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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–26 of July 7, 2000

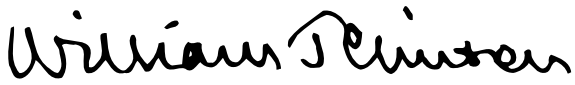
Determination on the Proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the United States of America and the Republic of Turkey Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize you to arrange for its execution.

The Secretary of State is authorized to publish this determination in the **Federal Register.**



THE WHITE HOUSE,
Washington, July 7, 2000.

[FR Doc. 00–18236
Filed 7–17–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–3 FR]

Raisins Produced From Grapes Grown in California; Increase in Desirable Carryout Used To Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This action will ultimately make more raisins available to handlers, especially for immediate use early in the season, and will allow desirable carryout to more accurately reflect actual carryout inventory.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

Question and Answer Overview

What Are Marketing Orders?

Marketing orders are rules which are authorized under the Agricultural Marketing Agreement Act of 1937. They are based on evidence developed at a formal hearing. Marketing orders help fruit and vegetable growers work together to solve marketing problems that cannot be solved individually. Industries voluntarily implement these programs and choose to have Federal oversight of certain aspects of their operations.

The California raisin industry has operated under a marketing order since 1949. The order authorizes implementation of volume control for the various varietal types grown. Preliminary and interim free and reserve percentages are computed and announced by the Committee and final percentages are established by the Department of Agriculture. When volume controls are implemented for a particular varietal type, a portion of the crop can be sold by handlers to any market (free tonnage), and the remaining portion (reserve tonnage) is required to be held by handlers for the account of the Committee. Reserve raisins are disposed of through programs authorized under the marketing order. Under the order, reporting and recordkeeping requirements for gathering statistical information and supporting volume control activities are implemented. Quality controls, and marketing research and development, and promotional activities also are implemented in the interest of growers, handlers, and consumers.

What Is Desirable Carryout?

Desirable carryout is the amount of raisins from one season needed during the first part of the next season for market needs, and is one of the factors used in computing yearly trade demand. When computed trade demand is less than the quantity of raisins produced, volume controls are implemented under the order.

Why Did the Committee Recommend This Action?

The Committee recommended the increase in the desirable carryout to make more raisins available to handlers for immediate use early in the season when supplies are often tight, and to bring desirable carryout more in line with actual carryout inventory and early season shipments. The increase is expected to more accurately reflect the marketing conditions currently facing the industry.

Who Will Be Affected by This Action?

Growers and handlers of raisins produced in California will be affected by this action. Volume controls implemented under the order are designed to promote orderly marketing conditions, stabilize prices and supplies, and improve grower returns.

Were Any Comments Received on This Action?

One comment was received. The commenter supports the increase in desirable carryout, but expressed concern over the impact of the change on the Committee's program to promote California raisin sales in foreign markets. The increase in desirable carryout would make more raisins available to handlers as free tonnage, and might reduce the amount of reserve raisins purchased to meet their market needs. However, Committee sponsored promotional activities are not expected to be negatively impacted by the amount of the desirable carryout, because those activities are planned and implemented later in the season when carrying inventories and size of the new crop are known. Additionally, those promotional activities are planned by the Committee with the most recent information available, and approved by the Department.

When Will This Action Be Effective?

This action will be effective August 1, 2000, the beginning of the 2000/2001 crop year, and the increased desirable carryout will be used to compute trade demand for that year.

Executive Orders 12866 and 12998

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

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

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

Discussion of the Increase in Desirable Carryout

This final rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from one crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule increases the desirable carryout from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments over the past 5 years, dropping the high and low figures. This action was recommended by the Committee at a meeting on November 10, 1999.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons.

The Committee would like to continue to bring the desirable carryout in line with handlers' actual inventory at the end of a crop year. Desirable carryout has averaged 63,364 tons at 2 months, 71,203 tons at 2¼ months, and 80,248 tons at 2½ months. For the past 5 years, an average of 102,452 tons has been held in inventory by all handlers at the end of a crop year. Increasing the desirable carryout will also bring this factor more in line with early-season shipments while providing some raisins for market expansion. For the past 5 years, an average of 94,147 tons of raisins has been shipped during the first 3 months of the crop year (August, September, and October).

Thus, the Committee met on November 10, 1999, and recommended increasing the desirable carryout to a rolling average of 3 months of shipments (August, September, and October) over the past 5 years, dropping the high and low figures. If this formula would have been used for the current crop year (1999–2000), the desirable carryout would have equaled 94,083 tons as compared to the current 73,809 tons. The 94,083-ton figure would have thus been much closer to the actual inventory of 102,452 tons, and closer to the 5-year average level of shipments for August, September, and October of 94,147 tons. The following table illustrates this computation.

TABLE 1.—COMPUTATION OF PROPOSED NEW DESIRABLE CARRYOUT CROP YEARS

	A 1998–99	B 1997–98	C 1996–97	D 1995–96	E 1994–95
Total of free tonnage shipments during August, September, and October (Natural condition tons)	91,015	89,756	98,731	96,109	95,125
Total of 3-months of shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by 3 (Natural condition tons)[1]	94,083				

[1] (Columns A+D+E)/3

Finally, as with the 1998–99 increase in the formula, this action will result in a higher free tonnage percentage which will make more raisins available to handlers, especially for immediate use early in the season when supplies can be tight. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

Much of the discussion at the Committee's meeting concerned the desirable carryout of Natural (sun-dried) Seedless raisins (Naturals). Naturals are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for Naturals for the past several seasons. However, the Committee also believes that the increase in desirable carryout should apply to the other varietal types of raisins covered under the order.

The Committee's vote on this action was 24 in favor and 13 opposed. The no votes were primarily from members who favored a higher desirable carryout. After much deliberation, the majority of Committee members supported basing desirable carryout on a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. Thus, paragraph (a) in § 989.154 is modified accordingly.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This final rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from one crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are available for shipment. This rule will increase the desirable carryout specified in paragraph (a) of § 989.154 from 2½ months (August, September, and one-half of October) of prior year's shipments to a rolling average of 3 months (August, September, and October) of shipments for the past 5 years, dropping the high and low figures.

The new desirable carryout level will apply uniformly to all handlers in the industry, whether small or large, with no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout will increase the trade demand and free tonnage percentage, making more raisins available to handlers early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

The Committee considered a number of alternatives to the 3-month rolling shipment average in the desirable carryout level. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on November 9, 1999, and discussed desirable carryout. All of the subcommittee members agreed with increasing the desirable carryout and considered a number of alternatives. Options considered included: Basing desirable carryout on a 5-year rolling average of actual carryout inventory; an average of 3 months of prior year's shipments; or a rolling average of 3 months of shipments over the past 5 years, dropping the high and low figures. The subcommittee ultimately recommended to the full Committee that desirable carryout be based on a 5-year rolling average of actual carryout inventory.

At the Committee meeting on November 10, 1999, these options were again reviewed. After much discussion, the majority of Committee members agreed that desirable carryout should be based on shipments, not actual carryout inventory. Most Committee members concurred that basing desirable carryout on actual carryout inventory could create problems if handlers carried out large inventories. In addition, most members believed that shipments are driven by market demand, and should thus continue to be the basis for desirable carryout. The Committee ultimately recommended that the desirable carryout be based on a rolling average of 3 months of shipments for the past 5 years, dropping the high and low figures.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on November 9, 1999, and the Committee meeting on November 10, 1999, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on January 31, 2000 (65 FR 4583). Copies of the rule were mailed by the Committee's staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 31, 2000. One comment was received.

The commenter supports the change in desirable carryout, but expressed concern over the impact of the change on the Committee's program to promote California raisin sales in foreign markets. The purpose of this rulemaking action is to change the desirable carryout to more accurately reflect actual carryout inventory and early-season shipments. Desirable carryout is the amount of tonnage from a specific crop year needed during the first part of the succeeding crop year to meet market needs. Failure to provide adequate raisins for market needs during the first part of the crop year would likely have a negative impact on prices and sales later in the season. Such an impact would likely be felt in domestic and foreign markets. The increase in desirable carryout would make more raisins available to handlers as free tonnage, and might reduce the amount of reserve raisins handlers purchase to meet their market needs. However, Committee sponsored promotional activities are not expected to be negatively impacted by this action. Those promotional activities are planned and implemented later in the season, when carryin inventories and the size of the new crop are known. Additionally, those promotional activities are planned by the Committee with the most recent information available, and approved by the Department.

Accordingly, no changes will be made to the rule, as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 2000–2001 crop year begins on August 1, 2000, and this rule should be effective promptly because the order provides that the Committee meet on or before August 15 to compute and announce the trade demand, and the desirable carryout level is a necessary item in that calculation; (2) this action is a relaxation in that it will make more raisins available to handlers especially for use early in the season; (3) producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 60-day comment period was provided for in the proposed rule, and the comment received is addressed in this final rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.154 is amended by revising paragraph (a) to read as follows:

§ 989.154 Marketing policy computations.

(a) *Desirable carryout levels.* The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage during August, September, and October for each of the past 5 crop years, for each varietal type, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three.

* * * * *

Dated: July 11, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–18073 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. DA–00–06]

Final Rule for Dairy Forward Pricing Pilot Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a pilot program which exempts handlers regulated under the Federal milk order program from paying producers and cooperative associations the minimum Federal order price(s) for that portion of their milk for nonfluid use that is under forward contract. Establishment of the pilot program is required by a November 1999 amendment to the Agricultural Marketing Agreement Act of 1937 (AMAA).

EFFECTIVE DATE: July 19, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: This rule implements an amendment to the AMAA which directs the Secretary of Agriculture to establish a temporary pilot program for forward contracting of milk under Federal milk marketing orders. The effect of the amendment is to permit a handler to pay producers or cooperative associations a negotiated price, rather than the minimum Federal order price, for milk that is under forward contract, provided that such milk does not exceed the handler's nonfluid use of milk for the month. The amendment appears in Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536). It was signed into law on November 29, 1999. The

amendment specifies that the pilot program shall only apply to federally regulated milk that is not classified as Class I milk or otherwise intended for fluid use and that is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in federally regulated milk. The pilot program expires December 31, 2004.

This pilot program does not invalidate, supersede, or otherwise change existing milk contracts between handlers and dairy farmers. Contracts eligible for this pilot program shall be those contracts beginning no earlier than the effective date of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The pilot program is a voluntary program that does not require extensive preparation for those handlers and dairy farmers who choose to participate in it; and (2) most handlers and farmers desiring to participate in the program are anticipating the publication of this rule and would like to have their contractual transactions under the program effective as soon as possible.

Executive Order 12988

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

Executive Order 12866

The Department is issuing this rule in conformance with Executive Order 12866. This rule is not economically significant for the purposes of Executive Order 12866.

The forward pricing pilot program is a voluntary program that will permit a handler and a producer to negotiate prices that, at times, may be below the minimum order prices that would otherwise apply to such milk. Some producers, proprietary handlers, and cooperative associations now negotiate forward contracts on part or all of their milk. The pilot program will expand the opportunities to engage in forward contracting by exempting participating proprietary handlers from the minimum prices to producers and cooperative associations required under Federal milk marketing orders. These regulations do not affect the ability of cooperative associations to forward contract with their members.

The Regulatory Flexibility Act and the Effects on Small Businesses

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) considered the economic impact of this rule on small entities and has prepared this final regulatory flexibility analysis.

The legal basis for this rule is set forth in an amendment to the AMAA signed into law on November 29, 1999, that directs the Secretary of Agriculture to establish the dairy forward pricing pilot program. The Secretary was directed ''to establish a temporary pilot program under which milk producers and cooperatives are authorized to voluntarily enter into forward price contracts with milk handlers.''

The pilot program will provide the dairy industry, which has experienced substantial price volatility in recent years, with another tool to deal with such volatility. With the phase-down of the dairy price support program to a safety-net program, the prices of dairy products have fluctuated to a much greater extent than they did during the prior 20 years. This price fluctuation has created problems for processors of manufactured dairy products (*e.g.*, butter, nonfat dry milk, and cheese), the dairy farmers who supply these processors, and the retailers, school systems, and other public institutions who provide these products to consumers.

Under the Small Business Administration's definition, a dairy farm is a small business if it has annual gross revenues of less than $500,000 and a handler is a small business if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Based upon the most current information available, USDA identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that had their milk pooled under a Federal order in January 2000. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there were approximately 1,200 plants associated with Federal orders in January 2000, and of these plants, approximately 720 qualify as ''small businesses,'' representing about 60 percent of the total. At the present time, 142 cooperative associations represent 61,405 dairy farmers under the Federal milk order program. In addition, there were 10,311 dairy farmers who were not affiliated with any cooperative association in January 2000. Of these nonmember producers, 9,559 meet the SBA's definition of a small business.

The recordkeeping and reporting requirements for this rule are minimal. At the present time, any handler that enters into a forward contract with a producer presumably has written proof for such an arrangement. Under the pilot program, a handler will be required to submit a copy of each forward contract with a producer or a cooperative association to the market administrator of the order that regulates the milk. In addition, the handler will be required to attach a specific disclosure statement to each forward contract with each producer under the pilot program. The disclosure statement will have to be signed by each dairy farmer entering into a forward contract. The disclosure statement explains that a dairy farmer entering into a forward contract under the pilot program forfeits his or her right to receive the minimum order price(s) for that portion of their milk that is under contract for the duration of the contract period. These requirements are discussed further in the Paperwork Reduction Act section of this document.

In drafting the rule, the Department considered whether any limit should be established for the amount of milk that a dairy farmer could forward contract. We decided not to impose such a limit because we did not wish to interfere with a dairy farmer's desire to forward contract all of his or her milk. Also, in order to gain as much knowledge as possible about the types of forward contracts that might be offered by handlers, we believe it is beneficial to allow handlers and dairy farmers to decide between themselves how much milk to put under forward contract and how much milk to keep under minimum Federal order pricing.

Comments were specifically requested on the impact of this rule on small businesses. Many comments, particularly from dairy farmers and

cheese plant operators, stated that the pilot program would assist them in running their business. No comments were received from a small business stating that the pilot program would be a burden to them.

The Department does not believe that the forward pricing pilot program will unduly burden small entities or impair their ability to compete in the marketplace. In fact, by providing another tool to reduce price risk, the pilot program may aid small businesses in competing with larger entities that have the ability to use existing futures and options markets, and other means, to reduce their price risks.

Several provisions that were in the proposed rule have been modified or eliminated in response to those commenters who noted that these provisions could limit the ability of small businesses to participate in the pilot program. A provision that would have provided a 3-day period in which a forward contract could be canceled has been removed to facilitate hedging of forward contracts, and a provision limiting initial forward contracts to 6 months has been changed to 12 months to better reflect dairy farmers' budgeting practices. In addition, another change was made so that proprietary handlers that do not operate pool plants can participate in the program. These provisions are discussed in more detail in the discussion of the rules applicable to the pilot program.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) for emergency approval and such approval was granted. A separate 60-day notice seeking public comment on the information collection will be published after this final rule is issued. OMB has assigned this request No. 0581–0190.

Under the pilot program for the forward contracting of milk under Federal milk orders, a one-page disclosure statement was designed so that the Secretary's representatives administering the pilot program can be certain that dairy farmers have entered into the pilot program voluntarily. The disclosure statement is attached to a fact sheet containing general guidelines to help dairy farmers understand the forward contracting process. It also explains to the dairy farmer that the program is voluntary and that by entering into the program with a handler, the dairy farmer will be forfeiting his or her right to the minimum prices provided under the order. The form should take no more than 15 minutes to be read, understood, and signed by a dairy farmer. We estimate that the number of dairy farmers involved would be approximately 8,000, and the total annual time burden would not exceed 2,000 hours.

Handlers will be required to submit their forward contracts under the pilot program to their respective market administrator's office. There are 2 reasons for this. First, the market administrator must be able to review the contract to ensure it is signed and to verify that it complies with the regulations provided here. Second, the Department is required to conduct a study of forward contracting under the pilot program to determine the impact on milk prices paid to producers in the United States. This study must be submitted to Congress no later than April 30, 2002. In order to do such a study, the Secretary will have to review, summarize, and evaluate the different types of contracts that were written under the pilot program.

The time required for handlers to prepare and submit copies of contracts would approximate 30 minutes per contract. If all of the nearly 1200 plants associated with Federal orders decide to forward contract under the pilot program, the total annual burden to submit these contracts would be 600 hours.

In the proposed rule, and as continued in this final rule, the disclosure statement described above must be submitted each time that a dairy farmer enters into a forward contract under the pilot program. Several commenters stated that this requirement was redundant and resulted in unnecessary paperwork. They suggested that the disclosure statement should only be required to be submitted the first time that a dairy farmer enters into a forward contract under the pilot program. Except for these comments with respect to the disclosure statement, no other comments were received that relate to paperwork reduction or information collection.

While we are concerned about burdening handlers with unnecessary paperwork, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. Furthermore, we are not convinced by the argument that producers need be told only once that entering into a forward contract precludes them from receiving the order minimum prices for their milk. Forward contracting by producers is a significant departure from the historical regulatory environment. As such, it is essential that producers fully understand the consequences of entering into a voluntary contract that forfeits their right to receive minimum order prices for milk. By signing a disclosure statement for each contract, producers will be certifying that they have been given the opportunity to review the Forward Pricing Pilot Program Fact Sheet that describes the program, provides some advice, and cautions the producer to fully understand the terms and conditions of each contract.

Public Comments

A proposed rule was issued on February 25, 2000 (44 FR 10981). Interested parties were given 15 days to file written comments concerning the proposed rule. These comments were accepted by regular mail, e-mail, and by fax. A total of 97 comments were received. These comments came from—in order from most to least—dairy farmers, handlers, federal and state legislators, futures industry representatives, banking industry representatives, and other interested parties. All of the comments are available for viewing on our web site: www.ams.usda.gov/dairy/for_contr_pilot.htm.

Discussion of Rules Applicable to Pilot Program

Under the rules adopted here to administer the pilot program, producer milk under forward contract with a handler in compliance with the rules will not be subject to a Federal milk order's minimum price requirements provided that such milk does not exceed the handler's Class II, III, and IV utilization of milk for the month in the market that regulates the milk. This rule contains a clarification in § 1140.2(a) to make it clear that in order to be eligible for exemption from minimum order pricing under this pilot program handlers must be in compliance with the program rules.

For convenience, a handler's combined Class II, III, and IV utilization is defined as the handler's eligible milk. In the case of a multi-plant handler, the handler's Class II, III, and IV utilization will be combined together for all of the handler's milk regulated under one order. A handler will only be exempt from paying the order's minimum price(s) on its quantity of eligible milk.

The determination of which producers' milk is over-contracted is left to the handler. If the handler fails to make this determination, the market administrator will prorate the over-contract milk to each producer and cooperative association having a contract with the handler.

Although handlers participating in the pilot program will not be required to pay producers and cooperative associations the order's minimum uniform or component prices for contract milk, they will still be required to account to the pool for all milk they receive at the respective order's minimum class prices. In the case of milk received by transfer from a cooperative association's pool plant, a handler may forward contract for all such transferred milk that is not used in Class I and will be exempt from paying the cooperative the minimum class prices for contract milk.

In the proposed rule (See § 1140.2(a)), forward contracting under the pilot program was restricted to a handler that operates ''one or more pool plants.'' In this final rule, this has been changed to read ''any handler defined in §§ 1000.9 and 1135.9.'' The language in the proposed rule would have excluded proprietary handlers that do not operate pool plants from participating in the pilot program. As noted by Kraft Foods in its comment, ''this limitation is not in the statute creating the pilot program, and would unnecessarily exclude a number of handlers and producers from enjoying the benefits intended by Congress.''

The language contained in the proposed rule would not have permitted forward contracting for many manufacturing plants that use pooled milk for their manufactured dairy products. In fact, many nonpool plants that receive producer milk by diversion from pool plants would have been unable to forward contract under the pilot program.

In providing for the forward contract pilot program, Congress provided handlers who forward contract with an exemption from paying the minimum Federal order price to producers with whom they have contracted. The November 1999 amendments to the Act did not *permit* handlers who manufacture Class II, III, and IV products to forward contract because any handler, even handlers with all Class I milk, could have forward contracted prior to the amendments. What the amendments did do, however, was excuse handlers from paying producers minimum order prices for Class II, III, and IV milk under forward contract.

The language in § 1140.2(a) for the proposed rule stated that only pool plant operators could forward contract and be exempt from minimum Federal order pricing. This language, however, does not take into consideration the complex marketing arrangements that exist between pool plants, cooperative association bulk tank handlers, and nonpool plants.

In many markets, milk of nonmember producers that is regularly received at a nonpool plant is actually pooled by a pool plant operator or by a cooperative association through its deliveries to a pool plant. The nonmember milk delivered to the nonpool plant is reported as producer milk diverted to a nonpool plant by the cooperative association on its monthly report of receipts and utilization to the market administrator. Alternatively, if a cooperative association is not involved in the transaction, such milk could be reported by a pool plant operator on its report.

Many nonpool plant operators that receive nonmember milk that is pooled through another handler issue checks to their nonmember producers. They submit their payrolls showing these payments to the market administrator. Nevertheless, these nonpool plant operators are not responsible under the order for paying their nonmember producers the minimum Federal order price; it is the handler—*i.e.,* either the cooperative association or pool plant operator—that pools the milk for them who would be held responsible for an underpayment.

In this final rule, only producer milk that is under forward contract with a handler in compliance with the rules provided here will be exempt from the order's minimum prices. In the case of nonmember milk that is reported as producer milk by a cooperative association handler or pool plant operator, but payrolled by a nonpool plant operator, the cooperative association or pool plant operator, respectively, will be held responsible for any underpayment to a nonmember producer in the event that milk under contract becomes subject to minimum order pricing (for instance, in the case of over-contracted milk). In this way, cooperative association handlers, pool plant operators, and nonpool plant operators may continue the complex arrangements that have evolved to pool milk under the Federal milk order program and all will be permitted to participate in the pilot program.

The language in § 1140.2(a) of this final rule has been modified to reflect the change from ''handler that operates one or more pool plants'' to simply ''handler.'' As defined in § 1000.9, handler includes not only the operator of a pool plant or a nonpool plant, but also a broker serving as a handler as provided in § 1000.9(b) and a cooperative association acting as a handler with respect to milk delivered to a pool plant or diverted to a nonpool plant. Finally, the term ''handler'' includes a proprietary bulk tank handler as defined in § 1135.9 of the Western order.

Any handler participating in the pilot program will still be required to file all of the reports that are now required under an order. This includes reports of receipts and utilization of milk and monthly payroll reports that show all information now required under the orders.

Handlers participating in the pilot program will have to submit to the market administrator a copy of each contract for which it is claiming exemption from the order's minimum pricing. This contract must be signed prior to the 1st day of the 1st month for which the contract applies and must be received by the market administrator by the 15th day of that month. For the first month that the pilot program is effective, contracts must be signed on or after the day on which the program becomes effective. For example, if the program becomes effective on July 17, contracts for August milk must be signed between July 17 and July 31 and must be in the market administrator's office by August 15.

It is the responsibility of each handler to give to each contracting dairy farmer or cooperative association a disclosure statement informing them of the nature of the pilot program and providing them with certain information that they should consider before entering into a forward contract. The disclosure statement must be signed on the same date as the contract by the dairy farmer or cooperative association representative and will have to be returned to the market administrator together with the contract by the 15th day of the month. Any contract that is submitted to the market administrator without the disclosure statement will be considered to be invalid for the purpose of being exempt from the order's minimum pricing and will be returned to the handler.

Several commenters objected to having to submit a disclosure statement each time they contract with a producer. They argued that attaching a disclosure statement to the first forward contract with a producer was sufficient and that having to do so with each succeeding contract involved unnecessary paperwork.

As noted earlier in the section dealing with the Paperwork Reduction Act, we do not believe that the very short disclosure statement specified in Section 1140.1(e) of this final rule would create such a burden. In fact, it is only one paragraph long and can easily be incorporated in the body of a forward contract itself or can be handled as a one-page supplement that may be attached to the forward contract.

In its proposed rule, the Department proposed 2 provisions to help dairy farmers adjust to the new program. One provision would have required that each forward contract under the pilot program contain a clause that gives a dairy farmer 3 days to change his or her mind about forward contracting their milk. The 2nd proposed provision would have limited the contract period for first-time contracts under the pilot program to 6 months. Both of these proposals were opposed by a majority of the commenters who addressed these issues.

Numerous commenters contended that these 2 provisions would be very damaging to the pilot program, even rendering it totally ineffective. One commenter who specializes in hedging price risks noted that the 3-day cancellation provision would severely constrain a handler in offsetting its risk if it had to wait for 3 days after signing a contract before it could safely hedge a price commitment that it had made 3 days earlier. With respect to the proposed rule limiting first-time contracts to 6 months, many commenters observed that a 6-month contract would not match up with a dairy farmer's budgeting process.

In response to those commenters who argued that having to wait 3 days would subject handlers to extraordinary, unreasonable price risk, we undertook a careful review of the options available to handlers for hedging such risk. In particular, we analyzed the costs associated with purchasing at-the-money put options in lieu of selling futures to hedge forward contracts during the 3 days when a forward contract could be canceled. We also looked at the costs incurred in selling futures and simultaneously purchasing an equivalent amount of at-the-money call options to hedge the price risks associated with entering into forward contracts during the 3 days when the contract could be canceled. Our analysis indicates that the costs of the 3-day cancellation provision could amount to between 10 and 15 cents per hundredweight. These costs would likely be passed on to producers in the form of lower contract prices which could dampen any interest in the pilot program.

In proposing the 3-day cancellation clause for producers who enter into forward contracts under the pilot program it was our intent to help farmers adjust to the new program and to protect them from undue pressure in signing forward contracts. However, based on the comments and on our analysis it is clear that the 3-day cancellation provision would result in some additional costs to handlers who enter into forward contracts and hedge such contracts by using the futures market. Such costs could be passed on to producers in terms of lower forward contract prices. Therefore, while we continue to see merit in this provision, we must conclude that, on balance, the 3-day cancellation provision could work against the interests of dairy farmers by denying them the opportunity to utilize forward contracts under the pilot program. Accordingly, this provision has been removed from this final rule. Nevertheless, we will carefully monitor whether producers have been provided with adequate time and information before entering into forward contracts with handlers under the pilot program and will revisit this issue if necessary.

With respect to the 6-month forward contract restriction for producers forward contracting for the first time, we still believe that a restriction for first-time forward contracts would have merit. However, we are convinced by the comments submitted that the maximum contract length should be changed from 6 months to 12 months to be more consistent with budgeting and banking practices. After a producer has entered into his or her first forward contract under the pilot program, subsequent contracts could be written for longer periods of time.

A 3rd proposed provision that was widely opposed by commenters and received virtually no support would have required the basis for pricing milk under a forward contract to be the same as the basis for pricing milk that was not under forward contract. Specifically, in the 4 Federal orders with butterfat and skim milk pricing, forward contracts would have been required to be written in those terms, and in the 7 orders with component pricing of milk, forward contracts would have been required to be written in terms of those same components. This provision was proposed for 2 reasons. First, we thought such pricing would be more understandable to producers who had part of their milk subject to minimum order pricing and part of it subject to forward contract pricing. Second, we thought that such pricing would be easier for producers to verify using testing data provided by the market administrator.

This proposal was seen by commenters to be unnecessarily limiting and an obstacle to effectively hedging contract prices, which may be based upon futures market prices that may not price each component of milk. Therefore, it has been removed. However, producers who are not members of a cooperative association should understand that their milk weights and tests will continue to be handled in the same way by the market administrator even if they choose to enter into a forward contract which prices their milk on a basis that differs from the order in which their milk is pooled. For example, if a producer under the Appalachian Order, which prices milk to dairy farmers on the basis of skim milk and butterfat, enters into a contract that prices milk on the basis of protein, butterfat, other solids, and somatic cell count, the producer will not receive data from the market administrator to compare against the buying handler's test data. If the producer wishes to verify these tests, he or she will have to do so at their own expense.

As proposed, payments specified under a forward contract must be made on the same dates as order payments which they replace. No comments were received in opposition to this provision and it should be carried forward for several reasons. First, nearly every handler entering into forward contracts would have some milk that is subject to minimum order pricing. It is highly unlikely that these handlers would establish a dual accounting and payment system even if they thought that different payment dates would be preferable to those specified under the order. Second, if handlers paid producers under contract at different times than producers not under contract, this disparate treatment could cause problems which might influence the success of the pilot program for reasons entirely apart from more predictable pricing. Third, from an administrative standpoint, it will be much easier to administer the pilot program if payments are made on the same day as minimum order payments.

Some commenters argued that the market administrator should enforce forward contract prices just as they do minimum order prices. Another comment stated that the regulations should enforce payment of all contracts.

The Act requires the Secretary to establish a forward pricing pilot program. Milk for nonfluid use which is covered by forward contracts under the

pilot program is exempt from the minimum price provisions of the orders. We do not believe it should be the role of the market administrator or the Department to determine the terms of forward contracts or to enforce negotiated prices. Payment for milk covered under forward contract is required to be made by the dates specified in § 1140.2(e) of the regulations.

Some commenters argued that allowing a handler to draw money from the producer-settlement fund and not pass it on to its producers could create disorderly marketing conditions. One commenter concluded that allowing a handler to keep the difference between the order's blend price and the contract price was an unjustified windfall to the handler.

This issue merits some discussion. Frankly, we do not know what form forward contracts will take under the pilot program. We do know the nature of some forward contracts prior to the pilot program. In the Upper Midwest, where much of the milk that is pooled is used for Class III use, many forward contracts provided for a Class III price plus a pool draw. If a handler was a cheese operation, the pool draw would equal the difference between the order's blend price and the Class III price.

It may be that this same formula will be the popular way to forward contract under the pilot program, but there are several variables that make this unclear. First, the pilot program applies to all Federal order markets, with Class I utilizations ranging from 90 percent to 10 percent. There is a significant difference in the pool draw between these extremes. Second, forward contracts may only cover milk used for Class II, III, or IV use. While a contract providing for a Class III price plus the pool draw might make sense for a cheese plant, it may not fit well with an ice cream or butter-powder operation.

Producers who are contemplating forward contracting should keep in mind that their benchmark price is the Federal order blend price. That is the minimum price that they would receive in the absence of a forward contract. Thus, it seems reasonable that when producers negotiate a forward contract price, they would hope to approximate, ideally, the minimum blend price plus applicable premiums averaged over the forward contract period.

As noted above, we do not know how handlers will arrive at forward contract prices. They could look at futures markets for guidance. A forward contract price could be a flat blend price approximation; it could be an average futures market cheese price plus a pool draw; or, for a butter-powder operation, it could be an average future butter and powder price on a hundredweight basis plus a pool draw.

Over time, we would expect to see forward prices to producers below the blend price in some months and above the blend price in other months. When the contract price is below the blend price, the pool draw could accrue to the contracting handler. On the other hand, when the contract price is above the blend price, the contracting handler will have to supplement the pool draw to pay the producer the contract price. On balance, the pluses and minuses should cancel each other out since, one could argue, the desired objective of forward contracting is to remove the uncertainty and variability in prices, not to reduce a handler's cost by cutting its payments to producers. In fact, if producers continually find that they are losing money by forward contracting, it would seem illogical for them to continue to do so.

Some commenters also argued that handlers with forward contracts under the pilot program should be prohibited from excluding milk from regulation or, as it more commonly called, depooling milk.

This issue would by necessity involve amendments to Federal orders, unlike the pilot program, which involves no amendments to Federal orders. The depooling issue is really separate from forward contracting and is not appropriate for consideration in this informal rulemaking process.

Participation in the pilot program must be entirely voluntary on the part of dairy farmers and handlers. If the Department believes that the program is being used to coerce dairy farmers into signing contracts providing for prices that, on average, are consistently below minimum order prices, steps will be taken to halt such practices. One indication that such practices could be occurring would be complaints from dairy farmers that they were dropped because they refused to sign a forward contract with a handler. Another indication might be manifested by the replacement of one group of dairy farmers with another group of dairy farmers who have entered into forward contracts with the handler. It is conceivable that some farmers might intentionally enter into a forward contract that would consistently provide a price below the minimum order price simply to get their milk pooled on a particular market for possible future benefit. This type of activity would undermine the concept of minimum prices to dairy farmers and lead to the type of conditions that the AMAA was enacted to remedy. Should these types of activities occur after the pilot program becomes effective, the Secretary would consider appropriate actions to halt such activities.

Many commenters, including several members of Congress, took issue with our reference to suspend or terminate the pilot program in the discussion part of the proposed rule. Other commenters, however, specifically welcomed the discussion of these contingencies.

It may be true, as one commenter stated, that it is unnecessary to state that the Secretary of Agriculture can terminate the pilot program if he finds that it is operating in conflict with the Agricultural Marketing Agreement Act. However, we see no harm in stating what may not be obvious to all pilot program participants: If the program is abused, steps will be taken to stop the abuse.

Therefore, based on the rationale set forth in the proposed rule and in this document we are adopting provisions of the proposal as a final rule, with the changes discussed in this document, as well as several technical changes made for clarity.

Additional information about the pilot program is included in the Department's program announcement. The information is also available on the Dairy Programs' web site (www:ams.usda.gov/fmor/index.htm) and is available from local market administrator offices.

For the reasons set forth in the preamble, Title 7 of Chapter X of the CFR is amended by adding a new Part 1140 as follows:

PART 1140—DAIRY FORWARD PRICING PILOT PROGRAM

Subpart A—Definitions

Sec.
1140.1 Definitions.

Subpart B—Rules Governing Forward Contracts

1140.2 Rules governing forward contracts.

Authority: 7 U.S.C. 601 *et seq.*

Subpart A—Definitions

§ 1140.1 Definitions.

(a) *Pilot program* means the dairy forward pricing pilot program provided by an amendment to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 *et seq.*) signed into law on November 29, 1999 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536)).

(b) *Eligible milk* means the quantity of milk equal to the contracting handler's Class II, III, and IV utilization of

producer milk, in product pounds, during the month, combining all plants of a single handler regulated under the same Federal order.

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of milk from a producer defined in §§ 1001.12, 1005.12, 1006.12, 1007.12, 1030.12, 1032.12, 1033.12, 1124.12, 1126.12, 1131.12, and 1135.12, or a cooperative association defined in § 1000.18, and a handler defined in §1000.9 or 1135.9.

(d) *Contract milk* means the producer milk covered by a forward contract.

(e) *Disclosure statement* means the following statement which must be signed by each producer entering into a forward contract with a handler before the market administrator will recognize the terms and conditions provided in such contract.

Disclosure Statement

I am voluntarily entering into a forward contract with (handler's name). I have been given a copy of the contract and I have received the USDA's Pilot Program Fact Sheet to which this disclosure statement was attached. By signing this form, I understand that I am forfeiting my right to receive the order's minimum prices for that portion of my milk that is under forward contract for the duration of the contract. I also understand that my milk will be priced in accordance with the terms and conditions of the contract.

Printed Name:
Signature:
Date:
Address:
Producer No:

(f) *Other definitions.* The definition of any term in parts 1000–1135 of this chapter apply to, and are hereby made a part of, this part.

Subpart B—Rules Governing Forward Contracts

§ 1140.2 Rules governing forward contracts.

(a) Any handler defined in §§ 1000.9 and 1135.9 may enter into forward contracts with producers or cooperative associations for the handler's eligible milk. Milk under forward contract in compliance with these rules will be exempt from the minimum payment provisions that would apply to such milk pursuant to §§ 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1124.73, 1126.73, 1131.73 and 1135.73 for the period of time covered by the contract.

(b) A forward contract with a producer or cooperative association participating for the first time in this pilot program may not exceed 12 months. In no event shall a forward contract executed pursuant to this part extend beyond December 31, 2004.

(c) Forward contracts must be signed and dated by the contracting handler and producer (or cooperative association) prior to the 1st day of the 1st month for which they are to be effective and must be in the possession of the market administrator by the 15th day of that month.[1] The disclosure statement provided in § 1140.1(e) must be signed on the same date as the contract by each producer entering into a forward contract under the pilot program, and this signed disclosure statement must be attached to each contract submitted to the market administrator.

(d) In the event that a handler's contract milk exceeds the handler's eligible milk for any month in which the specified contract price(s) are below the order's minimum prices, the handler must designate which producer milk shall not be contract milk. If the handler does not designate the suppliers of the over-contracted milk, the market administrator shall prorate the over-contracted milk to each producer and cooperative association having a forward contract with the handler.

(e) Payments for milk covered by a forward contract must be made on or before the dates applicable to payments for milk that is not under forward contract under the respective Federal order.

(f) Handlers participating in the pilot program will continue to be required to file all reports that are currently required under the respective marketing orders and will continue to be required to account to the pool for all milk they receive at their respective order's minimum class prices.

(g) Nothing in this part shall impede the contractual arrangements that exist between a cooperative association and its members.

Dated: July 13, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–18113 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–02–P

[1] Contracts that have been signed prior to the effective date of these rules are invalid under the pilot program.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

[No. 2000–34]

RIN 3069–AA97

Federal Home Loan Bank Advances, Eligible Collateral, New Business Activities and Related Matters

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Advances Regulation and other regulations to implement the requirements of the Federal Home Loan Bank System Modernization Act of 1999 by: allowing the Federal Home Loan Banks (Banks) to accept from community financial institution (CFI) members new categories of collateral to secure advances; expanding the purposes for which the Banks may make long-term advances to CFI members; and removing the limit on the amount of a member's advances that may be secured by other real estate-related collateral. The Finance Board also is making related and other technical changes to its regulations on General Definitions, Powers and Responsibilities of Bank Boards of Directors and Senior Management, Federal Home Loan Bank Housing Associates, Community Support Requirements, Community Investment Cash Advance Programs and Standby Letters of Credit, and adopting a new regulation on New Business Activities.

DATES: The final rule is effective on August 17, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Scott L. Smith, Deputy Director, (202) 408–2991, or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Eric E. Berg, Senior Attorney-Advisor, (202) 408–2589, Eric M. Raudenbush, Senior Attorney-Advisor, (202) 408–2932, or Sharon B. Like, (202) 408–2930, Senior Attorney-Advisor, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

A. Historical Benefits of Federal Home Loan Bank System

The Federal Home Loan Bank System (Bank System) comprises twelve regional Banks that are instrumentalities

of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may own the capital stock of a Bank and only members and certain eligible nonmember borrowers (housing associates) (such as state housing finance agencies) may obtain access to the products provided by a Bank. *See* 12 U.S.C. 1426, 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public by enhancing the availability of residential housing finance and community lending credit through its members and housing associates. *See* 12 U.S.C. 1427. Any eligible institution (typically, an insured depository institution) may become a member of a Bank by satisfying certain criteria and by purchasing a specified amount of a Bank's capital stock. *See* 12 U.S.C. 1424, 1426; 12 CFR part 925.

As government sponsored enterprises (GSEs), the Banks are granted certain privileges that enable them to borrow funds in the capital markets on terms more favorable than could be obtained by private entities, so that the Bank System generally can borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity. The Banks pass along their GSE funding advantage to their members, and ultimately to consumers, by providing secured loans, called advances, and other financial products and services at rates and terms that would not otherwise be available to their members.

The Banks must fully secure advances with eligible collateral. *See* 12 U.S.C. 1430(a). At the time of origination or renewal of an advance, a Bank must obtain a security interest in collateral eligible under one or more of the collateral categories set forth in the Bank Act. *See* 12 U.S.C. 1430(a).

Under section 10 of the Bank Act and part 950 of the Finance Board's regulations, the Banks have broad authority to make advances in support of residential housing finance, which includes community lending, defined, in the final rule, as providing financing for economic development projects for targeted beneficiaries and, for CFIs, purchasing or funding small business loans, small farm loans or small agri-business loans. *See* 12 U.S.C. 1430(a), (i), (j); 12 CFR parts 900, 950. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or targeted economic development credit needs. *See* 12 U.S.C. 1430(i), (j); 12 CFR parts 951, 952. In addition, section 10(j)(10) of the Bank Act authorizes the Banks to establish additional Community Investment Cash Advance (CICA) Programs for targeted community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 12 CFR part 952.

B. Expanded Access to Bank System Benefits

On November 12, 1999, the President signed into law the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act)[1] which, among other things, amended the Bank Act by providing smaller lenders with greater access to membership in the Bank System and greater access to Bank advances. The Modernization Act established a category of members consisting of depository institutions whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) that have less than $500,000,000 in average total assets (based on an average of total assets over three years) called community financial institutions (CFIs),[2] and authorized the Banks to make long-term advances to CFI members for the purposes of providing funds for small businesses, small farms and small agri-businesses. *See* Modernization Act, sections 602, 604(a)(2), 605. The Modernization Act also authorized the Banks to accept from CFI members as security for advances secured loans for small business, agriculture, or securities representing a whole interest in such secured loans. *See id.*, section 604(a)(5)(C).

For all members, the Modernization Act removed the statutory limit on the amount of aggregate outstanding advances that could be secured by ''other real estate-related collateral,'' which had been capped at 30 percent of a member's capital. *See id.*, section 604(a)(5)(B). The Banks, therefore, are now authorized to accept other real estate-related collateral as security for advances to any member as long as the collateral has a readily ascertainable value and the Bank is able to perfect a security interest in that collateral. *See* 12 U.S.C. 1430(a)(3)(D) (as amended).

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[2] The Finance Board recently adopted an Interim Final Rule that amended the Finance Board's Membership Regulation to implement the Modernization Act amendments regarding membership in the Bank System. See 65 FR 13866 (March 15, 2000). The Finance Board adopted the Interim Final Rule as a Final Rule, with several changes, at its June 23, 2000 Board meeting.

C. Proposed Rule

On May 8, 2000, the Finance Board issued a notice of proposed rulemaking that proposed amendments to the Finance Board's regulations to implement the new statutory authorities described above. *See* 65 FR 26518 (May 8, 2000). The public comment period on the proposed rule closed on June 7, 2000. The Finance Board received letters from a total of 64 commenters, including: 11 Banks; 15 financial institution trade associations; 34 Bank members; 1 home builders' association; the Farm Credit System trade association; the Bank's trade association; and a Congressman. Comments as they relate to specific issues raised by the proposed rule are discussed below.

II. Analysis of Final Rule

A. Modernization Act Amendments Establishing Newly Eligible Collateral

1. New CFI-Eligible Collateral

The Modernization Act amended the Bank Act to allow CFI members to pledge new types of collateral as security for advances, specifically, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans. *See* Modernization Act, section 604(a)(5)(C). Proposed § 950.7(b)(1) implemented this amendment by authorizing the Banks to accept from CFI members or their affiliates as security for advances, small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that: (i) The loans have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral (CFI-eligible collateral). Proposed § 950.7(b)(1) also required that, prior to accepting any such CFI-eligible collateral, a Bank shall meet the new business activity requirements of proposed part 980. This requirement was intended to ensure that a Bank has the capacity to value, discount and manage the newly eligible collateral prior to making advances secured by such collateral.

Proposed § 950.7(b)(1) excluded loans secured by real estate because these types of loans were included in proposed § 950.7(a)(4).

a. Types of CFI-eligible collateral—Definitions of ''small business loans,'' ''small farm loans'' and ''small agri-business loans''. Proposed § 950.1 defined the terms ''small business

loans,'' ''small farm loans'' and ''small agri-business loans'' using a loan size approach and an alternative business (or farm) size approach. Specifically, loans below a prescribed aggregate amount—$1 million for small business loans, and $500,000 for small farm loans and small agri-business loans—were considered a proxy for business (or farm) size based on the loan size standards established by regulation of the agencies comprising the Federal Financial Institutions Examination Council (FFIEC),[3] and met the proposed definitions. *See* 57 FR 54235 (Nov. 17, 1992). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, these aggregate loan size limits were derived from the FFIEC requirement that financial institutions report to their primary regulators small business loans of up to $1 million and small farm loans of up to $500,000. *See id.* Loans above these aggregate loan size limits would not meet the proposed definitions, unless business data specific to the borrowing enterprise (annual gross receipts or number of employees) showed that the borrower met the eligibility standards for a small business (or farm) concern under the Small Business Administrations (SBA) regulations. *See* 13 CFR part 121.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the business size approach provides greater accuracy, but may result in costs that deter CFI members from fully employing Banks as a funding source for loans to small businesses and small farms. The loan size approach is less precise, but has the advantage of lower implementation costs, since it involves information already available to Federally regulated financial institutions in the reports they are required to file with their primary federal regulator.

In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board stated that the proposed definitions represented an appropriate compromise between these two approaches that would allow CFI members to use Bank System funding to finance small businesses and small farms, as authorized by the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). The Finance Board requested comment on whether there were any other appropriate methods of categorizing or defining small business loans, small farm loans, and small agri-business loans.

Many of the community bank commenters noted that the expansion of eligible collateral to secure advances is critical to their funding needs. Many commenters of all types stated that neither of the alternatives set forth in the proposed definitions would allow CFI members to utilize such loans as a source of funding to the extent intended by Congress. The consensus among commenters was that the aggregate loan size limits set forth in the proposed definitions were too restrictive, and that the alternative documentation requirements for loans above the aggregate loan size limits would be too time-consuming and burdensome to offer a practical alternative. Many commenters recommended instead that the Finance Board adopt a definitional approach tied to the legal ''loans to one borrower'' (LTOB) limits to which members already are subject. Other commenters variously recommended raising the maximum aggregate loan size limits, making any aggregate loan size limits uniform for all categories of CFI-eligible collateral, providing a mechanism that would adjust the aggregate loan size limits over time for inflation, and reducing documentation requirements. One commenter recommended adopting an aggregate loan size limit based on the standard for small farms developed by the Secretary of Agriculture (less than $250,000 in annual gross agricultural sales).

Loans and extensions of credit by insured depository institutions are subject to statutory and regulatory LTOB limits. *See, e.g.*, 12 U.S.C. 84(a); 12 CFR part 32 (Office of the Comptroller of the Currency); 12 CFR 560.93 (Office of Thrift Supervision). Generally, the total loans and extensions of credit made by an insured depository institution to any one borrower may not exceed 15 percent of that institution's total unimpaired capital and unimpaired surplus, with exceptions for, among other things, loans fully secured by high quality and highly liquid collateral. *See* 12 U.S.C. 84(a)(1), (2), (c). These LTOB limits are intended to protect the safety and soundness of insured depository institutions by prohibiting concentration of lending to any one entity. Commenters pointed out that, in conjunction with the LTOB limits, the size limit on a member's CFI eligibility of $500 million in total assets effectively limits the size of the loans the member may pledge for advances. Various commenters calculated the ''effective'' loan limit resulting from the LTOB approach to range from $3.75 million to $6 million for a $500 million institution, depending on the institution's capital level. Several commenters pointed out that the Finance Board adopted a similar approach in amending the definition of ''combination business or farm property'' in the Advances Regulation in order to permit members with assets of $500 million and less to pledge combination agriculture/residential loans and business/residential loans as eligible collateral. *See* 63 FR 35117 (June 29, 1998). The Finance Board noted at that time that by limiting the size of members that could pledge the loans, the Finance Board was indirectly limiting the size of the loans themselves. *See id.* at 35122.

The Finance Board recognizes that the LTOB approach offers certain advantages over the definitions of ''small business loans,'' ''small farm loans,'' and ''small agri-business loans'' set forth in the proposed rule. For example, the aggregate loan size limits in the proposed rule represent static, one-size-fits-all loan amounts. One commenter noted, in this regard, that while the proposed aggregate loan size limits might not impact CFI members with assets of $100 million or less, the proposed limits could create an impediment for larger CFI members making larger loans. By contrast, the LTOB approach would result in aggregate loan size limits that are relative to the size of each CFI member and arguably more relevant and appropriate. Additionally, since LTOB restrictions are already in place, reliance on this measure would ease administration and limit implementation costs. Further, a CFI member's LTOB limit would follow the movement of its assets and capital, thereby making adjustments for inflation unnecessary.

The Finance Board also recognizes that LTOB restrictions are not uniform. Legal lending limits for similarly sized CFI members will vary, not only because institutions will hold different amounts of capital and unimpaired surplus, but because LTOB restrictions themselves may vary in form or application among the federal and state regulatory bodies that promulgate and enforce such restrictions. Even within the same regulatory structure, the size of loan a CFI member is permitted to make may vary depending on the extent to which certain exceptions to the general LTOB limit may apply to that particular loan. However, the Finance Board does not believe that these variances, including the potential for higher loan amounts under certain circumstances, would prevent the LTOB approach from

[3] FFIEC is a formal interagency body empowered to prescribe uniform principals, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the FDIC, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and to make recommendations to promote uniformity in the supervision of financial institutions. *See* 12 U.S.C. 3301 *et seq.*

serving as an appropriate method of categorizing or defining small business loans, small farm loans and small agri-business loans.

On balance, the Finance Board is persuaded that the LTOB approach is the most reasonable and cost efficient means of implementing the Modernization Act in a manner that will facilitate CFI member access to Bank advances for the purpose of funding small businesses, small farms and small agri-businesses. Further, the Finance Board does not believe that the LTOB approach raises any additional safety and soundness concerns that cannot be adequately addressed by the collateral policy requirements in § 917.4 and the new business activities requirements in part 980 discussed below. Accordingly, § 950.1 of the final rule defines ''small business loans,'' ''small farm loans,'' and ''small agri-business loans'' as loans that are within the legal lending limit of the reporting CFI member and reported on certain regulatory financial reports as specifically provided in § 950.1. To ensure that loan size is effectively limited by the definitions of ''small business loans,'' ''small farm loans,'' and ''small agri-business loans,'' the definitions shall apply only to whole loans and not to loan participations.

As proposed, § 950.7(b)(1) of the final rule does not explicitly refer to secured loans for agriculture, as does the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). Instead, the Finance Board has interpreted ''agriculture loans'' to mean small farm loans and small agri-business loans, and substituted these terms, in the text of § 950.7(b)(1). These terms also appear in § 950.3, which sets forth the authorized purposes of long-term Bank advances, so their use in § 950.7(b)(1) is consistent with the Finance Board's general policy of employing uniform terminology in its regulations whenever possible. The Finance Board also stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that permitting the Banks to accept as collateral only ''small'' agriculture loans was consistent with both the Banks' mission of assisting members with community lending and with the Modernization Act's emphasis on small institutions' lending to small enterprises. *See* Modernization Act, sections 602, 604(a)(3), 604(a)(5)(C).

Many commenters stated that the Finance Board's interpretation of the statutory term ''agriculture loans'' as small farm loans and small agri-business loans was unnecessarily restrictive, on the basis that the Modernization Act does not explicitly specify an aggregate size limit on secured loans for agriculture. The Finance Board's adoption of the LTOB approach to loan size definitions in the final rule resolves this issue, since it allows CFI members to pledge as collateral to secure advances farm loans and agri-business loans up to their respective legal lending limits.

b. Restrictions on acceptance of CFI-eligible collateral. The primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in view of the potentially greater risks inherent in non-mortgage, CFI-eligible collateral, with which the Banks have limited or no experience, the Finance Board, for safety and soundness reasons, considered whether limits or restrictions should be established on the types of collateral that could secure such loans or securities pledged by a CFI member or affiliate to secure an advance. For example, small business loans secured by accounts receivable or inventory, or small farm loans secured by crops or livestock, which may present greater risks than other types of secured small business or small farm loans, could have been excluded from the types of eligible collateral. The Finance Board chose not to impose limits or restrictions in the proposed rule, but instead to require in proposed § 917.4 that the Banks have policies and capacity to value the collateral, whatever it may be. In addition, proposed part 980 treated the acceptance of CFI-eligible collateral for the first time as a new business activity requiring 60-day notice to the Finance Board before the activity could be undertaken.

The Finance Board requested comment on whether certain types of CFI-eligible collateral should be prohibited as eligible collateral on the basis of risk. Several commenters supported the approach in the proposed rule, stating that no types of CFI-eligible collateral are so inherently risky as to justify a prohibition on their acceptance, and that each Bank should have the discretion to determine risk parameters and eligibility standards for each type of CFI-eligible collateral it chooses to accept.

The Finance Board continues to believe that requiring each Bank to determine the value of collateral in accordance with a member products policy established pursuant to § 917.4 will minimize appropriately the Banks' exposure to risk in accepting CFI-eligible collateral. The Finance Board expects such policies, if properly developed and implemented, will take the appropriate risk factors into account in their valuation and discounting procedures. Of course, those policies, and the Banks' activities in this regard, would continue to be subject to examination by the Finance Board and to the new business activities requirements of part 980, discussed in section II.B., below. Accordingly, as proposed, the final rule establishes no limits on the types of collateral that may secure such loans or securities pledged by a CFI member or affiliate.

c. CFI status. (i) Definition of ''CFI''—Determination of CFI status based on calculation of three-year total assets average. The Modernization Act defines a ''community financial institution'' as an FDIC-insured institution that has, as of the date of the transaction at issue, less than $500 million in average total assets, based on an average of total assets over the three years preceding that date. *See* Modernization Act, § 602 (*to be codified at* 12 U.S.C. 1422(13)). The proposed rule included a definition of ''CFI'' in § 900.1 that mirrored the statutory definition.

A number of commenters recommended that the Banks be allowed to determine the status of their members by calculating the average total assets of their members on an annual basis, based on calendar year-end financial data available from the institutions' regulatory financial reports filed with their regulators, or, in the alternative, based on data available from the institutions' quarterly regulatory financial reports for the preceding three years. Commenters stated that it would be confusing to determine CFI status on a quarterly or monthly basis when § 925.22(b)(1) of the Membership Regulation requires the Banks to calculate annually each member's minimum capital stock requirement using calendar year-end financial data. Commenters stated that calculation of CFI status on a quarterly or monthly basis would result in unnecessary administrative burdens and expense. Other commenters supported quarterly calculations of average total assets based on the institutions' quarterly regulatory financial reports over the three preceding years. Commenters also stated that calculation of CFI status on a quarterly or monthly basis would cause some members' CFI status to fluctuate more frequently, which, for members approaching the CFI asset cap, could have a negative effect on their reliance on Bank funding secured by CFI-eligible collateral.

The Finance Board finds merit in these comments and believes it would be reasonable and less burdensome for

the Banks to determine their members' CFI status by calculating annually the members' average total assets based on data drawn from the members' regulatory financial reports for the three most recent calendar year-ends. The April 1 effective date adopted in the final rule provides sufficient time for the Banks to use calendar year-end data available from the regulatory financial reports.

The issue of how to calculate the three-year total assets average also arises in the context of the membership application review process regarding the determination of whether an applicant for membership qualifies as a CFI and, therefore, is exempt from the statutory requirement that at least 10 percent of its total assets must be residential mortgage loans. *See* 12 U.S.C. 1424(a)(2) (1994). Because the calculation of the three-year total assets average affects the determination of CFI status for both membership and advances collateral purposes, consistent with the proposed Advances Collateral Rule, the final rule moves the definition of ''CFI'' to § 900.1, which contains general definitions applying to all Finance Board regulations. The final rule revises the proposed definition of ''CFI'' to include the calculation for advances collateral purposes described above, as well as a separate calculation for membership purposes discussed in the **SUPPLEMENTARY INFORMATION** section of the Finance Board's final rule on membership and advances adopted by the Finance Board on June 23, 2000.

(ii) Change in CFI status. The proposed rule provided that if a member that previously qualified as a CFI loses its CFI status, the Bank may not accept as security for new advances CFI-eligible collateral from that member. Proposed § 950.7(b)(2) also provided that a Bank shall not require a member that loses its CFI status and has outstanding advances secured by CFI-eligible collateral to repay such advances prior to the stated maturities, or to provide substitute collateral, eligible under paragraphs (a)(1) through (5), based solely on the member's change in CFI status. All of the comments addressing the change in CFI status provisions in proposed § 950.7(b)(2) supported allowing outstanding advances held by members that no longer qualify as CFIs to run to their stated maturities. Accordingly, this provision is adopted without change in § 950.7(b)(2)(i) of the final rule.

Proposed § 950.7(b)(2) also authorized a Bank to allow a member that has lost its CFI status to renew maturing advances secured by CFI-eligible collateral for up to 6 months in order to provide the member with sufficient time to wind down advances and replace them with other funding in an orderly fashion. The Finance Board requested comment on whether allowing renewals of such advances is appropriate and, if so, whether allowing renewals for up to 6 months would provide sufficient time for members to obtain alternative funding. Some of the commenters stated that the proposed 6-month renewal period for maturing advances was not enough time for members to obtain replacement funding for maturing advances. Alternative suggestions from commenters included a 12-month renewal period, an 18-month renewal period, and allowing members to maintain a permanent maximum eligible collateral limit, based on one-to two-year historical usage. In addition, some of the commenters indicated that it would be difficult to determine which advances are secured by CFI-eligible collateral and which advances are secured by other collateral.

Based on the comments, § 950.7(b)(2) of the final rule has been revised to apply to members that no longer qualify as CFIs and have total advances outstanding that exceed the amount that can be fully secured by collateral under § 950.7(a) (non-CFI-eligible collateral).

While the Finance Board believes that it is inappropriate to allow CFI members that lose their CFI status to continue to pledge CFI-eligible collateral as security for advances indefinitely, it does acknowledge that the proposed 6-month renewal period may not be long enough for members to obtain replacement funding for maturing advances. A 12-month renewal period would appear to be a more reasonable amount of time for transition, especially given that the calculation of CFI status is based on a three-year total assets average and a member, therefore, is likely to be aware of its potential loss of CFI status well before it actually occurs. Accordingly, § 950.7(b)(2)(ii) of the final rule has been revised to provide that maturing advances may be renewed to mature no later that 12 months from the date the Bank determines that a member ceases to qualify as a CFI. Since, as discussed above, § 900.1 of the final rule requires each Bank to perform the CFI calculation of the three-year total assets average on an annual basis effective April 1 of each year, the 12-month renewal period will run from April 1 of the year that a Bank determines that a member no longer qualifies as a CFI to March 31 of the following year.

Section 950.7(b)(2) of the final rule also provides that the total of a member's advances under § § 950.7(b)(2)(i) and (ii) shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.

d. Readily ascertainable value. Proposed § 950.7(b)(1) authorized the Banks to accept from CFI members or their affiliates as security for advances, CFI-eligible collateral provided that: (i) the loans have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral. The basis of this standard was the Finance Board's belief that the liquidation value of collateral, and the ability to liquidate the collateral quickly, was an appropriate measure of the value of CFI-eligible collateral securing an advance.

A substantial number of Bank commenters opposed the proposed standard on the grounds that liquidation value is difficult to measure and, therefore, impractical as a standard. The commenters also found the phrase ''freely liquidated in due course'' to be unclear in terms of when and how frequently such determination would have to be made.

In response to the Banks' concerns, § 950.7(a)(4) is revised in the final rule to provide that CFI-eligible collateral is eligible to secure advances if it has ''a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course.'' This standard is intended to clarify that the critical factor is the Bank's ability to reliably discount the collateral in question. The phrase ''can be liquidated in due course'' is intended to mean that there are no known impediments to liquidation at the time the collateral is accepted by the Bank. This change also is made in § 950.7(a)(4)(i)(A) of the final rule with respect to other real estate-related collateral.

2. Cash or Deposits in a Bank

Current § 950.9 of the Advances Regulation (redesignated as § 950.7 in the final rule) sets forth the types of eligible collateral that a Bank may accept to secure advances. The Modernization Act revised section 10(a)(3) of the Bank Act to add ''cash'' to the types of eligible collateral. *See* Modernization Act, section 604(a)(5)(A). As proposed, § 950.7(a)(3) of the final rule implements this change by adding cash as eligible collateral.

3. Other Real Estate-Related Collateral

a. New business activity notice requirement. The Modernization Act amended section 10(a)(4) of the Bank Act by removing the limit on the dollar amount of advances that may be secured by other real estate-related collateral,

which had been set at 30 percent of the member's capital. *See* Modernization Act, section 604(a)(5)(B). Section 950.7(a)(4) of the final rule implements this change by removing the 30 percent limitation. As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, because the Banks have had no or limited experience with accepting other real estate-related collateral, the Banks will need to build capacity and exercise caution in evaluating and accepting such collateral. For this reason, the proposed rule treated the acceptance of other real estate-related collateral as a new business activity, and proposed § 950.7(a)(4)(iii) prohibited a Bank from making total advances to all members secured by other real estate-related collateral in an aggregate amount exceeding 25% of the highest level of advances previously secured by such collateral (125% trigger), until the Bank met the new business activity requirements of proposed part 980. Proposed § 980.3 required a Bank to provide at least 60 days prior notice to the Finance Board to include, among other things, information demonstrating the Bank's capacity, sufficiency of experience and expertise to safely value, discount and manage the risks associated with other real estate-related collateral. Under proposed § § 980.4 and 980.5, the Bank was permitted to commence acceptance of other real-estate related collateral if, 60 days after receipt by the Finance Board of the notice, the Finance Board had not issued to the Bank a notice of disapproval, a notice instructing the Bank not to commence the new activity pending further consideration by the Finance Board, a notice of intent to examine, or a request for additional information, or if the Finance Board had issued a letter of approval.

The Finance Board requested comment on what the appropriate threshold should be for triggering the new business activity requirement with respect to the use of other real estate-related collateral, and whether there should be any other limits on the use of such collateral to ensure that the Banks' lending against this type of collateral was done in a safe and sound manner. A number of commenters opposed the proposed 125% trigger, stating that it was too severe, and several suggested a higher trigger. Most of the commenters recommended a trigger linked to a percentage or dollar limit per member. Various commenters recommended a trigger of 100% of member capital, 55% of member capital, 55% of Bank capital, and 100% of Bank capital. One commenter recommended that the final rule establish specific discount rates to be used by the Banks, rather than the Finance Board reviewing each Bank's capacity, sufficiency of experience and expertise to safely discount and manage the risks associated with other real estate-related collateral. Many commenters observed that the Banks had ample experience accepting this type of collateral without limit before the 30 percent cap was imposed by amendment of the Bank Act in 1989 and, thus, already were well qualified to manage and discount this type of collateral.

The Finance Board has reconsidered the 125% trigger in light of the comments, as being more restrictive than may be necessary, and has deleted the trigger from the final rule. However, because other real estate-related collateral has only been accepted by a few Banks in limited amounts since 1989, and because the Bank System's operations were very different prior to 1989, the Finance Board still believes it necessary for the Banks to establish policies and procedures to adequately value and discount this type of collateral. Rather than dictating specific discount rates to be applied by the Banks, which is a management function more appropriately administered by the Banks, which are in the best position to assess their members' underwriting capacity and the quality of loans pledged, § 980.1 of the final rule treats a Bank's acceptance of other real estate-related collateral of any amount as a new business activity, regardless of whether the Bank has accepted such collateral in the past, and § 980.3(b) requires the Bank to file a new business activity notice with the Finance Board prior to accepting such collateral. As stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in evaluating a Bank's notice, the Finance Board intends to encourage conservative discounting of new collateral until the Bank gains experience in valuing such collateral. However, in order to expedite the Banks' acceptance of such collateral while ensuring that it is done in a safe and sound manner, § 980.4(b) of the final rule allows a Bank to begin accepting such collateral immediately upon receipt by the Finance Board of the notice. The Finance Board intends to review the Banks' acceptance of such collateral through either special examinations or the regular examination process as it deems appropriate.

b. Pledge of all available collateral before pledge of other real estate-related collateral. The Finance Board requested comment in the **SUPPLEMENTARY INFORMATION** section of the proposed rule on whether members should be required to pledge all available collateral under proposed §§ 950.7(a)(1) through (3) prior to pledging other real estate-related collateral under paragraph (4), in order to prevent members from using only their least liquid collateral to secure Bank advances. While each Bank has the discretion to include such a requirement in its member products policy, the Finance Board questioned whether it would be appropriate to require collateral prioritization by regulation, especially in light of the Modernization Act authorization for the Finance Board to review, and increase, the Banks' standards for other real estate-related collateral. *See* Modernization Act, section 604(a)(7).

A number of commenters opposed imposition of a collateral prioritization requirement, recommending instead that decisions on adoption of any collateral prioritization standards be left to the discretion of each Bank, although one Bank supported the proposal as sound credit policy. The Finance Board believes generally that decisions on adopting collateral prioritization standards should be dealt with by each Bank in the context of its collateral policies. Accordingly, the final rule does not include a collateral prioritization requirement.

c. Readily ascertainable value. Current § 950.9(a)(4)(i)(A) of the Advances Regulation requires other real estate-related collateral to have a readily ascertainable value. *See* 12 CFR 950.9(a)(4)(i)(A). The Finance Board stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that the liquidation value of collateral, and the ability to liquidate the collateral quickly, is a more appropriate measure of the value of other real estate-related collateral securing an advance, particularly given the lifting of the 30 percent cap. Accordingly, proposed § 950.7(a)(4)(i)(A) provided that other real estate-related collateral have a readily ascertainable liquidation value and be able to be freely liquidated in due course. As discussed above, this change also was proposed in § 950.7(b)(1)(i) with respect to CFI-eligible collateral.

A significant number of Bank commenters opposed this change on the ground that liquidation value is difficult or impossible to measure and, therefore, impractical as a standard. The commenters also found the phrase ''freely liquidated in due course'' to be unclear in terms of when and how frequently such determination would have to be made.

In response to the Banks' concerns, the final rule has been revised to provide that other real estate-related collateral is eligible to secure advances if it has ''a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course.'' This standard is intended to clarify that the critical factor is the Bank's ability to reliably discount the collateral in question. The phrase ''can be liquidated in due course'' is intended to mean that there are no known impediments to liquidation at the time the collateral is accepted by the Bank. As discussed above, this change also is made in § 950.7(b)(1)(i) of the final rule with respect to CFI-eligible collateral.

4. Removal of Combination Business or Farm Property From Definition of ''Residential Real Property''

Under current § 950.1 of the Advances Regulation, the term ''residential real property'' is defined to include combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of a CFI, combination business or farm property on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. 12 CFR 950.1. This provision allows mortgage loans on combination properties to qualify as eligible collateral and to be included in a member's total residential housing assets for the purposes of qualifying for membership and obtaining long-term advances. The Modernization Act's removal of the statutory limit on the amount of advances that may be secured by other real estate-related collateral has eliminated the need to allow combination business or farm property to be counted under the mortgage loan category of eligible collateral. In addition, the Modernization Act's removal of the requirement that CFI members have 10 percent of their total assets in residential mortgage loans to qualify for membership and the expansion of the purposes for which advances may be made to CFI members has reduced the significance of counting such combination properties as residential mortgage loans.

The Finance Board requested comment on whether there were any reasons to retain combination business or farm property in the definition of ''residential real property.'' A number of commenters generally acknowledged that for most institutions seeking to join and borrow from the Bank System, the removal of the 30 percent cap on other real estate-related collateral and the exemption of CFI members from the 10 percent residential mortgage loans requirement reduced the need for the inclusion of combination business or farm property loans as ''residential real estate.'' However, commenters pointed out that institutions that do not qualify as CFI members would still benefit from the inclusion of combination property loans held in portfolio so long as such loans continued to qualify as ''residential real estate.'' For that reason, commenters urged that these types of loans be retained in the definition.

The Finance Board believes that non-CFI members have sufficient other means available by which to meet the 10 percent residential mortgage loans requirement (for example, purchasing mortgage-backed securities), and would not have to rely on loans on combination properties to meet the requirement. Accordingly, as proposed, the final rule removes combination business or farm property from the definition of ''residential real property'' in § 950.1.

B. New Business Activity Requirement

As discussed above, the changes in types and amounts of collateral that may now be pledged to secure advances will present new management challenges for the Banks. In order to ensure that entering into these and other new types of business activities will not create safety and soundness concerns, the proposed rule added a new part 980. Proposed § 980.3 required a Bank to provide at least 60 days prior written notice to the Finance Board of any new business activity that the Bank wished to undertake—including the acceptance of increased volumes of other real estate-related collateral (based on a 125% trigger, discussed in section II.A.3.a. above) and of new CFI-eligible collateral for the first time—so that the Finance Board could disapprove, examine, or impose restrictions on, such activities, as necessary, on a case-by-case basis. In addition to the acceptance of new or increased volumes of collateral, proposed § 980.1 defined a ''new business activity'' as any business activity undertaken, transacted, conducted or engaged in by a Bank that has not been previously approved by the Finance Board, including: (1) A business activity that has not been undertaken previously by that Bank, or was undertaken previously under materially different terms and conditions; (2) a business activity that entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or (3) a business activity that involves operations not previously undertaken by that Bank. The prior notice requirement applied to any Bank desiring to pursue a new business activity, even if another Bank had already undertaken the same activity. With respect to accepting either newly eligible collateral or significantly higher volumes of other real estate-related collateral, proposed § 980.3(b) required that the written notice include: a description of the classes or amounts of collateral proposed to be accepted by the Bank; a copy of the Bank's member products policy; a copy of the Bank's procedures for determining the value of the collateral in question; and a demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question. This requirement was intended to ensure that a Bank has the capacity to value, discount and manage the additional collateral prior to making advances secured by such collateral.

Many commenters, including most of the Banks, criticized the proposed definition of ''new business activity'' in § 980.1 as vague or overly broad, and recommended that the definition be revised to include only a new program or new product undertaking and not an expansion or refinement of an existing line of business. Some commenters opposed any prior notice requirement for undertaking new business activities, while other commenters opposed a prior notice requirement specifically for acceptance of increased volumes of other real estate-related collateral and CFI-eligible collateral for the first time. Commenters stated that a prior notice requirement was unnecessary and inconsistent with the general movement toward devolution of corporate governance responsibilities by the Finance Board to the Banks' boards of directors. Commenters expressed concern that a prior notice requirement would significantly delay a Bank's ability to meet marketplace demand or engage in new business activities, or stifle innovation.

Notwithstanding the concerns of the commenters, the Finance Board continues to believe, as discussed above, that a prior notice requirement is necessary in order to maintain adequate safety and soundness oversight over the Banks' acceptance of the newly eligible types of collateral and undertaking of other new business activities. Accordingly, the proposed prior notice requirement is retained in the final rule. However, the Finance Board agrees with commenters that the proposed definition of ''new business activity''

may be more broad than necessary. Accordingly, the final rule revises the definition of ''new business activity'' in § 980.1 by substituting the words ''such that'' for ''and that'' in the introductory text, which has the effect of including only those activities specifically enumerated in paragraphs (1) through (4) of the definition as ''new business activities.'' In addition, as further discussed in section II.A.3.a. above, based on the comments, the Finance Board believes that the proposed 125% trigger requiring notice of acceptance of other real estate-related collateral in § 950.7(a)(4)(iii) may be more restrictive than necessary, and has deleted the trigger from the final rule. Instead, ''new business activity'' is defined in the final rule to include the acceptance of any other real estate-related collateral, and § 980.4 is revised to permit a Bank to commence accepting other real estate-related collateral immediately upon receipt by the Finance Board of a notice of new business activity under § 980.3. This change will enable Banks to accept other real estate-related collateral without undue delay as a result of the § 980.3 prior notice requirement.

A substantial number of commenters also stated that the proposed requirement that the Banks establish procedures for determining the value of other real estate-related collateral and new CFI-eligible collateral on a loan-by-loan basis was administratively burdensome. Commenters recommended that the Banks therefore be permitted to adopt a valuation methodology based on evaluating a member's credit management systems (''institutional underwriting''). Although the Banks evaluate their members from a credit risk perspective, the Banks historically have been collateralized lenders, relying on the collateral securing advances. The Banks' policies of overcollateralizing advances have resulted in the Bank System never suffering a credit loss since it was established in 1932. In light of the significant challenges associated with implementation of the new collateral authority in the Modernization Act, the Finance Board does not believe that this is an appropriate time for the Bank System to turn its attention away from its traditional focus of evaluating the collateral securing its advances.

C. Clarification of Other Collateral Provisions in Existing Regulation

1. Securities Representing Equity Interests in Eligible Collateral

Current § 950.9(a)(5) of the Advances Regulation provides that a Bank may accept as collateral any security, such as mutual fund shares, the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as: (i) Eligible collateral under paragraph (a)(1) (mortgage loans and privately issued mortgage-backed securities) or paragraph (a)(2) (agency securities); or (ii) cash or cash equivalents. As discussed above, cash is now included as eligible collateral under paragraph (a)(3). Accordingly, for greater clarity, a reference to paragraph (a)(3) is included in § 950.7(a)(5)(i) of the final rule and the reference to cash in paragraph (a)(5)(ii) is removed.

The current Advances Regulation does not include a definition of ''cash equivalents.'' As proposed, § 950.1 of the final rule defines ''cash equivalents'' as investments that: (1) Are readily convertible into known amounts of cash; (2) have a remaining maturity of 90 days or less at the acquisition date; and (3) are held for liquidity purposes. This definition codifies a Finance Board regulatory interpretation (Regulatory Interpretation 2000-RI–1 (March 6, 2000)) that allowed a Bank to accept as collateral under § 950.7(a)(5), shares of mutual funds that enter into certain limited types of repurchase agreements. For cash management purposes, mutual funds typically hold securities, pursuant to repurchase agreements, that represent short-term investments as part of their daily cash management activities. A mutual fund's ability to enter into such repurchase agreements, typically with a maturity of less than 90 days, allows the excess cash in the fund to be invested without losing liquidity or incurring price risk. Even mutual funds with particularly restrictive investment limitations, such as those limited to mortgage loans, government securities, and agency securities, typically use repurchase agreements to maintain a liquidity position and manage the fund.

The Financial Accounting Standards Board (FASB) defines ''cash equivalents'' for financial reporting purposes as short-term, highly liquid investments that are both: (a) readily convertible into cash; and (b) so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. *See* FAS 95 Paragraphs 8–10. FASB also states that, generally, only investments with original maturities of three months or less qualify under that definition. *See id.*

The definition of ''cash equivalents'' is derived from the FASB definition, but adapts it by requiring that investments have a remaining maturity of 90 days or less at the acquisition date, because this standard is more practical to implement than a requirement that investments be so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. In addition, a requirement that the investments be held for liquidity purposes is included in the definition. The Banks will be required to determine on a case-by-case basis whether this requirement has been met.

Other real estate-related collateral under current § 950.9(a)(4) was not originally included in current § 950.9(a)(5)(i) because the dollar amount of advances that could be secured by other real estate-related collateral was limited to 30 percent of the member's capital and the Finance Board believed this limitation would result in monitoring complexities that would make the inclusion of other real estate-related collateral in § 950.9(a)(5)(i) impractical. *See* 64 FR 16618 (April 6, 1999). As discussed above, the Modernization Act amended section 10(a)(4) of the Bank Act by removing the 30 percent cap on other real estate-related collateral. *See* Modernization Act, section 604(a)(5)(B). Since this impediment has been eliminated, § 950.7(a)(5)(i) of the final rule includes a reference to other real estate-related collateral under § 950.7(a)(4).

2. Bank Restrictions on Eligible Collateral

Section 9 of the Bank Act provides that the Banks have discretion to deny, or to approve with conditions, a request for an advance, and section 10(a)(1) confers on the Banks the authority to determine whether collateral is sufficient to fully secure an advance. *See* 12 U.S.C. 1429, 1430(a)(1). Current § 950.9(b) of the Advances Regulation grants a Bank the discretion to further restrict the types of eligible collateral it will accept as security for advances based on the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria. 12 CFR 950.9(b). In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board stated that the discretionary authority conferred on the Banks by current § 950.9(b) was unnecessary in light of the Banks' statutory authority, and because the factors listed in current § 950.9(b) are ordinarily considered in valuing collateral. Accordingly, the proposed rule removed current § 950.9(b). However, a number of Bank commenters requested that this provision be retained in the final rule because it further clarifies the Banks' statutory authority in this area. Based on

these comments, the provision has been retained in § 950.7(c) of the final rule.

3. Pledge of Advances Collateral by Affiliates

The Bank Act does not directly address the acceptance of eligible collateral from an affiliate, apart from section 10(e) of the Bank Act, which gives a priority to any security interest granted by a member or its affiliates, subject to certain exceptions. *See* 12 U.S.C. 1430(e). Implicit in Congress' inclusion of collateral pledged by an affiliate in the so-called ''superlien provision'' is the authority for the Banks to accept collateral from members' affiliates. Accordingly, the Finance Board has determined that Congress has authorized the Banks to accept collateral not only from a wholly-owned subsidiary, but from any affiliate of a member, and states that expressly, as proposed, in § 950.7(f) of the final rule. Several Bank commenters supported this interpretation of the statutory authority of the Banks to accept eligible collateral from members' affiliates.

As proposed, § 950.7(f)(1) of the final rule requires that the pledge of collateral by an affiliate of a member used to secure advances to the member shall either directly secure the member's obligation to repay the advances, or secure a surety or other agreement under which the affiliate has assumed, along with the member, a primary co-obligation to repay the advances made to the member. Because the Bank Act requires that each advance be fully secured, *see* 12 U.S.C. 1430(a), a guaranty by an affiliate of a member's obligation, backed by the eligible assets held by the affiliate, would not meet the requirements of the Bank Act or the final rule, as the collateral would then be securing the affiliate's secondary obligation and not the advance itself. As provided by § 950.7(f)(1), however, where the affiliate enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself, as required by the statute.

As proposed, § 950.7(f)(2) of the final rule requires the Bank to obtain from an affiliate, and maintain, a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly. The Bank would be required to have on file adequate documentation demonstrating this functional equivalence. The Finance Board anticipates that Banks that decide to accept collateral from affiliates of members will need to make this determination on a case-by-case basis, after careful legal review and analysis, taking into consideration the structure of the transaction and the law of the state that governs the transaction.

These regulatory additions represent a modification of an earlier proposal on third-party collateral that was published for comment by the Finance Board, but that was subsequently withdrawn. In December 1998, the Finance Board published a proposed rule to amend the Advances Regulation (at that time designated as 12 CFR part 935), that, among other things, would have permitted the Banks to accept pledges of eligible collateral from a member's ''qualifying investment subsidiary'' (QIS) if the Bank were able to obtain and maintain a security interest in the collateral pursuant to which its rights and privileges were functionally equivalent to those that the Bank would possess if the member were to pledge the collateral directly. Under the December 1998 proposed rule, the term ''qualifying investment subsidiary'' would have included business entities that: (1) Are wholly owned by a member; (2) are operated solely as passive investment vehicles on behalf of that member; and (3) hold only cash equivalents and assets that are eligible collateral under § § 935.9(a)(1) and (2) of the Advances Regulation. *See* 63 FR 67625 (Dec. 8, 1998).

In proposing the December 1998 amendments, the Finance Board intended to codify into regulation a series of Finance Board regulatory interpretations regarding the acceptance of eligible collateral held by a real estate investment trust and state security corporation subsidiaries. However, in response to the proposed rule, a large number of commenters questioned the Finance Board's proposal to address only pledges of collateral from a narrow class of wholly-owned subsidiaries, while ignoring collateral arrangements with other types of affiliates that may be permissible under the Bank Act. In light of these comments, the Finance Board removed the QIS provisions from the text of the final rule pending further analysis of the issue. *See* 64 FR 16618 (April 6, 1999).

In conjunction with § 950.7(f) of the final rule, and consistent with the proposed rule, the final rule amends § 950.1 by defining an ''affiliate'' as any business entity that controls, is controlled by, or is under common control with, a member. The definition of ''affiliate'' is intended to limit the scope of eligible third-party collateral to assets over which the member exercises control or shares control.

4. Bank Advances Policy

Consistent with the proposed rule, the final rule removes existing § 950.3 of the Finance Board's Advances Regulation. That section requires each Bank's board of directors to adopt and review a policy on advances and outlines some basic criteria for the content of the advances policy. The final rule moves the requirement for the Bank's board of directors to adopt and periodically re-adopt an advances or credit policy to new § 917.4, ''Bank Member Products Policy.'' The Finance Board believes that it would make for a more logical presentation in its regulations to have all of the requirements for Bank policies contained in one regulatory part (part 917), rather than to have such requirements scattered throughout its regulations. The requirements for Bank member products policies are discussed in section II.F. 2., below.

5. Removal of Non-QTL Definitions

Prior to the enactment of the Modernization Act, section 10(e) of the Bank Act restricted access to Bank advances to Bank members that did not meet the qualified thrift lender (QTL) test.[4] These restrictions limited the purposes for which non-QTL members could obtain advances, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e)(1), (2) (1994). The Bank Act also established a statutory presumption, for the purpose of determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act, that each member has at least 30 percent of its assets in home mortgage loans. *See* 12 U.S.C. 1430(e)(3) (1994). Coupled with the section 6(b) requirement that all members must subscribe to Bank stock equaling at least one percent of the member's aggregate

[4] The ''qualified thrift lender'' test is set forth in section 10(m) of the Home Owners'' Loan Act, 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations, as well as for commercial banks, that did not meet the test.

unpaid loan principal, this presumption effectively limited the dollar amount of advances that a non-QTL member could obtain in relation to the amount of Bank stock it had purchased. *See id.*

The Modernization Act repealed section 10(e) of the Bank Act in its entirety, thereby providing access to Bank advances without regard to the percentage of housing-related assets a member holds. *See* Modernization Act, section 604(c). In a recently adopted Interim Final Rule that was finalized on June 23, 2000, the Finance Board removed the provisions in its Membership and Advances Regulations containing the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. *See* 65 FR 13866 (March 15, 2000). Consistent with the proposed rule, the final rule removes all remaining references to non-QTL status from the Advances Regulation. *See* 12 CFR 950.1, 950.21 (1999). Specifically, § 950.1 of the final rule deletes the following QTL-related definitions from the Advances Regulation: definitions of the terms ''Actual thrift investment percentage'' or ''ATIP;'' ''Non-Qualified Thrift Lender Member;'' ''Qualified Thrift Lender'' or ''QTL;'' and ''Qualified Thrift Lender test'' or ''QTL test.'' 12 CFR 950.1.

D. Modernization Act Amendment to Long-term Advances Purpose Provision for CFI Members

Section 10(a) of the Bank Act formerly provided that all long-term advances shall be made only for the purpose of providing funds for residential housing finance. *See* 12 U.S.C. 1430(a) (1994). This purpose is set forth in current § 950.14(a), and is implemented by use of a proxy test set forth in current § 950.14(b). 12 CFR 950.14(a), (b). Specifically, current § 950.14(b)(1) provides that, before funding a long-term advance (*i.e.,* an advance with a maturity greater than five years), a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of the member's ''residential housing finance assets.'' 12 CFR 950.1, 950.14(b)(1). ''Residential housing finance assets'' are defined in current § 950.1 to mean any of the following: (1) Loans secured by residential real property; (2) mortgage-backed securities; (3) participations in loans secured by residential real property; (4) loans or investments financed by advances made pursuant to a CICA program; (5) loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or (6) any loans or investments which the Finance Board, in its discretion, otherwise determines to be residential housing finance assets. 12 CFR 950.1. Current § 950.14(b)(1) requires a Bank to determine the total book value of the member's residential housing finance assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). This proxy test was determined by the Finance Board to be an operationally feasible compliance monitoring mechanism for residential housing finance assets to implement the statutory requirement that long-term advances be only for residential housing finance purposes. *See* 57 FR 45338 (Oct. 1, 1992).

The Modernization Act amended section 10(a) of the Bank Act to provide that a Bank may make long-term advances not only for the purpose of providing funds for residential housing finance, but also for the purpose of providing funds to any CFI for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(3). Accordingly, consistent with the proposed rule, the final rule amends current § 950.14 by adding this new purpose in redesignated § 950.3. Section 950.3(a) of the final rule provides that a Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans. Instead of the statutory terms ''small businesses,'' ''small farms'' and ''small agri-businesses,'' § 950.3 utilizes the terms ''small business loans,'' ''small farm loans'' and ''small agri-business loans,'' which the Finance Board is defining for purposes of identifying the new types of collateral that Banks are authorized to accept from CFI members. *See* Modernization Act, section 604(a)(5)(C). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board believes that a single set of terms that would apply to both CFI-eligible collateral and the new purposes for which Banks may make advances to CFI members will reduce confusion and otherwise provide an efficient means of implementing the new authorities conferred on the Banks in regard to their CFI members. Further, the Modernization Act provides that the terms ''small business,'' ''small farm'' and ''small agri-business'' shall have the meanings given to those terms by regulation of the Finance Board. *See* Modernization Act, section 604(a)(7). Accordingly, the Finance Board is interpreting the statutory phrase ''providing funds to any community financial institution for small businesses, small farms, and small agri-businesses'' to mean making advances to CFI members for small business loans, small farm loans and small agri-business loans. Section 950.3(b)(1) of the final rule maintains the proxy test in its current form. However, revisions to certain definitions will have the effect of including small business loans, small farm loans and small agri-business loans in the denominator of the proxy test for CFI members.

Specifically, as proposed, the final rule amends § 900.1 by adding a new definition of ''community lending,'' which applies, wherever it appears, in all of the Finance Board's regulations. The term ''community lending'' currently is defined in § 952.3 of the CICA Regulation as ''providing financing for economic development projects for targeted beneficiaries.'' 12 CFR 952.3. The definition of ''community lending'' in § 900.1 adds to that definition, ''and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.'' This addition to the definition implements changes made by the Modernization Act and supports the Finance Board's belief that CFI lending to small businesses, small farms and small agri-businesses is community lending. For purposes of the CICA and Community Support Regulations, the current definition of ''community lending,'' redesignated in the final rule as ''targeted community lending,'' would continue to apply.

Concurrently, the definition of ''residential housing finance assets'' is amended in the final rule to change the element that currently reads ''Loans or investments financed by advances made pursuant to a CICA program'' to ''Loans or investments qualifying under the definition of community lending in § 900.1 of this chapter.''

Thus, by operation of the revised definitions of ''residential housing finance assets'' and ''community lending,'' the proxy test calculation of the total book value of residential housing assets will include, for CFI members, small business loans, small farm loans and small agri-business loans. This result implements section 604(a)(5)(C) of the Modernization Act, which authorizes a Bank to make long-term advances to CFIs for the purpose of providing financing for small businesses, small farms and small agri-

businesses. *See* Modernization Act, section 604(a)(5)(C).

Current § 950.14(b)(1) of the Advances Regulation allows a Bank to determine the total book value of residential housing financial assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). As proposed, § 950.3(b)(1) of the final rule adds to this list ''other reliable documentation'' made available by the member. This revision is intended to give the Banks more flexibility in the form of documentation they may use in administering the proxy test, as long as the data supplied by the member is reliable.

E. Clarification of Other Advances Provisions in Current Regulation

1. Pricing

The Finance Board proposed to clarify a provision of the Advances Regulation dealing with the pricing of advances. Current § 950.6(b)(1) of the Advances Regulation requires each Bank to price its advances to members taking into account two factors: (1) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and (2) the administrative and operating costs associated with making such advances to members. 12 CFR 950.6(b)(1). A separate provision, current § 950.8(b)(1), provides that each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. 12 CFR 950.8(b)(1). These provisions do not clearly indicate whether Banks must consider the costs of associated options and the administrative costs of funding advances with such options in pricing an advance. Further, because current § 950.6(b)(1) merely requires the Bank ''to take into account'' the marginal cost to the Bank of raising matching maturity funds in the marketplace, and the administrative and operating costs associated with making such advances to members, the current rule allows a Bank to price an advance below its marginal cost of funds, a practice the Finance Board could find to be an unsafe and unsound practice in some circumstances and one the Finance Board wishes to discourage.

Therefore, redesignated § 950.5(b)(1) of the proposed rule prohibited a Bank from pricing an advance below the Bank's marginal cost of funds, including the cost of any embedded options, plus the administrative and operating costs associated with making the advance when funding an advance with similar maturity and options characteristics.

Several Banks commented that the proposed prohibition on pricing advances below a Bank's marginal cost of funds was too restrictive in that it could prohibit Banks from passing on the benefits of lower costs to member borrowers. However, the Finance Board believes that the proposed exceptions, discussed below, provide the Banks with ample flexibility to pass on lower costs to borrowers for special purposes. Accordingly, the advance pricing prohibition in proposed § 950.5(b) is adopted without change in the final rule.

Proposed § 950.5(b)(3)(i) provided that the advance pricing prohibition would not apply to a Bank's CICA programs. This was intended to provide the Banks with maximum flexibility in designing and offering AHP and other CICA programs. Proposed § 950.5(b)(3)(ii) also provided that the advance pricing prohibition would not apply to any other advances that are volume limited and specifically approved by a Bank's board of directors. This exception was intended to allow a Bank to price targeted advances at below the cost of funds for some special purpose that does not meet all of the criteria for CICA advances. It was intended that the special purpose involve some social benefit, such as providing relief from a natural disaster. The proposed exception also would allow a Bank to conduct market testing of alternative pricing strategies for advances.

The exceptions have been adopted in the final rule as proposed. In response to a Bank comment, the final rule substitutes the term ''advances program'' for ''advances'' in § 950.5(b)(3)(ii) to make clear that the exception for volume limited advances does not require a Bank's board of directors to approve each individual advance.

2. Putable and Convertible Advances Disclosure; Replacement Funding for Putable Advances

Current § 950.6(d)(1) of the Advances Regulation provides that a Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding, and that such disclosure should include detail sufficient to describe such risks. 12 CFR 950.6(d)(1). A convertible advance is similar to a putable advance in that it carries risks associated with a triggering event, usually a shift in a designated interest rate index. Accordingly, redesignated § 950.5(d)(1) of the proposed rule made the current disclosure requirements for putable advances applicable to convertible advances as well. Current § 950.6(d)(2) was not proposed to be revised because replacement funding is not an issue for convertible advances, as convertible advances involve only a change in the stated interest rate, not the repayment of funds.

The Finance Board requested comment on whether there are other appropriate requirements for putable or convertible advances. A Bank commenter suggested that the final rule clarify that replacement funding for putable advances is subject to normal and customary safety and soundness considerations. The final rule adopts § 950.5(d) as proposed except for a revision to paragraph (d)(2), in response to the Bank comment, to clarify that a member receiving replacement funding for putable advances must be able to satisfy the normal credit and collateral requirements of the Bank for such funding.

F. Other Technical Changes

1. Bank Housing Associates—Parts 900.1, 926

As part of a continuing effort to revise and achieve consistency in regulatory nomenclature regarding nonmember borrowers, the proposed rule amended the text, where appropriate, to refer to nonmember borrowers who are eligible under section 10b of the Bank Act, 12 U.S.C. 1430b, to obtain advances from the Banks, as ''associates.'' The definition of ''associate'' was recently added to 12 CFR 900.1, which contains definitions of terms that apply to all parts of the Finance Board's regulations. In response to a commenter's suggestion, the final rule replaces the term ''associates'' with the term ''housing associates,'' which the Finance Board has acknowledged represents a more accurate description of such borrowers. Consistent with this change, the final rule revises the title of subpart B to ''Advances to Housing Associates.'' Since the term ''housing associate'' is defined in § 900.1, it is not defined in any of the individual parts addressed by this final rule.

Eligibility requirements for housing associates, including application procedures and requirements for advances to housing associates, currently are contained in the Advances Regulation. *See* 12 CFR 950.22, 950.23. For the sake of greater organizational clarity, consistent with the proposed

rule, the final rule sets forth the housing associate eligibility requirements and advances requirements in separate regulations, by moving the housing associate eligibility requirements to a new part 926 under subpart B. No substantive changes have been made in subpart B.

2. Bank Member Products Policy—Section 917.4

In its recently adopted final rule, ''Powers and Responsibilities of Bank Boards of Directors and Senior Management,'' the Finance Board consolidated all of the requirements for the Bank's board of directors' operational policies into one regulatory part, part 917, rather than have such requirements scattered throughout its regulations. *See* 65 FR 25267 (May 1, 2000). As proposed, § 917.4 of the final rule adds to that part a new requirement for adoption by a Bank's board of directors of a member products policy that would combine the requirements for an advances policy from current § 950.3(a), with the requirements for a standby letter of credit policy from current § 961.5(a), into one policy. The member products policy also addresses other products that the Banks may offer, such as acquired member assets.

As proposed, § 917.4(b) of the final rule requires a Bank's member products policy to address the following items: the credit underwriting criteria to be applied to advances (including renewals) and standby letters of credit; collateralization (including levels, valuation and discounts) for advances and standby letters of credit; advances-related fees (including any schedules or formulas pertaining to such fees); standards and criteria for pricing member products (including differential pricing of advances pursuant to § 950.4(b)(2)); criteria regarding the pricing of standby letters of credit (including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any CICA programs under part 952); the maintenance of appropriate systems, procedures and internal controls; and the maintenance of appropriate operational and personnel capacity.

A Bank's member products policy also must provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with § 975.6(b).

As proposed, § 917.4(a)(2) of the final rule requires each Bank's board of directors to review the Bank's member products policy annually, amend the policy as appropriate, and re-adopt the policy, including interim amendments, not less often than every three years.

References to the ''advances policy'' in other sections of the Finance Board's current regulations are changed in the final rule to references to the ''member products policy.''

A few commenters questioned whether it was appropriate to include all of the information required by a Bank in a policy that may be distributed to members. Commenters also stated that policies governing member credit products should be separate and distinct from policies governing acquired member assets, that the regulation should accommodate policy differences among Banks from one year to the next, and that some of the member products policy requirements may already be covered in the regulatory requirements for the Banks' risk management policies.

The final rule retains all of the member products policy requirements contained in the proposed rule because it is important that the Banks' boards consider and address all of these issues as they pertain to advances and other member products. By requiring that each Bank adopt its own member products policy, the Finance Board recognizes that such policies will differ among the Banks, as is currently the case with the Banks' advances policies. The Finance Board also recognizes that some provisions contained in the member products policies will apply only to certain products, and that a Bank may address different products separately in its policy as it sees fit. In addition, the member products policy requirement does not preclude a Bank from creating separate materials for distribution to members.

3. Bank Primary Credit Mission—Removal of § 950.2

In the Finance Board's recently adopted final rule on parts 900, 917 and 940, the Finance Board revised part 940 to add a new definition of the mission of the Banks. *See* 65 FR 25267 (May 1, 2000). Accordingly, as proposed, the final rule removes existing § 950.2 of the Advances Regulation, which states the primary credit mission of the Banks and how the Banks must fulfill such mission, as no longer necessary.

4. Community Support Requirements and Community Investment Cash Advance programs—Parts 944 and 952

As discussed previously, the final rule amends part 944 and § 952.3 by re-designating the term ''community lending'' as ''targeted community lending,'' with no substantive change to the corresponding definition. This revision is intended to differentiate CICA community lending, which is targeted, from the broader term ''community lending'' that the final rule adds to § 900.1. The broader definition of ''community lending'' in § 900.1 would include, for CFIs, purchasing or funding small business loans, small farm loans and small agri-business loans, as defined in § 950.1 of this chapter.

5. Standby Letters of Credit—Part 961

As proposed, the final rule amends part 961 to update cross-references to reflect the reorganization of Finance Board regulations, change references from nonmember mortgagees to housing associates, and make other technical and conforming changes. The proposed rule amended § 961.2(c)(2)(i) to allow standby letters of credit issued for a purpose described in § 961.2(a)(1) or (2) to be secured by CFI-eligible collateral, regardless of whether the applicant is a CFI. The final rule removes this provision because the loan-to-one-borrower approach to the definition of ''small business loans,'' ''small farm loans'' and ''small agribusiness loans'' adopted in the final rule does not apply to members that do not qualify as CFIs. The final rule retains the current provision in § 961.2(c)(2)(ii) authorizing investment-grade obligations of state or local government units or agencies as additional collateral eligible to secure standby letters of credit issued for a purpose described in § 961.2(a)(1) or (2).

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* § 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, parts

900, 917, 926, 944, 950, 952, 961 and 980, Code of Federal Regulations, as follows:

PART 900—GENERAL DEFINITIONS

1. The authority citation for part 900 is revised to read as follows:

Authority: 12 U.S.C. 1422, 1422b(a)(1).

2. Amend § 900.1 by:

a. Adding, in alphabetical order, definitions of ''appropriate regulator'', ''community financial institution'', ''community financial institution asset cap'', ''community lending'' and ''regulatory financial report''; and

b. Removing the term ''Associate'' and, in its place, adding the term ''Housing associate'', to read as follows:

§ 900.1 Definitions applying to all regulations.

* * * * *

Appropriate regulator means a regulatory entity listed in § 925.8 of this chapter, as applicable.

* * * * *

Community financial institution or *CFI* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in total assets, based on an average of total assets over three years, which shall be calculated by the Bank as follows:

(i) For purposes of determining eligibility for membership under part 925 of this chapter, based on the average of total assets drawn from the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters; and

(ii) For purposes of making advances under part 950 of this chapter:

(A) The calculation shall be based on the average of total assets drawn from the institution's regulatory financial reports filed with its appropriate regulator for the three most recent calendar year-ends; and

(B) The calculation shall be made annually and shall be effective April 1 of each year.

Community financial institution asset cap means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register** of the CPI-adjusted cap.

Community lending means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.

* * * * *

Regulatory financial report means a financial report that an institution is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the primary regulator on the computer on-line database.

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

3. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

4. Add § 917.4 to read as follows:

§ 917.4 Bank Member Products Policy.

(a) *Adoption and review of member products policy.* (1) *Adoption.* Beginning November 15, 2000, each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and housing associates, including but not limited to advances, letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to § 950.5(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 952 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of § 975.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

5. Revise the heading of subchapter D to read as follows:

SUBCHAPTER D—FEDERAL HOME LOAN BANK MEMBERS AND HOUSING ASSOCIATES

6. In subchapter D, add a new part 926 to read as follows:

PART 926—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

Sec.

926.1 Definitions.
926.2 Bank authority to make advances to housing associates.
926.3 Housing associate eligibility requirements.
926.4 Satisfaction of eligibility requirements.
926.5 Housing associate application process.
926.6 Appeals.

Authority: 12 U.S.C. 1422b(a), 1430b.

§ 926.1 Definitions.

As used in this part:

Advance has the meaning set forth in § 950.1 of this chapter.

Governmental agency means the governor, legislature, and any other component of a federal, state, local, tribal, or Alaskan native village government with authority to act for or on behalf of that government.

HUD means the Department of Housing and Urban Development.

State housing finance agency or *SHFA* means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.

§ 926.2 Bank authority to make advances to housing associates.

Subject to the provisions of the Act and part 950 of this chapter, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as a housing associate under the provisions of this part.

§ 926.3 Housing associate eligibility requirements.

(a) *General.* A Bank may certify as a housing associate any applicant that meets the following requirements, as determined using the criteria set forth in § 926.4:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(b) *State housing finance agencies.* In addition to meeting the requirements in paragraph (a) of this section, any applicant seeking access to advances as a SHFA pursuant to § 950.17(b)(2) of this chapter shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 926.1.

§ 926.4 Satisfaction of eligibility requirements.

(a) *HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(1) that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(b) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(2) that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(1) The applicant is a government agency; or

(2) The applicant is chartered under state, federal, local, tribal, or Alaskan Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(c) *Inspection and supervision requirement.* (1) An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and § 926.3(a)(3) if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaskan native village governmental agency.

(2) An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor.

(3) An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant.

(d) *Mortgage activity requirement.* An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and § 926.3(a)(4) if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. For purposes of this paragraph, lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaskan Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(e) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in § 926.3(a)(5) if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.5 Housing associate application process.

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as a housing associate, subject to the requirements of the Act and this part. A Bank may delegate the authority to approve applications for certification as a housing associate only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as a housing associate shall submit an application that satisfies the requirements of the Act and this part to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 925 of this chapter, is located.

(c) *Bank decision process.* (1) *Action on applications.* A Bank shall approve or deny an application for certification as a housing associate within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this part and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is

necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as a housing associate by a written decision resolution stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Finance Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Finance Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

§ 926.6 Appeals.

(a) *General.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as a housing associate, the applicant may submit a written appeal to the Finance Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, with a copy to the Bank.

(b) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Finance Board a complete copy of the applicant's certification file maintained by the Bank under § 926.5(c)(3). Until the Finance Board resolves the appeal, the Bank shall promptly provide to the Finance Board any relevant new materials it receives. The Finance Board may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the Finance Board deems appropriate.

(c) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Finance Board, the Finance Board shall consider the record for appeal described in paragraph (b) of this section and resolve the appeal based on the requirements of the Act and this part.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

PART 944—COMMUNITY SUPPORT REQUIREMENTS

7. The authority citation for part 944 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

8. Amend part 944 by removing the term ''community lending'' wherever it appears, and, in its place, adding the term ''targeted community lending''.

§ 944.6 [Amended]

9. Amend § 944.6(b)(2) by removing the term ''nonmember borrowers'' and, in its place, adding the term ''housing associates''.

PART 950—ADVANCES

10. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

11. The table of contents for part 950 is revised to read as follows:

Subpart A—Advances to Members

Sec.
950.1 Definitions.
950.2 Authorization and application for advances; obligation to repay advances.
950.3 Purpose of long-term advances; Proxy text.
950.4 Limitations on access to advances.
950.5 Terms and conditions for advances.
950.6 Fees.
950.7 Collateral.
950.8 Banks as secured creditors.
950.9 Pledged collateral; verification.
950.10 Collateral valuation; appraisals.
950.11 Capital stock requirements; unilateral redemption of excess stock.
950.12 Intradistrict transfer of advances.
950.13 Special advances to savings associations.
950.14 Advances to the Savings Association Insurance Fund.
950.15 Liquidation of advances upon termination of membership.

Subpart B—Advances to Housing Associates

950.16 Scope.
950.17 Advances to housing associates.

12. Amend § 950.1 by:

a. Adding, in alphabetical order, a definition of ''affiliate'';

b. Adding, in alphabetical order, a definition of ''cash equivalents'';

c. Removing the definitions of ''Actual thrift investment percentage'' or ''ATIP'', ''combination business or farm property'', ''Non-Qualified Thrift Lender member'', ''Qualified Thrift Lender'' or ''QTL'', and ''Qualified Thrift Lender test'' or ''QTL test'';

d. Amending the definition of ''Community Investment Cash Advance'' or ''CICA'' by removing the term ''community lending'', and, in its place, adding the term ''targeted community lending'';

e. Revising paragraph (4) of the definition of ''residential housing finance assets'';

f. Amending the definition of ''residential real property'' by removing paragraph (1)(v); and

g. Adding, in alphabetical order, definitions of ''small agri-business loans'', ''small business loans'', and ''small farm loans'', to read as follows:

§ 950.1 Definitions.

* * * * *

Affiliate means any business entity that controls, is controlled by, or is under common control with, a member.

* * * * *

Cash equivalents means investments that—

(1) Are readily convertible into known amounts of cash;

(2) Have a remaining maturity of 90 days or less at the acquisition date; and

(3) Are held for liquidity purposes.

* * * * *

Residential housing finance assets means any of the following:

* * * * *

(4) Loans or investments qualifying under the definition of ''community lending'' in § 900.1 of this chapter;

* * * * *

Small agri-business loans means loans to finance agricultural production and other loans to farmers that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC–C, Part I, item 3 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or

Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

Small business loans means commercial and industrial loans that are within the legal lending limit of the reporting CFI member and that are reported on either: Schedule RC–C, Part I, item 1.e or Schedule RC–C, Part I, item 4 of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC300, SC303 or SC306 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules)

Small farm loans means loans secured primarily by farmland that are within the legal lending limit of the reporting CFI member, and that are reported on either: Schedule RC–C, Part I, item 1.a. or 1.b. of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks; or Schedule SC260 of the Thrift Financial Report filed by savings associations (or equivalent successor schedules).

* * * * *

§ 950.2 [Removed]

13. Remove § 950.2.

§ 950.3 [Removed]

14. Remove § 950.3.

§ 950.4 [Redesignated as § 950.2]

15. Section 950.4 is redesignated as § 950.2.

§ 950.14 [Redesignated as § 950.3]

16. Section 950.14 is redesignated as § 950.3, and the heading and paragraphs (a) and (b)(1) are revised to read as follows:

* * * * *

§ 950.3 Purpose of long-term advances; Proxy test.

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

* * * * *

§ 950.5 [Redesignated as § 950.4]

17. Section 950.5 is redesignated as § 950.4.

§ 950.6 [Redesignated as § 950.5]

18. Section 950.6 is redesignated as § 950.5, and paragraphs (b)(1), (b)(2)(ii), (b)(3), (d)(1) and (d)(2) are revised to read as follows:

§ 950.5 Terms and conditions for advances.

* * * * *

(b) *Advance pricing.* (1) *General.* A Bank shall not price its advances to members below:

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) * * *

(ii) Each Bank shall include in its member products policy required by § 917.4 of this chapter, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Exceptions.* The advance pricing policies contained in paragraph (b)(1) of this section shall not apply in the case of:

(i) A Bank's CICA programs; and

(ii) Any other advances programs that are volume limited and specifically approved by the Bank's board of directors.

* * * * *

(d) *Putable or convertible advances.* (1) *Disclosure.* A Bank that offers a putable or convertible advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable or convertible advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding for putable advances.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member, provided the member is able to satisfy the normal credit and collateral requirements of the Bank for the replacement funding requested.

* * * * *

§ 950.8 [Redesignated as § 950.6]

19. Section 950.8 is redesignated as § 950.6, and paragraphs (a) and (b)(1) are revised to read as follows:

§ 950.6 Fees.

(a) *Fees in member products policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's member products policy required by § 917.4 of this chapter. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Except where an advance product contains a prepayment option, each Bank shall establish and charge a prepayment fee pursuant to a specified formula which makes the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

* * * * *

20. Amend § 950.9 by:

§ 950.9 [Redesignated as § 950.7]

a. Redesignating § 950.9 as § 950.7;

b. Revising paragraphs (a) introductory text, (a)(3), (a)(4), and (a)(5);

c. Redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f) respectively;

d. Revising newly designated paragraphs (c) and (d); and

e. Adding paragraphs (b) and (g), to read as follows:

§ 950.7 Collateral.

(a) *Eligible security for advances to all members.* At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (g) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

* * * * *

(3) *Cash or deposits.* Cash or deposits in a Bank.

(4) *Other real estate-related collateral.* (i) Other real estate-related collateral provided that:

(A) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:

(i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or

(ii) Cash equivalents.

(b) *Additional collateral eligible as security for advances to CFI members or their affiliates.* (1) *General.* Subject to the requirements set forth in part 980 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:

(i) Such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course; and

(ii) The Bank can perfect a security interest in such collateral.

(2) *Change in CFI status.* If a Bank determines, as of April 1 of each year, that a member that has previously qualified as a CFI no longer qualifies as a CFI, and the member has total advances outstanding that exceed the amount that can be fully secured by collateral under paragraph (a) of this section, the Bank may:

(i) Permit the advances of such member to run to their stated maturities; and

(ii) Renew such member's advances to mature no later than March 31 of the following year; provided that the total of the member's advances under paragraphs (b)(2)(i) and (ii) of this section shall be fully secured by collateral set forth in paragraphs (a) and (b) of this section.

(c) *Bank restrictions on eligible advances collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(d) *Additional advances collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Act (12 U.S.C. 1430).

* * * * *

(g) *Pledge of advances collateral by affiliates.* Assets held by an affiliate of a member that are eligible as collateral under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:

(1) The collateral is pledged to secure either:

(i) The member's obligation to repay advances; or

(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and

(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.

§ 950.10 [Redesignated as § 950.8]

21. Section 950.10 is redesignated as § 950.8.

§ 950.11 [Redesignated as § 950.9]

22. Section 950.11 is redesignated as § 950.9.

§ 950.12 [Redesignated as § 950.10]

23. Section 950.12 is redesignated as § 950.10, and is revised to read as follows:

§ 950.10 Collateral valuation; appraisals.

(a) *Collateral valuation.* Each Bank shall determine the value of collateral securing the Bank's advances in accordance with the collateral valuation procedures set forth in the Bank's member products policy established pursuant to § 917.4 of this chapter.

(b) *Fair application of procedures.* Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) *Appraisals.* A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§ 950.15 [Redesignated as § 950.11]

24. Section 950.15 is redesignated as § 950.11.

§ 950.17 [Redesignated as § 950.12]

25. Section 950.17 is redesignated as § 950.12.

§ 950.18 [Redesignated as § 950.13]

26. Section 950.18 is redesignated as § 950.13.

§ 950.20 [Redesignated as § 950.14]

27. Section 950.20 is redesignated as § 950.14 and transferred to subpart A.

§ 950.19 [Redesignated as § 950.15]

28. Section 950.19 is redesignated as § 950.15.

29. The heading of Subpart B is revised to read as follows:

Subpart B—Advances to Housing Associates

§ 150.21 [Redesignated as § 950.16]

30. Section 950.21 is redesignated as § 950.16, and is revised to read as follows:

§ 950.16 Scope.

Except as otherwise provided in § § 950.14 and 950.17, the requirements of subpart A apply to this subpart.

§ 950.22 [Removed]

§ 950.23 [Removed]

31. Sections 950.22 and 950.23 are removed.

§ 950.24 [Redesignated as § 950.17]

32. Section 950.24 is redesignated as § 950.17, and is amended by:

a. Revising the section heading;

b. Removing the words ''nonmember mortgagee'' and ''nonmember mortgagees'', wherever they appear, and, in their place, adding the words ''housing associate'' and ''housing associates'', respectively; and

c. In paragraph (b)(2)(i) introductory text, removing the term ''§ 950.22(d)'', and, in its place, adding the term ''§ 926.3(b)'';

d. In paragraph (b)(2)(i)(B), removing the terms ''§ 950.9(a)(3)'' and ''§ 950.22(d)'', and in their place, adding the terms ''§ 950.7(a)(3)'' and ''§ 926.3(b),'' respectively; and

e. Revising paragraph (b)(2)(i)(C), to read as follows:

§ 950.17 Advances to housing associates.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) The other real estate-related collateral described in § 950.7(a)(4), provided that such collateral is comprised of mortgage loans on one-to-

four family or multifamily residential property.

* * * * *

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

33. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.3 [Amended]

34. Amend § 952.3 by removing the definition of ''nonmember borrower''.

35. Amend part 952 by:

a. Removing the term ''community lending'', wherever it appears, and, in its place, adding the term ''targeted community lending''; and

b. Removing the terms ''nonmember borrower'' and ''nonmember borrowers'', wherever they appear, and, in their place, adding the terms ''housing associate borrower'' and ''housing associate borrowers'', respectively.

PART 961—STANDBY LETTERS OF CREDIT

36. The authority citation for part 961 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

37. Amend § 961.1 by:

a. Removing the definition of ''community lending'';

b. Removing the definition of ''nonmember mortgagee'';

c. Removing the definition of ''nonmember SHFA'';

d. Adding the definition of ''SHFA associate''; and

e. Removing the definition of ''small business'', to read as follows:

§ 961.1 Definitions.

* * * * *

SHFA associate means a housing associate that is a ''state housing finance agency,'' as that term is defined in § 926.1 of this chapter, and that has met the requirements of § 926.3(b) of this chapter.

* * * * *

38. Amend part 961 by:

a. Removing the terms ''nonmember mortgagee'' and ''nonmember mortgagees'', wherever they appear, and, in their place, adding the terms ''housing associate'' and ''housing associates'', respectively; and

b. Removing the terms ''nonmember SHFA'' and ''nonmember SHFAs'', wherever they appear, and, in their place, adding the terms ''SHFA associate'' and ''SHFA associates'', respectively.

39. Amend § 961.2 by revising paragraphs (a)(2), (c)(1), and (c)(2), to read as follows:

§ 961.2 Standby letters of credit on behalf of members.

(a) * * *

(2) To assist members in facilitating community lending;

* * * * *

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured in accordance with the requirements for advances under § 950.7 of this chapter.

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraphs (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by obligations of state or local government units or agencies rated as investment grade by an NRSRO.

40. Amend § 961.3 by:

a. In the introductory text of paragraph (a), removing the term ''§ § 950.24(b)(1)(i) or (ii)'' and, in its place, adding the term ''§ § 950.17(b)(1)(i) or (ii)'';

b. Revising paragraph (a)(2); and

c. In paragraph (b), removing the term ''950.24(b)(2)(i)(A), (B) or (C)'' and, in its place, adding the term ''950.17(b)(2)(i)(A), (B) or (C)'', to read as follows:

§ 961.3 Standby letters of credit on behalf of housing associates.

(a) * * *

(2) To assist housing associates in facilitating community lending;

* * * * *

§ 961.4 [Amended]

41. Amend § 961.4 by removing the term ''§§ 950.24(b)(2)(i)(B), 950.24(d), or 965.2(a)(2)'' in paragraph (a)(1) and, in its place, adding the term ''§ § 950.17(b)(2)(i)(B), 950.17(d), or 969.2''.

42. Amend § 961.5 by:

a. Revising paragraph (a); and

b. In paragraph (b)(2), removing the reference to ''§ § 950.9(b), 950.9(d), 950.9(e), 950.10, 950.11 and 950.12'', and, in its place, adding a reference to § § 950.7(d), 950.7(e), 950.8, 950.9 and 950.10'', to read as follows:

§ 961.5 Additional provisions applying to all standby letters of credit.

(a) *Requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Contain a specific expiration date, or be for a specific term; and

(2) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

* * * * *

43. In subchapter J, add a new part 980 to read as follows:

PART 980—NEW BUSINESS ACTIVITIES

Sec.

980.1 Definitions.
980.2 Limitation on Bank authority to undertake new business activities.
980.3 New business activity notice requirement.
980.4 Commencement of new business activities.
980.5 Notice by the Finance Board.
980.6 Finance Board consent.
980.7 Examinations; requests for additional information.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1431(a), 1432(a).

§ 980.1 Definitions.

As used in this part:

New business activity means any business activity undertaken, transacted, conducted, or engaged in by a Bank that has not been previously undertaken, transacted, conducted, or engaged in by that Bank, or was previously undertaken, transacted, conducted, or engaged in under materially different terms and conditions, such that it:

(1) Involves the acceptance of collateral enumerated under § 950.7(a)(4) of this chapter;

(2) Involves the acceptance of classes of collateral enumerated under § 950.7(b) of this chapter for the first time;

(3) Entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or

(4) Involves operations not previously undertaken by that Bank.

§ 980.2 Limitation on Bank authority to undertake new business activities.

No Bank shall undertake any new business activity except in accordance with the procedures set forth in this part.

§ 980.3 New business activity notice requirement.

At least sixty days prior to undertaking a new business activity, except as provided in § 980.4(b), a Bank shall submit to the Finance Board a written notice containing the following information:

(a) *General requirements.* Except as provided in paragraph (b) of this section, a Bank's notice of new business activity shall include:

(1) An opinion of counsel citing the statutory, regulatory, or other legal authority for the new business activity;

(2) A good faith estimate of the anticipated dollar volume of the activity over the short-and long-term;

(3) A full description of:

(i) The purpose and operation of the proposed activity;

(ii) The market targeted by the activity;

(iii) The delivery system for the activity;

(iv) The effect of the activity on the housing, or relevant community lending, market; and

(4) A demonstration of the Bank's capacity, through staff, or contractors employed by the Bank, sufficiency of experience and expertise, to safely administer and manage the risks associated with the new activity;

(5) An assessment of the risks associated with the activity, including the Bank's ability to manage these risks and the Bank's ability to manage the risks associated with increasing volumes of the new activity; and

(6) The criteria that the Bank will use to determine the eligibility of its members or housing associates to participate in the new activity.

(b) *New collateral activities.* If a proposed new business activity relates to the acceptance of collateral under § 950.7 of this chapter, a Bank's notice of new business activity shall include:

(1) A description of the classes or amounts of collateral proposed to be accepted by the Bank;

(2) A copy of the Bank's member products policy, adopted pursuant to § 917.4 of this chapter;

(3) A copy of the Bank's procedures for determining the value of the collateral in question, established pursuant to § 950.10 of this chapter; and

(4) A demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question.

§ 980.4 Commencement of new business activities.

A Bank may commence a new business activity:

(a) Sixty days after receipt by the Finance Board of the notice of new business activity under § 980.3, if the Finance Board has not issued to the Bank a notice as described in § 980.5(a)(1) through (4);

(b) In the case of the acceptance of collateral enumerated under § 950.7(a)(4) of this chapter, immediately upon receipt by the Finance Board of a notice of new business activity under § 980.3; or

(c) Immediately upon issuance by the Finance Board of a letter of approval under § 980.6.

§ 980.5 Notice by the Finance Board.

(a) *Issuance.* Within sixty days after receipt of a notice of new business activity under § 980.3, the Finance Board may issue to a Bank a notice that:

(1) Disapproves the new business activity;

(2) Instructs the Bank not to commence the new business pending further consideration by the Finance Board;

(3) Declares an intent to examine the Bank;

(4) Requests additional information including but not limited to the requests listed in § 980.7;

(5) Establishes conditions for the Finance Board's approval of the new business activity, including but not limited to the conditions listed in § 980.7; or

(6) Contains other instructions or information that the Finance Board deems appropriate under the circumstances.

(b) *Effect.* Following receipt of a notice issued pursuant to paragraph (a) of this section, a Bank may not undertake any new business activity that is the subject of the notice until the Bank has received the Finance Board's consent pursuant to § 980.6.

§ 980.6 Finance Board consent.

The Finance Board may at any time provide consent for a Bank to undertake a particular new business activity and setting forth the terms and conditions that apply to the activity, with which the Bank shall comply if the Bank undertakes the activity in question.

§ 980.7 Examinations; requests for additional information.

(a) *General.* Nothing in this part shall limit in any manner the right of the Finance Board to conduct any examination of any Bank.

(b) *Requests for additional information and conditions for approval.* With respect to a new business activity, nothing in this part shall limit the right of the Finance Board at any time to:

(1) Request further information from a Bank concerning a new business activity; and

(2) Require a Bank to comply with certain conditions in order to undertake, or continue to undertake, the new business activity in question, including but not limited to:

(i) Successful completion of pre- or post-implementation safety and soundness examinations;

(ii) Demonstration by the Bank of adequate operational capacity, including the existence of appropriate policies, procedures and controls;

(iii) Demonstration by the Bank of its ability to manage the risks associated with accepting increasing volumes of particular collateral, or holding increasing volumes of particular assets, including the Bank's capacity reliably to value, discount and market the collateral or assets for liquidation;

(iv) Demonstration by the Bank that the new business activity is consistent with the housing finance and community lending mission of the Banks and the cooperative nature of the Bank System; and

(v) Finance Board review of any contracts or agreements between the Bank and its members or housing associates.

Dated: June 29, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–17133 Filed 7–17–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–66–AD; Amendment 39–11799; AD 2000–12–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped with Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 747–400 series airplanes. That AD currently requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. This document publishes Appendix 1, which was referenced in, but inadvertently omitted from, the existing AD. Appendix 1 describes procedures for a functional test to detect discrepancies of the additional locking system on each engine thrust reverser. This correction is necessary to ensure that operators have the procedures necessary to perform the required functional test.

DATES: Effective July 28, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 39079, June 23, 2000).

FOR FURTHER INFORMATION CONTACT: Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On June 14, 2000, the Federal Aviation Administration (FAA) issued AD 2000–12–21, amendment 39–11799 (65 FR 39079, June 23, 2000), which applies to certain Boeing Model 747–400 series airplanes. That AD requires installation of a modification of the thrust reverser control and indication system and wiring on each engine; and repetitive functional tests of that installation to detect discrepancies, and repair, if necessary. That AD was prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in airplane controllability. The actions required by that AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

Need for the Correction

Since the issuance of that AD, the FAA discovered that Appendix 1 was inadvertently omitted from the final version of the AD. Appendix 1 is referenced in paragraph (b) of the AD as the appropriate source of procedures for the functional test to detect discrepancies of the additional locking system on each engine thrust reverser. Appendix 1 was published in the notice of proposed rulemaking (NPRM), which preceded the final rule. No comments affecting the procedures described in Appendix 1 were received in response to the NPRM.

The FAA has determined that a correction to AD 2000–12–21 is necessary. The correction will add Appendix 1 to the existing AD to ensure that operators have the procedures necessary to perform the functional test required by paragraph (b) of the AD.

Correction of Publication

This document adds Appendix 1 and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains July 28, 2000.

Since this action only adds procedures to make it possible for operators to accomplish the AD, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2000–12–21 Boeing: Amendment 39–11799. Docket 99–NM–66–AD.

Applicability: Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Modifications

(a) For airplanes identified in Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD at the times specified in those paragraphs. Accomplishment of these actions constitutes terminating action for the inspections and tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

(1) Within 36 months after the effective date of this AD: Install an additional locking system on each engine thrust reverser in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998.

Note 2: Installations accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78–2155, Revision 1, dated January 30, 1997, are considered acceptable for compliance with paragraph (a)(1) of this AD.

(2) Prior to or concurrent with the installation required by paragraph (a)(1) of this AD, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD:

(i) Modify the central maintenance computer system hardware and software in accordance with Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996.

(ii) Modify the integrated display system software in accordance with Boeing Service Bulletin 747–31–2245, dated June 27, 1996.

(iii) Install the provisional wiring for the locking system on the thrust reversers in accordance with Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997.

Note 3: Installations accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–78–2154, Revision 1, dated November 2, 1995, and Revision 2, dated October 31, 1996, are considered acceptable for compliance with paragraph (a)(2)(iii) of this AD.

Repetitive Functional Tests

(b) Within 4,000 hours time-in-service after accomplishment of paragraph (a) of this AD, or production equivalent; or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later: Perform a functional test to detect discrepancies of the additional locking system on each engine thrust reverser, in accordance with Appendix 1 of this AD. Prior to further flight, correct any discrepancy detected and repeat the functional test of that repair, in accordance with the procedures described in the Boeing 747–400 Airplane Maintenance Manual. Repeat the functional test thereafter at intervals not to exceed 4,000 hours time-in-service.

Terminating Action Airplanes Having Line Numbers 1067 and Higher

(c) For airplanes having line numbers 1067 and higher on which the intent of Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998, was accomplished during production: Accomplishment of the repetitive functional tests required by paragraph (b) of this AD constitutes terminating action for the repetitive inspections and functional tests required by paragraph (a) of AD 94–15–05, amendment 39–8976.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78–2155, Revision 2, dated November 5, 1998; Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996; Boeing Service Bulletin 747–31–2245, dated June 27, 1996; or Boeing Service Bulletin 747–78–2154, Revision 3, dated December 11, 1997; as applicable. This incorporation by reference was approved previously by the Director of the Federal Register as of July 28, 2000 (65 FR 39079, June 23, 2000). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) The effective date of this amendment remains July 28, 2000.

Appendix 1.—Thrust Reverser Sync-Lock—Adjustment/Test

1. General

A. There are two sync-locks for each engine thrust reverser. The sync-lock is installed on the lower non-locking hydraulic actuator of each thrust reverser sleeve.

B. The Thrust Reverser Sync-Lock Integrity Test has two tasks:

(1) The first task does a test of the electrical circuit which controls the operation of the sync-lock on each thrust reverser sleeve.

(2) The second task does a test of the mechanical function of the sync-lock on each thrust reverser sleeve.

C. The thrust reverser sync-lock is referred to as ''the sync-lock'' in this procedure.

2. Thrust Reverser Sync-Lock Integrity Test

A. Equipment—Multi-meter, Simpson 260 or equivalent—commercially available

B. Prepare to do the integrity test for the sync-locks

(1) Supply electrical power

(2) For the applicable engine, make sure these circuit breakers on the Main Power Distribution Panel P6, are closed:

6F12 ENG 1 T/R IND
6E12 ENG 2 T/R IND
6D12 ENG 3 T/R IND
6C12 ENG 4 T/R IND
6F13 ENG 1 T/R CONT
6E13 ENG 2 T/R CONT
6D13 ENG 3 T/R CONT
6C13 ENG 4 T/R CONT
6F11 ENG 1 T/R LOCK CONT
6E11 ENG 2 T/R LOCK CONT
6D11 ENG 3 T/R LOCK CONT
6C11 ENG 4 T/R LOCK CONT

(3) Open the fan cowl panels for the applicable engine.

C. Do the electrical integrity test for the sync-locks.

(1) Do these steps, for the applicable engine, to make sure there are no ''hot'' short circuits in the electrical system which can accidentally supply power to the sync-locks:

(a) Remove the electrical connector, D20194, from the sync-lock, V170, on the left sleeve of the thrust reverser.

(b) Remove the electrical connector, D20196, from the sync-lock, V171, on the right sleeve of the thrust reverser.

(c) Use a multi-meter on the plug end of the applicable electrical connector to make sure that these conditions are correct:

D20194 PIN 1	D20194 PIN 2	−3 TO +1 VDC AND CONTINUITY (LESS THAN 5 OHMS)
D20196 PIN 1	D20196 PIN 2	−3 TO +1 VDC AND CONTINUITY (LESS THAN 5 OHMS)

(d) If you find the correct conditions, do the mechanical integrity test for the sync-locks.

(e) If you did not find these conditions to be correct, you must do these steps:

(1) Make a careful visual inspection of all the electrical wires and connectors between the sync-lock and its power circuit.

(2) Repair all the unserviceable electrical wire and connectors that you find.

(3) Use the multi-meter again to make sure there are no ''hot'' short circuits in the electrical system which can accidentally supply power to the sync-locks.

D. Do the mechanical integrity test for the sync-locks.

(1) Supply hydraulic power.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR IF THE SYNC-LOCKS DO NOT OPERATE CORRECTLY AND THE THRUST REVERSER EXTENDS.

(2) Move the applicable reverser thrust lever aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves do not extend, the sync-locks are serviceable. If the thrust reverser sleeves extend, the applicable sync-lock did not operate correctly.

(3) Replace the sync-lock(s) on the thrust reverser sleeve(s) that did extend when you moved the reverse thrust levers. Repeat steps 2.D.(1) and 2.D.(2) to verify that functional sync-locks are installed.

(4) Move the applicable thrust reverser lever forward to the stow position.

(5) Install the electrical connector, D20194, on the sync-lock, V170 on the left sleeve of the thrust reverser.

(6) Install the electrical connector, D20196, on the sync-lock, V171, on the right sleeve of the thrust reverser.

WARNING: MAKE SURE ALL PERSONS AND EQUIPMENT ARE CLEAR OF THE AREA BEHIND EACH THRUST REVERSER. IF YOU DO NOT OBEY THIS INSTRUCTION, INJURIES TO PERSONS OR DAMAGE TO EQUIPMENT CAN OCCUR WHEN THE THRUST REVERSERS ARE EXTENDED.

(7) Move the applicable thrust reverser aft to try to extend the thrust reverser with hydraulic power.

Note: If the thrust reverser sleeves extended, the sync-locks are serviceable. If the thrust reverser sleeves did not extend, the applicable sync-lock is not serviceable.

(8) Replace the sync-lock(s) on the thrust reverser sleeve that did not extend when you moved the reverse thrust levers. Repeat steps 2.D.(4) through 2.D.(7) to verify that functional sync-locks are installed.

(9) Repeat steps 2.A. through 2.D. for all other engine positions.

E. Put the airplane back to its usual condition.

(1) Move the reverse thrust levers forward to fully retract the thrust reversers on the applicable engine.

(2) Remove the hydraulic power if it is not necessary.

(3) Remove the electrical power if it is not necessary.

(4) Close the fan cowl panels.

Issued in Renton, Washington, on July 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–18041 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–12]

Revision of Class E Airspace, Carrizo Springs, Glass Ranch, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises the Class E Airspace at Carrizo Springs, Glass Ranch, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 21301 is effective 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 21, 2000, (65 FR 21301). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on June 30, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–18134 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Vessels in Foreign and Domestic Trades

CFR Correction

In Title 19 of the Code of Federal Regulations, Parts 1 to 140, revised as of April 1, 2000, on page 64, in §4.95, the third sentence is removed.

[FR Doc. 00–55512 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations; Confirmation in Part and Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation in part and technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is confirming, in part, the direct final rule amending certain references in various medical device regulations. The amendments update the references in those regulations to various standards of the American Society for Testing and Materials (ASTM) to reflect the current standards designations. In addition, FDA is correcting errors made in the direct final rule regarding ASTM's address and an FDA zip code.

DATES: The direct final rule published on January 24, 2000 (65 FR 3627), as amended by this rule, is effective June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 24, 2000 (65 FR 3627), FDA published a direct final rule and a companion proposed rule to amend various medical device regulations. The amendments would update references in those regulations to various standards issued by the American Society for Testing and Materials (ASTM). The preamble to the direct final rule and the companion proposed rule explained that ASTM had been working on a project to help Federal agencies update and maintain the ASTM standards that are referenced in the Code of Federal Regulations. As part of the ASTM project, ASTM informed FDA that many ASTM standards cited in FDA's food additive and device regulations were out-of-date and provided a list of standards with their current year designations.

Based on information received from ASTM, FDA, through the direct final rule and companion proposed rule, identified several device regulations that contained obsolete or withdrawn ASTM standards. The medical device regulations and the ASTM standards at issue are:

• 21 CFR 801.410 *Use of impact-resistant lenses in eyeglasses and sunglasses*—The agency proposed to amend paragraph (d)(2) by replacing ''ASTM Method D 1415–68 'Test for International Hardness of Vulcanized Rubber,''' with ''ASTM Method D 1415–88, 'Standard Test Method for Rubber Property—International Hardness,''' and also replace ''ASTM Method D 412–68 'Tension Test of Vulcanized Rubber''' with ''ASTM Method D 412–97, 'Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension'''.

• 21 CFR 801.430 *User labeling for menstrual tampons*—The agency sought to amend paragraph (f)(2) by replacing ''(ASTM) D 3492–83, 'Standard Specification for Rubber Contraceptives (Male Condoms)''' with ''(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)'''.

FDA received one comment. The comment, submitted by ASTM, pointed out that because ASTM had revised two of the cited ASTM references again, the two references in the direct final rule were now obsolete. ASTM recommended changing D412–97 to D412–98A and D3492–96 to D3492–97 to reflect the current ASTM cites. ASTM's comment explained how the standards had changed and provided detailed descriptions of the changes in its comment. In general, the changes were not significant; some changes involved removing terms that were not commonly used or defined, deleting redundant wording, adding metric measurements, and changing measurement methods to improve accuracy or clarity.

Because these changes are not significant and ASTM has already made these changes to its standards, FDA finds for good cause that notice and public comment on the latest ASTM standards citation revisions is unnecessary.

Therefore, FDA is confirming, in part, the direct final rule insofar as it pertains to § 801.410 and its reference to ASTM Method D 1415–88, ''Standard Test Method for Rubber Property—International Hardness'' and the addresses where the standards may be found or inspected. Similarly, FDA is confirming the addresses in § 801.430 where the standards may be found or inspected, although it is correcting errors that were made in the direct final rule regarding the ASTM's address.

FDA is amending § 801.410 by replacing ''ASTM Method D 412–97'' with ''ASTM Method D 412–98A'' and using the current title for ASTM method D 412.98A. FDA is also amending § 801.430(f)(2) by replacing ''(ASTM), D 3492–96,'' with ''(ASTM) D 3492–97,''.

List of Subjects 21 CFR Part 801

Hearing aids, Medical devices, Professional and patient labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, the direct final rule published on January 24, 2000 (65 FR 3627), is confirmed as effective June 7, 2000, with the following changes:

PART 801—LABELING

1. The authority citation for part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

§ 801.410 [Amended]

2. Section 801.410 ''*Use of impact-resistant lenses in eyeglasses and sunglasses*'' is amended in paragraph (d)(2) by removing ''ASTM Method D 412–97, Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension,'' and by adding in its place ''ASTM Method D 412–98A, 'Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers—Tension','' and by removing ''10850'' and by adding in its place ''20850''.

§ 801.430 [Amended]

3. Section 801.430 ''*User labeling for menstrual tampons*'' is amended in paragraph (f)(2) by removing ''(ASTM) D 3492–96, 'Standard Specification for Rubber Contraceptives (Male Condoms)''' and by adding in its place ''(ASTM) D 3492–97, 'Standard Specification for Rubber Contraceptives (Male Condoms)'''; and by revising the footnote to read ''Copies of the standard are available from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428, or available for inspection at the Center for Devices and Radiological Health's Library, 9200 Corporate Blvd., Rockville, MD 20850, or at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC.''

Dated: June 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18082 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8893]

RIN 1545–AW52

Retention of Income Tax Return Preparers' Signatures

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide income tax return preparers with two alternative means of meeting the requirement that a preparer retain the copy of the return or claim manually signed by the preparer. The regulations are necessary to inform preparers about the two alternatives and to provide them with the guidance needed to comply with the alternatives.

DATES: *Effective Date:* These regulations are effective July 18, 2000.

Applicability Date: For dates of applicability, see § 1.6695–1(g) of these regulations.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the penalty for failure to sign an income tax return under section 6695(b) of the Internal Revenue Code.

On December 31, 1998, final and temporary regulations (TD 8803, 1999–12 I.R.B. 15) under section 6695 were published in the **Federal Register** (63 FR 72182). A notice of proposed rulemaking (REG–106386–98, 1999–12 I.R.B. 31) cross-referencing the temporary regulations was published in the **Federal Register** (63 FR 72218) on the same date. Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6695 are adopted by this Treasury decision and the corresponding temporary regulations are removed.

Section 6695(b) provides that any person who is an income tax return preparer with respect to a return or claim for refund, who is required by regulations prescribed by the Secretary to sign the return or claim, and who fails to comply with those regulations, must pay a penalty of $50 for such failure, unless it is shown that the failure is due to reasonable cause and not willful neglect. The maximum penalty imposed with respect to documents filed during a calendar year will not exceed $25,000.

Section 7701(a)(36)(A) provides that, in general, the term *income tax return preparer* means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim is treated as if it were the preparation of such return or claim.

Section 1.6695–1(b)(1) generally provides that an income tax return preparer, with respect to a return or claim for refund, must manually sign the return or claim (which may be a photocopy) in the appropriate space provided on the return or claim after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

Explanation of Provisions

The final regulations provide that the employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim. In the alternative, the person required to retain the manually signed copy of the return or claim may either retain a photocopy of that manually signed copy or use an electronic storage system meeting the requirements of section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652), or procedures subsequently prescribed by the Commissioner, to store and produce a copy of the return or claim manually signed by the preparer.

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 the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations 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 Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for section 1.6695–1T and by revising the entry for section 1.6695–1 to read in part as follows:

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

Section 1.6695–1 also issued under 26 U.S.C. 6060(b) and 6695(b). * * *

Par. 2. Section 1.6695–1 is amended by:

1. Revising paragraph (b)(4)(i).
2. Adding paragraph (g).
3. Removing the authority citation immediately following the end of the section.

The revision and addition read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) * * *

(4)(i) The manual signature requirement of paragraphs (b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernible on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed or engaged by a preparer and not a partner of a partnership which is a preparer), must retain the manually signed copy of the return or claim for refund. In the alternative, for a return or claim for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date, the person required to retain the manually signed copy of the return or claim for refund may choose to retain a photocopy of the manually signed copy of the return or claim for refund, or use an electronic storage system to store and produce a copy of the manually signed return or claim for refund. For purposes of this paragraph (b)(4)(i), an electronic storage system must meet the electronic storage system requirements prescribed in section 4 of Rev. Proc. 97–22 (1997–1 C.B. 652) (see § 601.601(d)(2) of this chapter) or other procedures prescribed by the Commissioner. A record of any arithmetical errors corrected must be retained and made available upon request by the person required to retain the manually signed copy of the return or claim for refund.

* * * * *

(g) *Effective date.* This section applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 1998, and for returns or claims for refund retained on or before that date.

§ 1.6695–1T [Removed]

Par. 3. Section 1.6695–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 30, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18117 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8892]

RIN 1545–AR97

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.

SUMMARY: This document removes temporary regulations that provide that an individual Federal income tax return completed as part of the Telefile Voice Signature test will be treated as a return that is signed, authenticated, verified and filed by the taxpayer as required by the Internal Revenue Code. The temporary regulations were published in the **Federal Register** on December 27, 1993. Because the temporary regulations applied only to 1992 and 1993 calendar year returns, the IRS is removing them.

EFFECTIVE DATE: These regulations are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the IRS issued temporary regulations (TD 8510) in the **Federal Register** (58 FR 68295) under sections 6012, 6061, and 6065 relating to the TeleFile Voice Signature test. Because the temporary regulations applied only to 1992 and 1993 calendar year returns, the IRS has decided to remove them. Therefore, temporary regulations §§ 1.6012–7T, 1.6061–2T, and 1.6065–2T are being removed.

On December 27, 1993, the IRS also issued a notice of proposed rulemaking (58 FR 68335) under sections 6012, 6061, and 6065. Although written comments and requests for a public hearing were solicited, no written or oral comments were received and no public hearing was requested or held. This notice of proposed rulemaking is being withdrawn in a separate document.

Explanation of Provisions

Under sections 6012, 6061, and 6065 of the Internal Revenue Code, each individual with gross income in excess of a specified amount must file an annual income tax return that (i) is signed in accordance with prescribed forms and instructions and, (ii) except as otherwise provided by the Service, contains (or is verified by) a written declaration that the return is made under penalties of perjury.

The temporary regulations provide rules to facilitate the implementation of the Telefile Voice Signature test. Generally, pursuant to the temporary regulations a taxpayer's individual income tax return will be treated as having been properly filed if the taxpayer is eligible to participate in the Telefile Voice Signature test and, pursuant to the instructions from the Telefile system interactive voice computer, provides the requested information and the voice signature during the telephonic filing season.

The Telefile Voice Signature test occurred during the 1993 and 1994 filing seasons. Since that time the Service has published final regulations generally authorizing alternative signature methods. See § 301.6061–1. Accordingly, the regulations relating to

the Telefile Voice Signature test are being removed.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Removal of Temporary Regulations

PART 1—INCOME TAXES

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

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

§ 1.6012–7T [Removed]

Par. 2. Section 1.6012–7T is removed.

§ 1.6061–2T [Removed]

Par. 3. Section 1.6061–2T is removed.

§ 1.6065–2T [Removed]

Par. 4. Section 1.6065–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

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

Par. 6. Section 602.101(c) is amended by removing the following entries in the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * *	
1.6012–7T	1545–1348
1.6061–2T	1545–1348
* * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 30, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–18116 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 20

Global Package Link

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: The Postal Service is adopting changes to Global Package Link (GPL) service. Expansion of the service is planned to the European Union (EU) countries as well as expansion to Australia. Rates are being increased 5 percent for existing GPL services with a 15 percent increase to the oversize GPL package service to Japan.

There are several new fees that will be added to GPL. There will be a fee schedule for data exceptions. Customers will be charged when they fail to provide usable data needed to process GPL. In addition, there will be a new fee of $250 per hour for providing assistance in establishing necessary data links with GPL, for assistance in updating its manifesting systems, and for providing harmonization services needed to utilize GPL's Customs Preadvisory System. These new fees for service will allow the customer to access expertise quickly and for a reasonable charge thus making it easier for them to use GPL.

There will also be a new surcharge of $11 per piece when customers fail to meet the requirement of mailing a minimum of 10,000 packages to any combination of GPL destination countries per year. They will also be required to use the premium service where available. Any existing customers that have been using GPL for over a year will be reviewed and also subject to the surcharge if applicable.

EFFECTIVE DATE: The interim rule is effective 12:01 a.m. EST, August 6, 2000. Comments must be received on or before September 7, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, International Business Results, Room 370–IBU, International Business, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, 10th Floor, 901 D Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: Global Package Link service is an international mail service designed for companies sending merchandise packages to other countries. To use GPL, a customer must send at least 10,000 packages per year of mailing and agree to link its information systems with the Postal Service so that certain information about the contents of the customer's packages can be extracted for operational, customs clearance, and other purposes.

The Postal Service is proposing to add new features to GPL that will enhance its value to customers. The weight and size limits for items sent to Argentina are being increased. The weight limit is increased to 70 pounds from 44 pounds for both premium and standard services. The maximum size is increased to 60 inches in length and 108 inches in length and girth combined.

Service is being extended to Australia. Service to Australia includes premium and standard service. The maximum weight is 66 pounds for both premium and standard services. The maximum size limit for premium items is 36 inches maximum length and a maximum length and girth combined of 79 inches. The maximum size limit for standard items is 42 inches maximum length and a maximum length and girth combined of 79 inches.

The rates for service to Australia are:

Weight not over (pounds)	Premium ($)	Standard ($)
1	16.00	10.50
2	20.00	14.00
3	24.50	18.00
4	29.00	22.00
5	33.00	25.50
6	37.50	29.50
7	42.00	33.00
8	46.00	27.00
9	50.50	40.50
10	55.00	44.50
11	59.00	48.50
12	61.00	50.00
13	63.00	51.50
14	67.00	55.00
15	71.00	58.50
16	75.00	62.00
17	79.00	65.50
18	83.00	69.00
19	87.00	73.00
20	91.00	76.50
21	95.00	80.00
22	99.00	83.50
23	103.00	87.00
24	107.00	90.50
25	111.00	94.00
26	115.00	97.50

Weight not over (pounds)	Premium ($)	Standard ($)
27	119.00	101.00
28	123.00	104.50
29	127.00	108.00
30	131.00	111.50
31	135.00	115.00
32	139.00	118.50
33	143.00	122.00
34	147.00	125.50
35	151.00	129.00
36	155.00	132.50
37	159.50	136.00
38	163.50	139.50
39	167.50	143.00
40	171.50	146.50
41	175.50	150.50
42	179.50	153.50
43	183.50	157.00
44	187.50	160.50
45	191.50	164.00
46	195.50	164.00
47	199.50	171.00
48	203.50	178.00
49	207.50	178.00
50	211.50	181.50
51	215.50	185.00
52	219.50	188.50
53	223.50	192.00
54	227.50	195.50
55	231.50	199.00
56	235.50	202.50
57	239.50	206.00
58	243.50	209.50
59	247.50	213.00
60	251.50	216.50
61	255.50	220.00
62	259.50	223.50
63	263.50	227.50
64	267.50	230.00
65	271.50	234.00
66	275.50	237.50

The Postal Service is extending service to all countries in the EU. Under this service, packages will be transported to Great Britain for customs clearance. Once cleared, the packages will be delivered to the other countries in the EU with no further customs clearance required. There are two rate groups. Rate Group 1 includes Ireland, Belgium, The Netherlands, Denmark, France, and Germany. Rate Group 2 includes Luxembourg, Greece, Italy, Portugal, Spain, Austria, Finland, and Sweden. The rates for this service are as follows:

Weight not over (pounds)	Group 1 ($)	Group 2 ($)
1	13.25	21.50
2	15.00	23.25
3	16.50	24.75
4	18.00	26.25
5	19.75	28.00
6	21.25	29.50
7	22.75	31.00
8	24.50	32.50
9	26.00	34.50
10	27.50	35.75
11	29.25	37.25
12	30.75	39.00
13	32.25	40.50
14	34.00	42.00
15	35.50	43.75
16	37.00	45.25
17	38.50	46.75
18	40.25	48.50
19	41.25	50.00
20	43.25	51.50
21	45.00	53.25
22	46.50	54.75
23	48.00	56.25
24	49.75	58.00
25	51.25	59.50
26	52.75	61.00
27	54.50	62.50
28	56.00	64.25
29	57.50	65.75
30	59.25	67.25
31	60.75	69.00
32	62.25	70.50
33	64.00	72.00
34	65.50	73.75
35	67.00	75.25
36	68.50	76.50
37	70.25	78.50
38	71.75	80.00
39	73.25	81.50
40	75.00	83.25
41	76.50	84.75
42	78.00	86.25
43	79.75	87.75
44	81.25	89.50
45	82.75	91.00
46	84.50	92.50
47	86.00	84.25
48	87.50	95.75
49	89.25	97.25
50	90.75	99.00
51	92.25	100.50
52	93.75	102.00
53	95.50	103.75
54	97.00	105.25
55	98.50	106.75
56	100.25	108.50
57	101.75	110.00
58	103.25	111.50
59	105.00	113.25
60	106.50	114.75
61	108.00	116.75
62	111.25	117.75
63	111.25	119.50
64	112.75	121.00
65	114.50	122.50
66	116.00	124.25
67	117.50	125.75
68	119.25	127.50
69	120.75	129.00
70	122.25	130.50

The rates for oversized packages to Japan are increased 5 percent. These packages, which are too large for delivery by Japanese postal authorities, are tendered to a private delivery firm for delivery. The rates for this service are as follows:

Weight not over (pounds)	Rates ($)
1	28.75
2	32.25
3	36.00
4	39.50
5	44.25
6	49.00
7	52.50
8	57.25
9	60.50
10	63.00
11	65.50
12	68.75
13	71.25
14	74.00
15	76.00
16	78.50
17	81.25
18	83.25
19	86.50
20	88.50
21	90.50
22	92.50
23	94.75
24	96.75
25	98.75
26	101.00
27	103.00
28	105.00
29	107.25
30	108.25
31	110.25
32	112.50
33	114.50
34	116.50
35	118.50
36	120.75
37	121.75
38	122.75
39	126.75
40	129.00
41	132.00
42	135.00
43	138.75
44	140.00
45	143.50
46	147.75
47	150.00
48	152.75
49	155.00
50	158.00
51	161.50
52	164.00
53	167.50
54	169.50
55	173.50
56	176.25
57	178.75
58	181.00
59	185.50
60	187.50
61	189.00
62	193.75
63	196.00
64	199.00
65	202.50
66	208.00
67	210.00
68	213.75
69	216.75
70	219.00

The Postal Service is increasing the rates of all existing GPL services by 5 percent. Japan rates are also being

announced for parcels weighing up to 66 lbs. Rates for each country are as follows:

Premium Service

Weight Not Over (Pounds)	Germany ($)	Chile ($)	Brazil ($)	Argentina ($)	China ($)	Singapore ($)	Hong Kong ($)	Japan ($)	Canada ($)	Mexico ($)	UK ($)
1	12.25	11.00	14.25	11.50	14.75	15.50	17.75	16.50	10.50	8.75	15.75
2	14.25	13.50	16.50	15.00	17.75	19.50	21.50	19.00	11.50	10.25	17.25
3	16.00	16.00	19.50	17.75	21.00	23.25	25.25	21.75	13.25	12.00	19.00
4	17.75	18.50	21.50	21.00	24.25	27.50	29.00	24.75	15.00	13.75	20.50
5	19.75	21.00	24.75	24.00	30.75	32.50	32.50	27.50	16.50	15.50	22.00
6	21.50	23.00	26.75	26.75	33.75	36.75	36.25	31.00	18.50	17.00	23.75
7	23.25	25.75	30.00	60.25	37.00	41.25	40.00	33.75	20.00	18.50	25.00
8	25.25	28.00	32.00	32.75	40.25	45.25	43.50	36.75	21.75	20.00	27.00
9	27.00	30.75	35.25	35.50	43.50	50.50	47.25	39.50	23.25	21.75	28.50
10	29.00	33.00	37.25	38.25	46.75	54.25	51.00	42.25	25.25	23.25	30.50
11	30.75	35.50	39.50	42.25	50.00	58.25	54.50	45.25	26.75	25.25	32.00
12	32.50	37.75	42.50	44.75	53.00	63.00	58.25	48.00	25.28	26.25	33.50
13	34.50	40.25	44.75	47.50	56.25	67.50	62.25	51.00	30.25	28.00	35.50
14	36.25	42.75	47.75	50.75	59.25	72.25	65.75	53.75	31.75	29.75	37.00
15	38.00	45.25	49.75	53.50	62.75	76.25	69.50	56.75	33.50	31.00	38.75
16	40.00	47.75	53.00	56.75	66.00	80.50	73.25	59.50	35.25	32.50	40.50
17	41.75	50.25	55.00	59.50	69.00	85.25	77.00	62.50	37.00	34.50	42.25
18	43.50	52.50	57.50	62.75	72.25	89.75	80.50	65.25	38.50	35.50	44.25
19	45.50	54.75	59.50	65.75	75.50	94.00	84.25	68.00	40.50	37.25	46.50
20	47.25	57.50	62.50	68.75	78.75	98.50	88.00	71.00	42.00	38.25	48.00
21	49.00	59.75	64.75	71.75	82.00	103.00	91.50	73.75	43.50	40.25	50.00
22	51.00	62.25	66.75	75.25	85.00	107.00	95.25	76.75	45.25	41.25	51.50
23	52.75	64.50	69.75	78.00	88.25	116.25	99.00	79.50	47.00	43.00	53.00
24	54.50	67.00	72.00	80.25	91.25	120.75	102.75	82.50	48.50	44.00	54.50
25	56.50	69.50	75.00	83.50	94.75	124.75	106.25	85.25	50.50	45.75	56.25
26	58.50	72.00	77.25	86.25	98.00	129.00	110.00	88.25	52.00	47.00	58.00
27	60.50	74.50	80.25	89.50	101.00	133.25	113.75	91.00	53.25	48.50	61.25
28	62.25	77.00	82.25	92.50	104.25	137.25	117.25	94.00	55.50	50.00	62.75
29	64.00	79.25	85.25	95.25	107.25	141.25	121.00	96.50	57.25	51.00	64.50
30	66.00	81.75	87.50	98.50	110.50	145.50	124.75	99.50	58.75	52.75	66.25
31	67.75	84.25	90.50	101.25	114.00	150.00	128.25	102.50	60.00	53.75	68.00
32	69.50	86.75	92.75	104.25	117.00	153.75	132.25	105.25	61.75	54.75	69.50
33	71.50	89.00	94.75	107.25	120.25	158.00	136.00	108.25	63.50	56.25	71.25
34	73.25	91.50	97.75	110.25	123.50	167.75	139.75	111.00	65.00	57.75	73.00
35	75.00	93.75	100.00	114.50	126.50	171.75	143.25	114.00	67.00	59.00	74.50
36	77.00	96.25	103.00	117.00	129.75	175.50	147.00	116.75	68.50	60.00	76.50
37	78.75	98.75	105.25	119.50	133.00	180.25	150.75	119.75	70.25	61.25	78.00
38	80.50	101.25	108.25	122.50	136.25	184.25	154.25	122.50	72.00	62.50	79.50
39	82.50	103.75	110.25	125.50	139.50	188.25	158.00	125.25	73.50	63.50	83.00
40	94.25	106.00	113.25	128.25	142.50	193.00	161.75	128.00	75.25	64.50	84.50
41	86.00	108.50	115.50	131.25	145.75	197.00	165.50	131.00	76.50	66.50	86.25
42	88.00	111.00	118.50	134.50	148.75	200.75	169.00	134.00	78.25	67.50	88.00
43	89.75	113.50	120.75	137.25	152.25	204.75	172.75	136.75	79.75	68.75	89.75
44	91.50	115.75	122.75	140.25	155.50	209.50	176.50	139.75	81.50	69.75	91.50
45	93.50	118.50	125.75	141.50	158.50	218.75		142.50	83.25	71.00	93.25
46	95.25	120.50	128.00	144.50	161.75	222.50		145.50	84.25	71.75	95.00
47	97.25	123.00	131.00	147.50	164.75	227.00		148.25	85.75	72.75	96.50
48	99.00	125.50	133.25	150.50	168.00	231.25		151.25	87.50	73.75	98.50
49	100.75	128.00	136.25	153.25	171.50	235.25		154.00	89.00	75.00	100.00
50	102.75	130.50	138.25	158.50	174.50	239.75		157.00	90.75	77.25	103.50
51	104.50	132.75	141.25	161.25	177.75	243.75		159.75	92.50	78.50	105.25
52	106.25	135.25	143.50	164.25	180.75	247.75		162.75	94.25	79.00	106.75
53	108.25	137.75	146.50	167.25	184.00	251.75		165.75	95.75	79.00	106.75
54	110.00	140.25	148.75	170.25	187.50	256.50		168.50	97.50	80.00	108.75
55	111.75	142.50	150.75	173.00	190.50	260.50		171.50	99.25	81.50	110.25
56	113.75	145.25	153.75	176.00	193.75	269.50		174.25	100.00	82.50	112.00
57	115.50	147.50	156.00	179.00	197.00	274.00		177.25	101.75	83.00	113.75
58	117.25	150.00	159.00	181.75	200.00	278.00		180.00	103.50	84.00	115.50
59	119.25	152.25	161.00	184.75	203.25	282.25		183.00	105.00	85.25	117.00
60	121.00	155.00	164.25	192.00	206.50	286.75		185.75	106.75	85.75	119.00
61	123.00	157.25	166.25	195.00	209.75	290.50		188.75	108.50	87.00	120.50
62	125.00	159.75	169.25	198.00	213.00	294.75		191.75	110.00	87.75	122.25
63	126.75	162.00	171.50	200.75	216.00	298.75		194.50	110.75	88.75	124.25
64	128.75	164.50	174.50	203.75	219.25	303.25		197.50	112.50	89.75	125.75
65	130.50	167.00	176.75	206.75	222.25	307.50		200.25	114.25		127.50
66	132.25	169.25	178.75	209.75	225.75	311.25		203.25	115.75		129.25
67	134.25	172.00		212.50	229.00						
68	136.00	174.25		215.50	232.00						
69	137.75	176.75		218.50	235.25						
70	139.75	179.00		221.50	238.25						

Standard Service Weight Not Over (Pounds)	Japan ($)	Singapore ($)	Mexico ($)	France ($)	Argentina ($)	UK ($)
1	6.25	12.00	5.75	7.50	9.00	12.75
2	9.75	16.00	6.75	10.00	11.50	14.25
3	15.00	19.50	8.25	12.25	14.00	15.75
4	19.00	23.25	9.25	14.75	16.00	17.25
5	25.25	28.00	10.25	16.75	18.00	18.75
6	28.50	32.00	12.00	19.25	20.25	20.25
7		36.00	13.25	21.50	23.00	21.50
8		40.25	14.50	23.75	25.25	23.00
9		44.00	15.50	26.00	27.25	24.75
10		48.00	16.80	28.25	29.75	26.00
11		52.00	17.75	30.75	33.00	27.50
12		56.25	19.00	32.75	35.25	29.00
13		60.00	20.00	35.25	37.25	30.50
14		64.50	21.25	37.50	39.50	32.00
15		68.75	22.25	40.00	42.50	33.25
16		72.75	23.25	42.00	44.75	35.00
17		76.75	24.75	44.25	47.25	36.50
18		80.50	25.75	46.75	49.50	37.75
19		84.75	26.75	48.75	52.00	39.50
20		89.25	28.00	51.25	54.75	40.75
21		92.75	28.50	53.50	57.00	42.25
22		96.50	29.75	56.00	60.00	43.75
23		103.75	31.00	58.00	62.50	45.25
24		107.75	32.00	60.50	64.75	46.75
25		111.00	33.00	62.75	67.50	48.00
26		115.00	34.50	64.75	69.75	49.50
27		119.00	35.50	67.25	72.25	51.25
28		123.00	36.75	69.50	74.50	52.50
29		126.50	37.25	72.00	77.25	54.00
30		130.50	38.25	74.00	79.50	55.50
31		134.50	39.50	76.50	82.00	57.00
32		138.50	40.75	78.75	84.50	58.50
33		142.00	41.75	80.75	87.00	59.75
34		148.75	42.25	83.25	89.25	61.50
35		152.75	43.50	85.50	93.00	63.00
36		156.75	44.75	88.00	95.25	64.25
37		160.25	45.75	90.00	97.75	66.00
38		164.25	46.50	92.50	100.00	67.25
39		168.25	47.50	94.75	102.75	68.75
40		172.25	48.50	97.25	105.00	70.25
41		175.50	50.00	99.25	107.25	71.75
42		179.75	50.50	101.50	109.75	73.25
43		183.75	51.50	104.00	112.25	74.50
44		187.25	52.75	106.00	114.75	76.25
45		194.00	53.25	108.50	115.50	77.75
46		198.00	54.25	110.75	118.00	79.00
47		202.25	55.50	113.25	120.50	80.50
48		205.50	56.25	115.25	122.75	82.25
49		209.50	57.25	117.50	125.25	83.50
50		213.50	57.75	120.00	129.75	85.00
51		217.25	59.00	122.00	132.25	86.25
52		220.75	60.00	124.50	134.50	88.00
53		225.00	60.75	126.75	137.00	89.50
54		229.00	61.75	129.25	139.50	90.75
55		232.75	62.50	131.25	141.75	92.50
56		239.25	63.50		144.25	93.75
57		243.25	64.00		146.50	95.25
58		247.25	65.25		149.00	96.75
59		251.25	66.00		151.50	98.25
60		254.75	67.00		158.25	99.75
61		258.50	67.50		160.75	101.00
62		262.75	68.75		163.00	102.75
63		266.75	69.25		165.50	104.25
64		270.00	70.25		168.00	105.50
65		274.00			170.25	107.00
66		278.00			172.75	108.75

Economy Service Weight Not Over (Pounds)	UK ($)
1	11.25
2	12.75
3	14.25
4	15.75
5	17.00
6	18.50
7	20.00
8	21.25
9	22.75
10	24.25
11	25.50
12	27.00
13	28.25
14	30.00
15	31.25
16	32.50
17	34.25
18	35.50
19	37.00
20	38.25
21	39.75
22	41.25
23	42.50
24	44.00
25	45.50
26	46.75
27	48.25
28	49.50
29	51.25
30	52.50
31	54.00
32	55.50
33	56.75
34	58.25
35	59.50
36	61.25
37	62.50
38	63.75
39	65.25
40	66.75
41	68.25
42	69.50
43	71.00
44	72.50
45	73.75
46	75.25
47	76.75
48	78.00
49	79.50
50	80.75
51	82.50
52	83.75
53	85.00
54	86.75
55	88.00
56	89.50
57	90.75
58	92.25
59	93.75
60	95.00
61	96.50
62	98.00
63	99.25
64	100.75
65	102.00
66	103.75

Canada

Weight Not to Exceed (Pounds)		US Origin Zone A: Buffalo, New York City, and Chicago Canadian Entry: Toronto			US Origin Zone B: Miami and Dallas* Canadian Entry: Toronto			Schedule C, US Origins: Seattle Canadian Entry: Vancouver			Schedule D, US Origins: San Francisco Canadian Entry: Vancouver			
	Premium ($)	Local ($)	Regional ($)	National ($)	Local ($)	Regional ($)	National ($)	Local (V), ($)	Regional (V), ($)	National (V), ($)	Local (V), ($)	Regional (V), ($)	National (V), ($)	Returns ($)
1	10.50	5.75	7.50	8.00	6.50	8.25	8.50	8.00	9.50	12.00	8.50	10.00	12.50	7.25
2	11.50	6.25	8.75	9.25	7.50	10.00	10.50	8.50	9.75	12.25	9.50	11.00	13.75	8.25
3	13.25	6.75	9.75	10.50	8.75	11.50	12.25	8.75	10.25	12.75	10.50	12.00	14.75	9.00
4	15.00	7.25	10.50	11.75	9.75	12.75	14.25	9.25	10.75	13.50	11.50	13.25	15.75	9.75
5	16.50	8.00	11.25	13.25	10.75	14.50	16.25	9.75	11.00	13.75	12.50	14.25	16.75	10.50
6	18.50	8.50	12.25	14.50	12.00	16.00	18.00	10.00	11.50	14.25	13.75	15.25	17.75	11.25
7	20.00	9.00	13.25	15.75	13.25	17.25	20.25	10.50	11.75	14.50	14.75	16.25	19.00	12.00
8	21.75	9.50	14.00	17.00	14.25	19.00	22.00	10.75	12.25	15.00	15.75	17.25	20.00	12.75
9	23.25	10.00	15.00	18.50	15.50	20.50	24.00	11.25	12.75	15.50	16.75	18.00	20.75	13.75
10	25.25	10.50	15.75	19.75	16.50	21.75	26.00	11.75	13.25	15.75	17.75	19.25	21.75	14.25
11	26.75	11.00	16.25	20.25	17.50	22.75	27.00	12.25	13.75	16.25	19.00	20.50	23.00	15.00
12	28.25	11.50	17.00	21.50	18.75	24.50	29.00	12.75	14.50	17.00	20.00	21.50	24.25	15.75
13	30.25	12.00	18.00	22.75	20.00	26.00	30.75	13.50	15.00	17.50	21.25	22.75	25.50	16.50
14	31.75	12.50	19.00	24.25	21.00	27.25	32.75	13.75	15.50	18.00	22.25	24.00	26.50	17.25
15	33.50	13.25	19.75	25.50	22.25	29.00	34.75	14.25	16.00	18.75	23.25	25.25	27.75	18.00
16	35.25	13.75	20.75	26.75	23.25	30.50	36.50	14.75	16.75	19.25	24.50	26.25	29.00	19.00
17	37.00	14.25	21.50	28.00	24.50	31.75	38.50	15.25	17.25	20.00	25.75	27.50	30.25	19.75
18	38.50	14.75	22.25	29.50	25.75	33.25	40.50	15.75	17.75	20.50	26.75	28.50	31.25	20.50
19	40.50	15.25	23.25	31.00	26.75	35.00	42.25	16.25	18.50	21.00	27.75	30.00	32.50	21.25
20	42.00	15.75	24.25	32.25	27.75	36.25	44.25	16.75	19.00	21.50	29.00	31.25	33.75	22.00
21	43.50	16.25	25.25	33.50	29.25	37.75	46.25	17.25	19.75	22.25	30.25	32.25	35.00	22.50
22	45.25	16.75	25.50	33.75	30.25	38.75	47.25	17.75	20.25	22.75	31.25	33.50	36.25	23.25
23	47.00	17.25	26.50	35.25	31.25	40.50	49.00	18.50	20.75	23.25	32.25	34.75	37.25	24.25
24	48.50	17.75	27.25	36.50	32.25	41.75	51.25	19.00	21.25	24.00	33.25	36.00	38.50	25.00
25	50.50	18.50	28.00	37.75	33.50	43.25	53.00	19.50	21.75	24.50	34.75	37.00	39.75	25.75
26	52.00	19.00	29.25	39.00	34.75	45.00	54.75	20.00	22.50	25.25	35.75	38.25	41.00	26.50
27	53.25	19.50	30.00	40.50	35.75	46.25	57.00	20.50	23.00	25.75	36.75	39.50	42.00	27.25
28	55.50	20.00	30.75	42.00	37.00	47.75	58.75	21.00	23.75	26.25	37.75	40.75	43.25	28.00
29	57.25	20.50	31.75	43.25	38.00	49.25	60.75	21.50	24.25	26.75	39.00	41.75	44.25	29.00
30	58.75	21.00	32.50	44.75	39.50	50.75	62.75	22.00	24.75	27.25	40.25	43.00	45.75	29.75
31	60.00	21.50	33.25	46.00	40.50	52.25	64.50	22.50	25.50	28.00	41.25	44.00	46.75	30.50
32	61.75	22.25	34.50	47.25	41.50	53.75	66.50	23.00	26.00	28.50	42.25	45.50	48.00	31.00
33	63.50	22.50	34.75	47.50	42.50	54.75	67.50	23.25	26.50	29.25	43.50	46.50	49.00	31.75
34	65.00	23.00	35.75	48.75	43.75	56.25	69.50	24.00	27.00	29.75	44.75	47.75	50.50	32.50
35	67.00	23.75	36.50	50.25	45.00	57.75	71.50	24.50	27.50	30.25	45.75	48.75	51.50	33.25
36	68.50	24.25	37.50	51.50	46.00	59.25	73.25	25.00	28.25	31.00	46.75	50.25	52.75	34.25
37	70.25	24.75	38.25	53.00	47.25	60.75	75.25	25.50	29.00	31.50	48.00	51.25	53.75	35.00
38	72.00	25.25	39.00	54.25	48.25	62.25	77.25	26.00	29.50	32.00	49.00	52.50	55.25	35.75
39	73.50	26.00	40.25	55.75	49.25	63.75	79.00	26.50	30.00	32.50	50.25	53.50	56.25	36.50
40	75.25	26.50	41.00	57.00	50.75	65.00	81.00	27.00	30.50	33.00	51.50	54.75	57.50	37.25
41	76.50	27.00	41.75	58.25	51.75	66.75	83.00	27.50	31.25	33.75	52.50	56.00	58.50	38.00
42	78.25	27.50	42.75	59.50	52.75	68.25	84.75	28.00	31.75	34.50	53.50	57.25	59.75	38.75
43	79.75	28.00	43.50	61.00	54.00	69.50	87.00	28.50	32.25	35.00	54.50	58.25	61.00	39.75
44	81.50	28.25	44.00	61.25	55.25	70.50	88.00	29.25	32.75	35.50	56.00	59.50	62.25	40.25
45	83.25	29.00	45.00	62.50	56.25	72.25	89.75	29.75	33.25	36.00	57.00	60.75	63.25	41.00
46	84.25	29.75	46.00	64.00	57.50	73.50	92.00	30.25	34.25	36.75	58.00	62.00	64.50	41.75
47	85.75	30.25	46.75	65.25	58.50	75.00	93.75	30.75	34.75	37.25	59.00	63.00	65.75	42.50
48	87.50	30.75	47.50	66.75	59.50	76.75	95.50	31.25	35.25	37.75	60.50	64.25	67.00	43.25
49	89.00	31.25	48.50	68.00	61.00	78.00	97.75	31.75	35.75	38.25	61.50	65.25	68.00	44.00
50	90.75	31.75	49.25	69.25	62.00	79.50	99.50	32.25	36.25	38.75	62.50	66.75	69.25	45.00
51	92.50	32.25	50.25	70.50	63.00	81.00	101.25	32.75	37.00	39.75	63.50	67.75	70.25	45.75
52	94.25	32.75	51.25	72.00	64.25	82.50	103.50	33.00	37.50	40.25	64.75	69.00	71.75	46.50
53	95.75	33.25	52.00	73.25	65.25	84.00	105.25	33.50	38.00	40.75	66.00	70.00	72.75	47.25
54	97.50	33.75	52.50	73.75	66.50	85.00	106.25	34.25	38.50	41.25	67.00	71.50	74.00	48.00
55	99.25	34.50	53.25	75.00	67.50	86.75	108.25	34.75	39.00	41.75	68.00	72.50	75.00	48.50
56	100.00	35.00	54.00	76.50	68.75	88.00	110.25	35.25	40.00	42.50	69.25	73.75	76.50	49.25
57	101.75	35.50	55.25	77.75	69.75	89.50	112.00	35.75	40.50	43.00	70.25	74.75	77.50	50.25
58	103.50	36.00	56.00	79.00	71.00	91.00	114.00	36.25	41.00	43.50	71.50	76.25	78.75	51.00
59	105.00	36.50	57.00	80.25	72.25	92.50	116.00	36.75	41.50	44.00	72.50	77.25	79.75	51.75
60	106.75	37.00	57.75	81.75	73.25	94.00	117.75	37.25	42.00	44.75	73.75	78.50	81.00	52.50
61	708.50	37.50	58.50	83.00	74.50	95.50	119.75	37.75	42.75	45.50	74.75	79.50	82.25	53.25
62	110.00	38.00	59.50	84.25	75.50	96.75	121.75	38.25	43.25	46.00	75.75	80.75	83.50	54.00
63	110.75	38.50	60.50	85.50	76.75	98.50	123.75	38.75	43.75	46.50	77.00	82.00	84.50	54.75
64	112.50	39.00	61.25	87.00	78.00	100.00	125.50	39.50	44.25	47.00	78.25	83.25	85.75	55.75
65	114.25	39.75	61.75	87.50	79.00	101.00	126.50	40.00	45.00	47.50	79.25	84.50	87.25	56.50
66	115.75	40.25	62.50	88.75	80.00	102.50	128.75	40.50	45.75	48.25	80.25	85.50	88.25	57.00

*By special arrangement, Dallas origin mail may be entered in Vancouver. This mail will be charged Origin Zone C rates.

The Postal Service is introducing storage and other charges for GPL items tendered when the data required from the mailer is not sent, is incomplete or corrupt, or otherwise cannot be processed due to the mailer's fault. The lack of correct data causes significant operational problems and requires that packages be stored and rehandled. Such storage and rehandling results in additional costs, which are caused by the mailer. The Postal Service will charge fees for modifying corrupt data files sent by the mailer so that the mailer's packages can be processed and delivered. The Postal Service will charge a fee of $.30 per package for

storage, $1.50 for each data exception, and $50 for each file modification.

The Postal Service is establishing a new surcharge for customers not mailing at least 10,000 packages per year. If a mailer does not send 10,000 packages, combined volumes to GPL destination countries, in any year of mailing, an $11 per package surcharge will be applied. The mailer will also be required to use only the premium service level. The Postal Service will review a mailer's volume annually after its first complete year of mailing, based on the previous 13 complete accounting periods of mailing. The surcharge will be effective 30 days thereafter. In addition, the Postal Service is invoking the standard for bulk mailings such that GPL mailers will be required to send a minimum of 200 pieces or 50 pounds per mailing.

The Postal Service is revising the customs clearance service procedures to specify information a mailer must or may provide. The existing fee of $1.25 for each item harmonized is being replaced with a new fee structure. Before customs clearance services are initiated, the Postal Service will provide the mailer with a binding proposal stating the number of hours required to complete the service and the total fee for the service calculated on an hourly basis at $250 per hour. In addition, the existing harmonization of 2,500 free items in the first year of using GPL is changed to 2,500 annually. The current fee and customs clearance service causes additional costs to be incurred by the Postal Service and causes uncertainty among mailers in their not knowing the fees they will be charged. The Postal Service is also instituting a fee for assisting mailers in establishing an electronic data interchange or for manifesting GPL packages. Prior to providing such assistance, the Postal Service will provide the mailer with a binding proposal stating the number of hours that will be required to complete the assistance and the total fee for the assistance calculated on an hourly basis at $250 per hour.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 620, ''Global Package Link,'' and the appropriate Individual Country Listings, International Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, incorporation by reference, international postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 620, ''Global Package Link'', as follows:

620 Global Package Link

* * * * *

621.3 Availability

GPL service is available only to Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Luxembourg, Mexico, The Netherlands, Portugal, Singapore, Spain, Sweden, and Great Britain.

622 Qualifying Mailers

622.1 General

622.11 Qualifications

To qualify for GPL service, a mailer must:

a. Send a minimum of 200 pieces or 50 pounds per mailing.

b. Electronically send required parcel information to the Postal Service.

c. Meet the general and specific preparation requirements for each country.

d. Designate the Postal Service as its carrier of choice to each country for which it uses GPL service.

e. Enter into a service agreement with the Postal Service.

622.12 Service Agreement

Each service agreement must contain the following:

a. If a mailer does not send 10,000 packages, combined volumes to GPL destination countries, in any complete year of mailing, an $11 per package surcharge will be applied as stated in 623.444.

b. The mailer's commitment to provide the required information and a statement of what, if any, optional information it will provide under 626.422.

c. The mailer's intention, if desired, to use the electronic data interchange or manifesting assistance technical support service under 622.23.

622.13 Wholesaler Service Agreements

Each wholesaler must enter into the service agreement for wholesalers.

622.2 Linking Information Systems

622.21 General

The mailer must be able to electronically send parcel information to the Postal Service so that (1) the Postal Service and the mailer can exchange data transmissions concerning the mailer's packages and (2) by scanning the mailer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, the following information about the contents of each package to produce necessary customs forms and package labels and to provide tracking and tracing:

a. Order number.

b. Package identification number.

c. Delivery option used for package if more than one level of service is available.

d. Buyer's name and address.

e. Recipient's name, address, and post code.

f. Total weight of package.

g. Total value of the package's contents.

h. Total number of items in each package.

i. Numbers of each item in package.

j. SKU or key word description of each item.

k. Value of each item.

l. Country of origin of each item (for mailings to Germany and France, unless mailed using Global Package Link-Europe, and Canada, Mexico, Argentina, Brazil, Chile, Australia, China, Hong Kong, and Singapore).

m. Buyer's national identification or import number, where required by law (Brazil, Mexico).

n. Postage and handling charge per order.

o. Buyer's telephone number at delivery address (required for Mexico only).

622.22 Fees for Exceptions

If the mailer does not meet the requirements in 622.21 such that when its packages are processed at a GPL processing facility and it has failed to transmit package data or the data is not complete or is corrupt or otherwise prevents the Postal Service from processing packages, the Postal Service will charge the following fees for modifying corrupt data files sent by the mailer so that the mailer's packages can be processed and delivered:

Data exception	Fees
Individual package lacks data to process.	$.30 per package for storage, per calendar day, for every package that the Postal Service is unable to process. Plus $1.50 per data exception scan.
No data file sent by the mailer.	$.30 per package for storage, per calendar day, for every package listed in the postage statement for that mailing.
File sent by the mailer is corrupted.	$50.00 per file modification. Plus $.30 per package for storage, per calendar day, for every package listed in the postage statement for that mailing.

If data exceptions cannot be resolved within 5 business days, the associated packages will be returned to the mailer at a rate of $5 per package. These fees will be deducted from the mailer's CAPS account, and the Postal Service will send the mailer a monthly notice of these charges.

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622.23 Payment of Fees for Technical Support Services for Electronic Data Interchange Linkage and Manifesting

622.231. The Postal Service will provide, at no cost to the mailer, general technical advice to assist the mailer in establishing electronic data interchange links required in 622.21 and documentation and manifesting required in 623.43.

622.232. The Postal Service will provide the mailer, if desired, specific technical advice including but not limited to technical direction and support to establish such links or manifesting system changes in accordance with a binding written proposal prior to commencing with the technical support services. The proposal will state the number of hours needed to provide the technical support at the rate of $250 per hour. The Postal Service will charge the amount stated in the proposal, unless the mailer materially changes the nature and scope of the technical support provided.

622.233. The mailer will pay the Postal Service for such technical support in the manner and the time agreed to by the mailer in the GPL Service Agreement.

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623 General

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623.2 Customs Documentation

Customs documentation will be produced by the Postal Service from data transmitted by the mailer.

623.3 Size and Weight Limits

623.31 Weight

The weight limits for GPL service are 70 pounds for Argentina, Chile, China, and Germany; 66 pounds for Australia, Brazil, Canada, Japan, Singapore, Great Britain, and countries in the EU; 64 pounds for Mexico; 55 pounds for France; and 44 pounds for Hong Kong. Oversize service is available to Japan. To use the GPL premium oversize service, the mailer must select it when choosing the class of service and use the corresponding GPL premium oversize rate chart.

623.32 Size

All GPL packages must be large enough to accommodate the necessary labels and customs forms on the address side. The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches.

GPL premium packages to Japan, with the length more than 60 inches, up to a maximum length plus girth of 108 inches, must be mailed as GPL premium oversize. To use the GPL premium oversize service, the mailer must select GPL premium oversize service when selecting the class of service and use the corresponding GPL premium oversize rate chart. GPL premium packages longer than 60 inches, up to length plus girth of 108 inches, will be returned to the mailer for remailing if GPL premium oversize service is not selected.

Exceptions: Maximum size for Germany is length 47 inches, height 23 inches, and width 23 inches; for Japan standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum length, depth, and height of 36 inches; maximum size for Australia for premium items is 36 inches maximum length and a maximum length and girth combined of 79 inches and for standard items is 42 inches maximum length and a maximum length and girth combined of 79 inches.

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623.4 Postage

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623.444 Surcharge

If a mailer does not send 10,000 packages of combined volumes to GPL destination countries in any year of mailing, an $11 per package surcharge will be applied. The mailer must use the premium level of service for all packages in any year it does not mail 10,000 GPL packages. The Postal Service will review a mailer's volume annually after its first complete year of mailing, based on the previous 13 complete accounting periods of mailing. The surcharge will be effective 30 days thereafter.

626 Services Available

626.1 Delivery Options

Delivery options vary according to destination country, as set forth below.

626.11 Premium Service

Premium service is available to all countries except France and countries in the EU. Packages sent through premium service are transported to the destination country by air where they receive special handling and expedited delivery. The mailer can track premium service packages through the GPL website as well as reports of delivery performance furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

626.12 Standard Service

Standard service is available to Argentina, Australia, Canada, France, Japan, Mexico, Singapore, and Great Britain. Packages sent through standard service are transported to the destination country by air (or a combination of air/ground to Canada) for delivery. The mailer can track standard service packages through dispatch from the GPL processing facility for Japan and through delivery for Great Britain, Singapore, and Canada. In Mexico, standard service provides for customer pick up of parcels at selected secured customer service centers with tracking to pick up.

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626.2 Merchandise Return Service

626.21 Japan

Merchandise return service is available from Japan. The mailer or the recipient is responsible for returning merchandise to the designated Japanese return center where packages will be opened and the contents consolidated for return to the United States. The mailer will receive a daily electronic notification of returns. Returned merchandise will be shipped to the mailer on a mutually agreed-upon schedule.

626.211 Merchandise Return Reply Service

The mailer may use merchandise return reply service (MRRS) to pay the

postage of its customers' return of merchandise to the return center in Japan. For each package using MRRS, the mailer will be charged the postage for getting the package from the customer to the return center and a handling fee of $1.50.

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626.22 Great Britain and the European Union

A return merchandise service is available to mailers that mail GPL shipments to Great Britain and the EU. The returns agent will open and inspect the contents of each box and process for return to the United States. The returns agent may apply for a refund of duties and taxes from Great Britain customs. The packages will then be sent to the mailer's designated center for returns in the United States. The return prices per parcel are detailed in the GPL rate charts in the Individual Country Listings.

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626.3 Insurance and Indemnity

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626.322 Mexico, Great Britain, and Countries in the EU

Packages sent through standard service to Mexico, Great Britain, and countries in the EU are insured against loss, damage, or rifling at no additional cost. Indemnity payments are subject to the provisions of DMM S500. Standard service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

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626.4 Customs

626.41 Customs Forms

All necessary customs forms are automatically generated by the Postal Service's GPL computer system. The Postal Service will print the necessary customs forms and affix them to the mailer's packages after it scans the mailer-printed barcode on each package and correlates the barcode with the package-specific information transmitted electronically.

626.42 Customs Clearance

The customs preadvisory system (CPAS) electronically collects package-specific data to facilitate customs requirements in the destination country. For all destination countries except China, Japan, Hong Kong, and Singapore, CPAS electronically advises agents in the destination country of the contents of each package and determines the duties and taxes for each item in the package. Recipients of merchandise must designate the Postal Service and its agents as the recipients' agents for customs clearance.

626.421 Customs Clearance Services

CPAS determines the applicable duties and taxes due in each destination country for each item based upon the international Harmonization Tariff Schedule (HTS) code assigned to each item mailed in a package. The Postal Service will provide the destination country customs agency with the HTS codes and applicable duties and taxes for each item.

626.422 Information Provided by the Mailer

Prior to the first mailing, the mailer must provide to the Postal Service the following required information electronically (preferred) or printed copy and may provide the following optional information concerning the merchandise it will be sending:

a. Required information:

1. SKU and product name and description.

2. Country of origin of each item (required for all countries except Japan and GPL–EU countries).

3. Product composition and characteristics.

4. Catalog or product information sheets.

b. Optional information:

1. Existing full or partial HTS code for each item.

2. Customs description of each item.

3. The number of SKU items to be assessed duties and taxes.

4. Digitized pictures (for Europe).

5. Country of origin of each item for Japan and GPL–EU countries.

626.423 Payment of Customs Clearance Services Fees

a. In each calendar year, the Postal Service will assign, at no cost to the mailer, the HTS code and applicable duties and taxes for 2,500 items. For all additional items, the Postal Service will charge the mailer for this service in accordance with a binding written proposal provided to the mailer prior to commencing the customs clearance service. The Postal Service will base its estimate upon whether and to what extent the mailer provides the required and optional information in 626.422. The proposal will state the number of hours needed to complete the customs clearance service process before the first mailing. The Postal Service will charge the amount in the proposal unless the mailer fails to provide the information it promised or the number of items assessed duties and taxes differs from the number estimated by the mailer. In that event, the Postal Service will charge the mailer for the number of hours needed to complete the customs clearance process at the rate of $250 per hour.

b. If the customs clearance process has not been previously completed prior to a mailing, the Postal Service will provide one hour of customs clearance services each month at no additional charge. If the customs clearance process for such items takes more than one hour per month and the Postal Service has completed the process for more than 2,500 items, the Postal Service will charge the mailer for the number of hours needed to complete the customs clearance process at the rate of $250 per hour.

c. The mailer will pay the Postal Service for these services in a manner and within the time agreed to by the Postal Service and the mailer in the GPL Service Agreement.

626.43 Payment of Customs Duty

626.431 All Countries Except China, Japan, Hong Kong, and Singapore

For all countries except China, Japan, Hong Kong, and Singapore, the Postal Service will arrange payment of customs duty on behalf of the recipient at the time the merchandise enters the country of destination. Any banking costs or foreign exchange fees applicable to the customs payments will be charged to the mailer. The Postal Service will notify the mailer electronically of the amount of duty and fees paid, and the mailer will reimburse the Postal Service in a manner and within a time agreed between the mailer and the Postal Service. Because of the need to have funds available for customs at the time of clearance in Brazil, Chile, and Mexico, mailers must make an advance deposit prior to the first mailing to cover anticipated duties and taxes in addition to postage. For subsequent mailings, this account must be replenished by the mailer after the actual amount of duties and taxes are assessed. The mailer is responsible for collecting duties and taxes from the recipient. (This can be done when payment for the order is made.) For Mexico, GPL mailers will pay customs the day after the shipments arrive in customs, through a preauthorized automated clearinghouse debit program (ACH). GPL mailers must agree to allow the Postal Service to debit their designated bank account through the ACH debit program to pay these charges.

626.432 China, Japan, Hong Kong, and Singapore

In China, Japan, Hong Kong, and Singapore any customs duties and fees will be collected from the recipient at the time of delivery.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–18075 Filed 7–17–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301014; FRL–6594–6]

RIN 2070–AB78

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for trifloxystrobin regulated as trifloxystrobin and the free form of its acid metabolite CGA–321113 in or on almond nutmeat, almond hulls, dried hops cones, sugar beet roots, sugar beet tops, sugar beet dried pulp, sugar beet molasses, potato tubers, wheat grain, wheat forage, wheat hay, wheat straw, wheat bran, and aspirated grain fractions. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301014, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301014 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 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 in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301014. 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

In the **Federal Register** of August 17, 1998 (63 FR 43937) (FRL–6018–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) 8F4955 for tolerances by Novartis Crop Protection, Inc. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. An amendment to the notice of filing was published in the **Federal Register** of August 26, 1999 (64 FR 46680) (FRL–6099–8) which revised proposed tolerance levels and added the metabolite CGA–321113. No comments were received in response to the amendment.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for combined residues of the fungicide trifloxystrobin and the free form of its acid metabolite CGA–321113, in or on almond nutmeat at 0.04 parts per million (ppm), almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, and aspirated grain fractions at 5.0 ppm.

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

to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of trifloxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat bran at 0.15 ppm, and aspirated grain fractions at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The results of toxicity studies for trifloxystrobin are listed below:

1. *Subchronic-Feeding Study— Rat.* The No Observed Adverse Effects Level (NOAEL) was 500 ppm (30.6–32.8 milligrams/kilogram/day (mg/kg/day). Decreased body weight, hypertrophy of hepatocytes in males and pancreatic atrophy were observed at the Lowest Observed Adverse Effects Level (LOAEL) of 2,000 ppm (127–133 mg/kg/day).

2. *Subchronic-Feeding Study— Mouse.* The NOAEL was 500 ppm (76.9–110 mg/kg/day). Increased liver weights and necrosis of hepatocytes were observed at the LOAEL of 2,000 ppm (315–425 mg/kg/day).

3. *Subchronic-Feeding Study— Dog.* The NOAEL was 30 mg/kg/day. Increased liver weight and hepatocyte hypertrophy in males were observed at the LOAEL of 150 mg/kg/day.

4. *28–Day Dermal Toxicity Study— Rat.* The NOAEL was 100 mg/kg/day. Increased liver and kidney weight were observed at the LOAEL of 1,000 mg/kg/day.

5. *Developmental Toxicity Study— Rat.* The maternal NOAEL was 10 mg/kg/day. Decreased body weight gain and food consumption were observed at the maternal LOAEL of 100 mg/kg/day. The developmental NOAEL was 1,000 mg/kg/day. No developmental effects were observed. The developmental LOAEL was equal to or greater than 1,000 mg/kg/day.

6. *Developmental Toxicity Study— Rabbit.* The maternal NOAEL was 10 mg/kg/day. Decreased mean body weights and decreased mean body weight gain (compared to control), food consumption and efficiency were observed at the maternal LOAEL of 50 mg/kg/day. The developmental NOAEL was 250 mg/kg/day. Skeletal anomolies were observed at the Developmental LOAEL of 500 mg/kg/day.

7. *Reproductive Toxicity Study— Rat.* The parental NOAEL was 50 ppm (3.8 mg/kg/day). Decreased mean body weight and decreased mean weight gain (compared to control), decreased food consumption, and increased incidence of liver, kidney and spleen effects were observed at the parental LOAEL of 750 ppm (55.3 mg/kg/day). The reproductive NOAEL was 1,500 ppm (110.6 mg/kg/day). The reproductive LOAEL was greater than 1,500 ppm (110.6 mg/kg/day).

8. *Chronic-Feeding Study— Dog.* The NOAEL was 5 mg/kg/day. Increased clinical signs, increased liver weight and hepatocellular hypertrophy were observed at the LOAEL of 50 mg/kg/day.

9. *Carcinogenicity Study— Mouse.* The NOAEL was 300 ppm (39.4 mg/kg/day). Liver effects were observed at the LOAEL of 1,000 ppm (131.1 mg/kg/day).

10. *Chronic Toxicity/Carcinogenicity Study— Rat.* The NOAEL was 250 ppm (9.81–11.37 mg/kg/day). Decreased mean body weight and decreased mean body weight gain (compared to control) were observed at the LOAEL of 750 ppm (29.7–34.5 mg/kg/day).

11. *Gene Mutation Study— Salmonella.* Negative.

12. *Gene Mutation study— Chinese Hamster Cultured V–79.* Positive.

13. *Structural Chromosome Aberration-Micronucleus study— Mouse.* Negative.

14. *Structural Chromosome Aberration-Cytogenetics study— Chinese Hamster.* Negative.

15. *DNA Repair study-hepatocytes— Rat.* Negative.

16. *Acute Oral Neurotoxicity study— Rat.* The NOAEL and LOAEL could not be determined.

17. *Metabolism study—Rat.* The tissue half-lives ranged from 13 to 42 hours. The highest residues were found in liver, kidneys, spleen and blood. The parent compound was extensively metabolized to approximately 35 metabolites.

B. Toxicological Endpoints

The following endpoints were used in the the risk assessments for trifloxystrobin.

1. *Acute toxicity—Dietary Developmental Toxicity Study— Rabbits.* The developmental NOAEL was 250 mg/kg/day. The endpoint was an increase in fetal incidence of fused sternebrae 1#3 and 1#4 at a LOAEL of 500 mg/kg/day. The uncertainty factor (UF) was 100 based on intraspecies and interspecies variation. The acute reference dose (RfD) was 2.5 mg/kg/day; the acute population adjusted dose (aPAD) was 2.5 mg/kg/day. In the study selected, the developmental effects were presumed to occur after a single exposure. Since this is an *in utero* effect it is applicable only to the population subgroup, females 13+ years.

2. *Short- and intermediate-term toxicity— 28–Day Dermal Toxicity Study— Rats.* The systemic NOAEL was 100 mg/kg/day. The endpoint was an increase in liver and kidney weights at a LOAEL of 1,000 mg/kg/day.

3. *Long-term toxicity.* Long-term dermal exposure is not expected based on the proposed use pattern. Therefore, a long term dermal risk assessment was not performed.

4. *Chronic toxicity—Chronic Toxicity Study— Dogs.* The NOAEL was 5 mg/kg/day. The endpoint was an increased incidence of clinical signs, increased mean liver weight and hepatocellular hypertrophy at a LOAEL of 50 mg/kg/day. The UF was 100 for intraspecies and intraspecies variation. The chronic RfD was 0.05 mg/kg/day; the chronic PAD was 0.05 mg/kg/day. The chronic toxicity study in dogs was chosen for the chronic dietary risk assessment because the study is chronic and the systemic NOAEL is lower than that in the chronic rat study. Also, the toxic effects observed were seen in the chronic rat study and the multi-generation reproduction study in rats.

5. *Carcinogenicity.* Trifloxystrobin has been classified as a ''not likely human carcinogen''.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances are being established for the combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 on the following commodities: almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, wheat bran 0.15 ppm, and aspirated grain fractions at 5.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures 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. The Dietary Exposure Evaluation Model (DEEM) detailed acute analysis estimates the distribution of single exposures for the overall U.S. population and certain subgroups. For this assessment, the only population subgroup of concern for acute dietary risk is Females 13 years and older. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1992 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of trifloxystrobin in the commodity supply. In conducting the acute dietary risk assessment, the Agency made highly conservative assumptions. One hundred percent of proposed crops are assumed to be treated with trifloxystrobin, and this is expected to result in an overestimate of dietary risk. Therefore, this acute dietary (food only) risk assessment should be viewed as a highly conservative risk estimate. Further refinement using anticipated residues or percent of crop treated data in conjunction with a Monte Carlo analysis would result in a lower dietary exposure estimate. In the DEEM acute analysis the proposed tolerances for combined residues of trifloxystrobin and CGA–321113 utilized < 1% of the aPAD for females 13–50 years.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, the Agency made highly conservative assumptions which resulted in an overestimate of human dietary exposure. One hundred percent of proposed crops are assumed to be treated with trifloxystrobin, and this is expected to result in an overestimate of dietary risk. Therefore, this chronic dietary (food only) risk assessment should be viewed as a highly conservative risk estimate. Further refinement using anticipated residues or percent of crop treated data would result in a lower dietary exposure estimate. Thus, in making a safety determination for these tolerances, EPA takes into account this highly conservative exposure assessment. The Agency is generally concerned with chronic exposures that exceed 100% of the chronic PAD (cPAD) or chronic RfD. The proposed trifloxystrobin tolerances were used to calculate the the exposure and risk estimate. The percentages cPAD utilized were 15% for all infants (< 1 year), 18% for children 1–6 years old, and 7.5% or lower for other population subgroups.

iii. *Cancer dietary risk from food sources.* Trifloxystrobin was classified as a ''not likely human carcinogen.'' Therefore, a cancer risk assessment was not conducted.

2. *From drinking water.* EPA does not have monitoring data available to perform a quantitative dietary (drinking water) risk assessment for trifloxystrobin and the free form of its acid metabolite. In the absence of reliable, available monitoring data, EPA uses models to estimate concentrations of pesticides in ground-water and surface water. Drinking water estimates for the parent, trifloxystrobin, plus the free form of its acid metabolite CGA–321113, were generated by the Screening Concentration in Ground Water (SCI-GROW) model. Conservative assumptions were built into the ground water scenario used by the SCI-GROW model, such as assuming shallow ground water, coarse soils and high levels of irrigation. The estimate from SCI-GROW represents an upper bound on the concentration of trifloxystrobin in ground waters as a result of agricultural use.

The estimate for the parent, trifloxystrobin, using the SCI-GROW model is 0.006 part per billion (ppb). For the primary metabolite CGA–321113, the estimated value is 4.9 ppb. For risk assessment purposes, EPA used the estimates for the primary metabolite (and not a sum of parent plus metabolite) because the SCI-GROW model assumes 100% conversion from parent to CGA–321113.

Estimates of concentrations of trifloxystrobin and its metabolite in surface water were made using the generic expected environmental concentration (GENEEC) model. The peak estimate for the parent, trifloxystrobin, using the GENEEC model, ranges from 5.29 to 5.56 ppb. The 56–day average for the parent ranges from 0.64 to 2.97. For the primary metabolite, the peak estimate is 47.98 ppb, and the 56–day average estimate is 47.31 ppb. For risk assessment purposes, EPA used the estimates for the primary metabolite (and not a sum of parent plus metabolite) because the GENEEC model assumes 100% conversion from parent to CGA–321113.

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit of a pesticide's concentration in drinking water in light of total aggregate exposure to that pesticide in food and through residential uses. A DWLOC will vary depending on the toxic endpoint, consumption and body weight. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, the DWLOC is used as a point of comparison against conservative model estimates of potential pesticide concentration in water. DWLOC values are not regulatory standards for drinking water. EPA has calculated DWLOCs for acute and chronic (non-cancer) exposure to trifloxystrobin and the primary metabolite CGA–321113 for the U.S. population and selected subgroups.

The DWLOC for acute risk is 75,000 µg/l for females 13–50 years. The DWLOCs for chronic exposure are 1,600 µg/l for the U.S. population, 430 µg/l for all infants, 1,400 µg/l for females 13–50 years, and 615 µg/l for children 1–6 years. The estimated concentrations of trifloxystrobin in ground water, 4.9 µg/l and surface water, 47 µg/l, are less than the DWLOCs as a contribution to acute and chronic exposure. The estimated concentrations of trifloxystrobin and its primary metabolite in ground and surface water are considered conservative estimates. Therefore, EPA concludes with reasonable certainty that residues of trifloxystrobin in food and drinking water would not result in an unacceptable estimate of acute or chronic (non-cancer) aggregate human health risk.

3. *From non-dietary exposure.* Trifloxystrobin, is proposed for use on the following residential non-food sites: turfgrass and ornamentals. There are no homeowner uses of trifloxystrobin

proposed, but residential lawns are listed on the label as sites which may be treated by a professional pesticide applicator. Therefore, risk assessments (dermal and oral) were conducted for adults and children who may be exposed to trifloxystrobin after application by a professional pesticide applicator. Short and intermediate-term post-application residential risk estimates do not exceed EPA's level of concern, Margins Of Exposure (MOE) range from 760 to 300,000. Acute and chronic aggregate risk (food plus water) estimates do not exceed EPA's level of concern. Short- and intermediate-term aggregate risk estimates also do not exceed EPA's level of concern.

4. *Cumulative exposure to substances with 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.'' Trifloxystrobin belongs to a new class of fungicides, the MAEs (beta-methoxyacryl esters), which are synthetic analogs of strobilurin A, an antifungal secondary metabolite of the fungus *Strobilurus tenacellus*. Trifloxystrobin works by interfering with respiration in plant pathogenic fungi. The site of action of strobilurin compounds is located in the mitochondrial respiration pathway between cytochromes b and c1 at the level of the hydroquinone binding site. As a result of this mode of action, trifloxystrobin is a potent inhibitor of fungal spore germination and mycelial growth. Trifloxystrobin can be referred to more specifically as an oximinoacetate.

EPA does not have, at this time, available data to determine whether trifloxystrobin 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, trifloxystrobin 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 trifloxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA 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) (FRL. start

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

1. *Acute risk.* To calculate acute aggregate dietary risk, high-end exposures from food and drinking water sources are compared to the acute PAD. Exposure to trifloxystrobin residues and the free form of its acid metabolite, CGA–321113 in food will occupy no more than < 1% of the acute PAD for females 13–50 years. Acute dietary risk from food was calculated for females 13–50 years because the endpoint upon which the acute PAD is based is on developmental effects. Residue levels used for food-source dietary risk assessments were very conservative: proposed tolerance levels were used, and 100% crop treated was assumed, with no refinements. Acute dietary exposure estimates were calculated for the 95th percentile. Estimated drinking water levels were calculated using drinking water models (SCI-GROW and GENEEC)). Estimated concentrations of trifloxystrobin residues in surface and ground water are lower than EPA's DWLOCs. Therefore, EPA does not expect acute aggregate risk to trifloxystrobin residues from acute food and drinking water sources to exceed EPA's level of concern for acute aggregate risk.

2. *Chronic risk.* Exposure to trifloxystrobin and the free form of its acid metabolite, CGA–321113 residues in food will occupy no more than 3.5% of the chronic PAD for adult population subgroups (females 13–50 years) and no more than 18% of the chronic PAD for infant/children subgroups (highest subgroup: children 1–6 years). Residue levels used for food-source dietary risk assessments were not refined and did not incorporate percent of crop treated. Estimated concentrations of trifloxystrobin residues in surface and ground water are lower than EPA's DWLOCs. Estimated drinking water levels were calculated using drinking water models. Chronic residential exposure of trifloxystrobin is not expected. EPA does not expect chronic aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed EPA's level of concern for chronic aggregate risk.

3. *Short-term risk.* To calculate short-term aggregate risk, high-end residential risk (oral) is combined with chronic food and drinking water risks. Since trifloxystrobin causes the same toxic effects but different NOAELs were found across different routes, risks for food, drinking water and residential exposure paths are combined to estimate short-term risk. Based on EPA's short-term aggregate risk calculation, EPA does not expect short-term aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed EPA's level of concern for short-term aggregate risk.

4. *Intermediate-term risk.* To calculate intermediate-term aggregate risk, high-end residential risk (oral) are combined with chronic food and drinking water risks. Since trifloxystrobin causes the same toxic effects but different NOAELs were found across different routes, risks for food, drinking water and residential exposure paths are combined to estimate intermediate-term risk. Based on EPA's intermediate term aggregate risk calculation, EPA does not expect intermediate-term aggregate risk to trifloxystrobin residues from food, water and residential sources to exceed the EPA's level of concern for intermediate-term aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Not applicable. There is no evidence of carcinogenicity.

6. *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 residues.

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

EPA determined the 10x safety factor for the protection of infants and children should be removed. Based on the following:

1. The toxicology database is complete for FQPA assessment.

2. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproductive toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

3. It was determined that a developmental neurotoxicity study in rats is not required.

4. The exposure assessments will not underestimate the potential dietary (food and drinking water) or nondietary exposures for infants and children from the use of trifloxystrobin.

IV. Other Considerations

A. Metabolism in Plants and Animals

1. *For plants*. EPA determined that the qualitative nature of the residue in plants is adequately understood for almonds, hops, fruiting vegetables, tuberous and corm vegetables, and sugar beets based on acceptable studies conducted on apples, cucumbers, peanuts and a supplementary study on

wheat and that these plant commodities are of concern for both regulatory and risk assessment purposes. EPA concluded that additional metabolism studies would be needed to support registration of trifloxystrobin and the free form of its acid metabolite CGA–321113 on wheat.

2. *For animals.* The EPA determined that the qualitative nature of the residue in animals is adequately understood based on acceptable studies conducted in goats and laying hens. It was determined that the total toxic residues for animals, both for regulatory and risk assessment purposes, is trifloxystrobin and the free form of its acid metabolite CGA–321113. Additionally, the liver contribution for metabolite L7a (taurine conjugate of trifloxystrobin) is to be included for risk assessment purposes, assuming equal toxicity as trifloxystrobin.

B. Analytical Enforcement Methodology

EPA has completed a method validation of AG–659A on apples, wet apple pomace, grapes, summer squash, peanut hay, peanuts, cow liver, cow milk and raisins, and concluded that AG–659A is suitable for enforcement of trifloxystrobin and the free form of its acid metabolite in plant and animal commodities. Method AG–659A is the proposed analytical method for the enforcement of trifloxystrobin in plant and animal commodities. It supersedes Method AG–659. Compared to AG–659, AG–659A also includes extractability and accountability of ^{14}C-CGA–279202 in animal matrices, minor changes, and suggestions resulting from the independent laboratory validation (ILV) to improve the ruggedness of the method. Method AG–659A has been validated by the petitioner for both trifloxystrobin and its acid metabolite CGA–321113. This method adequately recovers residues of trifloxystrobin and CGA–321113, usually with a limit of quantitation (LOQ) of 0.02 ppm.

C. Magnitude of Residue

1. *Crop field trials.* The field trials were adequate in number, geographically representative, and reasonably reflected the proposed use patterns. In all cases, the tolerances EPA recommended were for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113.

i. *Almond.* EPA recommended for a 0.04 ppm tolerance in/on almond nutmeats and 3.0 ppm in/on almond hulls.

ii. *Fruiting vegetables.* Additional residue data would be needed to support future registrations for fruiting vegetables. In the interim, EPA recommended for a 0.5 ppm tolerance.

iii. *Hops.* EPA recommended for a 11.0 ppm tolerance in/on hops, dried cones.

iv. *Potato.* EPA recommended for a tolerance of 0.04 ppm (based on LOQs).

v. *Sugar beet.* EPA recommended for a 0.1 ppm tolerance on sugar beet roots and 4.0 ppm on sugar beet tops.

vi. *Wheat.* EPA recommended at 0.05 ppm on wheat grain, 0.3 ppm on wheat forage, 0.2 ppm on wheat hay, 5.0 ppm on wheat straw.

vii. *Aspirated grain fractions.* EPA recommended for a 5.0 ppm tolerance.

2. *Processed commodities.* In all cases, the tolerances EPA recommended were for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113.

i. *Sugar beet.* No concentration of residues occurred in refined sugar; no tolerance is required. EPA recommended a 0.2 ppm in molasses and 0.4 ppm in dried beet pulp.

ii. *Potato.* No concentration of residues occured in flakes and chips, and no tolerances are required. Residues for wet peel were lower than the tolerance level recommended for potato, hence, no tolerance for wet peel is required.

iii. *Tomato.* No concentration of residues occurred in puree; no tolerance is required. No tolerance on tomato paste is required, pending residue data reflecting the maximum application rate.

iv. *Wheat.* No concentration of residues occurred in germ, middlings, shorts, and flour. EPA recommended tolerance of 0.15 ppm on bran and 5.0 ppm on aspirated grain fractions.

3. *Residues in poultry and eggs.* Based on the poultry metabolism study, EPA concluded that finite residues of trifloxystrobin are not expected in poultry commodities. Thus, poultry feeding data and tolerances for poultry commodities are not required at this time.

4. *Residues in meat and milk.* A dairy cattle feeding study was conducted at levels equivalent to 2, 6, and 20 ppm in the diet (mg/kg diet on a dry weight basis). Because the highest feeding level was only 3–4x the calculated maximum theoretical dietary burden (6.2 ppm, beef cattle; 4.9 ppm, dairy cattle) and because residues of trifloxystrobin and the acid metabolite CGA–321113 were detected in fat at this feeding level, EPA concluded that animal commodity tolerances were needed. Based on LOQs each for parent and CGA–321113 of 0.01 ppm for milk and 0.02 ppm for other animal commodities, EPA has established a 0.02 ppm LOQ tolerance for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 in milk and a 0.05 ppm combined residue tolerance for the meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep. For risk assessment purposes only, 0.1 ppm trifloxystrobin-equivalent residue is used for liver. This value is based on the sum of the liver contribution of metabolite L7a (estimated at ca 0.05 ppm trifloxystrobin equivalent, adjusted to a 1x feeding level from the goat metabolism study, TFMP–^{14}C label) plus that of the recommended 0.05 ppm tolerance for the combined residues of trifloxystrobin and CGA–321113 in meat byproducts.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for trifloxystrobin. Harmonization is thus not an issue at this time.

E. Rotational Crop Restrictions

An acceptable confined rotational crop study was submitted. The predominant metabolite, trifluoroacetic acid, is not of concern at the (≤ 0.2 ppm) levels reported. Quantifiable residues (≥ 0.02 ppm) of trifloxystrobin and CGA–321113 are not expected in/on crops rotated at a 30–day plantback interval. Nonetheless, the petitioner did submit new data on field accumulation in rotational crops. Trifloxystrobin (as CGA–279202 50 WG) was applied to squash or cucumbers as a post-foliar spray four times at 7–day intervals at 0.25 lb active ingredient/acre (ai/A/) application for a maximum rate of 1.0 lb ai/A/season. The last application occurred on the day of primary crop harvest. Rotational crops were planted 30–31, and 120 days after the last application. The following rotational crops were planted: leaf lettuce, turnips, and wheat. Crops were grown under normal agricultural conditions. Samples of the appropriate RACs were collected at normal harvest maturity, frozen, and maintained frozen (approximately -20° C) until analysis using method AG–659A. The LOQ for both analytes were 0.02 ppm. Residues of trifloxystrobin and its acid metabolite CGA–321113 were all less than the LOQ in all crops planted at 30–31 days after the last application. The revised draft Flint® label (EPA Reg. 100–919) proposes a 30–day plantback restriction for crops not listed on the label and would permit treated areas to be replanted immediately following harvest with any crop listed on the label (pome fruits, grapes, cucurbit vegetables, almonds, fruiting vegetables, hops, potatoes, sugar

beets, and wheat). For the Stratego® labels, celery, cereals, corn, pineapple, and sugarcane may be replanted 30 days after the last application; for all other crops, a 105–day plantback interval must be observed. The proposed plantback restrictions for Flint® and Stratego® are adequate and no rotational crop tolerances need to be proposed, provided that rotational crop restrictions of the Stratego® labels are compatible with those of the propiconazole labels.

V. Conclusion

Therefore, tolerances are established for combined residues of trifloxystrobin and the free form of its acid metabolite CGA–321113 in/on almond nutmeat at 0.04 ppm, almond hulls at 3.0 ppm, dried hops cones at 11.0 ppm, sugar beet roots at 0.1 ppm, sugar beet tops at 4.0 ppm, sugar beet dried pulp at 0.4 ppm, sugar beet molasses at 0.2 ppm, potato tubers at 0.04 ppm, fruiting vegetables at 0.5 ppm, wheat grain at 0.05 ppm, wheat forage at 0.3 ppm, wheat hay at 0.2, wheat straw at 5.0 ppm, wheat bran 0.15 ppm, and aspirated grain fractions at 5.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301014 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 September 18, 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, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, 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, 401 M St., SW., 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, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–301014, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. 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 5.1/6.1 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 EPA, 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).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any

unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.555 is amended by alphabetically adding the following entries to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hulls	3.0
Almond, nutmeat	0.04
* * * * *	
Aspirated grain fractions	5.0
* * * * *	
Fruiting vegetables	0.5
* * * * *	
Hops, dried cones	11.0
* * * * *	
Potato, tubers	0.04
* * * * *	
Sugar beet, dried pulp	0.4
Sugar beet, molasses	0.2
Sugar beet, roots	0.1
Sugar beet, tops	4.0
Wheat, bran	0.15
Wheat, forage	0.3
Wheat, grain	0.05
Wheat, hay	0.2
Wheat, straw	5.0

* * * * *

[FR Doc. 00–18100 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301015; FRL–6594–8]

RIN 2070–AB78

Vinclozolin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the raw agricultural commodities: succulent beans at 2.0 parts per million (ppm); canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and in the meat, fat, and meat byproducts of poultry at 0.1 ppm. These tolerances will expire and are revoked on September 30, 2003. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301015, must be received by EPA on or before September 18, 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–301015 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301015. 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

In the **Federal Register** of April 21, 2000 (65 FR 78) (FRL–6555–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 0F6079) for tolerances by BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709. This notice included a summary of the petition prepared by BASF Corporation, the registrant. In addition, on June 2, 2000, the Agency added a supplemental notice of filing to the docket which summarized the toxicity and risk associated with the proposed tolerances. The Agency received comments from the Natural Resources Defense Council (NRDC), Earthjustice Legal Defense Fund (EJLDF), and BASF Corporation. The comments from outside parties are summarized in Unit IV below, followed by the Agency's response.

The petition requested that 40 CFR 180.380 be amended by establishing tolerances for combined residues of the fungicide vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm and canola at 1.0 ppm. The petition was later amended to request tolerances on eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm and in the meat, fat, and meat byproducts of poultry at 0.1 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of vinclozolin in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and the meat, fat, and meat byproducts of poultry at 0.1 ppm. EPA's assessment of the exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* A battery of acute toxicity studies placed technical vinclozolin in toxicity category IV for acute oral toxicity (LD_{50} of > 10,000 mg/kg), and acute inhalation toxicity (LC_{50} of 29.1 mg/l); and toxicity category III for acute dermal toxicity (LD_{50} of > 5,000 mg/kg). Technical vinclozolin caused minimal eye and dermal

irritation and the technical material is positive for skin sensitization.

2. *Chronic toxicity.* i. A 1–year chronic feeding study in dogs fed dosages of 0, 1.1, 2.4, 4.9, and 48.7 mg/kg/day with a No-Observed-Adverse-Effect Level (NOAEL) of 2.4 mg/kg/day based on the following effects: (1) Slight decrease in hematological and increase in clinical chemistry values in the 48.7 mg/kg/day dose group (highest dose tested—HDT); (2) increased absolute and/or relative weights for the testes (male only), adrenal, liver, spleen, and thyroids in the 4.9 or 48.7 mg/kg/day dose groups; (3) a dose-related atrophy of the prostate in the 4.9 or 48.7 mg/kg/day dose groups; and (4) microscopic findings in the adrenal and testes (males) in the 48.7 mg/kg/day dose group and liver findings for both male and female dogs in the 48.7 mg/kg/day dose groups and in the females in the 4.9 mg/kg/day dose group, only.

ii. A combination of two chronic feeding studies and one carcinogenicity study resulted in rats being fed combined dosages of 0, 1.2, 2.4, 7.0, 23, 71, 143, and 221 mg/kg/day (males) and 0, 1.6, 3.1, 7.0, 23, 71, 180, and 221 mg/kg/day (females) with a NOAEL of 1.2 mg/kg/day (males) and 1.6 mg/kg/day (females) based on the following effects: (1) Decreased body weights in both male and female rats at dose levels ≥ 23 mg/kg/day with a progression of severity to the upper levels; (2) decreased food consumption in both male and female rats at dose levels ≥ 71 mg/kg/day with a progression of severity to the upper dose levels; (3) cataracts with associated histopathology at dose levels ≥ 23 mg/kg/day and lenticular changes at dose levels ≥ 7.0 mg/kg/day for male and female rats; (4) hematological and clinical chemistry value changes at dose levels ≥ 71 mg/kg/day with increase of severity at the higher doses tested; (5) increased absolute and/or relative weights for adrenal at dose levels ≥ 143 mg/kg/day, for the liver at dose levels ≥ 71 mg/kg/day, for the testes at dose levels ≥ 23 mg/kg/day, and for the ovaries at dose levels ≥ 143 mg/kg/day; (6) microscopic findings were observed in the liver, adrenal, pancreas, testes (males), ovaries and uterus (females) at dose levels of ≥ 7.0 mg/kg/day with a progression of severity of histological effects in the upper dose levels; and (7) an increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (MTD) of ≥ 23 mg/kg/day in the liver, adrenal, pituitary, prostate (males), uterus (females), and ovaries (females) at dose levels ≥ 143 mg/kg/day. In the testes (males), Leydig cell adenomas were seen at the MTD for dose levels ≥ 23.0 mg/kg/day due to the anti-androgenic nature of vinclozolin.

3. *Carcinogenicity*. A carcinogenicity study in mice fed dosages of 0, 2.1, 20.6, 432, and 1,225 HDT mg/kg/day (males) and 0, 2.8, 28.5, 557, and 1,411 (HDT) mg/kg/day (females) with a NOAEL of 20.6 mg/kg/day (males) and 28.5 mg/kg/day (females) based on the following effects:

i. Increased mortality in the HDT as compared to controls;

ii. Decreased body weights and significant signs of clinical toxicity were observed in both male and female mice at the upper two dose levels with a progression of severity;

iii. Hematological and clinical chemistry value changes were observed at the highest dose tested;

iv. Increased absolute and/or relative weights for adrenal and liver were observed at the upper two dose levels, atrophic seminal vesicles and coagulation glands with reduction of the prostate (males) and atrophic uteri were observed at the upper two dose levels;

v. Microscopic findings were observed in the liver, adrenal, testes (males), ovaries and uterus (females), and related sexual organs in the upper two dose levels;

vi An increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (> 28.5 mg/kg/day) in the liver of female mice.

4. *Developmental toxicity.* i. In four developmental toxicity studies, vinclozolin was given orally from gestational day (gd) 6 through 19 as follows: Study 4—dose levels of 0, 15, 50, or 150 mg/kg/day; study 5—dose levels of 0, 50, 100, 200 mg/kg/day, study 6—dose levels of 0, 200, 400 mg/kg/day and study 8—dose levels of 0, 600, and 1,000 mg/kg/day. At the gd 20, the fetuses were evaluated.

Maternal toxicity was demonstrated at 600 and 1,000 mg/kg/day by the statistically significant increase in absolute and relative adrenal and liver weight in study 8. This was the only study where organ weights were determined. A maternal NOAEL could not be established and therefore, the study was not considered to demonstrate any extra sensitivity. No histology was conducted on the organs, but other studies have demonstrated lipid accumulation in the adrenals, and centrilobular cloudiness of the liver. In addition, a dermal developmental study has indicated adrenal and liver weight increases occurred at 180 mg/kg/day and higher. Statistically significant increases and decreases occurred in the body weight gain and in food consumption with no apparent dose relatedness in any of the studies. The relative efficiency of food utilization was too variable to be definitive.

Statistically significant male and female fetal body weight decrement occurred at 1,000 mg/kg/day. These weight decrements were considered test material related. A statistically significant decrease occurred in anogenital distance among male fetuses. The term pseudohermaphroditism was used to describe the effect because these males exhibited decreased anogenital distances, but exhibited superficially normal internal testes. The anogenital distance in male fetuses was statistically decreased at 50 mg/kg/day and higher in studies 4, 6, and 8. (The anogenital index was statistically significantly depressed at 150 mg/kg/day and higher). The anogenital distance and index were not determined in study 5. The response was dose related. Although the anogenital index was not statistically significantly depressed at 50 mg/kg/day, it was nominally depressed. Considering the significantly depressed anogenital distance at 50 mg/kg/day and higher and the nominally depressed anogenital index at 50 mg/kg/day, the NOAEL for this study was considered to be 15 mg/kg/day, the lowest dose tested (LDT). These results are consistent with hormonal or anti-hormonal effects from the test material.

Soft tissue examination of fetuses indicated that increased incidence occurred in dilated renal pelvis and hydro-ureter at 400 mg/kg/day in study 6. At higher dose levels in study 8, the incidence of dilated renal pelvis and hydro-ureter was nominally increased. The failure of the dilated renal pelvis, and hydro-ureter to be significantly increased in study 8 was attributed to the fewer litters used (7, 5, and 8 in controls, 600, and 1,000 mg/kg/day). The NOAEL for these renal effects is considered to be 200 mg/kg/day.

Skeletal examination of fetuses indicated increased incidence of accessory 14th rib at 400 mg/kg/day and in fetuses and litters at 600, and 1,000 mg/kg/day. These effects on the 14th rib may be related to dose administration. Evaluation of the Preliminary Study suggested a dose related increase in 14th ribs at these high dose levels. No other dose related effects were reported.

The developmental toxicity NOAEL was set at 15 mg/kg/day and the developmental LOAEL was 50 mg/kg/day based on decreased anogenital distance in males. Increased incidence of dilated renal pelvis, hydro-ureter, and accessary 14th rib may have occurred at 400 mg/kg/day and higher. The maternal toxicity LOAEL was < 600 mg/kg/day based on increases in absolute

and relative adrenal and liver weight. Organ weights were not determined at lower dose levels.

ii. A developmental study in rats via dermal exposure for 6 hours/day on intact skin with dosages of 0, 60, 180, and 360 mg/kg/day HDT had a developmental NOAEL of 60 mg/kg/day and a maternal NOAEL of 60 mg/kg/day based on the following: (1) Increased absolute liver weights at dose levels > 180 mg/kg/day; and (2) decreased anogenital distance and index at dose levels ≥ 180 mg/kg/day.

iii. A developmental study in rabbits via oral gavage resulted in dosages of 0, 20, 80, and 300 mg/kg/day HDT with a developmental NOAEL of 300 mg/kg/day and a maternal NOAEL of 300 mg/kg/day based on no signs of maternal or meaningful fetal toxicity observed at any of the dose levels mentioned.

iv. A second developmental study in rabbits via oral gavage resulted in dosages of 0, 50, 200, and 800 mg/kg/day HDT with a development toxicity NOAEL of 200 mg/kg/day and a maternal toxicity NOAEL of 50 mg/kg/day based on the following: (1) Severe maternal toxicity with simultaneous change in hematological values and high number of abortions at the HDT; and (2) increased absolute and/or relative weights for adrenal in the mid and high dose groups.

v. A two-generation rat reproduction study (consisting of two studies: Study A—dose levels of 0, 2.0 and 4.1 mg/kg/day; study B—dose levels of 0, 4.9, 29, 100, and 307 mg/kg/day) with a reproductive NOAEL of 4.9 mg/kg/day based on decreased epididymal weight and male's inability to mate at dose levels > 100 mg/kg/day and pup effects at 29 mg/kg/day; and with a parental NOAEL of 4.9 mg/kg/day based on general toxicity consistent with previous rat studies at levels > 29 mg/kg/day. Study A was performed to clarify an equivocal finding of decreased absolute and relative weight of the epididymides without any morphological correlation in the male FY and FZ generations in Study B. However, the Agency concluded that the effects at the 4.9 mg/kg/day dose level were minimal and considered sufficiently close to the NOAEL. The study is acceptable and the 4.9 mg/kg/day dose level was considered to be the NOAEL.

5. *Mutagenicity.* The following test/assays showed no evidence of mutagenic activity: Modified Ames Test (3 studies, point mutation); Host-Mediated Assay (point mutation); Mouse Lymphoma Test (point mutation); *In Vitro* CHO Cells (point mutation); *In Vitro* Cytogenetics—CHO Cells (Chromosome Aberrations); *In Vivo* Dominant Lethal Test—Male NMRI Mouse (Chromosome Aberrations); Rec Assay (2 test, DNA damage and repair); *In Vitro* UDS Test Using Hepatocyte (DNA damage and repair); and *In Vivo* SCE Using Chinese Hamster (DNA damage and repair).

6. *Mechanistic studies-anti-androgenicity activity.* A series of mechanistic studies (*In Vivo* and *In Vitro*) were conducted to define the anti-androgenic properties of vinclozolin. The results of these studies showed that vinclozolin elicits the anti-androgenic effects by binding to androgen sensitive organs.

B. Toxicological Endpoints

1. *Acute toxicity.* EPA selected the NOAEL of 6 mg/kg/day (adjusted for a single dose) from a developmental toxicity study in rats based on decreased ventral prostate weight in male offspring observed at the adjusted LOAEL of 11.5 mg/kg/day. The endpoint is the most sensitive indicator of acute anti-androgenic developmental toxicity. The population subgroup of concern is females (13+) because the endpoint is an *in utero* effect applicable only to females of childbearing age. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variation. On this basis, the acute reference dose (aRfD) is 0.06 mg/kg/day. EPA determined that a 10X FQPA safety factor is applicable, and the margin of exposure (MOE) for the population subgroup of concern, females (13+) is 1,000X. The acute population adjusted dose (aPAD) is 0.006 mg/kg/day. An acute dose and endpoint were not identified for other population subgroups.

2. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for vinclozolin at 0.012 mg/kg/day. This RfD is based on a NOAEL of 1.2 mg/kg/day from the combined chronic toxicity/carcinogenicity study in rats in which histopathological lesions occurred in the lungs and livers of male rats, in ovaries of females, and in the eyes of both sexes at the LOAEL of 2.3 mg/kg/day. An uncertainty factor of 100 was used to account for interspecies extrapolation and intraspecies variation. A 10X FQPA safety factor was added resulting in a cPAD of 0.0012 mg/kg/day.

3. *Short- and intermediate-term toxicity.* For short- and intermediate-term dermal and inhalation toxicity, the NOAEL of 3 mg/kg/day from a rat developmental toxicity study was selected for the population subgroup of concern, females (13+). The LOAEL of 6 mg/kg/day was based on decreased ventral prostate weights. For short- and intermediate-term dermal and inhalation toxicity, the NOAEL of 5 mg/kg/day from a rat developmental toxicity study was selected for the population subgroup of concern, infants and children. The LOAEL of 15 mg/kg/day was based on delayed puberty. A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The MOE for females (13+), infants and children is 1,000X.

4. *Long-term dermal and inhalation toxicity (cancer and non- cancer).* For chronic non-cancer and cancer dermal and inhalation toxicity, EPA selected the chronic NOAEL of 1.2 mg/kg/day from the combined rat chronic toxicity/carcinogenicity study in which histopathological lesions occurred in the lungs and livers of male rats, in ovaries of females, and in the eyes of both sexes at the LOAEL of 2.3 mg/kg/day. The $Q_1{}^*$ calculated in a low-dose linear extrapolation is 2.9×10^{-1} $(mg/kg/day)^{-1}$. A dermal absorption factor of 25% was used to correct for route-to-route extrapolation (oral to dermal exposure) and a default inhalation absorption factor of 100% was assumed for oral to inhalation exposure. The cancer assessment includes not only the adult U.S. population but also infants and children as well.

5. *Carcinogenicity.* Vinclozolin is classified as a Group C carcinogen based on Leydig (interstitial testicular) cell tumors in a perinatal rat developmental toxicity study. A non-linear (MOE) approach was determined to be appropriate based on a weight-of-the-evidence conclusion that tumor induction is via an anti-androgenic mechanism. Prostate weight decreases occurred at the LOAEL of 6 mg/kg/day; the point of departure for use in the non-linear risk assessment is 3 mg/kg/day (NOAEL). EPA believes that use of the population adjusted dose (PAD) for overall anti-androgenic effects (0.0012 mg/kg/day) is also protective of cancer effects because it is protective of the anti-androgenic effects that are, in effect, precursors to tumor formation.

6. *Overall anti-androgenic effects.* The Agency has determined that use of the most sensitive regulatory toxicity endpoint and the highest uncertainty factor (UF) would be protective of the anti-androgenic effects on all population subgroups caused by vinclozolin including developmental/reproductive effects as well as carcinogenic effects. In the case of vinclozolin, the most sensitive toxicity endpoint/dose and UF

are derived from the rat oral chronic/carcinogenicity study, i.e., the NOAEL of 1.2 mg/kg/day and an UF of 1,000. The PAD of 0.0012 mg/kg/day was used in assessment of risks resulting from the anti-androgenic activity of vinclozolin.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.380) for the combined residues of vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety, in or on the following raw agricultural commodities: Belgian endive tops, cucumbers, wine grapes, kiwi fruit, head and leaf lettuce, dry bulb onions, bell peppers, raspberries, stone fruit (except plums/fresh prunes), and strawberries. There are no U.S. registered vinclozolin products for use on wine grapes, cucumbers, and peppers, and the current tolerances for these commodities are for imported commodities only. In addition, as a risk mitigation measure, BASF requested deletion of the strawberry and stone fruit uses from their vinclozolin label on June 30, 1998. The Agency published a **Federal Register** notice announcing the use deletion on July 30, 1998, (63 FR 40710) (FRL–6020–9) and under the existing stock plan, vinclozolin could be used on strawberries and stone fruit until January 30, 2000. Revocation of the stone fruit and strawberry tolerances are expected in the near future.

To further mitigate risk associated with the use of vinclozolin, the Agency is considering a proposal submitted by the registrant which includes the following items to occur over the next 5 years: A phase out of all domestic food uses of vinclozolin except for the use on canola, and the reinstatement of the snap bean tolerance for a period of 5 years; revocation of all import tolerances except for wine grapes to cover residues in wine; future phase out of use on sod farms resulting in the remaining turf use limited to golf courses; and voluntary cancellation of use on ornamental plants. In addition as a short-term risk reduction measure, label amendments were approved on June 14, 2000 to add a 24–day pre-harvest interval for sod harvested for residential uses.

The Agency has been petitioned by BASF Corporation to establish tolerances on the following commodities: Succulent beans; canola; eggs, milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and fat, meat, and meat byproducts of poultry. Risk assessments were conducted by EPA to assess dietary exposure from vinclozolin as a result of all current tolerances (excluding stone fruit and strawberries) and all proposed tolerances. Strawberries and stone fruit were excluded because the use of vinclozolin on these crops was deleted and significant residues are not expected to occur in these crops as the latest possible use of vinclozolin under the existing stocks plan was January 30, 2000.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

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; and 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 percent of crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT data for domestic crops and percent of imported crop treated (PICT) data for all imported crops. Data on stone fruits and strawberries were not included as the uses have been deleted from labels. For the acute analysis, the estimated maximum PCT was used and for the chronic analyses, the weighted average PCT was incorporated.

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 underestimate. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations 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 the pesticide may be applied in a particular area.

The dietary (food only) risk assessments used anticipated residues from field trial data which EPA believes are very conservative for the following qualitative reasons: (1) Field trial data assumes that all crops are treated at the maximum application rate and harvested at the minimum pre-harvest interval (PHI). In practice, crops are sometimes treated at lower application rates and harvested at longer PHI's leading to lower residues in the crops; (2) Field trial data assumes no decline between harvest and consumption of the crop. However, residues of vinclozolin will decline between harvest and consumption. Data are not available to

quantify the extent of this decline; (3) Home ''processing'' was not accounted for in the risk assessment. Practices such as washing, peeling, and cooking could lead to significantly lower residues than those from field trial data; and (4) For the acute dietary risk assessment, the vinclozolin metabolites of greatest concern are those closely related to the parent compound. Use of field trial data in the acute dietary assessment assumes that all residues have structures closely related to the parent compound and that they all elicit the developmental effects of concern. In reality, many metabolites convertible to 3,5-DCA may have structures different from the parent such that they are not of acute concern.

Although EPA cannot quantify for vinclozolin the combined residue reduction from the factors identified above, for many pesticides the difference in residues between field trial and monitoring data can be an order of magnitude 10X or more. The registrant is submitting processing (washing/cooking) studies which could allow for further future refinement of the dietary risk assessment.

The Dietary Exposure Evaluation Model (DEEM®), which incorporates consumption data generated in USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1989–1992 was used to conduct the dietary risk assessments. For refined acute dietary risk assessments, the entire distribution of consumption events for individuals is multiplied by the distribution of residues to obtain a distribution of exposures in mg/kg/day. This is a probabilistic analysis, referred to as a ''Monte Carlo'' analysis and the risk is reported at various percentiles of exposure. For chronic dietary risk assessments, the 3–day average of consumption for each population subgroup is combined with residues in commodities to determine average exposure in mg/kg/day.

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. The acute dietary exposure estimates for the only population subgroup of concern (taking into account the toxicological studies on vinclozolin), females (13+), utilized the following percentage of the aPAD (0.006 mg/kg/day) at the various percentiles of exposure as indicated: 120% of the aPAD at the 99.9th percentile; 98% of the aPAD at 99.85th percentile; 83% of the aPAD at the 99.8th percentile; 73% of the aPAD at the 99.75th percentile; 60% of the aPAD at the 99.6th percentile; and 49% of the aPAD at the 99.5th percentile. Because the anticipated residues are based on field trial data and are conservative estimates (i.e. they overestimate residue levels), the Agency believes that basing its exposure estimate on the very upper ranges of potential exposure (the 99.5th and above) will unreasonably overestimate exposure. Considering this factor in choosing a population percentile of exposure that is adequately protective was explicitly discussed in EPA's policy on the use of population percentiles of exposure in acute risk assessments. U.S. EPA (Office of Pesticide Programs), ''Choosing A Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern'' (March 2000). In addition, as part of the reregistration process for vinclozolin, the registrant is proposing to further reduce the dietary exposure to vinclozolin, and the Agency may request future tolerance revocations for certain commodities as well. The very conservatively estimated acute dietary risk (food only) does not exceed the Agency's level of concern.

ii. *Chronic exposure and risk.* The chronic dietary exposure estimates expressed as a percentage of the cPAD (0.0012 mg/kg/day) were 4% for the U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). 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 risk to human health. Therefore, the chronic dietary risk (food only) does not exceed the Agency's level of concern.

iii. *For cancer and anti-androgenic risk assessment.* EPA believes that vinclozolin should be classified as a Group C carcinogen. The cancer risk assessment included both the U.S. population and infants and children. EPA believes the key concern for infants and children exposed to vinclozolin is the potential for developmental/reproductive effects related to the anti-androgenic properties of vinclozolin. In addition, the possibility of increased incidence of testicular Leydig cell tumors in adults as a result of exposure to vinclozolin as infants or children cannot be ruled out. However, due to the relationship between vinclozolin's anti-androgenic properties and its carcinogenic effects, the Agency believes protecting against the anti-androgenic effects would also be protective against potential carcinogenic effects to all population subgroups (including infants and children).

Accordingly, the cPAD will be protective against potential carcinogenic effects as well as the developmental/reproductive effects. The cPAD already incorporates the full, additional 10x safety factor for the protection of infants and children (i.e., it is derived from the NOAEL of 1.2 mg/kg/day with an MOE of 1,000 – 10x for intraspecies extrapolation; 10x for interspecies variation; and 10x for FQPA). Since this approach (using the cPAD) would be more protective than the proposed POD for cancer risk assessment of 3 mg/kg/day, and includes an additional 10x factor for the protection of infants and children, a separate non-linear risk assessment for cancer is not necessary.

Exposure estimates expressed as a percentage of the anti-androgenic PAD (0.0012 mg/kg/day) were 4% for the general U.S. population and 7% for the most highly exposed population subgroup, children (1–6 years old). In addition, as a point of comparison, the MOE was calculated to be 75,000 for the general U.S. population and 38,000 for children (1–6 years old).

2. *From drinking water.* In general, available monitoring data are of limited use because metabolite concentration measurements were not performed. For both surface water and groundwater, the sum of vinclozolin and its principal metabolites, assumed to degrade completely to 3,5-dichloroaniline (hereafter referred to as 3,5-DCA), have been used to assess the cancer risk associated with 3,5-DCA whereas vinclozolin per se has been used for the vinclozolin risk assessments.

In the absence of reliable, available monitoring data, EPA uses models to calculate the estimated environmental concentrations (EECs) of pesticides in ground and surface water. However, EPA does not use these model estimates to quantify risk. Currently, EPA uses DWLOCs as a surrogate to capture risk associated with exposure to pesticides in drinking water. A DWLOC represents the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses (if any). A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and the drinking water consumption patterns and body weights for specific population subgroups. The calculated DWLOC is compared to the model estimate (EEC), and if the model estimates are below the DWLOC, the risks are not considered to be of concern.

For estimating groundwater concentrations of vinclozolin and 3,5-DCA, EPA used the Screening

Concentration in Ground Water (SCI-GROW) model. The SCI-GROW model is based on scaled groundwater concentration from groundwater monitoring studies, and environmental fate properties (aerobic soil half-lives and organic carbon partitioning coefficients-Koc's). SCI-GROW provides a screening concentration which is an estimate of likely groundwater concentrations if the pesticide were used at the maximum allowed label rate in areas with groundwater vulnerable to contamination. In most cases, a majority of the pesticide use area will have groundwater that is less vulnerable to contamination than the areas used to derive the SCI-GROW estimate. Using SCI-GROW, the acute and chronic ground water EEC of vinclozolin per se is 0.53 parts per billion (ppb), and the acute and chronic ground water EEC of 3,5-DCA is 2.65 ppb.

For estimating surface water concentrations of vinclozolin and 3,5-DCA, EPA used tier II models, Pesticide Root Zone Model (PRZM) 3.12 and Exposuer Analysis Modeling System (EXAMS) 2.975, which assumed decline of parent vinclozolin and formation and decline of metabolites in a sequential degradation pattern in both field and pond such that degradation proceeds completely to 3,5-DCA. Vinclozolin per se is a major residue near application, but eventually the metabolites are the principal residues in both surface and drinking water. The metabolites are the only residues that are likely to be found in the environment except fairly soon after application. The scenario used in the model (application to onions in California) is the worst-case scenario for water modeling. A tier II EEC for a particular crop or use is based on a single site that represents a high exposure scenario for the crop or use. Weather and agricultural practices are simulated at the site for 36 years to estimate the probability of exceeding a given concentration (maximum concentration or average concentration) in a single year. Maximum EECs are calculated so that there is a 10% probability that the maximum concentration in a given year will exceed the EEC at the site; peak and chronic EECs were calculated so that there is a 10% probability the maximum average concentration for a given duration (4–day, 21–day, etc.) will equal or exceed the EEC at the site. This can also be expressed as an expectation that water concentrations will exceed EECs once every 10 years. The acute (peak) surface water EEC for vinclozolin is 5.68 ppb and for 3,5-DCA is 26 ppb. The chronic (annual mean) surface water EEC for vinclozolin is 0.165 ppb and for 3,5-DCA is 3.12 ppb.

i. *Acute exposure and risk*. For the population subgroup of concern, females (13+), the DWLOCs for vinclozolin per se at the various percentiles of exposure are as follows: 0 ppb at the 99.9th percentile; 4 ppb at the 99.85th percentile; 30 ppb at the 99.8th percentile; 47 ppb at the 99.75th percentile; 80 ppb at the 99.6th percentile; and 92 at the 99.5th percentile. At all but the very highest percentiles of exposure (99.85th and above), the DWLOC for vinclozolin per se is higher than the EEC of 5.68 ppb in surface water and 0.53 ppb in ground water. As explained above, given the level of refinement in the vinclozolin exposure estimate, EPA believes using the highest percentiles of exposure in estimating risk would unreasonably overstate risk. Therefore, EPA is reasonably certain that exposure to vinclozolin per se in drinking water will result in no harm.

ii. *Chronic exposure and risk*. The following chronic DWLOCs were calculated for vinclozolin per se: general U.S. population, 41 ppb; females (13+) 35 ppb; and children (1–6 years old), 11 ppb. The lowest DWLOC of 11 ppb for children 1–6 years old is higher than the EEC of 0.165 ppb in surface water and 0.53 ppb in ground water. Therefore, EPA is reasonably certain that exposure to vinclozolin in drinking water will result in no harm.

3. *From non-dietary exposure*. There are no vinclozolin pesticide products registered for use by homeowners. Therefore, there is no potential for homeowner handler exposure to vinclozolin pesticide products. Vinclozolin can, however, be occupationally used in a manner that may lead to post-application exposures to the general population, in particular, golfers playing on treated golf courses and homeowners and their families coming into contact with or playing on sod which was previously treated on a sod farm. A chemical-specific turf exposure study was used to measure human exposure as well as residue dissipation over time.

All residential exposures are considered to be short-/intermediate-term duration (i.e., 1 day to 1 week and 1 week to several months, respectively), and the same endpoint applies to both durations of exposure. As the endpoints selected are from oral toxicity studies (NOAEL of 3 mg/kg/day for females (13+)) and NOAEL of 5 mg/kg/day for infants and children, route-to-route exposure was corrected by applying a 25% dermal absorption factor and a 100% default inhalation absorption factor was assumed. A 100% safety factor was used and a 10X FQPA safety factor was added raising the Agency's level of concern to 1,000.

Post-application risks to the general population were considered for golfers following treatment of greens, tees, and fairways. Adult golfer exposures, women (13+), were less than the Agency's level of concern even on the day of application (MOE = 1,700). Given the magnitude of the MOE for adult women golfers, the Agency does not believe that the risks to child golfers would exceed the Agency level of concern either because the skin surface area/body weight ratio of the typical child golfer is similar to that of adults (within 15%). Therefore, the MOE for a child golfer is only slightly less than the MOE for adult golfers.

The exposure scenario used for toddlers playing on treated sod was the worst case scenario. The exposure scenario assumed that toddlers were playing on sod which had been treated with vinclozolin on a sod farm that same day, cut and laid in a residential setting. The MOE for toddlers is 33. This MOE represents an upper-bound exposure which includes dermal and non-dietary ingestion pathways (dermal exposure and hand-to-mouth oral exposure to grass and dirt). EPA has calculated that foliar dislodgeable residues on the sod decline such that risks fall beneath the Agency's level of concern 26 days after application (MOE = 1,100). To mitigate the unacceptable risk resulting from exposure before the 26–day period has elapsed; the registrant has proposed deletion of use on sod farms; amended the label to add a 24–day pre-harvest interval; and initiated the immediate restickering of all product in the channels of trade to require a 24–day period before sod can be harvested. It is assumed that, at a minimum, sod harvesting and replanting in a residential setting would take an additional 2 days; thereby, providing a total of 26 days for residues of vinclozolin to decline to an acceptable level. Although the Agency's level of concern is exceeded, EPA believes that these risk reduction measures when taken into consideration with the extremely conservative exposure scenario and exposure assumptions will immediately reduce the exposure such that it is below the Agency's level of concern.

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.''

Vinclozolin, procymidone, and iprodione are members of the imide group of the dicarboximide class of fungicides. Each of these three pesticides can metabolize to 3,5-DCA. FQPA requires EPA to estimate cumulative risk from consumption of food and water containing 3,5-DCA derived from vinclozolin, iprodione, and procymidone.

i. *Acute exposure and risk.* EPA has certain evidence that these compounds induce similar toxic effects but has not yet determined whether or not these compounds modulate androgens by a common mechanism of toxicity. In fact, there is evidence that iprodione does not share a common mechanism of toxicity as it disrupts the endocrine system by inhibiting androgen synthesis rather than competing for the androgen receptor as vinclozolin does. In addition, these three chemicals do not have any known metabolites/degradates in common with the possible exception of 3,5-DCA which is structurally and toxicologically different from the parent compounds and unlikely to be an androgen receptor antagonist.

EPA has, at this time, some data which suggests that vinclozolin and procymidone have a common mechanism of toxicity. An article published in *Toxicology & Industrial Health* (Vol. 15, ISS 1–2, 1999, page 80–93) which reports the findings by Dr. Earl Gray, National Health and Environmental Effects Research Laboratory, U.S. EPA, Research Triangle Park, NC, suggests that procymidone alters sexual differentiation in the male rat by acting as an androgen-receptor antagonist *in vivo* and *in vitro.* The Agency has yet to make a conclusion as to whether these data are sufficient to evaluate whether vinclozolin and procymidone have a common mechanism of toxicity. Within the next year, the Agency expects to reach a conclusion as to whether these data are sufficient to determine that vinclozolin and procymidone have a common mechanism of toxicity.

Even if it is assumed that vinclozolin and procymidone share a common mechanism of toxicity, EPA believes that it can still make the finding of reasonable certainty of no harm for vinclozolin because any cumulative risk resulting from adding procymidone residues in wine to vinclozolin exposure is unlikely to differ significantly from the risk of vinclozolin alone. This conclusion is based on a number of factors. The exposure assessment for vinclozolin estimates that vinclozolin exposure through wine grapes contributes < 2% of the total vinclozolin exposure. The percent of imported wine grapes that are treated with procymidone is similar to that of vinclozolin (estimated 10% of wine grapes treated with vinclozolin and 9.4% of wine grapes treated with procymidone), and therefore, the exposure pattern for these chemicals is similar. In addition, the exposure estimates conservatively assume that all wine bearing vinclozolin residues also contain procymidone residues. In all likelihood, wine grapes would be treated with either vinclozolin or procymidone but not both chemicals. Therefore, EPA believes that vinclozolin exposure and procymidone exposure through wine grapes would each add < 2% to the ''cumulative exposure''. As noted above, the acute food-only risk of vinclozolin is 83% of the aPAD at the 99.8th percentile of exposure, and the acute ground water EEC of 0.53 ppb and the acute surface water EEC of 5.68 ppb are lower than the drinking water DWLOC which is 30 ppb at the 99.8th percentile of exposure. EPA believes there is ultimately enough room in the risk cup to accommodate vinclozolin and procymidone risk, even, if in the future, EPA does determine that procymidone and vinclozolin share a common mechanism of toxicity.

ii. *Carcinogenic exposure and risk.* Since 3,5-DCA is not a registered pesticide, there is no FIFRA toxicology data base for this compound. EPA has used the Q_1* for *p*-chloroaniline (PCA) to assess the carcinogenicity (only toxicological endpoint identified for 3,5-DCA) for other structurally related chloroanilines. EPA's approach on chloroanilines is to consider chloroaniline metabolites to be toxicologically equivalent to PCA unless there is sufficient evidence that the metabolite is not carcinogenic. A Q_1* of 6.38×10^{-2} (mg/kg/day)$^{-1}$ has been calculated for *p*-chloroaniline based on the spleen sarcoma rate in male rats from a National Toxicology Program bioassay.

Exposure to 3,5-DCA was evaluated from the following sources: residues of vinclozolin- and iprodione-derived 3,5-DCA in food and wine, residues of procymidone-derived 3,5-DCA in imported wine, and 3,5-DCA residues in water from domestic agricultural uses of iprodione and vinclozolin. There are no U.S. registrations for procymidone. Therefore, an evaluation of exposure to procymidone-derived 3,5-DCA in water is not appropriate.

a. *Food risk*— (1) *From vinclozolin-derived 3,5-DCA residues.* Cancer risks were 5.1×10^{-7} for all crops, including strawberries and stone fruits. Cancer risks were 2.6×10^{-7} for all crops, excluding strawberries and stone fruits. Neither of these risks exceed the Agency's level of concern.

(2) From iprodione-derived 3,5-DCA residues. As stated in the July 1998 Iprodione RED, the cancer risk associated with 3,5-DCA derived from iprodione was 6×10^{-9}. This risk does not exceed the Agency's level of concern.

(3) *From procymidone-derived 3,5-DCA residues.* The cancer risk associated with 3,5-DCA in imported wine produced from grapes treated with procymidone was estimated to be 3.7×10^{-7}. This risk does not exceed the Agency's level of concern

b. *Drinking water risk*—(1) *From vinclozolin derived 3,5- DCA.* As stated previously, Tier II surface water EECs were generated using PRZM/EXAMS for 3,5-DCA. Onions grown in California were considered to be the worst-case scenario for water modeling. The highest chronic EEC is 3.12 ppb in surface water while the carcinogenic DWLOC for 3,5-DCA has been calculated to range from 0.47 ppb to 1.6 ppb. Therefore, the EEC exceeds the DWLOC indicating a potential for concern. The onion scenario was selected because this use site represents the highest maximum seasonal rate currently allowed on vinclozolin labels. However, the registrant has requested deletion of onions after this growing season (July 15, 2000). If the Agency accepts this request, this scenario is not appropriate for use in a carcinogenic risk assessment which represents life-time exposure.

Assuming acceptance of BASF's use deletion request, the carcinogenic DWLOC for 3,5-DCA (based on the commodities available for consumption after this use season) has been calculated to range from 0.46 ppb to 1.6 ppb. Using Tier II PRZM/EXAMS, the modeled EECs are 0.64 ppb for lettuce and 0.34 ppb for canola. The use site which represents the highest modeled exposure in drinking water is golf courses. Application to golf course turf is currently permitted on grass mowed at 1 inch or less. Using the Tier I generic expected environmental concentration (GENEEC) model, the Agency has calculated a chronic EEC of 0.29 ppb based on application to tees and greens and a chronic EEC of 2.33 ppb assuming application to tees, greens, and fairways. These EECs were the result of refinements to the GENEEC model. These refinements included the incorporation of an 87 percent crop area (PCA) factor as well as the percentage of the golf course that actually receives

pesticide treatment, bringing the resulting PCA factor down to 17%. It was assumed that tees and greens comprise 2.8% of the acreage of a golf course. When fairways are included, an additional 16.7% of the golf course is treated. The EEC of 2.33 ppb exceeds the DWLOC. In evaluating whether this EEC indicated a risk of concern EPA considered the following factors:

(i) The drinking water assessment on turf is based on GENEEC, a screening-level Tier I model. At present, PRZM-EXAMS, the Tier II model, does not have the appropriate parameters to accurately model turf runoff. Although GENEEC is not an ideal tool for use in drinking water risk assessments, it can provide high-end estimates of the concentrations that might be found in a confined pond of one hectare. Drinking water from surface water sources does not typically come from this type of scenario, but rather from bodies of water that are substantially larger than such ponds and from diverse watersheds. Unlike a confined pond, there is always some flow (in a river) or turn over (in a lake or reservoir) resulting in an over-estimation of the persistence of the chemicals near the drinking water utility intakes. Although a PCA of 17% was used to refine the model, the Agency recognizes that there are still uncertainties in the accuracy of the model to represent drinking water concentrations.

(ii) The GENEEC model uses the 56–day average of pesticide concentrations immediately after an event (application of pesticide). This short time-period may not adequately characterize a person's average daily exposure over a year, even more so, over a life time of 70 years.

(iii) The GENEEC model assumes that once in every 10 years the EEC will be exceeded. For the other 9 out of 10 years the level of residue in drinking water is likely to be below the EEC with at least one half of the years falling significantly below by a factor of 5 to 10. Therefore, a person may be exposed to the EEC once in every 10 years or a total of seven times during a lifetime of 70 years. The Agency believes the potential for such a lifetime exposure is minimal.

The first of these factors raises some concern because there is a possibility that GENEEC may underpredict residue levels although such underprediction would not be expected to be great. The second and third factors, on the other hand, could lead to a significant overstatement of drinking water exposure values. In light of all of these factors, EPA believes that it is likely there is no risk of concern from exposure to vinclozolin-derived 3,5-DCA.

Nonetheless, the exceedance of the DWLOC, based on a screening level model, does indicate a need to take steps to insure that exposures do not raise a risk of concern. Therefore, the Agency is considering requiring the registrants of vinclozolin and iprodione to submit targeted surface water monitoring studies. The studies would be used to compare the existing modeled results to the more accurate data. The Agency will also consider requiring BASF to develop a survey of golf course superintendents to obtain current information on actual vinclozolin use patterns. Estimates for turf use will be examined further pending receipt of better usage characterization data. Lastly, the Agency is considering requiring additional toxicological information on 3,5-DCA from the registrants of vinclozolin, iprodione and procymidone, including data for use in evaluating the carcinogenic potential of this metabolite.

(2) *Iprodione 3,5-DCA.* As stated in the RED, the DWLOC for 3,5-DCA derived from domestic uses of iprodione was estimated to be 0.55 ppb. The 3,5-DCA EEC in surface water associated with the use of iprodione alone was estimated to be 0.45 ppb. Thus, the iprodione derived 3,5-DCA carcinogenic DWLOC is not exceeded.

(3) *From procymidone 3,5-DCA.* There is no drinking water exposure because procymidone is not registered for use in the United States.

c. *Cumulative risk.* The cumulative, food-only cancer risk associated with 3,5-DCA derived from all three of these imide fungicides is 9.2×10^{-7} (includes stone fruit and strawberries) and the cumulative food-only cancer risk is 6.3×10^{-7} when stone fruit and strawberries are excluded. There is uncertainty in the above risk estimates in that a surrogate Q_1* is being used for 3,5-DCA. However, due to the structural similarities of 3,5-DCA and *p*-chloroaniline (PCA), EPA believes that for 3,5-DCA, the use of the PCA Q_1* represents an upper-bound estimate. The Agency is considering requiring registrants of vinclozolin, iprodione, and procymidone to provide additional toxicological information on 3,5-DCA including data for use in evaluating the carcinogenic potential. The cumulative, food-only cancer risk estimates are conservative and are considered to be a negligible cancer risk.

The 3,5-DCA DWLOC from all three imide fungicides (including canola, snap beans and those currently registered vinclozolin uses which are not being supported after this use season) ranges from 0.26 ppb to 1.4 ppb. The estimated concentration of 3,5-DCA in water from applications of iprodione (1998 iprodione RED) is 0.45 ppb and falls within the range of the aggregated DWLOC cited above. The estimated concentration of 3,5-DCA in water from applications of vinclozolin after this use season is estimated to range from 0.29 ppb to 2.33 ppb. As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, EPA believes that it is unlikely that a cancer risk of concern is present.

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

1. *Acute risk.* The acute dietary (food only) risk does not exceed the Agency's level of concern at the percentiles of exposure up to the 99.8th percentile. Using anticipated residues, PCT data, and PICT data, the population subgroup of concern, females (13+) utilized 83% of the dietary (food only) aPAD at the 99.8th percentile of exposure. For drinking water, the EEC of 5.68 ppb in surface water and the EEC of 0.53 in groundwater did not exceed the DWLOC of 30 ppb at the 99.8th percentile of exposure.

2. *Chronic risk.* Using the exposure assumptions described above, EPA believes that aggregate dietary exposure to the U.S. population will use 4% of the cPAD and exposure to the most highly exposed population subgroup, children (1–6 year old) will use 7% of the cPAD. The chronic DWLOCs for vinclozolin were 41 ppb for the general U.S. population and 35 ppb for the most highly exposed population subgroup, women (13+). The chronic DWLOCs were higher than the chronic EEC of 0.53 ppb in ground water and 0.165 ppb in surface water. 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.

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. All residential exposures are considered to be short- and intermediate-term duration and since the same endpoint applies to both durations of exposures, the dermal and inhalation exposures must be aggregated together with the food and water exposures for each population subgroup

of concern, females (13+) and infants and children. The risks currently exceed the Agency's level of concern. However, when considering the conservative method of exposure estimations previously discussed, and the following risk mitigation measures (stone fruit and strawberry use deletion, and the immediate restickering of all vinclozolin products for sod farm use to include a 24–day period before harvesting), the MOE is ≥1,010 for aggregate risks to the population subgroups of concern, females (13+) and infants and children as well as the general U.S. population resulting from vinclozolin uses are not of concern. Therefore, the risks do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. Because the overall anti-androgenic effects are a prerequisite for hyperplasia and tumor formation, and are considered to be protective of the potential carcinogenic outcome of exposure to the anti-androgenic vinclozolin and its metabolites, the overall anti-androgenic aggregate risk which are identical to the chronic aggregate risk. The chronic aggregate risks are presented. The chronic (non-cancer) aggregate risk was below the Agency's level of concern for food and drinking water sources of exposure. Chronic food-source risks were ≤7% of the cPAD when stone fruit and strawberries are excluded (uses have been canceled). Estimated environmental concentrations were compared to the chronic DWLOCs. The chronic EEC for residues of vinclozolin per se in ground water (0.53 ppb) was below the chronic DWLOCs for water consumption by adults (41 ppb for the general U.S. population and 35 ppb for females (13+)) and by children (11 ppb).

Cancer risks from vinclozolin derived 3,5-DCA were 2.6×10^{-7} for all crops, excluding strawberries and stone fruits. This risk does not exceed the Agency's level of concern. The 3,5-DCA DWLOC from all three Imide fungicides (including canola, snap beans and those currently registered vinclozolin uses which are not being supported after this use season) ranges from 0.26 ppb to 1.4 ppb. The 3,5-DCA EEC resulting from iprodione use is 0.45 ppb and falls with the range of the aggregated DWLOC cited above. The 3,5-DCA EEC resulting from vinclozolin use after this use season is estimated to range from 0.29 ppb to 2.33 ppb. As already stated, this range could potentially present a risk of concern based on the model, however, based on how the model estimates residue concentrations for cancer assessment, EPA believes that it is unlikely that a cancer risk of concern is present.

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 vinclozolin 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 vinclozolin, 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.

ii. *Prenatal and postnatal sensitivity*. The rationale for retaining the 10X FQPA safety factor is explained below:

a. There is evidence of increased susceptibility of offspring following *in utero* exposure to vinclozolin in the prenatal developmental toxicity study in rats.

b. A developmental neurotoxicity study in rats with an expanded protocol is required for vinclozolin as a result of concern for the anti-androgenic properties of vinclozolin and its metabolites.

iii. *Conclusion*. Based on the developmental and reproductive data for vinclozolin, EPA determined that an additional 10X safety factor for the protection of infants and children (as required by FQPA) should be retained.

2. *Acute risk*. No study with vinclozolin indicated that acute exposure to vinclozolin is likely to cause an adverse effect of concern on infants or children or the general public with the exception of the *in utero* effects on the developing fetus. Risks to the fetus are estimated by examining exposure to women of child-bearing age.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to vinclozolin from food will utilize 7% of the cPAD for infants and children. 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. Since the EEC's for residues of vinclozolin per se are lower than the chronic DWLOC's, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk*. The short- and intermediate-term risks currently exceed the Agency's level of concern (MOE = 1,000). However, the Agency believes the exposure estimates are conservative, as previously discussed, and therefore, overestimate risk. When the following risk mitigation measures (stone fruit and strawberry use deletion, and the immediate restickering of all vinclozolin products for sod farm use to include a 24–day period before harvesting) are taken into consideration, the MOE is ≥ 1,010 for aggregate risks to infants and children resulting from use of vinclozolin. Therefore, the risks do not exceed the Agency'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 vinclozolin residues.

IV. Response to Public Comments

A. Natural Resources Defense Council Comments

1. *Comment number 1*. NRDC argues that EPA is not authorized to use percent crop treated information in acute risk assessments. NRDC bases this argument on the fact that the provision explicitly addressing percent crop treated information, section 408(b)(2)(F), only mentions use of such information in chronic assessments.

Agency response. EPA disagrees with this interpretation of the FFDCA. FFDCA Section 408(b)(2)(D)(vi) directs EPA, in making tolerance decisions, to consider ''available information concerning the aggregate exposure levels of consumers to the pesticide chemical residue.'' 21 U.S.C. 346a(b)(2)(D)(vi). This is a broad mandate that includes all manner of information bearing on exposure, not the least of which would be percent crop treated information. Thus, EPA believes that subsection (b)(2)(D)(vi) authorizes use of percent crop treated information in both acute and chronic risk assessments.

Congress explicitly addressed use of percent crop treated information in section 408(b)(2)(F) where it imposed certain conditions on EPA's use of

percent crop treated information in chronic risk assessments. Section 408(b)(2)(F) states:

> In establishing, modifying, leaving in effect, or revoking a tolerance for a pesticide chemical residue, the Administrator may, when assessing chronic dietary risk, consider available data and information on the percent of food actually treated with the pesticide chemical (including aggregate pesticide use data collected by the Department of Agriculture) only if the Administrator—
>
> (i) finds that the data are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue;
>
> (ii) finds that the exposure estimate does not understate exposure for any significant subpopulation group;
>
> (iii) finds that, if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated by the Administrator; and
>
> (iv) provides for the periodic reevaluation of the estimate of anticipated dietary exposure.

21 U.S.C. 346a(b)(2)(F) (emphasis added). Although this paragraph affirms the ability of EPA to use percent crop treated information for chronic dietary risk assessments, the clear thrust of this paragraph is to impose four limitations on the use of such information in chronic risk assessments (i.e. the limitations set forth in clauses (i)—(iv) following the ''only if''). Because the limitations expressly apply only ''when assessing chronic dietary risk'', Congress did not impose any limitation on the authority in subsection (b)(2)(D)(vi) to consider percent crop treated for risk assessments that consider risks other than chronic ones (i.e. acute risks).

NRDC contends that subparagraph (F) impliedly bars EPA from relying on percent crop treated information for acute risk assessments under subparagraph (D)(vi) because subparagraph (F) only mentions chronic risk assessments. EPA, however, does not believe that the statutory silence on acute risk assessments in subparagraph (F) compels such an interpretation. In fact, the statutory structure suggests the converse conclusion. Subparagraph (F) clearly sets forth that percent crop treated information may be used in chronic risk assessments ''only if'' four conditions can be met. If Congress had intended that this provision limit EPA's general authority to consider percent crop treated information other than as applied to chronic risk assessments, the reference to chronic risk assessments should not have been included as part of the introductory clause but as one of the ''only if'' conditions. Failure to include it as one of the ''only if'' conditions suggests that Congress was merely setting out rules for chronic risk assessments and not making a broader statement about use of percent crop treated information generally.

Moreover, it is not surprising that Congress chose only to address use of percent crop treated information in the context of chronic risk assessment given EPA's historical practice regarding use of percent crop treated data. Although EPA has considered percent crop treated information in chronic risk assessment for decades, use of such information in acute risk assessments is a relatively recent phenomenon, and Congress, in 1996, may have either not been aware of the rapidly evolving risk assessment techniques for acute hazards or believed that it was premature to enact statutory requirements as to such assessments.

There were two key events in 1995 that triggered the use of percent crop treated information in acute risk assessments: (1) A new focus on acute hazards; and (2) a new risk methodology for assessing acute risks. In 1995, EPA began for the first time consistently identifying acute endpoints and performing acute risk assessments for each pesticide. EPA was initially reluctant to use percent crop treated information in such assessments due to the difference between acute and chronic risks. With chronic risk, EPA is concerned with hazards that occur from exposure over an extended time period. Thus, in assessing chronic risk, EPA generally combines percent crop treated information with data on residue levels to produce an estimate of the residue level a person is exposed to over an extended time-frame assuming the person gets a mixture of treated and untreated commodities. With acute hazards, EPA is concerned with the risk from a single exposure and thus is interested in the exposure that can come from a single commodity. Accordingly, for acute risk assessments it is inappropriate to produce a single estimate of the residue level in commodities if such estimate does not reflect high end values that are likely to occur. Use of percent crop treated data in the manner used in chronic assessment, however, reduces high-end values in proportion to percent of crop treated. To overcome this problem, a new risk assessment methodology was developed that used a complex, probabilistic model that incorporated all residue values, including the high end values, and percent crop treated information. EPA first accepted these probabilistic acute risk assessments late in 1995, and use of this new risk assessment technique in regulatory actions was still relatively infrequent prior to the drafting and passage of the FQPA in the summer of 1996.

In sum, NRDC can demonstrate, at best, that the statute is silent regarding use of percent crop treated information in acute risk assessments. Given the general language in section 408 directing EPA to consider ''available information'' on aggregate exposure levels, EPA's interpretation of section 408 as permitting use of percent crop treated data in acute risk assessments is certainly reasonable. NRDC's interpretation, on the other hand, would erect an absolute bar to the use of the most advanced scientific techniques for reliably and accurately estimating anticipated exposure to pesticide residues.

2.*Comment number 2*. EPA fails to identify the correct NOAEL for vinclozolin's endocrine disrupting effects. Dr. Gray has reported an apparent lack of a NOAEL for vinclozolin's developmental effects. Therefore, use of a NOAEL of 6 mg/kg/day for the acute analysis and use of 3 mg/kg/day as the NOAEL for short-term, intermediate-term, and carcinogenic risk assessments is not scientifically supportable. NRDC feels that a LOAEL of 3 mg/kg/day, adjusted for the lack of a true NOAEL, should be used as the hazard component in risk assessments.

Agency response. First, the Agency stresses that it conducted a statistical analysis of anogenital distance in response to dose in the Gray developmental rat study, and it was determined that the NOAEL for acute effects was 6 mg/kg/day and the LOAEL was 12 mg/kg/day. In a 12/8/99 memorandum, the Agency determined that decreased ventral prostate weight, observed at 6 mg/kg/day, was an even more sensitive indicator of the anti-androgenic activity of vinclozolin; the next lower dose (3 mg/kg/day) was thus selected as the study NOAEL.

Second, the Agency must stress that the NOAEL of 6 mg/kg/day for the acute dietary analysis represents the 3 mg/kg/day treatment level (study NOAEL) in the [multidose] perinatal oral developmental rat study noted above that has been adjusted by a plasma equilibrium factor to derive an adjusted NOAEL that reflects a single dose; the adjusted LOAEL causing decreased ventral prostate weight has been calculated to be 11.5 mg/kg/day.

The perinatal oral developmental rat study mentioned above was also used as the source of the NOAEL for short-term and intermediate-term dermal and inhalation risk assessments for women (13–50); note that the study NOAEL of 3 mg/kg/day was not adjusted for the

plasma equilibrium factor because the applicable short-term and intermediate-term routes of exposure are not oral and because they typically reflect multiple exposure events more closely approximated by the multidose oral developmental rat study.

The Agency disagrees with NRDC's suggestion that the 3 mg/kg dose from the Gray, et al. oral developmental rat study is a LOAEL. As noted above, EPA's statistical analysis shows that the anogenital distance effect has a NOAEL of 6 mg/kg/day in the Gray study. NRDC has not offered any explanation of why it does not agree with that statistical analysis. Second, as to the decreased ventral prostate weight effect, EPA's review of the data shows that this adverse affect was not present at 3 mg/kg; however, this adverse effect was a dose-related effect in male offspring at 6 mg/kg and above. No adverse effects were observed at the 3 mg/kg/day dose level. Thus, EPA cannot agree with NRDC that the 3 mg/kg/day dose should be treated as a LOAEL in conducting the risk assessment for vinclozolin.

The perinatal rat developmental toxicity study was also used to derive the point of departure (POD = NOAEL of 3 mg/kg/day) to be used in the non-linear carcinogenicity risk assessments; the effect seen at the LOAEL of 6 mg/kg/day was prostate weight decrease, seen as an early manifestation of the anti-androgenic action of vinclozolin ultimately resulting in Leydig (testicular interstitial) cell tumors in the chronic/cancer studies. However, note that the NOAEL of 1.2 mg/kg/day from the rat chronic/cancer studies is considered to be protective of cancer effects because it is protective of the anti-androgenic effects that are the likely precursors to tumor formation. The chronic Population Adjusted Dose (cPAD), used to calculate risk, is derived by dividing the NOAEL of 1.2 mg/kg/day by the safety factor of 1,000 (10X for intraspecies extrapolation, 10X for interspecies variation, and 10X for FQPA). Because this approach (using the cPAD) would be more protective than the proposed POD for cancer risk assessment of 3 mg/kg/day, and includes an additional 10X factor for the protection of infants and children, a separate non-linear risk assessment for cancer is not necessary.

3. *Comment number 3*. Vinclozolin and iprodione do share a common mechanism of toxicity. NRDC disagrees with EPA's judgement that vinclozolin and iprodione do not share a common mechanism because they are both known anti-androgens, both have the metabolite 3,5-dichloroaniline in common, and both cause the same effect even if the exact manner of androgen interference is different. In fact, they may act additively or synergistically as a result of affecting the androgen pathway at different sites as opposed to the potential competition for the same binding site if both act at the exact same point in the process.

Agency response. FQPA requires EPA to consider available information concerning the cumulative effects of compounds that have a common mechanism of toxicity. It should be stressed, however, that EPA is moving in a stepwise fashion to evaluating the cumulative assessment of anti-androgenic pesticides.

Vinclozolin, procymidone, and iprodione are members of the imide group of the dicarboximide class of fungicides. There is some evidence that these compounds induce similar toxic effects. Further, all of these fungicides appear to be anti-androgenic. The mechanistic basis for their anti-androgenic properties have been studied to different degrees. There are studies underway at EPA's National Health and Environmental Effects Laboratory to better elucidate the mechanism of toxicity for these anti-androgenic fungicides as well as mixture studies on how they interact. Although all three of these fungicides effectively reduce the level of testosterone, they do so by different pathways. Vinclozolin and procymidone bind and compete for the androgen receptor. Iprodione disrupts the endocrine system by inhibiting androgen synthesis rather than competing for the androgen receptor. It should be noted that these three chemicals do not have any known metabolites/degradates in common with the possible exception of 3,5-dichloroaniline which is structurally and toxicologically different from the parent compounds and unlikely to be anti-androgenic.

The androgen system may be modulated in different ways including competitive binding to androgen receptors, interference with gene control over the synthesis of several enzymes or other factors associated with synthesis of androgen and testosterone. All of these variables relate to the potency, specificity, and site of action of the anti-androgen and determine the expression of the anti-androgenicity induced by various compounds. Because of the complexity of the androgen system, a careful evaluation of all the available data is needed as well as peer review by the FIFRA Science Advisory Panel before a formal decision is made regarding whether or not these compounds modulate androgens by a common mechanism of toxicity. The evaluation of a common mechanism would follow the 1999 EPA Guidance for Identifying Pesticide Chemicals and Other Substances That Have A Common Mechanism of Toxicity (64 FR 5796, February 5, 1999) (FRL–6060–7). Furthermore, procymidone has yet to be subjected to the Reregistration Eligibility Decision (RED) process and, as part of this process, its toxicology database must meet current standards of acceptability. Although there are data suggesting that these dicarboximide fungicides induce some of the same anti-androgenic effects, the mechanism by which they cause these toxic effects have not been adequately evaluated.

Even after an evaluation of all the data and a decision is made regarding a common mechanism of toxicity, other analyses are important to conduct regarding the integration of exposure and hazard data to determine the likelihood that such groupings might result in a cumulative risk as described in the Agency's Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity (http://www.epa.gov/scipoly/sap/1999/september/cumdoc.pdf). Only then can it be determined whether there is a need to conduct a cumulative risk assessment on these dicarboximide fungicides.

Nonetheless, because of the apparent similarity of mechanism of toxicity between vinclozolin and procymidone EPA has considered, as discussed above, whether the cumulative effects from vinclozolin and procymidone (assuming these pesticides' effects are cumulative) would raise a risk of concern. EPA is unwilling, at this time, to make the same assumption concerning iprodione and vinclozolin. NRDC hypothesizes that, because iprodione and vinclozolin operate in a different manner on the androgen system, they are likely to have an additive anti-androgenic effect. A conclusion that chemicals that operate at different stages in the androgen pathway are acting through a common mechanism of toxicity or otherwise merit a cumulative assessment is beyond any cumulative effects determination EPA has made either pre- or post-FQPA. That does not mean that further evaluation of the science of cumulative effects concerning anti-androgenic effects will not lead to a conclusion that iprodione and vinclozolin have a common mechanism of toxicity. At this time, however, given the scientific understanding of the mechanisms of these two pesticides, EPA is unwilling to presume that such common mechanism exists or that there is some other justification for treating

these pesticides as having cumulative effects.

4. *Comment number 4.* EPA should not approve tolerances that exceed safe levels. The elevated risk numbers in the case of short-term and intermediate-term risk and the exceedance of the drinking water level of concern (DWLOC) are especially of concern and there is doubt that the proposed mitigation measures will alleviate the estimated risks. There is concern that EPA's assessments are not sufficiently conservative to protect public health and the Agency should not ignore or explain-away its own elevated risk estimates.

Agency response. EPA has high confidence in the short-term and intermediate-term risk assessments (these involve treated sod) because a chemical-specific turf exposure study was used and because foliar residue dissipation over time was determined. We, therefore, have confidence that the mitigation measure to require a 24-day interval between final treatment and harvest of sod before it is shipped for placement in a residential setting will be protective. Only in the case of acute aggregate risk from vinclozolin and carcinogenic risk from 3,5-DCA was there an indication of a potential drinking water concern. The exposure estimates (EECs) were based on conservative modeling. Also, the food exposures (subtracted from the aPAD to determine the DWLOC) are very conservative because they are based on field trial residue data. DWLOCs cannot be used in a quantitative risk assessment as representative monitoring data may. Rather, they are used to determine the magnitude of potential concern by comparison to the EEC's. As the 99.9th percentile of food exposure to vinclozolin is considered to be overly conservative given the use in this exposure assessment and the overly conservative drinking water assessment, EPA has little concern for an apparent elevated risk particularly in light of the registrant's mitigation proposals. Finally, discussion of the strengths and weaknesses of our assessments, the assumptions made, and our level of confidence are all part of the risk characterization component of risk assessment. We must provide qualitative descriptors to facilitate the risk management process.

B. Earthjustice Legal Defense Fund comment

Comment. EPA is asked to consider Earthjustice's prior comments and objections to the previous vinclozolin tolerance.

Agency response. EPA has addressed Earthjustice's prior comments and objections in the Agency letter of May 11, 2000 to the Earthjustice Legal Defense Fund, and therefore, the Agency believes that further detailed discussion is not necessary. In brief, Earthjustice's prior comments focused on two issues: the use of the additional safety factor for the protection of infants and children; and the cumulative effects of vinclozolin, iprodione, and procymidone. In considering Earthjustice's comments in the course of assessing vinclozolin, EPA has acceded to Earthjustice's request to retain the additional safety factor for the protection of infants and children and has assumed, for this tolerance rulemaking, that vinclozolin and procymidone have a common mechanism of action that will lead to cumulative effects. EPA decided against reaching that conclusion as to vinclozolin and iprodione for the reasons explained above. EPA's full response to Earthjustice has been included in the docket for this action.

C. BASF Corporation Comments

1. *Comment number 1.* BASF has supplied information which would allow the Agency to further refine the acute dietary risk by using monitoring data provided in response to the Agency's preliminary risk assessment. Use of this information would significantly reduce the calculated acute dietary risk.

Agency response. BASF did submit grape and lettuce metabolism studies and a proposal that monitoring data be used as a source of refined dietary exposure estimates, i.e., anticipated residues. FDA and USDA/Pesticide Data Program monitoring data are available for most foods expected to bear vinclozolin residues. However, these monitoring data are not useful for risk assessment purposes because these programs do not analyze all 3,5-DCA containing metabolites, which are the residues of concern. Agency review of the plant metabolism studies reveals that a significant portion of the vinclozolin residue may exist as 3,5-DCA per se or conjugates, all of which tend to increase with time as they are the terminal, more stable residues. Conjugates and 3,5-DCA per se are not analyzed by either FDA or PDP. These residues are, however, analyzed by the data collection method used to generate the field trial data because the method converts all of these residues to a common moiety (derivatized 3,5-DCA). Also, there was significant variability in the ratios of vinclozolin per se to total residues with time, between crops, and between studies on the same crop. Therefore, at this time the Agency does not believe that the plant metabolism studies provide sufficient additional information supporting use of monitoring data to generate anticipated residues (ARs) and that field trial data should be used to calculate AR values for dietary exposure in food.

2. *Comment number 2.* BASF has submitted or cited information it feels supports their contention that 3,5-DCA should not be assumed to be toxicologically equivalent to *p*-chloroaniline, i.e., that 3,5-DCA should not be considered to be a carcinogen like *p*-chloroaniline for risk assessment purposes. Based on physicochemical and stereochemical differences from *p*-chloroaniline, BASF thinks that 3,5-DCA would not be mutagenic. Calculations indicate that the amino group of *p*-chloroaniline is 1,300 times more reactive than the amino group of 3,5-DCA in a peroxidation reaction, a step necessary to generate the corresponding hydroxylamine which is a prerequisite for mutagenicity. Side-by-side Ames Bioassays demonstrated that *p*-chloroaniline is clearly mutagenic whereas 3,5-DCA is nonmutagenic in the presence of metabolic activation and a cocarcinogen. This indicates that the two chloroanilines behave different biologically.

Agency response. While the submitted information provides some support for the claim that 3,5-DCA may be less potent than *p*-chloroaniline, there is insufficient evidence to show that 3,5-DCA is not mutagenic or carcinogenic. The available mutagenicity data are insufficient because 3,5-DCA was tested using only one of the four or five *Salmonella typhimurium* strains usually tested in the Ames bioassay; also, 3,5-DCA was not the subject of any other *in vitro* mutagenicity study required for pesticide registration.

Only long-term studies in which two mammalian species are exposed to a potential carcinogen can provide concrete evidence of carcinogenicity. Therefore, until sufficient data are submitted, DCA will continue to be regulated based on a Q_1* calculation for *p*-chloroaniline.

3. *Comment number 3.* BASF claims that recently submitted details of calculations of turf foliar dislodgeable residues provides evidence that a 9-day preharvest interval (PHI), rather than the Agency-calculated 24-day PHI, is sufficient to bring the children's MOE to a level below the Agency's level of concern. Regardless of the outcome of the Agency review, BASF is willing to impose the 24-day PHI suggested in the supplemental notice.

Agency response. These data are currently under review, and no comment can be provided at this time.

V. Other Considerations

A. Metabolism in Plants and Animals

1. *Plant metabolism*. The qualitative nature of the residue in plants is adequately understood based on metabolism studies on strawberries, lettuce, peaches, and grapes. The plant metabolism studies indicate that metabolism in plants results from the hydrolytic cleavage of the oxazolidinedione ring and/or loss of the ethenyl moiety. Formation of conjugates and hydrolysis to 3,5-DCA occur and these may increase with time. The residues of concern are vinclozolin per se and its metabolites containing the 3,5-DCA moiety.

2. *Animal metabolism*. The qualitative nature of the residue in livestock is adequately understood based on adequate ruminant and poultry metabolism studies submitted in conjunction with pesticide petitions PP#7H5531 and PP#9F3750. The residues of concern are vinclozolin, a mixture of the diastereomers of *N*-(3,5-dichlorophenyl)-2-methyl-2,3,4-trihydroxybutyramide (BF 352–25), and a mixture of diastereomers derived by dihydroxylation of the vinclozolin vinyl group (BF 352–37). These metabolites are covered by the present tolerance expression, i.e., they contain the 3,5-DCA moiety.

B. Analytical Enforcement Methodology

1. *Plants*. Adequate analytical methodology is available for data collection and enforcing tolerances of vinclozolin per se and its metabolites containing the 3,5-DCA moiety in/on plant commodities. Method I in PAM, Vol. II, which underwent a successful EPA method validation on strawberries, involves base hydrolysis of residues to convert vinclozolin and its metabolites to 3,5-DCA. After steam distillation and organic solvent extraction, the isolated DCA is derivatized to *N*-(3,5-dichlorophenyl)chloroacetamide using chloroacetyl chloride prior to quantitation by gas chromatography/electron capture detection (GC/ECD). The limit of quantitation is 0.05 ppm.

2. *Livestock*. EPA has concluded that the following methods are available for the enforcement of tolerances for livestock tissues: method A9004A, a GC/ECD method, and method A9207, a High Performance Liquid Chromatography method. Method A9004A is based on conversion of vinclozolin and its metabolites to 3,5-DCA. However, it does not distinguish between residues of vinclozolin and other compounds convertible to 3,5-DCA. The LOQ is generally 0.05 ppm (0.1 ppm for poultry commodities). To confirm that the 3,5-DCA detected by method A9004A is derived from vinclozolin, method A9207 is used to measure 2,3,4-trihydroxy-*w*-methylbutanoic acid-(3,5-dichloroanilide) (BF 352–25), the major metabolite of vinclozolin in livestock commodities. The LOQ and the limit of detection are estimated to be 0.05 and 0.025 ppm, respectively. Both methods have been successfully validated.

3. The FDA PESTDATA database dated 1/94 (PAM, Vol. I, Appendix II) indicates that vinclozolin is completely recovered (> 80%) using FDA Multiresidue Protocols D and E (oily and non-oily matrices). Vinclozolin metabolite B is completely recovered using Protocols D and E (for oily matrices), and only partially recovered (50–80%) using Protocol E for non-oily matrices. Metabolite E is completely recovered using Protocol D. Metabolite F is recovered using Protocol D but no quantitative information is available. Metabolite S is partially recovered using Protocol E (non-oily matrices). The FDA multiresidue methodology differentiates between vinclozolin and iprodione, a pesticide that also contains the DCA moiety.

C. Magnitude of Residues

1. *Snap beans*. Sixteen (16) residue trials were conducted in a total of 7 states. Each trial consisted of a single residue sample. The residue trials were conducted using the Ronilin WP formulation. Eight of the trials involved application to lima beans and eight to snap beans. Ground applications were made in approximately 50 gallons of finish spray per acre and air applications in 5 to 15 gallons per acre. Samples of beans, cannery waste, green forage, and dry forage were analyzed. Residues in snap beans were as follows: 0.38, 0.53, 0.62, 0.64, 0.73, 0.76, 0.95, and 2.40 ppm.

2. *Canola*. Four field trials were conducted in Canada (two in Alberta and one each in Manitoba and Saskatchewan). These sites represent Regions 5, 7, and 14. A single treatment was applied at 0.22, 0.33, or 0.45 lb active ingredient per acre (ai/A) (0.44X, 0.66X, and 0.89X the maximum rate of 0.5 lb ai/A proposed on the U.S. label) in 40 gallons of water per acre using ground equipment. Two major canola varieties were treated at 20–35% bloom; the treatment-to-harvest intervals were 37–57 days. The canola seed were stored frozen for 330 days. The preponderance of data support the storage stability of the 3,5-DCA moiety for this length of time in canola seed. At the 0.44X application rate, canola seed contained 3,5-DCA-containing residues of 0.038–0.20 ppm. At the 0.33X rate, residues were detected at 0.065–0.28 ppm. At the 0.88X rate, residues were found at 0.068–0.42 ppm. An additional six field trials were conducted in Canada between 1982 and 1996 to support Section 18 requests. A single application was made at 0.22–0.67 lb ai/A (0.44X – 1.34X) during the early bloom to the mid-bloom stage using aerial and ground equipment. The treatment-to-harvest intervals were 36–69 days. Residues containing the 3,5-DCA moiety in canola seed were ≤ 0.93 ppm. The highest residue value resulted from an application of 0.44 lb ai/A (0.88X). Although some of the available trials do not reflect the maximum rate, others represent exaggerated rates. The earlier-submitted data, combined with the four Canadian field trials submitted with this petition, provide sufficient magnitude of the residue data upon which to base a canola seed tolerance.

A canola seed processing study was conducted on seed harvested from a Saskatchewan field trial. A single treatment at 0.45 lb ai/A (0.89X) occurred at 40% bloom. At maturity, 49 days later, seeds were subjected to typical processing into oil and meal. The seed, crude oil, refined oil, and meal byproduct were analyzed in Germany by BASF using method P–14.003.02. Residues containing the 3,5-DCA moiety were detected at 0.62 – 0.89 ppm in four replicates of seed (mean = 0.76 ppm). Residues in crude oil were 0.85 = 0.94 ppm (mean = 0.88 ppm) indicating very slight concentration in this intermediate component of the process that is not used for food or feed. Upon purifying, refined oil (the product for commerce) did not contain detectable residues (< 0.05 ppm) indicating residue reduction. In addition, the byproduct canola meal contained residue levels identical to those in the seed (0.68 – 0.89 ppm) demonstrating a lack of concentration of vinclozolin residues in this livestock feed.

3. *Meat, milk, poultry, and eggs*. There are no feed items associated with the currently registered use sites or succulent beans. However, canola meal may be fed to beef and dairy cows, swine, and poultry at up to 15% of the diet. The canola seed tolerance level of 1 ppm was used for canola meal to calculate livestock diets because the processing study indicated that vinclozolin concentrations in seed remains the same in the meal. The meal dry matter content of 88% (corrected for

cattle only) was also used to calculate livestock diets for tolerance-setting purposes. The dietary burdens are thus: 0.17 ppm for beef and dairy cattle and 0.15 ppm for swine and poultry.

Based on livestock feeding studies, the theoretical residues in tissues were calculated using tissue residues at the lowest feeding level (100 ppm) extrapolated to the dietary burdens provided above. Livestock commodity residues resulting from the three feeding levels (100, 300, and 1,000 ppm) were fairly linear lending some support to the assumed linearity down to the dietary burden levels. Theoretical residues ranged from 0.004 ppm to 0.015 ppm in cattle tissues and milk, 0.001 ppm to 0.004 ppm in poultry tissues and eggs, and 0.003 ppm to 0.014 ppm in swine tissues. In accordance with 40 CFR 180.6(a)(2), EPA believes that the available data indicate that there is a reasonable expectation of finite residues of vinclozolin transferring from treated canola to livestock commodities via canola meal in the diet. Accordingly, EPA recommends that tolerances at the LOQ of the method be proposed as follows: 0.05 ppm in eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and 0.1 ppm in the meat, fat, and meat byproducts of poultry.

D. International Residue Limits

CODEX maximum residue limits (MRLs) for residues of vinclozolin and its metabolites containing the 3,5-DCA moiety have been established in common bean at 2 ppm, rape seed at 1 ppm (no limit for canola), cattle meat and milk at 0.5 ppm, and chicken meat and eggs at 0.05 ppm. No Canadian or Mexican tolerances have been established for vinclozolin residues in succulent beans, rape, canola, meat, milk, poultry, or eggs.

The CODEX MRLs for canola (rape seed), cattle meat, cattle milk, and poultry eggs are in harmony with the proposed tolerances associated with this petition. The chicken meat MRL (0.05 ppm) is not in harmony with the proposed tolerance in poultry meat (0.1 ppm) due to recovery discrepancies with the analytical method.

E. Rotational Crop Restrictions

Based on a limited field rotational crop study which was adequate to satisfy the data requirement, vinclozolin residues were all < 0.05 ppm (LOQ of method) in all plant commodities (wheat, cabbage, and potatoes) at the minimum plant-back interval of 30 days. Therefore, EPA has concluded that it is permissible to rotate to small grains, leafy vegetables and root crops after a 30–day interval.

VI. Conclusion

Therefore, tolerances are established for combined residues of vinclozolin, 3-(3,5-dichlorophenyl)-5-ethynyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on succulent beans at 2.0 ppm; canola at 1.0 ppm; eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and the meat, fat, and meat byproducts of poultry at 0.1 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–301015 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 September 18, 2000.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301015, to: Public

Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

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: June 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.380, the table to paragraph (a) is amended by revising the entry for ''beans, succulent'', and by adding new entries to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Beans, succulent ..	2.0	9/30/03
* * * * *		
Canola	1.0	9/30/03
Cattle, fat	0.05	9/30/03
Cattle, mbyp	0.05	9/30/03
Cattle, meat	0.05	9/30/03
* * * * *		
Eggs	0.05	9/30/03
Goats, fat	0.05	9/30/03
Goats, mbyp	0.05	9/30/03
Goats, meat	0.05	9/30/03
Hogs, fat	0.05	9/30/03
Hogs, mbyp	0.05	9/30/03
Hogs, meat	0.05	9/30/03
Horses, fat	0.05	9/30/03
Horses, mbyp	0.05	9/30/03
Horses, meat	0.05	9/30/03
* * * * *		
Milk	0.05	9/30/03
* * * * *		
Poultry, fat, ...	0.1	9/30/03
Poultry, meat	0.1	9/30/03
Poultry mbyp	0.1	9/30/03
* * * * *		
Sheep, fat	0.05	9/30/03
Sheep, mbyp	0.05	9/30/03
Sheep, meat	0.05	9/30/03
* * * * *		

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[FR Doc. 00–18099 Filed 7–17–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301017; FRL–6595–9]

RIN 2070–AB

Humic Acid, Sodium Salt, Exemption Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of humic acid, sodium salt when used as an inert ingredient (adjuvant, UV protectant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. LignoTech USA, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of humic acid, sodium salt.

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301017, must be received by EPA on or before September 18, 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 VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301017 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; and e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301017. 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

In the **Federal Register** of April 12, 2000 (65 FR 19759) (FRL–6498–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition PP 6E4705 by, LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474–1198. This notice included a summary of the petition prepared by the petitioner LignoTech USA, Inc. There were no comments received in response to the notice of filing.

The initial petition requested that 40 CFR 180.1001(c) and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt. Subsequently the petitioner revised the petition to request the establishment of an exemption from the requirement of a tolerance for residues of humic acid, sodium salt under 40 CFR 180.1001(c) only.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this

action and considered its validity, completeness and reliability and the relationship of this information 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 humic acid, sodium salt are discussed in this unit.

Humic substances including humic acid, sodium salt occur naturally in the environment, as they are derived from soil or soil deposits. Humic acid, sodium salt is a hydrophilic, reversible colloid whose molecular weight ranges from 2,000-500,000 daltons. Chemically, humic acids are complex, polymeric polyhydroxy acids formed by the process of degradation of organic matter under the action of soil microorganisms and ground worms.

The Agency has reviewed three mammalian acute toxicity tests. In an acute oral toxicity test of humic acid, sodium salt, an $LD_{50} > 5,000$ milligrams/kilograms (mg/kg) was determined. This was Toxicity Category IV. In a primary dermal irritation test, humic acid, sodium salt was found to be Toxicity Category IV. In a primary eye irritation test, humic acid, sodium salt was found to be a mild eye irritant. This was Toxicity Category III. Due to placement in Categories III and IV, no acute effects are expected to occur. Due to the ubiquitous nature of humic substances including humic acid, sodium salt, no chronic effects are expected to occur. There is no available information to indicate that these naturally occuring substances are carcinogenic, mutagenic, or are expected to have any effect on the immune or endocrine systems.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* Not only are humic substances abundant in nature, but they have been used in commercial agriculture for years to condition soils. Therefore, increased dietary exposure from the use of humic acid, sodium salt as an inert ingredient in pesticide formulations is expected to be minimal.

2. *Drinking water exposure.* Humic substances occur in abundance in nature, including soils, fresh water and oceans. Increased drinking water exposure from the use of humic acid, sodium salt in pesticide formulations would not be expected.

B. Other Non-Occupational Exposure

Humic substances occur in abundance in nature, including soils that are in and around the home. The potential for an increase in the existing non-dietary exposure to the general population, including infants and children, is unlikely as these pesticide formulations containing humic acid, sodium salt would be used in agricultural and horticultural settings.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not humic acid, sodium salt shares a common mechanism of toxicity with other chemicals. However, humic acid, sodium salt is expected to be practically non-toxic to mammals. Due to the expected lack of toxicity, a cummulative risk assessment is not necessary.

VI. Determination of Safety for U.S. Population, Infants and Children

Humic substances are present in abundance in the soil and the environment. Humic substances have been used in commercial agriculture for years to condition soils. Based on known acute toxicity studies, humic acid, sodium salt is not acutely toxic. Due to the ubiquitous nature of humic substances including humic acid, sodium salt, no chronic effects are expected to occur. There is no available information to indicate that these naturally occuring substances are carcinogenic or mutagenic, or expected to have any effect on the immune or endocrine systems. Because of its abundance in nature and lack of toxicity, the Agency did not use the safety factor analysis in evaluating the risk posed by humic acid, sodium salt and did not apply an additional tenfold safety factor to protect infants and children.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of humic acid, sodium salt. Accordingly, EPA finds that exempting humic acid, sodium salt from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Tolerances Exemptions

There are no existing tolerance exemptions for humic acid, sodium salt.

C. International Tolerances

There are no international tolerances or tolerance exemptions for humic acid, sodium salt. No CODEX maximum residue levels have been established for humic acid, sodium salt.

D. Conclusion

Therefore, based on the information and the data considered, EPA is establishing an exemption from the requirement of a tolerance for residues of humic acid, sodium salt.

VIII. 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–301017 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 September 18, 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 VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301017, 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).

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption 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).

X. 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: June 27, 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 § 180.1001, the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Humic acid, sodium salt (CAS Reg. No. 68131–04–4)	.....	Adjuvant, UV protectant.
* * * * * * *		

* * * * *

[FR Doc. 00–18097 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301022; FRL–6596–7]

RIN 2070–AB

Tebuconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective July 18, 2000. Objections and requests for hearings, identified by docket control number OPP–301022, must be received by EPA on or before September 18, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301022 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9362; and e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to

the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301022. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of May 26, 1999 (64 FR 28377) (FRL–6079–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of tebuconazole in or on garlic at 0.1 ppm, with an expiration date of June 30, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebuconazole on garlic for this year's growing season due to the continued inefficacy of registered fungicides at controlling rust under high pest pressure and continued mild winters which have led to infection earlier in the growing season. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebuconazole on garlic for control of rust in Arizona, California, and Nevada.

EPA assessed the potential risks presented by residues of tebuconazole in or on garlic. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 26, 1999 (64 FR 28377). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18-month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on garlic after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301022 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 September 18, 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 III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301022, 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).

IV. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 5, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.474 [Amended]

2. In § 180.474, by amending the table in paragraph (b), by revising the Expiration/Revocation Date of ''6/30/00'' for the commodity ''garlic'' to read ''12/31/01''.

[FR Doc. 00–18098 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1527; MM Docket No. 99–345; RM–9782]

Radio Broadcasting Services; Minerva, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bible Broadcasting Associates, allots Channel 264A to Minerva, NY, as the community's first local aural service. *See* 64 FR 70671, December 17, 1999. Channel 264A can be allotted to Minerva in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, at coordinates 43–48–33 NL; 74–00–41 WL, to avoid a short-spacing to Station WKBE, Channel 262B1, Warrensburg, NY, and Station WWFY, Channel 265A, Middlebury, VT. Channel 264A at Minerva, at the reference coordinates, is short-spaced to Station CBF-FM, Channel 264C1, Montreal, Quebec, Canada. Therefore, since Minerva is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian Government in the allotment, as a specially negotiated, short-spaced allotment, has been obtained. A filing window for Channel 264A at Minerva will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–345, adopted June 28, 2000, and released July 7, 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 New York, is amended by adding Minerva, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–18081 Filed 7–17–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 212

[EOIR No. 127P; AG Order No. 2315–2000]

RIN 1125–AA29

Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would create a uniform procedure for applying the law as enacted by the Antiterrrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule would allow certain aliens in deportation proceedings that commenced before April 24, 1996, to apply for relief pursuant to section 212(c) of the Immigration and Nationality Act (INA).

DATES: Written comments must be submitted on or before August 17, 2000.

ADDRESSES: Please submit written comments, original and two copies, to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470. Comments are available for public inspection at the above address by calling (703) 305–0470 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305-0470.

SUPPLEMENTARY INFORMATION:

What has Happened to Aliens Seeking Section 212(c) Relief Since Enactment of AEDPA?

Before the comprehensive revision of the INA by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, 110 Stat. 3009, section 212(c) of the INA provided that aliens who were lawfully admitted for permanent residence, who temporarily proceeded abroad voluntarily and not under an order of deportation, and who were returning to a lawful unrelinquished domicile in the United States of seven consecutive years, could be admitted to the United States in the discretion of the Attorney General. 8 U.S.C. § 1182(c) (1994). Although section 212(c) by its terms applied only to aliens in exclusion proceedings (*i.e.,* aliens seeking to enter at the border), it had been construed for many years also to allow aliens who were placed in deportation proceedings in the United States to apply for discretionary relief from deportation. See *Matter of Silva,* 16 I. & N. Dec. 26 (Board 1976); *Gonzalez* v. *INS,* 996 F.2d 804, 806 (6th Cir. 1993); *Ashby* v. *INS,* 961 F.2d 555, 557 & n.2 (5th Cir. 1992); *Tapica-Acuna* v. *INS,* 640 F.2d 223 (9th Cir. 1981); *Francis* v. *INS,* 532 F.2d 268, 273 (2d Cir. 1976).

In the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132, 110 Stat. 1214, Congress significantly restricted the availability of discretionary relief from deportation under section 212(c). Section 440(d) of AEDPA amended section 212(c) of the INA to provide that section 212(c) ''shall not apply to an alien who is deportable by reason of having committed any criminal offense covered by section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i).'' AEDPA § 440(d), as amended by IIRIRA section 306(d). The effect of section 440(d) of AEDPA was to render ineligible for relief under INA section 212(c) aliens deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, and multiple crimes of moral turpitude.

AEDPA did not contain a provision expressly stating whether section 440(d) was to be applied to criminal aliens who were placed in deportation proceedings, were convicted, or who committed the crimes rendering them deportable before AEDPA was passed. In *Matter of Soriano,* Interim Decision 3289 (Board 1996), the Board of Immigration Appeals (Board) held that section 440(d) of AEDPA did not apply to aliens who had applied for section 212(c) relief before AEDPA was passed, but did apply to all other aliens covered in the provision, even those whose criminal conduct or conviction occurred before AEDPA was issued.

At the request of the Immigration and Naturalization Service (INS), the Attorney General vacated the Board's decision in *Soriano* and certified the question to herself. On February 21, 1997, the Attorney General concluded that section 440(d) applied to (and thereby rendered ineligible for section 212(c) relief) all aliens who had committed one of the specified offenses and who had not finally been granted section 212(c) relief before AEDPA was passed. As construed in that decision, AEDPA section 440(d) rendered ineligible for section 212(c) relief even those aliens who were already in deportation proceedings and who had already applied for section 212(c) relief at the time AEDPA was passed.

How Have the Federal Courts Ruled on the Issue?

Following the Attorney General's decision in *Soriano,* the Board and Immigration Court denied applications for relief under section 212(c) filed by aliens who fell within the categories identified in AEDPA section 440(d), regardless of the date of the alien's crime, conviction, deportation proceedings, or application for section 212(c) relief. Numerous aliens challenged their final orders of deportation in both district courts and courts of appeals, arguing that AEDPA section 440(d) should not be applied ''retroactively'' to their cases, and that the Attorney General had erred in her construction of AEDPA section 440(d) in *Soriano.*

The *Soriano* issue has given rise to widespread litigation in almost every circuit. Only the D.C. Circuit has yet to decide a case on the *Soriano* issue. Eight circuits—the First, Second, Third,

Fourth, Sixth, Eighth, Ninth, and Eleventh Circuits—have now disagreed with the Attorney General's holding in *Soriano.* Seven of the eight circuits have held that section 440(d) of AEDPA does not apply to aliens who filed applications for section 212(c) relief before AEDPA was passed. *See Goncalves* v. *Reno,* 144 F.3d 110, 126–33 (1st Cir. 1998), *cert. denied,* 526 U.S. 1004 (1999); *Henderson* v. *INS,* 157 F.3d 106, 128–30 (2d Cir. 1998), *cert. denied sub nom. Reno* v. *Navas,* 526 U.S. 1004 (1999); *Sandoval* v. *Reno,* 166 F.3d 225, 239–42 (3d Cir. 1999); *Tasios* v. *Reno,* 204 F.3d 544, 547–52 (4th Cir. 2000); *Pak* v. *Reno,* 196 F.3d 666, 674–76 (6th Cir. 1999); *Shah* v. *Reno,* 184 F.3d 719, 724 (8th Cir. 1999); *Magana-Pizano* v. *INS,* 200 F.3d 603, 610–11 (9th Cir. 1999); *Mayers* v. *INS,* 175 F.3d 1289, 1301–04 (11th Cir. 1999).

The First Circuit has gone further and held that AEDPA section 440(d) likewise does not apply to aliens who were placed in deportation proceedings before AEDPA was passed, even if they did not actually request section 212(c) relief until after AEDPA was passed. *See Wallace* v. *Reno,* 194 F.3d 279, 285–88 (1st Cir. 1999). Other circuits have either likewise so held or strongly implied in their reasoning. *See Henderson,* 157 F.3d at 129–31; *Sandoval,* 166 F.3d at 241–42; *Mayers,* 175 F.3d at 1304; *see also Shah,* 184 F.3d at 724 (adopting reasoning of *Goncalves, Henderson,* and *Mayers*).

By contrast, the Seventh Circuit has held, consistent with the Attorney General's conclusion in *Soriano,* that section 440(d) of AEDPA applies even to aliens who were in deportation proceedings and had applied for section 212(c) relief when AEDPA was enacted. *See Turkhan* v. *Perryman,* 188 F.3d 814, 824–28 (7th Cir. 1999); *see also LaGuerre* v. *Reno,* 164 F.3d 1035, 1040–41 (7th Cir. 1998), *cert. denied,* 120 S. Ct. 1157 (2000).

Aliens have also argued that persons who were placed in deportation proceedings *after* AEDPA was enacted, but who committed their crimes and were convicted before that date, should be eligible for section 212(c) relief, and that AEDPA section 440(d) would be impermissibly retroactive if applied to them.

Three circuits—the Third, Fifth and Tenth—have affirmatively held that AEDPA section 440(d) *does* foreclose section 212(c) relief for aliens who were placed in proceedings after AEDPA was enacted, even if their criminal offenses were committed before the enactment of AEDPA. *See DeSousa* v. *Reno,* 190 F.3d 175, 185–87 (3d Cir. 1999); *Requena-Rodriguez* v. *Pasquarell,* 190 F.3d 299, 306–08 (5th Cir. 1999); *Jurado-Gutierrez* v. *Greene,* 190 F.3d 1135, 1147–52 (10th Cir. 1999), *cert. denied sub nom Palaganas-Suarez* v. *Greene,* 120 S. Ct. 1539 (2000). The Seventh Circuit has necessarily adopted that position as well. *See Turkhan,* 188 F.3d at 824–28 (holding that section 440(d) bars relief for *all* criminal aliens who had not been granted section 212(c) relief at the time AEDPA was enacted, necessarily including all those whose convictions occurred prior to AEDPA but whose deportation proceedings were initiated after enactment of AEDPA).

The Ninth Circuit has concluded that aliens who are deportable based on a qualifying criminal conviction entered prior to AEDPA but after a full trial are properly covered by AEDPA section 440(d) and therefore ineligible for section 212(c) relief. *See Magana-Pizano,* 200 F.3d at 610–11. The Ninth Circuit also held, however, that because of concerns about retroactivity and reliance, it could not exclude the possibility that section 440(d) should not be applied to an alien who pleaded guilty or nolo contendere to his disqualifying criminal offense and who can show that the plea ''was entered in reliance on the availability of discretionary waiver under § 212(c).'' *Id.* at 613. The court therefore remanded the case to the district court to determine whether the alien could show such reliance. *See id.* at 609. The First Circuit has issued a similar ruling, holding that section 440(d) does not apply in a case where an alien pleaded guilty to and was convicted of a qualifying offense before AEDPA was enacted but was placed in proceedings afterwards, if the alien could show that he entered his guilty plea in reliance on the state of the law before AEDPA's enactment. *See Mattis* versus *Reno,* —F.3d—, 2000 WL 554957, at *5-*9 (1st Cir. May 8, 2000). The First Circuit found no evidence of such reliance in that case, however. *See id.* at *9.

Additionally, the Fourth Circuit held that the statute is inapplicable, because of perceived retroactivity concerns, to an alien who pleaded guilty and was convicted before AEDPA was enacted even if his deportation proceedings were commenced after enactment of AEDPA. The court reasoned that the alien had detrimentally relied upon the availability of discretionary relief from deportation when he entered his guilty plea prior to the enactment date. *See Tasios,* 204 F.3d at 550–52.

Why is the Attorney General Implementing a Rule of Uniform Implementation of AEDPA for Aliens Seeking Section 212(c) Relief?

Issues concerning the construction of AEDPA section 440(d) affect a large number of aliens and are of considerable importance to the Department of Justice, including the INS and the Executive Office for Immigration Review (EOIR).

Approximately 800 aliens who have been found deportable by the Immigration Court and the Board have filed challenges to *Soriano* in federal district court. In addition, a number of cases in which the application of *Soriano* may be dispositive are still pending before the Immigration Court and the Board.

There is an important public interest in the uniform administration of the immigration laws. The Constitution grants Congress the power to establish ''an uniform Rule of Naturalization,'' U.S. Const. art. I, § 8, cl. 4, and it is generally desirable as well that immigration rules be consistent throughout the country to minimize distinctions among aliens based solely on geographical factors. There is also an important public interest in the completion of proceedings involving criminal aliens. The Department of Justice therefore sought to have the Supreme Court definitively resolve the *Soriano* issue October Term 1998 by petitioning for a writ of certiorari from the First Circuit's decision in *Goncalves* and the Second Circuit's decision in *Henderson.* On March 8, 1999, the Supreme Court denied those certiorari petitions.

In light of the Supreme Court's denial of certiorari in *Goncalves, Henderson/Navas,* and *LaGuerre* in February 2000, the decisions of eight circuits rejecting the decision in *Soriano,* and the large number of aliens who are affected by the issue, the Attorney General has considered whether the government's interest in the uniform administration of the immigration laws, avoiding unnecessary delays in the completion of proceedings involving criminal aliens, and the reasoning of the courts that have rejected her construction of AEDPA section 440(d) in *Soriano,* warrant a change in the Department's application of AEDPA section 440(d). In the interest of the uniform and expeditious administration of the immigration laws, the Attorney General proposes to acquiesce on a nationwide basis in those appellate decisions holding that AEDPA section 440(d) is not to be applied in the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted.

In particular, the Attorney General proposes to acquiesce in the courts' conclusion, as a matter of statutory construction, that Congress intended that section 440(d) of AEDPA not be applied to deportation proceedings that had been commenced before AEDPA was enacted into law. In reaching that conclusion, the courts generally have applied the first step of the two-step retroactivity analysis set forth by the Supreme Court in *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994). In the first step of that analysis, the courts inquire whether Congress has specifically addressed the temporal application of a statute. The courts that have rejected *Soriano* have generally relied on two factors to reach the conclusion that Congress specifically addressed the temporal application of AEDPA section 440(d). First, they have observed that Congress expressly made other provisions of AEDPA, such as section 413(f), applicable to pending deportation proceedings, and they have drawn a negative inference from that fact that Congress did not intend section 440(d) to be applied to pending proceedings. Second, examining the legislative history of AEDPA, they have noted that an earlier version of AEDPA in Congress would have applied what became section 440(d) to pending cases, but that provision was deleted by the conference committee. *See Magana-Pizano,* 200 F.3d at 611; *Pak,* 196 F.3d at 676; *Shah,* 184 F.3d at 724; *Mayers,* 175 F.3d at 1302–03; *Sandoval,* 166 F.3d at 241; *Henderson,* 157 F.3d at 129–30; *Goncalves,* 144 F.3d at 128–33.

These factors are specific to AEDPA and concern only the first step of the *Landgraf* analysis. They do not concern the question of whether application of section 440(d) to pending deportation proceedings would be regarded as retroactive under the second step of the *Landgraf analysis.* As to that question, the Attorney General maintains the Department of Justice's longstanding position that questions about an alien's deportability or eligibility for discretionary relief from deportation are matters inherently prospective in nature.

In the absence of adverse appellate precedent, the Attorney General will continue to apply AEDPA section 440(d) in the cases of aliens whose deportation proceedings were commenced *after* AEDPA was enacted into law, even if the alien committed his crime or was convicted of the crime before that date. The appellate decisions rejecting *Soriano* have concluded only that Congress did not intend to apply AEDPA section 440(d) to the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted, and do not (with the exception of the *Mattis, Tasios,* and *Magana-Pizano* decisions from the First, Fourth, and Ninth Circuits, respectively) question its applicability to cases commenced after that date.

The interpretation of AEDPA that would be changed by this proposed rule has, of course, affected many aliens whose deportation proceedings were commenced before enactment of AEDPA but who were unable to obtain section 212(c) relief in those proceedings because of the *Soriano* decision. This rule provides a mechanism for such aliens who now have a final order of deportation to reopen their immigration proceedings if they would have been eligible to apply for section 212(c) relief but for the *Soriano* decision.

The Attorney General has considered the important interest in avoiding delays in deportation proceedings and, on balance, has decided to define the class of aliens eligible for reopening under this proposed rule in categorical terms. For aliens who have a final order of deportation, based on established principles requiring exhaustion of all available administrative remedies, this rule could properly be written to limit relief on reopening only to those aliens who can show that they had affirmatively applied for relief under section 212(c) in their prior immigration proceedings and had appealed an immigration judge's adverse decision to the Board of Immigration Appeals. However, this rule does not require that eligible aliens make a specific factual showing that they previously applied for section 212(c) relief notwithstanding the *Soriano* decision, or appealed an immigration judge's adverse decision to the Board. Instead, this proposed rule is drafted in order to relieve both the government and the alien of the burdens of litigating such factual issues in each case at the motion to reopen stage. In light of the highly unusual circumstances of the *Soriano* litigation, the interest in expeditious enforcement of the immigration laws will be more effectively served by focusing attention on the merits of the claims for discretionary relief from deportation with respect to aliens in the defined class who otherwise would have been eligible to seek section 212(c) relief in their immigration proceedings but for the *Soriano* precedent.

Who is Eligible to Apply for Section 212(c) Relief?

Under this proposed rule, eligible aliens in pending immigration proceedings may apply for section 212(c) relief if their immigration proceedings were commenced prior to the enactment of AEDPA. This rule also provides a 90-day period for a defined class of aliens who had been adversely affected by the *Soriano* decision to file a motion to reopen in order to apply for section 212(c) relief. This special reopening rule would cover aliens who:

(1) had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) are subject to a final order of deportation;

(3) would presently be eligible to apply for section 212(c) relief if proceedings were reopened and section 212(c) as in effect on April 23, 1996 were applied; and

(4) either,

(i) applied for and were denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Soriano* (or its rationale), and not any other basis;

(ii) applied for and were denied section 212(c) relief by the Immigration Court and did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale); or

(iii) did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale).

This rule is not intended to apply to an alien who filed an application for section 212(c) relief that was denied by an immigration judge or the Board for reasons other than *Soriano* or its rationale. For example, an alien whose section 212(c) application was denied on the merits or before the AEDPA statute was enacted is not covered by this rule.

This rule is also not intended to apply to aliens outside the United States or aliens with a final order of deportation who have returned to the United States illegally. Moreover, this rule does not provide a basis for such aliens to seek or secure admission or parole into the United States to file a section 212(c) application.

What is Required to be Statutorily Eligible for Section 212(c) Relief?

The alien must be a lawful permanent resident, returning to a lawful, unrelinquished domicile of seven consecutive years, who may be admitted in the discretion of the Attorney General without regard to section 212(a) (other than paragraphs (3) and (9)(C)), who is deportable on a ground that has a

corresponding ground of exclusion, and who has not been convicted of one or more aggravated felonies for which he or she has served an aggregate term of imprisonment of at least five years. *See* INA section 212(c).

How is 7 Years Lawful, Unrelinquished Domicile in the United States Defined in this Rule?

The alien must have lived in the United States as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the INA for at least seven years, as defined in 8 CFR 212.3(f). For purposes of this rule, an alien begins accruing time as of the date of entry or admission as either a lawful permanent resident or lawful temporary resident and the accrual of time ceases when there is a final administrative order in the alien's case, as defined in 8 CFR 240.52 and 3.1(d)(2). When a motion to reopen is filed pursuant to this rule, the alien must have accrued seven years of lawful unrelinquished domicile as of the date of his or her final administrative order which the alien seeks to reopen.

Is There a Fee for Filing this Application?

If the alien has already filed a section 212(c) application and only needs to update the application, no fee is required. If the alien has not filed a section 212(c) application and has a final administrative order, he or she must file a motion to reopen. If the motion to reopen is granted, he or she must pay the fee required by 8 CFR 103.7(b)(1) for Form I–191 (currently $170). *See* 8 CFR 103.7.

An alien in deportation proceedings who has not filed an application shall submit the Form I–191 to the Immigration Court with the appropriate fee receipt attached.

If the case is pending before the Board, the alien must file a copy of the application with the motion and if the motion is granted and the case is remanded to the Immigration Court, the alien must then file the application with the appropriate fee. Nothing in this rule changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for a section 212(c) application after a motion to reopen is granted if such an application was not previously filed. Fees must be submitted to the local office of the INS in accordance with 8 CFR 3.31. An applicant who is deserving of section 212(c) relief and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

What is the Procedure for an Applicant who is Currently in Deportation Proceedings Before the Immigration Court or the Board of Immigration Appeals?

Immigration Court. An eligible alien who has a deportation proceeding pending before the Immigration Court should file a section 212(c) application pursuant to this rule, or request a reasonable period of time to submit an application pursuant to this rule. If the alien already has an application on file, he or she may file a supplement to the existing section 212(c) application.

Board of Immigration Appeals. An eligible alien who has a deportation proceeding pending before the Board should file with the Board a motion to remand to the Immigration Court to file a section 212(c) application or to supplement his or her existing section 212(c) application on the basis of his or her eligibility for such relief pursuant to this rule. If the alien appears to be statutorily eligible for relief and meets the other eligibility requirements defined in this rule, the Board shall remand the case to the Immigration Court for adjudication of the section 212(c) application.

What if an Applicant is the Subject of a Final Order of Deportation?

Aliens who have final administrative orders. An alien who is the subject of a final order of deportation who is eligible to apply for section 212(c) relief pursuant to this rule must file a motion to reopen with the Immigration Court or the Board of Immigration Appeals, whichever last held jurisdiction. The front page of the motion and any envelope containing the motion should include the notation ''Special 212(c) Motion.'' The fee for motions to reopen (currently $110) will be waived for aliens eligible for section 212(c) relief pursuant to this rule. The waiver of the fee is only applicable to motions to reopen seeking section 212(c) relief pursuant to this rule. The reopening and remand will be limited to issues concerning the alien's eligibility for relief under section 212(c) and may not address the alien's deportability or any other basis for relief from deportation, unless the Board is also reopening under other applicable provisions of law, in which case the issues may be consolidated for hearing as appropriate and all appropriate motions fees will apply.

If the alien previously filed an application for section 212(c) relief, he or she must file a copy of that application or a copy of a new application and supporting documents with the motion to reopen. If the motion to reopen is granted, an alien who previously filed an application will not be required to pay a new filing fee for the section 212(c) application, Form I–191.

If the alien has not previously filed an application for section 212(c) relief, the alien must submit a copy of his or her completed application and supporting documents with the motion to reopen. If the motion is granted, the alien must then file the application with the appropriate fee.

Cases remanded to the Board. If a case has been remanded to the Board by a federal court based on a judicial decision rejecting the Attorney General's decision in *Soriano,* the Board will comply with the order of the district or circuit court.

What happens if an applicant currently has a Motion to Reopen or motion to reconsider pending before the Immigration Court or the Board?

Immigration Court. If an alien has a pending motion to reopen or reconsider filed with the Immigration Court, he or she must file a new motion to reopen with the Immigration Court to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

Board of Immigration Appeals. If an alien has a pending motion to reopen or reconsider filed with the Board the alien must file a new motion to reopen with the Board to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

New Motion to Reopen. An alien may file only one motion to reopen for purposes of establishing eligibility under this rule. A new motion to reopen filed pursuant to this rule either before the Immigration Court or the Board, as appropriate, must specify whether the alien has any pending motions before the Immigration Court or the Board. All motions to reopen to apply for section 212(c) relief filed pursuant to this rule are subject to the restrictions specified in this rule. The usual time and number restrictions on motions, as articulated in 8 CFR 3.2 and 3.23, shall apply to all other motions.

Is an Alien with a Final Administrative Order of Deportation Required to File a Motion to Reopen under this Rule Within the 90-day Period in Order to Seek Section 212(c) Relief?

This rule is intended to provide a single, straightforward process for the defined class of aliens who were adversely affected by *Soriano* to reopen their immigration proceedings based on the interpretive change announced in this rule.

Accordingly, 8 CFR 3.44 is intended to provide the sole process for eligible aliens who have a final administrative order of deportation to reopen their cases on account of the change in the governing law announced in this rule in order to apply for section 212(c) relief. However, the existing reopening rules in 8 CFR 3.2 and 3.23 allow aliens to seek to reopen their cases notwithstanding the time limits on certain other grounds unrelated to a change in the law. As provided in 8 CFR 3.44(h), this rule would not prevent an alien from filing a motion to reopen under the existing rules based on any other basis or exception.

Does the Filing of an Application for Section 212(c) Relief stay the Execution of a Final Order?

The mere filing of a motion to reopen to apply for section 212(c) relief with the Immigration Court or the Board does not stay the execution of the final order of deportation. To request that execution of the final order be stayed by the INS, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6.

What Happens if an Application is Denied by the Immigration Court?

If the Immigration Court denies the section 212(c) application of an alien in deportation proceedings before the Immigration Court, the decision may be appealed to the Board along with, and under the same procedures as apply to, other issues, if any, properly before the Board on appeal.

What Happens if an Alien Fails to Appear for a Hearing Before the Immigration Court on a Section 212(c) Application?

An alien must appear for all scheduled hearings before an Immigration Court, unless his or her appearance is waived by the Immigration Court. An alien who is in deportation proceedings before the Immigration Court, and who fails to appear for a hearing regarding a section 212(c) application, will be subject to the applicable statutory and regulatory *in absentia* procedures (*i.e.,* section 242B of the INA as it existed prior to amendment by IIRIRA).

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain aliens to apply for INA section 212(c) relief; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provision of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

The regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section six of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041, telephone: (703) 305–0470.

Paperwork Reduction Act

This rule will increase the use of Form I–191 but will not result in a material change in the form, and the INS is adjusting the total burden hours of the form accordingly.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 will continue to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 8 U.S.C. 1103, 1252 note, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.44 is added to subpart C to read as follows:

§ 3.44 Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996.

(a) *Standard for Adjudication.* Except as provided in this section, a motion to reopen proceedings to apply for relief under section 212(c) of the Act will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings to apply for section 212(c) relief.* A motion to reopen proceedings to seek section 212(c) relief under this section must establish that the alien:

(1) Had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) Is subject to a final order of deportation,

(3) Would presently be eligible to apply for section 212(c) as in effect on or before April 23, 1996; and

(4) Either—

(i) Applied for and was denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale), and not any other basis;

(ii) Applied for and was denied section 212(c) relief by the Immigration Court, did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale); or (iii) Did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale).

(c) *Scope of reopened proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the Immigration Court or the Board reopens on other applicable grounds, all issues encompassed within the reopening proceedings may be considered together, as appropriate.

(d) *Procedure for filing a motion to reopen to apply for section 212(c) relief.* An eligible alien must file either a copy of the original Form I–191 application, and supporting documents, or file a copy of a newly completed Form I–191, plus all supporting documents. An alien who has a pending motion to reopen or reconsider before the Immigration Court or the Board must file a new motion to reopen to apply for section 212(c)relief pursuant to this section. The new motion to reopen shall specify any other motions currently pending before the Immigration Court or the Board that should be consolidated. The Service shall have 45 days from the date of service of the motion to reopen to respond. In the event the Service does not respond to the motion to reopen, the Service retains the right in the reopened proceedings to contest any and all issues raised.

(e) *Fee and number restriction for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for section 212(c) relief under this section. An eligible alien may file one motion to reopen to apply for section 212(c) relief under this section, even if a motion to reopen was filed previously in his or her case.

(f) *Deadline to file a motion to reopen to apply for section 212(c) relief under this section.* An alien with a final administrative order of deportation must file a motion to reopen within 90 days of the effective date of the final rule.

(g) *Jurisdiction over motion to reopen to apply for section 212(c)relief and remand of appeals.*

(1) Notwithstanding any other provisions, any motion to reopen filed pursuant to this section to apply for section 212(c) relief shall be filed with the Immigration Court or the Board, whichever last held jurisdiction over the case.

(2) If the Immigration Court has jurisdiction, and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall adjudicate only the section 212(c) application.

(3) If the Board has jurisdiction and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall remand the case to the Immigration Court solely for adjudication of the section 212(c) application (Form I–191).

(h) *Applicability of other exceptions to motions to reopen.* Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exception to the motion to reopen provisions of this part as defined in 8 CFR 3.2(c)(3) and 3.23(b).

(i) *Limitations on eligibility for reopening under this rule.* This special reopening rule does not apply to:

(1) Aliens who have departed the United States;

(2) Aliens with a final order of deportation who have illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184,1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Paragraph (g) is added to Section 212.3 to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

* * * * *

(g) *Relief for certain aliens who were in deportation proceedings before April 24, 1996.* Section 440(d) of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) shall not apply to any applicant for relief under this section whose deportation proceedings were commenced before the Immigration Court before April 24, 1996.

Dated: July 12, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–18210 Filed 7–17–00; 8:45 am]

BILLING CODE 4410–30–U

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1077]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The proposed revisions implement amendments to the EFTA contained in the Gramm-Leach-Bliley Act that require the disclosure of certain fees associated with automated teller machine (ATM) transactions. The amendments require ATM operators who impose a fee for providing electronic fund transfer services to disclose this fact in a prominent and conspicuous location on or at the ATM. The operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the machine or on a paper notice before the consumer is committed to completing the transaction. In addition, when the consumer contracts for an electronic fund transfer service, financial institutions are required to disclose that a fee may be imposed for electronic fund transfers initiated at an ATM owned by another entity.

DATES: Comments must be received by August 18, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1077, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.12.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Natalie E. Taylor, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve

System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452-3667. For the hearing impaired *only*, contact Janice Simms, Telecommunications Device for the Deaf (TDD), at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. The Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFT services by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFT services.

The Official Staff Commentary (12 CFR part 205 (Supp. I)) interprets the regulation, and provides guidance to financial institutions in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically, as necessary, to address significant questions that arise.

EFTA coverage is not limited to traditional financial institutions holding consumers' asset accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable.

II. The Gramm-Leach-Bliley Amendments to the EFTA

On November 12, 1999, the Gramm-Leach-Bliley Act (GLBA) became law (Pub. L. 106–102, 113 Stat. 1338). Sections 702, 703, and 705 of the GLBA contain amendments to the EFTA. The amendments require disclosure of ATM fees (sometimes referred to as ''surcharges'') imposed by ATM operators on consumers who hold accounts at other financial institutions. Many ATM operators including financial institutions that impose such a fee, currently disclose information about the fee to satisfy existing regulatory and network requirements.

Section 702 of the GLBA amends section 904(d) of the EFTA regarding services provided by entities other than the account-holding institution. An ATM operator that imposes a fee on a consumer for providing EFT services is required to provide notice of that fact in a prominent and conspicuous location on or at the ATM on which the EFT is initiated. The ATM operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the ATM or on a paper notice, before the consumer is committed to completing the transaction. No fee may be imposed unless proper notice is provided and the consumer elects to complete the transaction.

Section 703 of the GLBA amends section 905(a) of the EFTA regarding the disclosure of terms and conditions. The financial institution holding the consumer's account must include in its initial disclosures a notice that a fee may be imposed by (1) An ATM operator not holding the consumer's account, or (2) any national, regional, or local network used to complete the transaction.

Section 705 of the GLBA amends section 910 of the EFTA regarding liability of financial institutions. ATM operators are not liable for failing to comply with the requirement to post notice if the notice posted at an ATM is subsequently removed, damaged, or altered by any person other than the ATM operator.

III. Proposed Revisions to Regulation E

Pursuant to its authority under section 904(a) of the EFTA, the Board is proposing amendments to Regulation E to implement sections 702 and 703 of the GLBA. Section 705, like other statutory provisions regarding liability, would not be made part of the regulation.

To ease compliance, the Board proposes to add a new § 205.16 to address in a single location the rules related to disclosure of surcharges by ATM operators. Below is a section-by-section analysis of the proposed amendments including proposed revisions to §§ 205.3 and 205.7. A cross-reference would also be added to the Official Staff Commentary to existing § 205.9(a)(1). The Board contemplates issuing a final rule in early fall that would be effective 30 days thereafter.

Section 205.3—Coverage

3(b) Electronic Fund Transfer

Section 205.3(b) generally defines the term ''electronic fund transfer.'' Proposed paragraph (b)(6) would add balance inquiries at ATMs to the list of examples of an EFT. A balance inquiry would only be considered an EFT for purposes of proposed § 205.16. Thus, balance inquiries at ATMs would be subject to the new ATM fee disclosure requirements, but would not otherwise be subject to Regulation E requirements.

Section 205.7—Initial Disclosures

7(b) Content of Disclosures

Section 205.7(b) would be revised to implement section 703 of the GLBA. At the time a consumer contracts for an EFT service or before the first EFT, a financial institution is required to provide initial disclosures related to the EFT service, such as fees and a summary of the consumer's liability for unauthorized transfers. Section 703 of the GLBA amends section 905(a) of the EFTA by adding to the initial disclosures a provision that a fee may be imposed by an ATM operator not holding the consumer's account and by a national, regional, or local network used to complete the transfer. If a financial institution's disclosures do not currently include such a provision, it may comply with the new requirement by including an insert regarding ATM surcharges. The Board solicits specific comment on whether national, regional, or local networks separately impose fees and, thus, should be distinguished or whether it is sufficient to refer to ''any network'' in the disclosures as an alternative to the statutory language, as the proposal provides. In addition, the proposed language would capture national networks that impose a surcharge and that operate internationally.

Section 205.16—Disclosures at Automatic Teller Machines

A new § 205.16 would be added to implement generally section 702 of the GLBA. Proposed § 205.16 (a) defines ATM operator and provides, for purposes of this section, that a balance inquiry is an EFT. The proposal does not incorporate the definition for host transfer services contained in section 702 of the GLBA, as it seems unnecessary to do so.

Proposed §§ 205.16(b) and (c) set forth the ATM disclosure requirements. The disclosure required on the screen or on a paper notice does not apply to any ATM operator that lacks the technical capability to provide such information.

Appendix A to Part 205—Model Disclosure Clauses and Forms

Model language that reflects the new disclosure in proposed § 205.7(b)(11)

regarding fees that may be imposed by an ATM operator and by any network would be added to appendix A–2.

IV. Proposed Revisions to the Official Staff Commentary

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

Section 205.9(a)(1) requires financial institutions that include in the transaction amount a fee for completing an EFT at an electronic terminal to disclose the amount of the fee on the receipt and to display it on or at the terminal. Comment 9(a)(1)-1, which provides guidance on complying with the disclosure requirement, would be revised to provide a cross-reference to the notice requirements in proposed § 205.16(b) for ATM operators.

V. Form of Comment Letters

Comment letters should refer to Docket No. R–1077, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. The proposal would impose a disclosure requirement on account-holding financial institutions with respect to ATM surcharges and a notice requirement on ATM operators. The proposal exempts ATMs lacking technical capabilities from certain notice requirements until December 31, 2004.

The proposed amendments are not expected to have any significant impact on small entities. Many financial institutions that impose a fee for carrying out an EFT at an ATM already disclose the fee on a receipt and on the screen of a terminal or at the electronic terminal to satisfy existing requirements under § 205.9(a)(1). The proposed amendment would require that the notification regarding the fee be posted at the terminal and on the screen. The notice, however, is generic and can easily be programmed to be viewed on the screen and posted once at the terminal. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate disclosure of fees imposed for electronic fund transfers at ATMs owned by a party other than the account-holding financial institution. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of financial institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions are not expected to increase the ongoing annual burden of Regulation E. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of about 85,800 responses per respondent each year. Therefore the current amount of annual burden is estimated to be approximately 462,800 hours. Using the same hourly cost, the Federal Reserve estimates that there would be associated start up cost ranging from $1,600 to $5,000 per respondent, depending on size and location, for changing disclosures (or disclosure producing software) to include disclosures relating to ATM surcharges and for posting a notice regarding the surcharge at either the ATM or on the screen of the ATM.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology; and (d) capital and start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and record keeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Under § 205.3—Coverage, paragraph (b) would be revised to read as follows:

§ 205.3 Coverage.

* * * * *

(b) *Electronic fund transfer.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

(1) Point-of-sale transfers;

(2) Automated teller machine transfers;

(3) Direct deposits or withdrawals of funds;

(4) Transfers initiated by telephone; [and]

(5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal[.]►; and

(6) Balance inquiries at automated teller machines for purposes of § 205.16.◄

* * * * *

3. Under § 205.7—Initial Disclosures, new paragraph (b)(11) would be added to read as follows:

§ 205.7 Initial disclosures.

* * * * *

(b) Content of disclosures. * * *

►(11) *ATM surcharge.* A notice that a fee may be imposed by an automated teller machine operator as defined in § 205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry at an automated teller machine operated by a non-accountholding financial institution, and by any network used to complete the transaction.◄

* * * * *

4. A new § 205.16-Disclosures at Automatic Teller Machines, would be added to read as follows:

►§ 205.16 Disclosures at automatic teller machines.

(a) *Definitions.* (1) *Automated teller machine operator* means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer as defined in § 205.3(b), and that does not hold the account from which the transfer is made.

(2) *Balance inquiry as EFT.* For purposes of this section, the term *electronic fund transfer* includes a transaction that involves a balance inquiry initiated by a consumer.

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer shall:

(1) Provide notice that a fee will be imposed; and

(2) Disclose the amount of the fee.

(c) *Notice requirement.* (1) *On the machine.* Notice required by paragraph (b)(1) of this section shall be posted in a prominent and conspicuous location on or at the automatic teller machine.

(2) *Screen or paper notice.* The notice required by paragraph (b) of this section shall be given to the consumer, either by showing it on the screen of the automatic teller machine or by printing out a paper notice, before the consumer is irrevocably committed to completing the transaction.

(d) *Temporary exemption.* The notice requirement in paragraph (c)(2) of this section does not apply to any automated teller machine that lacks the technical capability to provide such information until December 31, 2004.

(e) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer only if

(1) The consumer receives the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction after receiving such notice.◄

* * * * *

5. Under Appendix A, in A–2 a new paragraph (j) would be added to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–2—Model Clauses for Initial Disclosures (§ 205.7(b))

* * * * *

►(j) *ATM surcharges (§ 205.7(b)(11)).* When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used to complete the transfer (and you may be charged a fee for a balance inquiry).◄

* * * * *

6. In Supplement I to Part 205, under Section 205.9—Receipts at Electronic Terminals; Periodic Statements, under Paragraph 9(a)(1)—Amount, paragraph 1. would be revised to read as follows:

Supplement I to Part 205—Official Staff Interpretations

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

* * * * *

Paragraph 9(a)(1)—Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after receiving notice of a fee. ►(See § 205.16(c) for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 7, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–17674 Filed 7–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Proposed Rule; Commission Solicits Demonstration Projects for Electronic Pre-Sale Disclosure.

SUMMARY: The Federal Trade Commission (the ''Commission'') solicits proposals to conduct demonstration projects implementing the proposed instructions for electronic dissemination of disclosure documents set forth in § 436.7 of the Commission's October 22, 1999, Notice of Proposed Rulemaking.

DATES: Proposals to conduct demonstration project start on July 18, 2000.

ADDRESSES: Petitions for permission to implement a demonstration projects should be addressed to: Federal Trade Commission, Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 22, 1999, the Commission published a Notice of Proposed Rulemaking (''NPR''), soliciting comment on a wide-range of proposed amendments to the Franchise Rule. One proposal would permit franchisors to comply with the Franchise Rule by furnishing prospective franchises with disclosures electronically, including through the Internet. Among other things, the proposal would: (1) Require franchisors to obtain a prospective franchisee's prior consent to receive disclosure electronically; (2) permit a prospective franchisee the right to obtain a paper disclosure document until the time of sale; and (3) require franchisors to provide a prospective franchisee with a paper summary

document, which among other things, includes the disclosure document's table of contents, as well as an admonition to download or otherwise preserve document's table of contents, as well as an admonition to download or otherwise preserve the electronic disclosure document. The proposed instructions would also specify the general formal for an electronic disclosure document, ensuring that the disclosure document could be downloaded or otherwise preserved, and that the disclosures are clear, conspicuous, and do not contain extraneous or distracting features (such as animation or pop-up screens). The proposal would permit franchisors to insert navigational tools that aid in the reviewing a disclosure document, including scroll bars, search features, and internal links.

The NPR comment period closed at the end of January, 2000. Forty comments, including five rebuttal comments, were submitted, several of which address the Commission's proposed Internet compliance instructions. Commission staff are currently analyzing the various comments and are preparing recommendations to the Commission on Internet compliance and other disclosure issues.

The Commission recognizes that, to date, few franchisors have sought to use the Internet or other electronic technologies to comply with the Franchise Rule. One reason is that the Rule itself requires franchisors to ''furnish'' a ''written'' disclosure document. Arguably, these requirements would preclude the use of the Internet until such time as the Commission clarifies the term ''furnish'' and revises the definition of ''written'' to include electronic communications. Another reason is fear of liability. Franchisors appear unwilling to incur the costs associated with developing an online disclosure mechanism without some assurances that their mechanism will pass Commission muster. This reluctance is understandable in light of the Commission's evolving policy in this area, as developed through the ongoing Franchise Rule amendment process.

The Commission believes that demonstration projects of the NPR's proposed Internet instructions would be in the public interest. In light of the franchise community's lack of practical experience with Internet disclosure, it is critical to probe the strengths and weaknesses of the NPR proposed instructions before they are incorporated into the final revised Rule. Through demonstration projects, the Commission can be alerted to any technological problems with the proposed instructions, receive feedback on whether franchisors are able to comply with the proposed instructions efficiently, as well as to identify areas where the proposed instructions might need fine-tuning. As a result, the final Rule's Internet instructions are likely to be much more precise, enabling franchisors to comply with the Rule efficiently and with significant cost reductions.

Accordingly, the Commission solicits all interested parties to submit petitions to the Commission for permission to implement a demonstration project, consistent with proposed section 436.7 of the NPR. The Commission will consider all such petitions on a case-by-case basis. To gain approval, the interested party must be able to demonstrate that its proposal meets the standards specified in proposed section 436.7 of the NPR. All demonstration projects will be on a trial basis only, and the Commission specifically reserves its right to terminate any demonstration project for any reason. To enable the Commission and the public to benefit from a demonstration project, an approved party must file written reports to appropriate Commission staff of its progress on at least a quarterly basis, describing any problems it has encountered with the proposed Internet instructions, any complaints from franchisors and franchisees, as well as any suggested improvements. Such reports will be placed on the public record.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–17994 Filed 7–17–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 00N–1380]

Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) and Center for Devices and Radiological Health (CDRH), is announcing a public meeting entitled ''Human Bone Allograft: Manipulation and Homologous Use in Spine and Other Orthopedic Reconstruction and Repair.'' The purpose of the meeting is to provide a public forum for gathering scientific information and views from the public to help FDA in clarifying the regulation of human bone allograft.

DATES: The public meeting will be held on Wednesday, August 2, 2000, from 8:30 a.m. to 5 p.m. Submit registration information by July 24, 2000. Submit written comments by September 1, 2000.

ADDRESSES: The public meeting will be held at the National Institutes of Health (NIH), NIH Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document. Submit registration information to Kathy A. Eberhart (address below).

FOR FURTHER INFORMATION CONTACT: For registration and meeting information: Kathy A. Eberhart, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1317, FAX 301–827–3079, e-mail: eberhart@cber.fda.gov.

For information about presentations: Martha A. Wells, Center for Biologics Evaluation and Research (HFM–305), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6106.

For information about this notice: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA began regulating tissue establishments in 1993 when it issued an interim rule entitled ''Human Tissue Intended for Transplantation'' that was codified in 21 CFR 1270 (58 FR 65514, December 14, 1993). In 1997 the agency replaced the interim rule with a final rule entitled ''Human Tissue Intended

for Transplantation'' (62 FR 40429, July 29, 1997). FDA announced a plan for a new approach to regulate cells and tissue-based products in February 1997 with two documents: ''Reinventing the Regulation of Human Tissue'' and ''A Proposed Approach to the Regulation of Cellular and Tissue-Based Products.'' FDA requested written comments on the proposed approach and on March 17, 1997, held a public meeting to solicit information and views from the interested public (62 FR 9721, March 4, 1997). FDA is implementing its regulatory plan for human cellular and tissue-based products with publication of a series of proposed regulations. On May 14, 1998, FDA published a proposed regulation entitled ''Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products'' (63 FR 26744). On September 30, 1999, FDA published a proposed rule entitled ''Suitability Determination for Donors of Human Cellular and Tissue-Based Products'' (64 FR 52696). The comment period for the 1999 proposed rule was reopened on April 18, 2000 (65 FR 20774), and will close on July 17, 2000.

The proposed rule for establishment registration and listing also proposed criteria that human cellular and tissue-based products must meet for regulation solely under section 361 of the Public Health Service Act. One of the criteria is that these products be ''minimally manipulated.'' ''Minimal manipulation'' is defined in proposed § 1271.3(g) for structural tissue, as processing that does not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement. Another criterion, ''homologous use,'' is defined in proposed § 1271.3(d). ''Homologous use'' means the use of a cellular or tissue-based product for replacement or supplementation or for structural tissue-based products, used for the same basic function that it fulfills in its native state, in a location where such structural function normally occurs. FDA has received numerous comments to the dockets of both proposed rules (Docket Nos. 97N–484R and 97N–484S) about the application of the definitions for minimal manipulation and homologous use in the regulation of human allograft bone products. Many of these comments request that FDA clarify how these definitions will be applied to bone products that are preshaped for use in spinal fixation. Other comments cite the long history of safe use of bone products.

This public meeting is being organized by CBER and CDRH to provide stakeholders with the opportunity to provide additional information to the agency. The agency is requesting information concerning the characteristics of various bone products as they relate to the agency's proposed definitions for ''minimal manipulation'' and ''homologous use.'' Such information will be considered for future guidance to industry in conjunction with the regulations discussed above. Stakeholders are encouraged to provide information about the following issues:

1. Which processing procedures applied to human bone allograft fall within, or outside of, FDA's proposed definition for ''minimal manipulation?''

2. Which uses of human bone allograft fall within, or outside of, FDA's proposed definition for ''homologous use?''

3. What risks to health have been identified and characterized for human bone allograft products?

4. What controls have been identified to adequately address the risk to health of human bone allograft products?

5. What industry standards for bone allograft products are available, and what standards will be needed in the future?

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments by September 1, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the appropriate docket number found in brackets in the heading of this document. FDA is requesting that those persons making oral presentations at the public meeting also submit in writing comments based on their statements by September 1, 2000, to ensure their adequate consideration. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Registration and Requests for Oral Presentations

Those persons interested in attending the public meeting should fax or e-mail their registration information (including name, title, firm name, address, and telephone and fax numbers), a summary of their presentation, and a notice of intent to make an oral presentation, to Kathy Eberhart (address above) by Monday, July 24, 2000. Registration is not required for attendees not making a presentation. However, all interested persons are encouraged to preregister because space is limited. An announcement of the public meeting and the notice of intent to participate may be accessed at http://www.fda.gov/cber/scireg/htm. FDA will post a draft agenda on this web site about a week before the meeting.

If time permits, those who did not submit a notice of participation will be given an opportunity to speak at the end of the meeting.

If you need special accommodations due to a disability, please contact Kathy Eberhart at least 7 days in advance.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript will also be available at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: July 10, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–17942 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 172

[FHWA Docket No. FHWA–98–4350]

RIN 2125–AE45

Administration of Engineering and Design Related Services Contracts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the administration of engineering and design related services contracts in order to establish procedures to be followed when using Federal-aid highway funds for the procurement of engineering and design related services, materials, equipment, or supplies. The proposed regulation describes procurement methods contracting agencies are to use when acquiring these services or related items. This proposed rule implements 23 U.S.C. 112(b), as amended by section 307 of the National Highway System Designation Act of 1995 (NHS Act) and section 1205(a) of the Transportation Equity Act for the 21st Century (TEA–21), by requiring States to award Federal-aid highway engineering and design service contracts: In accordance

with the provisions of title IX of the Federal Property and Administrative Services Act of 1949, or by use of equivalent State qualifications-based procedures unless a State has previously established by statute a formal procurement procedure for engineering and design related services.

DATES: Written comments are due on or before September 18, 2000. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Signed written comments should refer to the docket number that appears at the top of this document and should be submitted to the Docket Clerk, U.S. DOT Dockets Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notifications of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Moss, Office of Program Administration, (HIPA–10), (202)–366–4654, or Mr. Steven Rochlis, Office of the Chief Counsel, (HCC–30), (202)–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

Background

The FHWA's regulation on the administration of engineering and design related services contracts, 23 CFR part 172, draws its authority from 23 U.S.C. 112. Title 23, U.S.C., section 112 references the provisions of title IX of the Federal Property and Administrative Services Act of 1949 (Pub. L. 92–582, 86 Stat. 1278 (1972); 40 U.S.C. 541, *et seq.*) which provides the qualifications-based procedures to be followed for the selection of engineering and design related services. Section 307 of the NHS Act, Public Law 104–59, 109 Stat. 568, modified 23 U.S.C. 112 by requiring grantees of Federal highway funds to accept indirect cost rates for architectural and engineering firms which are established in accordance with the Federal Acquisition Regulations (FAR) and accepted by a cognizant Federal or State agency if such rates are not under dispute. The law also specifies that once a firm's indirect cost rate is accepted, the grantee shall apply those indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment. The NHS Act also provided a period of time in which State Departments of Transportation (State DOTs) could adopt statutes to allow use of alternate State procedures other than those provided for in the NHS Act.

Section 1205 of TEA–21, Public Law 105–178, 112 Stat. 107 (1998), further modified 23 U.S.C. 112(b) by removing the provision allowing State DOTs to adopt alternate procedures for the procurement of design and engineering consultants.

The changes made to 23 U.S.C. 112(b) by these two laws, as well as provisions in 23 U.S.C. 106(c) relating to the assumption by the State of responsibilities of the Secretary for project design and construction, require the FHWA to modify 23 CFR part 172, subpart A—Procurement Procedures. In addition, the FHWA proposes to add several new terms to the definition section to clarify existing terms used in the regulation.

The small purchase procedures section would be revised by raising the maximum value for small purchases from $25,000 to $100,000.

The references to Certification Acceptance (CA), and § 172.15, Alternate Procedures, which were incorporated into 23 CFR part 172 to implement Certification Acceptance, would be removed since Certification Acceptance was repealed by section 1601 of the TEA–21.

Reference to the Secondary Road Plan (SRP) and the Combined Road Plan (CRP) demonstration project, would be removed since these programs are no longer being funded.

Section-by-Section Analysis

Section 172.1 Purpose and Applicability

The statement of purpose and applicability would be revised to remove the references to the Certification Acceptance Plans that were repealed by the TEA–21; to remove an obsolete reference to the Secondary Road Plans; and to remove the reference to Combined Road Plans because the Secondary and Combined Road programs are no longer being funded. Additionally, paragraph (b) would be revised to limit the use of State statutes for an alternate procedure to those enacted into law before June 9, 1998 (the date the TEA–21 was enacted) and redesignated as § 172.5(b).

Section 172.3 Definitions

The term ''cognizant agency'' would be added to the list of definitions to mean any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the cost principles contained in the Federal Acquisition Regulations (title 48, Code of Federal Regulations). This term was used in section 307(a) of the NHS Act. The term ''competitive negotiation'' would be revised to prohibit the use of procurement procedures enacted into State law after the enactment of TEA–21 (June 9, 1998). The terms ''contract modification,'' ''extra work,'' ''fixed fee,'' ''prenegotiation audit,'' and ''scope of work'' would be removed since they would not be used in the new regulation.

Section 172.5 General Principles

This section, with the exception of paragraphs (b) and (e) would be removed. The material that was covered in § 172.5 is either covered by other regulations or is not required by law. The provisions of paragraph (a) need for consultant services in management roles are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statute requirements (see 49 CFR 18.4). In addition, States would still have to meet the provisions of 23 U.S.C. 112(b)(2) that require a State to award architectural and engineering contracts relating to highway construction in the same manner as a contract for architectural and engineering services is negotiated under the Brooks Architects-Engineering Act (title IX of the Federal Property and Administrative Services

Act of 1949, as amended; 40 U.S.C 541–544) , or equivalent State based qualifications requirements. Alternatively, prior to TEA–21, the Congress authorized a State to adopt a formal procedure for procurement of architectural and engineering services adopted by State statute (23 U.S.C. 112(b)(2)(B)(ii)).

Paragraph (b), written procedures, would be redesignated as § 172.9(a).

The provisions of paragraph (c) are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4).

The provisions of paragraph (d) are still required to be consistent with 49 CFR 18.36 and 18.37, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4). But, as stated in the comments for § 172.5(a), State and local agencies must meet the requirements of 23 U.S.C. 112(b)(2).

The requirements of paragraph (e), the Disadvantaged Business Enterprise program, are specified under 49 CFR part 26. Paragraph (e), is redesignated as paragraph (b).

The requirements of paragraph (f), Contractual responsibilities, are still required to be consistent with 49 CFR 18.36(a) which requires States to use the same procurement procedures as if they were procuring with State funds, except where such procedures are inconsistent with Federal statutory requirements (see 49 CFR 18.4). Because States would be responsible for approving contracts and settlements, provided such contracts and settlements follow the same policies and procedures as the State would follow using State funds, there would no longer be a requirement that such settlements be approved by the FHWA, except for settlements on contracts requiring approval under proposal § 172.9.

Section 172.7 Methods of Procurement

This section would be redesignated as § 172.5 and revised. This section generally covers the methods that can be used for procurement of design engineering services. Those same methods are still in the regulations, but have been simplified. The small purchase section would be revised by raising the maximum amount for procurement by small purchase procedures from $25,000 to $100,000 to conform to the simplified acquisition threshold set in 41 U.S.C. 403(11) and 49 CFR 18.36(d). The threshold has already been raised from $25,000 to $100,000 by FHWA memorandum dated June 26, 1996, from the Director, Office of Engineering to the FHWA Regional Administrators to implement the change in the final rule published in the **Federal Register** of April 19, 1995 (60 FR 19646) concerning 49 CFR part 18 and the change to 41 U.S.C. 403(11), which defines the ''simplified acquisition threshold'' to mean $100,000.

Section 172.9 Compensation

The information in paragraph (a) of this section would be transferred to a new paragraph (a) in § 172.7, Audit Principles, and revised to prohibit procedures enacted into State law after June 9, 1998 (TEA–21). Paragraphs (b), (c), and (d) would be removed.

Section 172.11 Contract Modification

This section would be removed to promote uniformity with the common grant rule, 49 CFR part 18. The requirements of this section would in general be addressed by 49 CFR 18.36 and 18.52.

Section 172.13 Monitoring the Contract Work

This section would be removed to promote uniformity with the common grant rule, 49 CFR part 18. The requirements of this section would be covered by 49 CFR 18.36 which generally involve State procedures.

Section 172.15 Alternate Procedures

This section would be removed as it implemented 23 U.S.C. 117, Certification Acceptance, which was repealed by section 1601 of the TEA–21 in 1998.

Sections 172.21, 172.23, and 172.25 of Subpart B

Subpart B, Private sector involvement program, would be removed. This section was developed to meet the requirements of the Intermodel Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, section 1060, Private sector involvement program, but has never been funded.

For ease of reference the following distribution table is provided:

Old section	New section
172.1(a)	172.1 Revised.
172.1(b)	172.1 Revised and 172.5(b) Revised.
172.3	172.3 Revised.
Cognizant agency	Added.
Competitive negotiation.	Revised.
Contract modification	Removed.
Extra work	Removed.
Fixed fee	Removed.
Prenegotiation audit	Removed.
Scope of work	Removed.
172.5(a)	Removed.
172.5(b)	172.9(a).
172.5(c)	Removed.
172.5(d)	Removed.
172.5(e)	172.5(b) Revised.
172.5(f)	Removed.
172.7 introductory paragraph.	172.5 introductory paragraph revised and 172.5(a)(1) Revised.
172.7(a)	172.5(a)(1) Revised.
172.7(a)(3)(ii)(B)	172.5(a)(2) Revised.
172.7(b)	172.5(a)(4) Revised.
172.7(c)	172.5(a)(3) Revised.
172.7(c)(1)	172.5(a)(3) Revised.
172.7(c)(1)(i)	172.5(a)(3)(i) Revised.
172.7(c)(1)(ii)	172.5(a)(3)(ii) Revised.
172.7(c)(1)(iii)	172.5(a)(3)(iii) Revised.
172.7(c)(2)	Removed.
None	172.7(b) Added.
None	172.7(c) Added.
None	172.7(d) Added.
72.9(a)	172.7(a) Revised.
172.9(b), (c), and (d)	Removed.
None	172.9(a), (b), (c) Added.
172.11	Removed.
172.13	Removed.
172.15	Removed.
172 Subpart B	Removed.
172.21	Removed.
172.23	Removed.
172.25	Removed.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This proposed action would

not adversely affect, in a material way, any sector of the economy. In addition, these proposed changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely proposes to amend current regulations governing the administration of engineering and design related services contracts based on changes in law. It is not anticipated that these proposed changes would affect the total Federal funding available under the engineering and design related services contracts. Consequently, it is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the anticipated effects of this proposed rule on small entities, such as local governments and businesses. Based on the evaluation, the FHWA hereby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Essentially, this rulemaking proposes to implement certain changes in 23 U.S.C. 112 as mandated by recent laws. The rulemaking would eliminate sections that were removed by the recent laws and other sections that were not required directly by law or that were outdated. Thus, the projected impact upon the small entities affected is expected to be negligible because the FHWA merely proposes to update, simplify, and clarify existing procedures. We specifically invite comments on the projected economic impact of this proposal and would consider such information before completing our Regulatory Flexibility Act analysis when adopting final rules.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose a Federal mandate resulting in the expenditure by State, Local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State Law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 172

Government procurement, Grant programs—transportation, Highways and roads.

Issued on: June 26, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise part 172 of title 23, Code of Federal Regulations to read as set forth below:

PART 172—ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICE CONTRACTS

Sec.

172.1 Purpose and applicability.
172.3 Definitions.
172.5 Methods of procurement.
172.7 Audit principles.
172.9 Approvals.

Authority: 23 U.S.C. 112, 114(a), 302, 315, and 402; 40 U.S.C. 541 *et seq.*; 41 U.S.C. 253 and 259; sec. 1205(a), Pub L. 105–178, 112 Stat. 107 (1998); sec. 307, Pub. L. 104–59, 109 Stat. 568 (1995); sec. 1060, Pub. L. 102–240, 105 Stat. 1914, 2003 (1991); 48 CFR 12 and 31; 49 CFR 1.48(b) and 18.

§ 172.1 Purpose and applicability.

To prescribe policies and procedures for exceptions to the general contracting regulations under the common grant rule, 49 CFR part 18. It is not the intent of this regulation to release the grantee from the other requirements of the common rule. The exceptions involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost.

§ 172.3 Definitions.

As used in this part:

Cognizant agency means any Federal or State agency that has conducted and issued an audit report of the consultant's indirect cost rate that has been developed in accordance with the cost principles contained in the Federal Acquisition Regulations (FAR).

Competitive negotiation means any form of negotiations that utilizes the following;

(1) Qualifications-based procedures complying with title IX of the Federal Property and Administrative Services

Act of 1949 (Pub. L. 92–582, 86 Stat. 1278 (1972));

(2) Equivalent State qualifications-based procedures; or

(3) A formal procedure permitted by State statute that was enacted into State law prior to the enactment of Public Law 105–178 (TEA–21) on June 9, 1998.

Consultant means the individual or firm providing engineering and design related services as a party to the contract.

Contracting agencies means State Departments of Transportation (State DOTs) or local governmental agencies that are responsible for the procurement of engineering and design services.

Engineering and design services means program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a construction project subject to 23 U.S.C. 112(a).

Private sector engineering and design firms means any individual or private firm (including small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals as defined in 49 CFR part 26) contracting with a State to provide engineering and design services.

§ 172.5 Methods of procurement.

(a) *Procurement.* The procurement of Federal-aid highway contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, and architectural related services as specified in 23 U.S.C. 112(b)(2) shall be evaluated and ranked by the contracting agency using one of the following procedures:

(1) *Competitive negotiation.* Contracting agencies shall use competitive negotiation for the procurement of engineering and design related services when Federal-aid highway funds are involved in the contract. These contracts shall use qualifications-based selection procedures in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541–544) or equivalent State qualifications-based requirements. The proposal solicitation (project, task, or service) process shall be by public announcement/advertisement or any other method that assures qualified in-State and out-of-State consultants/firms are given fair opportunity to be awarded the contract.

(2) *State statutory procedures.* States may procure engineering and design related services using a different selection procedure as long as these procedures are established in State statutes and the State statutes were enacted into law before June 9, 1998.

(3) *Noncompetitive negotiation.* Noncompetitive negotiation may be used to procure engineering and design related services on Federal-aid participating contracts when it is not feasible to award the contract using competitive negotiation or equivalent State qualifications-based procedures. Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The service is available only from a single source;

(ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(iii) After solicitation of a number of sources responding is determined to be inadequate.

(4) *Small purchases.* Contracting agencies may use small purchase procedures for the procurement of engineering and design related services when the contract costs do not exceed $100,000.

(b) *Disadvantaged Business Enterprise (DBE) program.* The contracting agency shall give consideration to DBE firms in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26.

§ 172.7 Audit principles.

(a) *Performance of audits.* When contracts or subcontracts awarded in accordance with 23 U.S.C. 112(b)(2)(A) are audited, the audits shall comply with the cost principles contained in the Federal Acquisition Regulations provided at 48 CFR part 31. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(b) *Audits for indirect cost rate.* Contracting agencies shall use the indirect cost rate established by a cognizant agency audit for the consultant, if such rates are not under dispute. The grantee shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative ceilings. The cost rates have a one-year applicability period. Other procedures may be used if permitted by State statutes that were enacted into law prior to June 9, 1998.

(c) *Disputed audits.* When the indirect cost rate(s) as established by the cognizant audit in paragraph (b) of this section are in dispute, then the parties of any proposed new contract must negotiate a provisional indirect cost rate or perform an independent audit to establish a rate for the specific contract.

(d) *Prenotification; confidentiality of data.* Only the FHWA and recipients and sub-recipients of Federal-aid highway funds may share the audit information, provided that the firm is given notice of such use. Audit information shall not be provided to other firms or any other government agencies without the written permission of the affected firms, unless otherwise required by Federal law, regulation, or pursuant to court order.

§ 172.9 Approvals.

(a) *Written procedures.* The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures and all revisions shall be approved by the FHWA and describe, as appropriate to the particular method of procurement, each step used:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant,

(2) In soliciting proposals from prospective consultants,

(3) In the evaluation of proposals and the ranking/selection of a consultant,

(4) In negotiation of the reimbursement to be paid to the selected consultant,

(5) In monitoring the consultant's work and in preparing a consultant's performance evaluation when completed, and

(6) In determining the extent to which the consultant, who is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors or deficiencies in design furnished under its contract.

(b) *Contracts.* Contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c) or that do not fall under the small purchase procedures in § 172.5(a)(4) shall be submitted to the FHWA for approval.

(c) *Major projects.* Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.

[FR Doc. 00–17774 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209640–93]

RIN 1545–AR69

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of cross-referencing notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the Telefile Voice Signature test that was published in the **Federal Register** on December 27, 1993. The notice of proposed rulemaking cross-referenced temporary regulations published on the same day that provided that an individual federal income tax return completed as part of the Telefile Voice Signature test would be treated as a return that is signed, authenticated, verified and filed by the taxpayer as required by the Internal Revenue Code.

EFFECTIVE DATE: These regulations are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the IRS issued proposed regulations (REG–209640–93) in the **Federal Register** (58 FR 68335) under sections 6012, 6061, and 6065 relating to the TeleFile Voice Signature test. The notice of proposed rulemaking cross-referenced temporary regulations published in the **Federal Register** for the same day (58 FR 68295). Although written comments and requests for a public hearing were solicited, no written or oral comments were received and no public hearing was requested or held. Because the applicable temporary regulations apply only to 1992 and 1993 calendar year returns, the IRS has decided not to finalize those regulations and, thus, is withdrawing the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published in the **Federal Register** on December 27, 1993, (58 FR 68335) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–18118 Filed 7–17–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–6838–1]

RIN 2050–AE07

Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous of Hazardous Wastes; Notice of Data Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment; extension of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is making available for public comment human health and ecological risk data and information relating to an exemption from hazardous waste management that we discussed in a **Federal Register** notice published on November 19, 1999 (64 FR 63382).

That exemption, also known as the Hazardous Waste Identification Rule (HWIR) exemption, would exempt listed hazardous wastes that meet chemical-specific exemption levels from hazardous waste management requirements. We plan to develop these exemption levels based on results from the Multimedia, Multipathway and Multireceptor Risk Assessment (3MRA) Model. The model evaluates simultaneous chemical exposures across several environmental media and multiple exposure pathways to human and ecological receptors in order to estimate the health and ecological effects in the vicinity of waste disposal units that may receive exempt listed hazardous waste.

We presented the underlying methodology and assumptions for the 3MRA Model in the **Federal Register** (64 FR 63382, November 19, 1999). However, because of technical difficulties, we were unable to propose exemption levels in that notice. Since then, we have made numerous revisions to correct and improve the model. On April 12, 2000, we provided an updated version of the 3MRA Model (beta Version 0.98) and results for five chemicals in Docket number F–99–WH2P–FFFFF. On April 19, 2000 (65 FR 20934), we also extended the original deadline of May 17, 2000 for public comment on the modeling methodology to August 15, 2000 to allow additional time for review and comment.

Today's notice makes available the results for 36 chemicals, including the five already in the docket, using an updated version of the model (Version0.98r). In addition, today's notice again extends the comment period for the November 19, 1999 HWIR exemption discussion until October 16, 2000, to coincide with the comment period for today's notice.

Before using a revised risk assessment to support a final regulatory action, we would propose the HWIR exemption. Comments on the 1999 HWIR discussion and on today's notice will be helpful to us in developing such a proposal.

Please note that today's notice does *not* re-open the comment period on the revisions to the mixture and derived-from rules that were proposed in the November 19, 1999 **Federal Register** notice (64 FR 63382, Sections I–IV, Sections XXI–XVI (as applicable) of the preamble and the proposed regulatory language amending 40 CFR Part 261).

DATES: We will accept comments through October 16, 2000 on: (1) The concentration-based HWIR exemption discussed in the November 19, 1999 **Federal Register** notice; (2) the possible revisions to the Land Disposal Restriction (LDR) treatment standard which were also discussed in the November 19, 1999 **Federal Register** notice; and (3) the additional data presented today. The discussions of the HWIR exemption and possible LDR treatment standard revisions are in Sections V–XX and Sections XXI–VVCI (as applicable) of the preamble, 64 FR 63382 (November 19, 1999).

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2000–WH2A–FFFFF to: (1) If using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number

F–2000–WH2A–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption and should include commenter's mailing address and phone number. If comments are not submitted electronically, we are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name and address. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. We emphasize that the submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave., N.W., Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The notice and other material associated with this action can be electronically accessed on the Internet at http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm.

The official record will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the record maintained at the address in **ADDRESSES** at the beginning of this document. The comments and other documents associated with the November 19, 1999 HWIR notice (64 FR 63382) are kept in docket Number F–99–WH2P–FFFFF.

We will respond to submitted comments, whether written or electronic, in a notice in the **Federal Register** or in a response to comments document placed in the official record. We will not immediately reply to electronically submitted comments other than to seek clarification of comments that may be garbled in transmission or during conversion to paper form, as discussed above.

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, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For specific information on the risk modeling, contact David Cozzie, (703) 308–0479, *cozzie.david@epa.gov*, Stephen Kroner, (703) 308–0468, *kroner.stephen@epa.gov*, or Zubair Saleem, (703) 308–0467, *saleem.zubair@epa.gov*, all at: Office of Solid Waste, U.S. Environmental Protection Agency (5307W), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

SUPPLEMENTARY INFORMATION:

Outline

I. How does today's notice relate to the November 19, 1999 notice?
II. How has EPA revised the 3MRA Model since the November 19, 1999 notice?
III What are the results from the revised 3MRA Model?
IV. What are possible next steps for the HWIR exemption development?

I. How Does Today's Notice Relate to the November 19, 1999 Notice?

The November 19, 1999 **Federal Register** notice includes (among other things) a discussion of a concentration-based exemption (the ''HWIR exemption'') from the definition of hazardous waste (64 FR 63382 and docket number F–99–WH2P–FFFFF; see also the web site at: *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm* for accessing the background documents electronically). Included in this discussion is an extensive explanation of the risk assessment methodology that would support this exemption. The version of the 3MRA Model that we discussed was beta Version 0.93. However, because of unresolved technical issues, we did not have results from the risk assessment modeling, other than for acrylonitrile, to include in the **Federal Register** notice.

Since then, we have addressed many technical issues and have revised the 3MRA Model. Today's notice and materials placed in the docket explain the revisions to the 3MRA Model and present results for 36 chemicals using beta Version 0.98r of the revised model.

II. How Has EPA Revised the 3MRA Model Since the November 19, 1999 Notice?

The details of all the improvements and corrections made to beta Version 0.93 of the model and incorporated in beta Version 0.98r of the model are presented in the RCRA docket number F–2000–WH2A–FFFFF. Selected examples of changes we made are listed below.

(1) We changed the aerated tank and surface impoundment modules so that exceedance of constituent solubility in either the leachate or the waste management unit (WMU) causes an error that terminates the model instead of issuing a warning that allows the model to continue. We changed this because solubility exceedance indicates that the modules were not operating within the intended range of simulation; that is, the modules were not intended to model concentrations that lead to the formation of non-aqueous phase liquids.

(2) We changed the national data table in the aquifer module so that it simulates the effects of fractures and heterogeneities on the transport of chemical constituents. We did this to better reflect the nature of the subsurface environment in the vicinity of the WMUs.

(3) We corrected an error in the data transfer between the ecological risk module and the exit-level processor (ELP–I). Previously the ELP–I misread the ecological receptor group descriptors. In beta version 0.98r, the ecological module outputs the ecological receptor groups directly to the ELP–I; and

(4) We changed the exit-level processor (ELP–II) to correct the exposure pathway tables to include only those pathways relevant to the chemical. The ELP–II now refers to flags in the human health benchmarks database to identify appropriate exposure pathways for each chemical. This specific change has occurred since Version 0.98.

III. What Are the Results From the Revised 3MRA Model?

We are presenting the draft chemical-specific results estimated for the three waste forms (liquids, solids, and semi-solids) and one WMU type (landfill) for the four Protection Groups. The Protection Groups are based on five different types of protection criteria: (1) Cancer risk level, (2) human health hazard quotient (HQ) for non-cancer risks, (3) ecological hazard quotient, (4) population percentile, and (5)

probability of protection. We summarize below these five risk protection criteria, which are explained more fully in the November 19, 1999 **Federal Register** notice (see 64 FR 63440–41).

1. Cancer Risk Level. The cancer risk level refers to an individual's increased chance of developing cancer over a lifetime due to potential exposure to a specific chemical. A risk of 1×10^{-6} translates as an increased chance of one in a million of developing cancer during a lifetime. EPA generally sets regulations at risk levels between 10^{-6} and 10^{-4} (in other words, from one in a million to one in ten thousand increased chance of developing cancer during a lifetime). In the RCRA hazardous waste listing program, a 10^{-6} risk is usually the presumptive ''no list'' level, while 10^{-5} is often used to determine which wastes are considered initial candidates for listing (see, for example the petroleum listing at 63 FR 42117). We present the exemption levels that result from both the 10^{-6} and 10^{-5} risk levels.

2. Human Health Hazard Quotient (HQ). The HQ refers to the likelihood that exposure to a specific chemical would result in a non-cancer health problem (for example, neurological effects). The hazard quotient is developed by dividing the estimated exposure to a chemical by the reference dose (RfD) for oral ingestion pathways or reference concentration (RfC) for inhalation pathways. The RfD and RfC are estimates of the highest dose or concentration that might be considered safe. An HQ of one or lower indicates that the given exposure is unlikely to result in adverse health effects. We present the exemption levels that result from both an HQ of 0.1 and an HQ of one.

3. Ecological Hazard Quotient. The ecological hazard quotient is analogous to the human health HQ, except that the estimated exposure is compared with an ecological toxicity value rather than the human health RfD or RfC. For this analysis, we developed two types of toxicity values: (1) An ecological benchmark that is calculated as a dose (mg/kg-day); and (2) a chemical stressor concentration limit (CSCL) that is calculated as a concentration in media (for example, mg/l). The ecological hazard quotient protects ecological health at the population or community level, and, therefore, focuses on reproductive and developmental effects, rather than the mortality of individual organisms. In developing ecological toxicity values for this risk assessment, we used the geometric mean between a No Observed Effects Level (NOEL) and a Lowest Observed Effects Level (LOEL). (Human health reference doses are based on NOELs.) We present the exemption levels that result from an ecological hazard quotient of one and ten.

4. Population Percentile. The population percentile is the percentage of the population protected at the specified risk level and hazard quotient for a single environmental setting. A setting is a specific WMU at a specific site, and is defined by combining site-based information (such as unit size, and unit placement) with variable environmental information (such as rainfall and exposure rates) from regional and national databases. We present the exemption levels that result from population protection percentiles of 99% and 95%.

5. Probability of Protection. The probability of protection is defined as the percentage of WMU settings that meet the population percentile criteria. We present the exemption levels that result from probability of protection levels of 95% and 90%.

Four Protection Groups are defined below in Table 1. These four groups serve to indicate the potential range of risk decision measures, from most conservative (Group 1) to least conservative (Group 4), that we could use to determine the final HWIR regulatory exemption levels. These groups are not an exhaustive look at all possible combinations of potential risk protection criteria; we could choose a different combination altogether. An example of how these protection groups are interpreted is provided below with respect to the Group 2 criteria for cancer and hazard effects, respectively:

—99% of the population are subject to cancer risks of less than 10–6 across 90% of the environmental settings;

—99% of the population experience exposure levels below an HQ of 1 across 90% of the environmental settings.

TABLE 1.—PROTECTION GROUPS EVALUATED

	Protection group 1	Protection group 2	Protection group 3	Protection group 4
Risk Level	10^{-6}	10^{-6}	10^{-5}	10^{-5}
Human Health HQ	0.1	1	1	1
Ecological HQ	1	1	1	10
Population Percentile	99	99	99	95
Probability of Protection	95	90	90	90

In addition to the five risk criteria set forth in the November 19, 1999 notice and summarized above, we present a sixth risk criterion: the distance to human and ecological receptors from the WMU. We developed draft chemical-specific waste concentrations for each of the 36 chemicals that are presented in Tables 2 through 13. These tables present results using 3MRA Model beta Version 0.98r for the four Protection Groups based on the above five protection criteria and for various distances to human receptors corresponding to 500, 1000, 2000 meters and for a fixed distance of 2000 meters for ecological receptors.

We also are presenting in the RCRA Docket (Docket Number F–2000–WH2A–FFFFF) the following results for the same 36 chemicals:

1. *Protection Group Results.* Draft chemical-specific waste concentrations identified for the additional four waste management unit types (waste piles, aerated tanks, surface impoundments, and land application units);

2. *Sub-Population Results.* Risk or hazard quotient estimates for each sub-population (residents, gardeners, beef/dairy farmers, and fishers) for each Protection Group and the three waste forms and the five waste management unit types;

3. *Cohort Results.* Risk or hazard quotient estimates for each cohort (infants, children 1–12, and adults 13 and older) for each Protection Group and the three waste forms and the five waste management unit types; and

4. *Exposure Pathway Results.* Risk or hazard quotient estimates for each exposure pathway (air inhalation, soil ingestion, water ingestion, crop ingestion, beef ingestion, milk ingestion, fish ingestion, shower inhalation, breast milk, all inhalation, all ingestion, all

ingestion and inhalation, and groundwater total) for each Protection Group for the three waste forms and for the five waste management unit types.

Copies of beta Version 0.98r of the 3MRA Model are in the RCRA docket on a CD. Beta Version 0.98r of the 3MRA model can also be accessed at: http://www.epa.gov/ceampubl/hwir.htm.

IV. What Are Possible Next Steps for the HWIR Exemption Development?

Since the results of the HWIR risk assessment model presented in today's notice are intrinsically related to the discussion of the HWIR risk assessment found in the November 19, 1999 **Federal Register** notice, we have harmonized the comment periods for both to end on October 16, 2000. However, please note that nothing in today's notice changes or supersedes the information in the November 19, 1999 **Federal Register** notice. The information available by today's notice specifically supplements the information in Sections XV–XIX in the preamble to the November 19, 1999 discussion. Please note that today's notice does *not* re-open the comment period on the revisions to the mixture and derived-from rules that were proposed in the same November 19, 1999 **Federal Register** notice. That comment period ended February 17, 2000.

We will review the public comments and decide if further revisions to the HWIR risk assessment (3MRA) model or other aspects, *e.g.,* implementation, of the HWIR exemption are necessary. We also are continuing independent testing and external peer review of the HWIR risk assessment model. Before we go final with an HWIR exemption, we will publish a proposal to allow public comment on a unified package. The exact timing of this proposal will depend on the extent of the public and peer review comments.

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Table 2. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	5	note 1	5	90	note 1	90	90	note 1	90	200	note 1	200
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.006	note 1	0.006	0.07	note 1	0.07	0.09	note 1	0.09
Aniline	62-53-3	0.7	100*	0.7	2	100*	2	40	100*	40	60	100*	60
Arsenic	7440-38-2	10	20	10	20	40	20	100	40	40	100	5000	100
Barium	7440-39-3	2000	600	600	30000	2000	2000	30000	2000	2000	50000	60000	50000
Benzene	71-43-2	30	1000*	30	60	1000*	60	600	1000*	600	800	1000*	800
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	100	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	20	10	10	200	50	50	200	50	50	700	90	90
Chlorobenzene	108-90-7	30	100*	30	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	200	700	200	500	3000	500	7000	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	5	note 1	5	50	note 1	50	50	note 1	50	60	note 1	60
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.005	note 1	0.005	0.009	note 1	0.009	0.4	note 1	0.4	0.6	note 1	0.6
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	6	1000*	6	200	1000*	200	200	1000*	200	600	1000*	600
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	3	6000	3	5	10000*	5	400	10000*	400	400	10000*	400
Nickel [+2]	7440-02-0	700	600	600	6000	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	40	1000*	40	700	1000*	700	700	1000*	700	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	5	70	5	300	70	70	400	800	400
Phenol	108-95-2	6000	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.3	1000*	0.3	6	1000*	6	6	1000*	6	7	1000*	7
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.002	0.0006	0.0006	0.004	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	300	5000*	300	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.4	8	0.4	0.4	8	0.4	0.6	100*	0.6
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	800	6000	800	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	300	200	200	600	300	300	9000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.2	5	0.2	0.4	9	0.4	4	9	4	7	200	7
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 3. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	30	note 1	30	800	note 1	800	800	note 1	800	1000	note 1	1000
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.01	note 1	0.01	0.7	note 1	0.7	1	note 1	1
Aniline	62-53-3	0.4	1000*	0.4	0.8	1000*	0.8	8	1000*	8	8	1000*	8
Arsenic	7440-38-2	0.003	0.3	0.003	0.006	0.6	0.006	0.3	0.6	0.3	0.4	10	0.4
Barium	7440-39-3	4	700	4	80	1000*	80	80	1000*	80	200	1000*	200
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	40	100*	40
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.03	10*	0.03	0.5	10*	0.5	0.5	10*	0.5	0.7	10*	0.7
Carbon disulfide	75-15-0	5	10	5	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.7	100*	0.7	40	100*	40	40	100*	40	40	100*	40
Chloroform	67-66-3	0.3	3	0.3	0.7	8	0.7	8	8	8	9	300	9
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	8	note 1	8
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 1	0.0002	0.0005	note 1	0.0005	0.02	note 1	0.02	0.07	note 1	0.07
Lead	7439-92-1	note 2	2	2	note 2	3	3	note 2	3	3	note 2	40	40
Methyl ethyl ketone	78-93-3	80	2000	80	7000	6000	6000	7000	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	0.5	1000*	0.5	1	1000*	1	100	1000*	100	200	1000*	200
Nickel [+2]	7440-02-0	0.6	1000*	0.6	40	1000*	40	40	1000*	40	50	1000*	50
Nitrobenzene	98-95-3	0.04	100*	0.04	0.9	100*	0.9	0.9	100*	0.9	1	100*	1
Pentachlorophenol	87-86-5	0.3	1*	0.3	0.6	1*	0.6	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	400	4000	400	8000	10000*	8000	8000	10000*	8000	10000*	10000*	10000*
Pyridine	110-86-1	0.05	10*	0.05	0.9	10*	0.9	0.9	10*	0.9	3	10*	3
Silver	7440-22-4	note 4	4000	note 4	6	10000*	6	6	10000*	6	8	10000*	8
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000005	0.00001*	0.000005	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.1	100*	0.1	6	100*	6	10	100*	10
Thallium [+1]	7446-18-6	0.003	1	0.003	0.05	1	0.05	0.05	1	0.05	0.05	1	0.05
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	10	6	6	700	20	20	700	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 4	20	note 4	70	60	60	70	60	60	100	900	100
Trichloroethylene	79-01-6	0.5	0.3	0.3	1	0.6	0.6	60	0.6	0.6	70	20	20
Vinyl chloride	75-01-4	0.004	0.2	0.004	0.008	0.4	0.008	0.5	0.4	0.4	0.6	10	0.6
Zinc	7440-66-6	30	2000	30	600	3000	600	600	3000	600	700	10000*	700

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 4. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	CASRN	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+	HH#	Eco	Lowest+
Acetonitrile	75-05-8	10	note 1	10	400	note 1	400	400	note 1	400	600	note 1	600
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.005	note 1	0.005	0.07	note 1	0.07	0.09	note 1	0.09
Aniline	62-53-3	0.3	100*	0.3	0.5	100*	0.5	5	100*	5	8	100*	8
Arsenic	7440-38-2	0.003	0.04	0.003	0.006	0.08	0.006	0.3	0.08	0.08	0.4	10	0.4
Barium	7440-39-3	4	20	4	80	60	60	80	60	60	200	900	200
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	40	100*	40
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.03	0.3	0.03	0.5	0.7	0.5	0.5	0.7	0.5	0.7	10*	0.7
Carbon disulfide	75-15-0	5	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.7	30	0.7	40	100*	40	40	100*	40	40	100*	40
Chloroform	67-66-3	0.2	3	0.2	0.3	8	0.3	2	8	2	4	300	4
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	8	note 1	8
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	note 4	note 1	note 4	0.0005	note 1	0.0005	0.004	note 1	0.004	0.005	note 1	0.005
Lead	7439-92-1	note 2	note 4	note 4	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	30	note 1	30	600	note 1	600	600	note 1	600	800	note 1	800
Methylene chloride	75-09-2	0.5	600	0.5	1	1000*	1	100	1000*	100	200	1000*	200
Nickel [+2]	7440-02-0	0.6	5	0.6	40	9	9	40	9	9	50	900	50
Nitrobenzene	98-95-3	0.04	100*	0.04	0.4	100*	0.4	0.4	100*	0.4	0.4	100*	0.4
Pentachlorophenol	87-86-5	0.03	1*	0.03	0.06	1*	0.06	0.9	1*	0.9	1*	1*	1*
Phenol	108-95-2	400	4000	400	8000	10000*	8000	8000	10000*	8000	10000*	10000*	10000*
Pyridine	110-86-1	0.05	10*	0.05	0.5	10*	0.5	0.5	10*	0.5	0.5	10*	0.5
Silver	7440-22-4	note 4	0.7	note 4	6	3	3	6	3	3	8	10*	8
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000005	0.00001*	0.000005	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.1	100*	0.1	6	100*	6	10	100*	10
Thallium [+1]	7446-18-6	note 4	0.2	note 4	0.05	0.8	0.05	0.05	0.8	0.05	0.05	1*	0.05
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	10	6	6	700	20	20	700	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 4	20	note 4	70	60	60	70	60	60	100	900	100
Trichloroethylene	79-01-6	0.5	0.3	0.3	1	0.6	0.6	60	0.6	0.6	70	20	20
Vinyl chloride	75-01-4	0.004	0.2	0.004	0.008	0.4	0.008	0.4	0.4	0.4	0.5	9	0.5
Zinc	7440-66-6	30	5	5	600	8	8	600	8	8	700	800	700

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 5. Chemical-specific Waste Concentrations for Landfills Category (mg/kg)
(Human Receptors - 500 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	60	note 1	60	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.01	note 1	0.01	0.04	note 1	0.04	0.7	note 1	0.7	0.7	note 1	0.7
Aniline	62-53-3	0.7	100*	0.7	2	100*	2	60	100*	60	70	100*	70
Arsenic	7440-38-2	10	20	10	20	40	20	100	40	40	100	5000	100
Barium	7440-39-3	2000	800	800	30000	3000	3000	30000	3000	3000	50000	60000	50000
Benzene	71-43-2	50	1000*	50	100	1000*	100	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	60	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	30	100*	30	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	200	2000	200	500	4000	500	7000	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	5	note 1	5	50	note 1	50	50	note 1	50	60	note 1	60
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.005	note 1	0.005	0.01	note 1	0.01	0.4	note 1	0.4	0.8	note 1	0.8
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	50	1000*	50	800	1000*	800	800	1000*	800	1000*	1000*	1000*
Methyl methacrylate	80-62-6	600	note 1	600	1000*	note 1	1000*	1000	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	100	10000*	100	300	10000*	300	2000	10000*	2000	4000	10000*	4000
Nickel [+2]	7440-02-0	1000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	70	1000*	70	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	5	70	5	300	70	70	400	800	400
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	3	1000*	3	50	1000*	50	50	1000*	50	70	1000*	70
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.005	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	400	5000*	400	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.4	8	0.4	0.4	8	0.4	0.6	100*	0.6
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	1000	10000*	1000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	400	200	200	800	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.4	8	0.4	0.7	30	0.7	20	30	20	30	300	30
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 6. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	6	note 1	6	200	note 1	200	200	note 1	200	600	note 1	600
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.009	note 1	0.009	0.09	note 1	0.09	0.3	note 1	0.3
Aniline	62-53-3	0.9	100*	0.9	3	100*	3	60	100*	60	70	100*	70
Arsenic	7440-38-2	10	20	10	20	40	20	1000	40	40	3000	5000	3000
Barium	7440-39-3	2000	600	600	30000	2000	2000	30000	2000	2000	70000	60000	60000
Benzene	71-43-2	30	1000*	30	50	1000*	50	700	1000*	700	700	1000*	700
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	40	10	10	700	50	50	700	50	50	1000*	90	90
Chlorobenzene	108-90-7	40	100*	40	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	300	700	300	600	3000	600	10000*	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	8	note 1	8	60	note 1	60	60	note 1	60	90	note 1	90
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.006	note 1	0.006	0.06	note 1	0.06	0.6	note 1	0.6	0.8	note 1	0.8
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	20	1000*	20	600	1000*	600	600	1000*	600	900	1000*	900
Methyl methacrylate	80-62-6	80	note 1	80	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	4	6000	4	8	10000*	8	400	10000*	400	600	10000*	600
Nickel [+2]	7440-02-0	800	600	600	9000	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	50	1000*	50	900	1000*	900	900	1000*	900	1000*	1000*	1000*
Pentachlorophenol	87-86-5	1	1	1	4	70	4	300	70	70	500	800	500
Phenol	108-95-2	8000	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.4	1000*	0.4	7	1000*	7	7	1000*	7	20	1000*	20
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.002	0.0006	0.0006	0.004	0.003	0.003	0.01	0.003	0.003	0.01	0.01	0.01
Tetrachloroethylene	127-18-4	500	5000*	500	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.6	8	0.6	0.6	8	0.6	0.9	100	0.9
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	6000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	400	200	200	700	300	300	9000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.2	5	0.2	0.4	9	0.4	6	9	6	9	200	9
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 7. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	20	note 2	20	500	note 2	500	500	note 2	500	2000	note 2	2000
Acrylonitrile	107-13-1	0.005	note 2	0.005	0.01	note 2	0.01	0.7	note 2	0.7	5	note 2	5
Aniline	62-53-3	0.4	1000*	0.4	0.9	1000*	0.9	7	1000*	7	10	1000*	10
Arsenic	7440-38-2	0.004	0.3	0.004	0.007	0.6	0.007	0.4	0.6	0.4	0.6	10	0.6
Barium	7440-39-3	4	700	4	90	1000*	90	90	1000*	90	600	1000*	600
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	70	100*	70
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.04	10*	0.04	0.6	10*	0.6	0.6	10*	0.6	1	10*	1
Carbon disulfide	75-15-0	6	10	6	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.5	100*	0.5	20	100*	20	20	100*	20	70	100*	70
Chloroform	67-66-3	0.3	3	0.3	0.6	8	0.6	6	8	6	100	300	100
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 2	0.3	6	note 2	6	6	note 2	6	40	note 2	40
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 2	0.0002	0.0004	note 2	0.0004	0.02	note 2	0.02	0.2	note 2	0.2
Lead	7439-92-1	note 1	2	2	note 1	3	3	note 1	3	3	note 1	40	40
Methyl ethyl ketone	78-93-3	80	2000	80	6000	6000	6000	6000	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	60	note 2	60	1000*	note 2	1000*	1000*	note 2	1000*	1000*	note 2	1000*
Methylene chloride	75-09-2	0.4	1000*	0.4	0.8	1000*	0.8	100	1000*	100	500	1000*	500
Nickel [+2]	7440-02-0	1	1000*	1	50	1000*	50	50	1000*	50	200	1000*	200
Nitrobenzene	98-95-3	0.03	100*	0.03	0.6	100*	0.6	0.6	100*	0.6	20	100*	20
Pentachlorophenol	87-86-5	0.4	1*	0.4	0.8	1*	0.8	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	500	4000	500	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.04	10*	0.04	1	10*	1	1	10*	1	6	10*	6
Silver	7440-22-4	note 3	4000	note 3	7	10000*	7	7	10000*	7	30	10000*	30
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	2E-006	0.00001*	2E-006	6E-006	0.00001*	6E-006	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.3	100*	0.3	7	100*	7	50	100*	50
Thallium [+1]	7446-18-6	0.003	1*	0.003	0.05	1*	0.05	0.05	1*	0.05	0.09	1*	0.09
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	20	6	6	800	20	20	800	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 3	20	note 3	60	60	60	60	60	60	600	900	600
Trichloroethylene	79-01-6	0.4	0.3	0.3	0.8	0.6	0.6	60	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.003	0.2	0.003	0.007	0.4	0.007	0.4	0.4	0.4	0.9	10	0.9
Zinc	7440-66-6	40	2000	40	700	3000	700	700	3000	700	3000	10000*	3000

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 8. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	20	note 1	20	500	note 1	500	500	note 1	500	600	note 1	600
Acrylonitrile	107-13-1	0.003	note 1	0.003	0.006	note 1	0.006	0.09	note 1	0.09	0.3	note 1	0.3
Aniline	62-53-3	0.3	100*	0.3	0.6	100*	0.6	7	100*	7	10	100*	10
Arsenic	7440-38-2	0.004	0.04	0.004	0.007	0.08	0.007	0.4	0.08	0.08	0.6	10	0.6
Barium	7440-39-3	4	20	4	90	60	60	90	60	60	600	900	600
Benzene	71-43-2	0.07	20	0.07	0.4	40	0.4	30	40	30	70	100	70
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.04	0.3	0.04	0.6	0.7	0.6	0.6	0.7	0.6	1	10*	1
Carbon disulfide	75-15-0	6	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.5	30	0.5	20	100*	20	20	100*	20	70	100*	70
Chloroform	67-66-3	0.2	3	0.2	0.4	8	0.4	4	8	4	4	300	4
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.3	note 1	0.3	6	note 1	6	6	note 1	6	30	note 1	30
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0002	note 1	0.0002	0.0004	note 1	0.0004	0.005	note 1	0.005	0.005	note 1	0.005
Lead	7439-92-1	note 2	note 3	note 3	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	40	note 1	40	700	note 1	700	700	note 1	700	1000*	note 1	1000*
Methylene chloride	75-09-2	0.4	600	0.4	0.8	1000*	0.8	100	1000*	100	400	1000*	400
Nickel [+2]	7440-02-0	1	5	1	50	9	9	50	9	9	200	900	200
Nitrobenzene	98-95-3	0.03	100*	0.03	0.4	100*	0.4	0.4	100*	0.4	0.6	100*	0.6
Pentachlorophenol	87-86-5	0.04	1*	0.04	0.07	1*	0.07	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	500	4000	500	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.04	10*	0.04	0.5	10*	0.5	0.5	10*	0.5	0.8	10*	0.8
Silver	7440-22-4	note 3	0.7	note 3	7	3	3	7	3	3	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000006	0.00001*	0.000006	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.06	100*	0.06	0.3	100*	0.3	7	100*	7	50	100*	50
Thallium [+1]	7446-18-6	note 3	0.2	note 3	0.05	0.8	0.05	0.05	0.8	0.05	0.09	1*	0.09
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	20	6	6	800	20	20	800	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	note 3	20	note 3	60	60	60	60	60	60	600	900	600
Trichloroethylene	79-01-6	0.4	0.3	0.3	0.8	0.6	0.6	60	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.003	0.2	0.003	0.007	0.4	0.007	0.4	0.4	0.4	0.5	9	0.5
Zinc	7440-66-6	40	5	5	700	8	8	700	8	8	3000	800	800

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 9. Chemical-specific Waste Concentrations for Landfills Category (mg/kg)
(Human Receptors - 1000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.008	note 1	0.008	0.03	note 1	0.03	0.7	note 1	0.7	3	note 1	3
Aniline	62-53-3	0.9	100*	0.9	3	100*	3	70	100*	70	100*	100*	100*
Arsenic	7440-38-2	10	20	10	20	40	20	1000	40	40	3000	5000	3000
Barium	7440-39-3	2000	800	800	30000	3000	3000	30000	3000	3000	70000	60000	60000
Benzene	71-43-2	80	1000*	80	300	1000*	300	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	200	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	60	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	40	100*	40	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	300	2000	300	600	4000	600	10000*	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	8	note 1	8	60	note 1	60	60	note 1	60	200	note 1	200
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.008	note 1	0.008	0.1	note 1	0.1	0.6	note 1	0.6	7	note 1	7
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	50	1000*	50	800	1000*	800	800	1000*	800	1000*	1000*	1000*
Methyl methacrylate	80-62-6	500	note 1	500	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	200	10000*	200	300	10000*	300	3000	10000*	3000	6000	10000*	6000
Nickel [+2]	7440-02-0	800	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	80	1000*	80	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	1	1	1	4	70	4	300	70	70	500	800	500
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	3	1000*	3	60	1000*	60	60	1000*	60	200	1000*	200
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.008	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	500	5000*	500	1000	5000*	1000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.03	5	0.03	0.6	8	0.6	0.6	8	0.6	1	100*	1
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	3000	10000*	3000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	1000	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.4	8	0.4	0.8	30	0.8	20	30	20	50	300	50
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 10. Chemical-specific Waste Concentrations for Solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	6	note 1	6	200	note 1	200	200	note 1	200	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.005	note 1	0.005	0.01	note 1	0.01	0.1	note 1	0.1	10*	note 1	10*
Aniline	62-53-3	0.7	100*	0.7	4	100*	4	60	100*	60	100*	100*	100*
Arsenic	7440-38-2	20	20	20	40	40	40	2000	40	40	8000	5000	5000
Barium	7440-39-3	3000	600	600	50000	2000	2000	50000	2000	2000	100000*	60000	60000
Benzene	71-43-2	20	1000*	20	50	1000*	50	800	1000*	800	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	60	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	400	30	30	1000*	50	50	1000*	50	50	1000*	1000*	1000*
Carbon disulfide	75-15-0	50	10	10	900	50	50	900	50	50	1000*	90	90
Chlorobenzene	108-90-7	60	100*	60	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	400	700	400	700	3000	700	10000*	3000	3000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1
Dichlorophenoxyacetic acid, 2,4-	94-75-7	10	note 1	10	90	note 1	90	90	note 1	90	800	note 1	800
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.01	note 1	0.01	0.2	note 1	0.2	0.7	note 1	0.7	40	note 1	40
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	20	1000*	20	600	1000*	600	600	1000*	600	1000*	1000*	1000*
Methyl methacrylate	80-62-6	100	note 1	100	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	5	6000	5	10	10000*	10	400	10000*	400	10000*	10000*	10000*
Nickel [+2]	7440-02-0	3000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	60	1000*	60	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000
Pentachlorophenol	87-86-5	3	1	1	7	70	7	400	70	70	1000*	800	800
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	0.5	1000*	0.5	10	1000*	10	10	1000*	10	1000*	1000*	1000*
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.003	0.0006	0.0006	0.007	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	900	5000*	900	2000	5000*	2000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.05	5	0.05	0.9	8	0.9	0.9	8	0.9	7	100*	7
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	2000	2000	5000*	4000	4000	5000*	4000	4000	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	6000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	900	300	300	10000	300	300	10000*	2000	2000
Vinyl chloride	75-01-4	0.3	5	0.3	0.5	9	0.5	8	9	8	700	200	200
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 11. Chemical-specific Waste Concentrations for Liquids Category (mg/l)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	30	note 2	30	2000	note 2	2000	2000	note 2	2000	9000	note 2	9000
Acrylonitrile	107-13-1	0.05	note 2	0.05	0.3	note 2	0.3	1	note 2	1	50	note 2	50
Aniline	62-53-3	0.5	1000*	0.5	6	1000*	6	9	1000*	9	600	1000*	600
Arsenic	7440-38-2	0.007	0.3	0.007	0.2	0.6	0.2	0.7	0.6	0.6	40	10	10
Barium	7440-39-3	7	700	7	600	1000*	600	600	1000*	600	1000*	1000*	1000*
Benzene	71-43-2	0.4	20	0.4	1	40	1	60	40	40	100*	100*	100*
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.07	10*	0.07	2	10*	2	2	10*	2	10*	10*	10*
Carbon disulfide	75-15-0	20	10	10	100*	30	30	100*	30	30	100*	100*	100*
Chlorobenzene	108-90-7	0.9	100*	0.9	70	100*	70	70	100*	70	100*	100*	100*
Chloroform	67-66-3	0.4	3	0.4	0.8	8	0.8	100	8	8	700	300	300
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.8	note 2	0.8	40	note 2	40	40	note 2	40	100*	note 2	100*
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0004	note 2	0.0004	0.0008	note 2	0.0008	0.2	note 2	0.2	0.5	note 2	0.5
Lead	7439-92-1	note 1	2	2	note 1	3	3	note 1	3	3	note 1	40	40
Methyl ethyl ketone	78-93-3	500	2000	500	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Methyl methacrylate	80-62-6	100	note 2	100	1000*	note 2	1000*	1000*	note 2	1000*	1000*	note 2	1000*
Methylene chloride	75-09-2	3	1000*	3	8	1000*	8	300	1000*	300	1000*	1000*	1000*
Nickel [+2]	7440-02-0	3	1000*	3	200	1000*	200	200	1000*	200	1000*	1000*	1000*
Nitrobenzene	98-95-3	0.07	100*	0.07	10	100*	10	10	100*	10	80	100*	80
Pentachlorophenol	87-86-5	0.7	1*	0.7	1*	1*	1*	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	2000	4000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.2	10*	0.2	6	10*	6	6	10*	6	10*	10*	10*
Silver	7440-22-4	note 4	4000	note 4	30	10000*	30	30	10000*	30	2000	10000*	2000
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000008	0.00001*	0.000008	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.4	100*	0.4	1	100*	1	20	100*	20	100*	100*	100*
Thallium [+1]	7446-18-6	0.005	1*	0.005	0.1	1*	0.1	0.1	1*	0.1	1*	1*	1*
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	60	6	6	1000*	20	20	1000*	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	4	20	4	100	60	60	100	60	60	1000*	900	900
Trichloroethylene	79-01-6	0.8	0.3	0.3	20	0.6	0.6	80	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.006	0.2	0.006	0.08	0.4	0.08	0.7	0.4	0.4	30	10	10
Zinc	7440-66-6	80	2000	80	2000	3000	2000	2000	3000	2000	10000*	10000*	10000*

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 12. Chemical-specific Waste Concentrations for Semi-solids Category (mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	30	note 1	30	700	note 1	700	700	note 1	700	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.004	note 1	0.004	0.008	note 1	0.008	0.2	note 1	0.2	0.7	note 1	0.7
Aniline	62-53-3	0.4	100*	0.4	0.7	100*	0.7	9	100*	9	50	100*	50
Arsenic	7440-38-2	0.007	0.04	0.007	0.2	0.08	0.08	0.7	0.08	0.08	40	10	10
Barium	7440-39-3	7	20	7	600	60	60	600	60	60	1000*	900	900
Benzene	71-43-2	0.4	20	0.4	1	40	1	60	40	40	100*	100*	100*
Benzo(a)pyrene	50-32-8	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*	0.001*
Beryllium	7440-41-7	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Bis-(2-ethylhexyl) phthalate	117-81-7	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*	0.01*
Cadmium	7440-43-9	0.07	0.3	0.07	2	0.7	0.7	2	0.7	0.7	10*	10*	10*
Carbon disulfide	75-15-0	20	0.6	0.6	100*	10	10	100*	10	10	100*	80	80
Chlorobenzene	108-90-7	0.9	30	0.9	70	100*	70	70	100*	70	100*	100*	100*
Chloroform	67-66-3	0.2	3	0.2	0.5	8	0.5	6	8	6	300	300	300
Dibenz[a,h]anthracene	53-70-3	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*	0.0001*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	0.4	note 1	0.4	40	note 1	40	40	note 1	40	60	note 1	60
Divalent Mercury	7439-97-6	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Ethylene dibromide	106-93-4	0.0004	note 1	0.0004	0.0008	note 1	0.0008	0.007	note 1	0.007	0.5	note 1	0.5
Lead	7439-92-1	note 2	note 3	note 2	note 2	0.6	0.6	note 2	0.6	0.6	note 2	30	30
Methyl ethyl ketone	78-93-3	500	1000*	500	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	70	note 1	70	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	3	600	3	8	1000*	8	300	1000*	300	900	1000*	900
Nickel [+2]	7440-02-0	3	5	3	200	9	9	200	9	9	1000	900	900
Nitrobenzene	98-95-3	0.07	100*	0.07	0.7	100*	0.7	0.7	100*	0.7	10	100*	10
Pentachlorophenol	87-86-5	0.07	1*	0.07	0.2	1*	0.2	1*	1*	1*	1*	1*	1*
Phenol	108-95-2	2000	4000	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Pyridine	110-86-1	0.2	10*	0.2	0.7	10*	0.7	0.7	10*	0.7	4	10*	4
Silver	7440-22-4	note 3	0.7	note 3	10*	3	3	10*	3	3	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.000002	0.00001*	0.000002	0.000008	0.00001*	0.000008	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*	0.00001*
Tetrachloroethylene	127-18-4	0.4	100*	0.4	1	100*	1	20	100*	20	100*	100*	100*
Thallium [+1]	7446-18-6	note 3	0.2	note 3	0.09	0.8	0.09	0.09	0.8	0.09	0.4	1*	0.4
Thiram	137-26-8	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Toluene	108-88-3	60	6	6	1000*	20	20	1000*	20	20	1000*	400	400
Trichloroethane, 1,1,1-	71-55-6	4	20	4	100	60	60	100	60	60	1000*	900	900
Trichloroethylene	79-01-6	0.8	0.3	0.3	9	0.6	0.6	80	0.6	0.6	100*	20	20
Vinyl chloride	75-01-4	0.006	0.2	0.006	0.08	0.4	0.08	0.6	0.4	0.4	5	9	5
Zinc	7440-66-6	80	5	5	2000	8	8	2000	8	8	10000*	800	800

Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

+ Represents the lower concentration between human health effects and ecological impacts.

* Values in the highlighted cells are the same as the highest waste concentration evaluated.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Table 13. Chemical-specific Waste Concentrations for Landfills Category mg/kg)
(Human Receptors - 2000 meters; Ecological Receptors - 2000 meters)

		Protection Group 1			Protection Group 2			Protection Group 3			Protection Group 4		
Chemical Name	**CASRN**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**	**HH#**	**Eco**	**Lowest+**
Acetonitrile	75-05-8	200	note 1	200	1000*	note 1	1000	1000*	note 1	1000*	1000*	note 1	1000*
Acrylonitrile	107-13-1	0.04	note 1	0.04	0.07	note 1	0.07	2	note 1	2	10	note 1	10
Aniline	62-53-3	3	100*	3	6	100*	6	100*	100*	100*	100*	100*	100*
Arsenic	7440-38-2	20	20	20	40	40	40	2000	40	40	8000	5000	5000
Barium	7440-39-3	3000	800	800	50000	3000	3000	50000	3000	3000	100000*	60000	60000
Benzene	71-43-2	300	1000*	300	600	1000*	600	1000*	1000*	1000*	1000*	1000*	1000*
Benzo(a)pyrene	50-32-8	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Beryllium	7440-41-7	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*	1*
Bis-(2-ethylhexyl) phthalate	117-81-7	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Cadmium	7440-43-9	400	30	30	1000*	50	50	1000*		50	1000*	1000*	1000*
Carbon disulfide	75-15-0	200	10	10	1000*	50	50	1000*	50	50	1000*	90	90
Chlorobenzene	108-90-7	80	100*	80	100*	100*	100*	100*	100*	100*	100*	100*	100*
Chloroform	67-66-3	400	2000	400	800	4000	800	10000	4000	4000	10000*	10000*	10000*
Dibenz[a,h]anthracene	53-70-3	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*	0.1*
Dichlorophenoxyacetic acid, 2,4-	94-75-7	10	note 1	10	90	note 1	90	90	note 1	90	800	note 1	800
Divalent Mercury	7439-97-6	10*	3	3	10*	5	5	10*	5	5	10*	10*	10*
Ethylene dibromide	106-93-4	0.04	note 1	0.04	0.2	note 1	0.2	0.9	note 1	0.9	40	note 1	40
Lead	7439-92-1	note 2	5	5	note 2	8	8	note 2	8	8	note 2	500	500
Methyl ethyl ketone	78-93-3	100	1000*	100	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Methyl methacrylate	80-62-6	800	note 1	800	1000*	note 1	1000*	1000*	note 1	1000*	1000*	note 1	1000*
Methylene chloride	75-09-2	200	10000*	200	400	10000*	400	5000	10000*	5000	10000*	10000*	10000*
Nickel [+2]	7440-02-0	3000	600	600	10000*	1000	1000	10000*	1000	1000	10000*	10000*	10000*
Nitrobenzene	98-95-3	200	1000*	200	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*	1000*
Pentachlorophenol	87-86-5	3	1	1	7	70	7	400	70	70	1000*	800	800
Phenol	108-95-2	10000*	4000	4000	10000*	6000	6000	10000*	6000	6000	10000*	10000*	10000*
Pyridine	110-86-1	4	1000*	4	80	1000*	80	80	1000*	80	1000*	1000*	1000*
Silver	7440-22-4	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*	10*
Tetrachlorodibenzo-p-dioxin, 2,3,7,8-	1746-01-6	0.008	0.0006	0.0006	0.01*	0.003	0.003	0.01*	0.003	0.003	0.01*	0.01*	0.01*
Tetrachloroethylene	127-18-4	900	5000*	900	2000	5000*	2000	5000*	5000*	5000*	5000*	5000*	5000*
Thallium [+1]	7446-18-6	0.06	5	0.06	1	8	1	1	8	1	7	100	7
Thiram	137-26-8	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*	100*
Toluene	108-88-3	5000*	3000	3000	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*	5000*
Trichloroethane, 1,1,1-	71-55-6	2000	10000*	2000	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*	10000*
Trichloroethylene	79-01-6	500	200	200	900	300	300	10000*	300	300	10000*	4000	4000
Vinyl chloride	75-01-4	0.6	8	0.6	2	30	2	40	30	30	700	300	300
Zinc	7440-66-6	10000*	300	300	10000*	600	600	10000*	600	600	10000*	10000*	10000*

\# Represents the lower concentration between carcinogenic risk and hazard quotient for a chemical when both types of effects are evaluated.

\+ Represents the lower concentration between human health effects and ecological impacts.

note 1: Ecological impacts were not evaluated due to the lack of chronic ecological toxicity values.

note 2: Human impacts were not evaluated due to the lack of human health toxicity values.

note 3: The lowest waste concentration run does not meet the protection criteria for this scenario.

NA: Not Applicable

Dated: July 7, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–18103 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 00–1536]

Comment Sought on Federal-State Joint Board on Universal Service Recommendations for Phasing Down Interim Hold-Harmless Provision

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: This document seeks comment on the Federal-State Joint Board on Universal Service recommended decision for phasing down the interim hold-harmless provision of the new, forward-looking high-cost universal service support mechanism for non-rural carriers.

DATES: Submit comments on or before August 14, 2000 and reply comments on or before August 28, 2000.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Bill J. Scher (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On June 30, 2000, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision for phasing down the interim hold-harmless provision of the new, forward-looking high-cost universal service support mechanism for non-rural carriers. The Joint Board recommended that Long Term Support (LTS) be maintained under the Commission's current rules until the Commission considers appropriate reforms for the LTS program in connection with the pending proceedings for high-cost reform for rural carriers and/or interstate access charge reform for rate-of-return carriers. The Joint Board further recommended that the Commission phase down the balance of interim hold-harmless support, excluding LTS, through $1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter. Finally, the Joint Board recommended against phasing down any interim hold-harmless support that is transferred to a rural carrier when it acquires exchanges from a non-rural carrier. Instead, the Joint Board recommended that such transferred interim hold-harmless support should be maintained until the Commission completes a review of the rule governing the transfer of universal service support or until rural high-cost reform is complete. In this document, the Common Carrier Bureau seeks comment on the Joint Board's recommendations.

Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on the Recommended Decision on or before August 14, 2000, and reply comments on or before August 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Dated: July 12, 2000.

Katherine L. Schroder,

Deputy Chief, Accounting Policy Division.

[FR Doc. 00–18036 Filed 7–17–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1518, MM Docket No. 00–123, RM–9903]

Radio Broadcasting Services; Rincon, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ocean Communications seeking the allotment of FM Channel 300B to Rincon, PR, as the community's first local aural service. Channel 300B can be allotted to Rincon in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.6 kilometers (16.5 miles) west, at coordinates 18–23–06 NL; 67–29–51 WL, to avoid short-spacings to Station WCMN–FM, Channel 297B, Arecibo, PR, and Station WVOZ–FM, Channel 299B, Carolina, PR. If the channel is ultimately allotted, it will be conditioned on formal approval by the International Telecommunication Union. In addition, the proposed allotment is within the Radio Astronomy Coordination Zone in Puerto Rico, and applicant's will be required to coordinate their applications with the Interference Office at Arecibo Observatory.

DATES: Comments must be filed on or before August 28, 2000, and reply comments on or before September 12, 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: Jose J. Arzuaga, Jr., P.O. Box 980, Quebradillas, PR 00678 (Technical consultant to 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. 00–123, adopted June 28, 2000, and released July 7, 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. 00–18080 Filed 7–17–00; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

RIN 3090–AH25

Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the GSA Acquisition Regulation (GSAR) for consistency with the proposed Federal Acquisition Regulation (FAR) revision of energy conservation regulations and President Clinton's issuance of Executive Order 13123 on efficient energy management.

DATES: Comments should be submitted on or before September 18, 2000.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, Division (MVP), 1800 F Street, NW., Room 4015, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, GSA Acquisition Policy Division, (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 538.273(a)(3) is revised to reflect the new clause title. Clause 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.,* Reduced Pollutants), is revised to update the definition of energy-efficient products and to reflect language that is consistent with Executive Order 13123 (64 FR 30851) and proposed FAR Part 23.2 (FAR Case 99–011, 65 FR 30311, May 10, 2000).

B. Executive Order 12866

This regulatory action is not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

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

D. Paperwork Reduction Act

The revised clause at 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.,* Reduced Pollutants), contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). However, the revisions to the clause made by this rule do not affect the information collection requirement which was approved previously by OMB and assigned control number 3090–0262.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Accordingly, 48 CFR parts 538 and 552 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

2. Revise section 538.273(a)(3) to read as follows:

538.273 Contract clauses.

* * * * *

(a) * * *

(3) 552.238–72, Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.,* Reduced Pollutants).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 552.212–72 by revising the date of the clause and by revising the title of the clause in paragraph 552.238–72(b) to read as follows:

552.212–72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items.

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (DATE)

* * * * *

_____ 552.238–72 Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (*e.g.,* Reduced Pollutants)

* * * * *

4. Revise section 552.238–72 to read as follows:

552.238–72 Identification of Products that Contain Recovered Materials, are Energy-Efficient, or Have Other Environmental Attributes (e.g., Reduced Pollutants).

As prescribed in 538.273(a)(3), insert the following clause:

IDENTIFICATION OF PRODUCTS THAT CONTAIN RECOVERED MATERIALS, ARE ENERGY-EFFICIENT, OR HAVE OTHER ENVIRONMENTAL ATTRIBUTES (e.g., REDUCED POLLUTANTS) (DATE)

Several laws, Executive orders, and Agency directives require Federal buyers to purchase products and services that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products and services under Federal Supply Service Schedule contracts in various communications media; *e.g.,* publications and electronic formats.

(a) *Definitions.* ''Recovered Materials,'' as used in this clause, means waste material and by-products which have been recovered or diverted from solid waste. This term does not include those materials and by-products generated from, and commonly reused, within an original manufacturing process (42 U.S.C. 6903(19)). For paper, it also includes postconsumer materials, and manufacturing certain other wastes. (42 U.S.C. 6962(h)). Note that the Environmental Protection Agency (EPA) has developed a list of Comprehensive Procurement Guideline Items (CPG Items) that directs Federal agencies to purchase products that meet recommended

minimum recovered materials levels for specific products (40 CFR Part 247).

''Energy-Efficient Product,'' as used in this clause, refers to a product that is either ENERGY STAR® labeled or its energy consumption measures in the upper 25 percent of efficiency within its comparable class of products as designated by the Department of Energy Federal Energy Management Program (FEMP). (See Executive Order 13123)

''Other Environmental Attributes,'' as used in this clause, refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

''GAS Advantage,'' as used in this clause, refers to the GSA electronic on-line shopping mall that makes it easier for Federal employees to order products and services via the internet.

(b) The offeror must identify products that contain recovered or remanufactured materials, are energy-efficient, water-efficient or have other environmental attributes in each of the offeror's following mediums:

(1) The offer itself;

(2) Printed commercial catalogs, brochures, and pricelists;

(3) Online product website; and,

(4) Electronic data submission for *GSAAdvantage!*

(c) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR 260, Guides for the Use of Environmental Marketing Claims). The government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency sponsored program, *e.g.,* the EPA and DOE Energy Star product labeling program;

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis research, study, or other evidence to be ''competent and reliable,'' it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

Dated: July 12, 2000.

David Drabkin,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–18062 Filed 7–17–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1247

[STB Ex Parte No. 583]

Modification of the Class I Reporting Regulations

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) solicits comments on requiring Class I railroads to report the number of rail cars loaded and terminated annually. The effect of this proposal, if adopted, will be to ensure the continued availability of these data.

DATES: Comments are due on September 1, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 583 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, D.C. 20423–0001.

FOR FURTHER INFORMATION CONTACT: Paul A. Aguiar, (202) 565–1527 or H. Jeff Warren, (202) 565–1533. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Association of American Railroads (AAR) currently collects quarterly data on the number of rail cars loaded and terminated by each Class I railroad in Equipment Report, Cars Loaded and Cars Terminated (AAR Form CS–54–1). Data contained in these quarterly reports are aggregated by the AAR to create an annual AAR Form CS–54–1 report for each railroad. These annual reports are used by the Board as inputs into the Uniform Railroad Costing System (URCS). To ensure the continued availability of these data, we propose that the Class I railroads file an abbreviated version of the AAR's annual Form CS–54–1 with the Board within 90 days after the end of the calendar year. The proposed STB report—Annual Report of Cars Loaded and Cars Terminated (Form STB–54)—would require reporting of only that data used as inputs for URCS, namely, Sections A and B of AAR Form CS–54–1.

If the proposed regulation set forth below is adopted, it will be codified at 49 CFR part 1247. Copies of proposed Form STB–54 and its instructions are available on the Board's web site (www.stb.dot.gov) under decisions of this docket. Alternatively, copies can be requested by writing or calling the contact persons listed above.

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

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1247

Freight, Railroads, Reporting and recordkeeping requirements.

Decided: June 30, 2000.

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

Vernon A. Williams,

Secretary.

For the reasons set forth in the Preamble, Part 1247 Report of Cars Loaded and Cars Terminated would be added to Title 49, Chapter X of the Code of Federal regulations to read as follows:

PART 1247—REPORT OF CARS LOADED AND CARS TERMINATED

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

§ 1247.1 Annual Report of Cars Loaded and Cars Terminated.

Beginning with the reporting period commencing January 1, 2001, and annually thereafter, each Class I railroad shall file Form STB–54, Annual Report of Cars Loaded and Cars Terminated with the Office of Economics, Environmental Analysis, and Administration (OEEA&A), Surface Transportation Board, Washington, DC 20243, within 90 days after the end of the reporting year. Blank forms and instructions are available on the Board's web site (www.stb.dot.gov) or can be obtained by contacting OEEA&A.

[FR Doc. 00–18077 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG26

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the Fish and Wildlife Service (Service), in cooperation with the Cheyenne River Sioux Tribe, the U.S. Forest Service, and the Bureau of Indian Affairs, propose to reintroduce black-footed ferrets (*Mustela nigripes*) into north-central South Dakota on the Cheyenne River Sioux Reservation. We also announce the availability of the draft environmental assessment for this action. The purposes of this reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. If this rule is finalized, we will release surplus captive-raised black-footed ferrets in 2000, if possible, and release additional animals annually for several years thereafter until we establish a self-sustaining population. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Cheyenne River Sioux Reservation population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We would manage this population under provisions of this proposed special rule.

DATES: Comments on both the proposed rule and the draft environmental assessment must be received by August 17, 2000.

ADDRESSES: Send your comments on this proposed rule or on the draft environmental assessment to Pete Gober, Field Supervisor, or Scott Larson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or telephone 605/224–8693. We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments received will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 605/224–8693.

FOR FURTHER INFORMATION CONTACT: Mike Lockhart at 307/721–8805.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, in 1984 with the addition of section 10(j) to allow for the designation of specific populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range but within its historical range as ''experimental.'' Based on the best available information, the Secretary will determine whether such populations are ''essential,'' or ''nonessential,'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a nonessential experimental population (NEP) designation.

Species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEP's are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEP's as if the population is proposed for listing, but we treat NEP's as threatened species when they are located within a National Wildlife Refuge or National Park. When NEP's occur outside of such refuges or parks, Federal agencies are required to confer with the Service, in accordance with section 7(a)(4) of the Act, on their actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature, and agencies are not restricted from committing resources to projects as a result of a conference.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of reestablishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and which also originated from captive sources) may be directly translocated to the proposed reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie

dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of several species of prairie dog ranges in North America. Sylvatic plague arrived from Asia in approximately 1900. It is an exotic disease foreign to the evolutionary history of prairie dogs, who have little or no immunity to it. Black-footed ferrets are also highly susceptible to sylvatic plague. This severe reduction in the availability of the ferret's principal prey species, in combination with other factors such as secondary poisoning from prairie dog toxicants, resulted in the near extinction of the black-footed ferret in the wild.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. Afterwards, we believed the species to be extinct. However, in 1981, a small population of ferrets was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to outbreaks of sylvatic plague and canine distemper. Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, captive breeding efforts have been highly successful and have facilitated ferret reintroductions in several areas of formerly occupied range. Today, the captive population of juveniles and adults fluctuates annually between 300 and 600 animals depending on the time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among six captive breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive breeding sites in Arizona, Colorado, New Mexico, and Montana.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for reclassification:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (which has been achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (not achieved); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range. Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sufficient at only one site in South Dakota.

We can reclassify the black-footed ferret to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and in 1997 we reached captive breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population (*e.g.*, contagious disease). Additional breeding centers were added later, and presently there are six separate subpopulations in captivity. Current recovery priorities emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use on reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, in Arizona in 1996, a second effort in Montana in 1997, and in Colorado/Utah in 1999. The Service and the Black-footed Ferret Recovery Implementation Team (composed of 27 State and Federal agencies, Indian Tribes, and conservation organizations) have identified the Cheyenne River Sioux Reservation (Reservation) as a priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plaque.

(a) *Cheyenne River Sioux Reservation Experimental Population Reintroduction Area:* The area designated as the Cheyenne River Sioux Reservation, Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Dewey and Ziebach Counties in South Dakota. The boundaries of these Counties are also the boundaries of the Reservation. Within the Experimental Population Area, the proposed primary reintroduction area will be in large black-tailed prairie dog complexes located along the Moreau River. The approximate center of the Experimental Population Area is the town of Eagle Butte, the location of Cheyenne River Sioux Tribal offices. Eagle Butte is approximately 160 kilometers (100 miles) northwest of Pierre, the capital of South Dakota.

The Experimental Population Area supports two large complexes of black-tailed prairie dog colonies located within the two-county area. These two Counties encompass approximately 1,141,558 hectares (2,820,751 acres). Approximately half or 574,752 hectares (1,420,193 acres) of the Experimental Population Area is Tribal Trust and Allotted lands. The majority of this Tribal Trust and Allotted land, approximately 90 percent or 505,875 hectares (1,250,000 acres), is native rangeland, which is used for grazing.

Some lands within the Experimental Population Area are owned by private landowners (approximately 50 percent, although much less in the primary reintroduction area). No ferrets will be released on private lands. The Tribe and other Cooperators have agreed that if any ferrets disperse onto private lands they will capture and translocate them to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (few if any prairie dogs can be found to the south and west), cropland barriers (*e.g.,* expansive cultivation over the northern portion of the Experimental Population Area), and physical barriers (*e.g.,* the Missouri River to the east). The Tribe estimates a total of approximately 8,408 hectares (20,777 acres) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in the Experimental Population Area and could support over 200 ferret families (characterized as an adult female, three kits, and one-half an adult male; *i.e.,* one adult male for every two adult females). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies along the

Moreau River (the primary ferret release area) should facilitate ferret distribution throughout the Moreau River reintroduction area.

(b) *Primary Reintroduction Areas:* In the early 1990s, the Tribe began development of a Prairie Management Plan as a framework for managing the natural resources of 574,752 hectares (1,420,193 acres) of Tribal and Allotted lands within the Reservation boundaries (Cheyenne River Sioux Tribe 1992). The Prairie Management Plan included development of prairie dog and black-footed ferret management strategies. Phase I of the Prairie Management Plan accomplished initial prairie dog surveys along the Moreau River in areas believed to be well-suited for ferret reintroduction. Follow up Phase II surveys confirmed that prairie dog colonies along the Moreau River are highly suitable for ferret releases due to the number and size of prairie dog colonies, the spatial relationships of prairie dog towns to each other, their location on Tribal and Allotted Trust lands, their remoteness, and their distance from human settlements (Cheyenne River Sioux Tribe 1999). Recent surveys revealed 5,739 hectares (14,156 acres) of prairie dog colonies within the Moreau River complex. In addition to the Moreau River prairie dog complex, a secondary black-footed ferret release area was identified to the south in the Southeast Parade Management Area, an area that supports 2,280 hectares (6,621 acres) of black-tailed prairie dog towns. This area requires further research to ensure appropriate conditions exist prior to conducting future reintroductions of black-footed ferrets. The Tribe selected the Moreau River prairie dog complex as the primary ferret reintroduction area because of its location within the historical range of the black-footed ferret, our determination that ferrets are no longer present, the abundance of suitable ferret habitat (lands containing active prairie dog colonies), the extensive amount of land managed by the Tribe, and the area's isolation from human activities.

The primary reintroduction area within the Experimental Population Area generally includes lands along the Moreau River in Dewey and Ziebach Counties in north-central South Dakota. Extensive ferret surveys were conducted in this area in the 1980s and 1990s, but no evidence of ferrets was found. There are no confirmed records of ferrets occurring within the boundaries of the Experimental Population Area since the early 1960s.

Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, private landowners, and Federal and State land managers. The Service will reevaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain suitable prairie dog habitat that was available on specific reintroduction areas in 1999.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Wyoming, Montana, South Dakota, Arizona, and Utah/Colorado. Consequently, the discovery of a black-footed ferret at the proposed experimental population area prior to the reintroduction would confirm the presence of a new population, which would prevent the designation of an experimental population in the area.

(iv) Discovery of an active case of canine distemper or other disease contagious to black-footed ferrets on or near the reintroduction area prior to the scheduled release.

(v) Less than 20 captive black-footed ferrets are available for the first release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Cheyenne River Sioux Reservation.

(vii) Land ownership changes significantly, or cooperators withdraw from the project.

All of the above conditions will be based on information routinely collected by us or the Tribe.

5. *Reintroduction procedures:* The standard reintroduction protocol calls for the release of 20 or more captive-raised, or wild-translocated black-footed ferrets in the Experimental Population Area in the first year of the program, and 20 or more animals released annually for the next 2 to 4 years. However, if the proposal is finalized, biologists expect to release 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive breeding program, and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.* 1998, Vargas *et al.* 1998) have documented the importance of outdoor ''preconditioning'' experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. The U.S. Forest Service will participate in the reestablishment of ferrets on the Cheyenne River Sioux Reservation by preconditioning captive-raised ferrets in large open-air pens on the Conata Basin District of the Buffalo Gap National Grasslands in southwestern South Dakota. In these pens, young ferrets are exposed to live prairie dogs, burrows, and other natural stimuli. In addition, biologists may translocate up to 25 ferrets born in the wild on the Buffalo Gap National Grasslands to the Reservation (if annual production levels of wild ferrets on Conata Basin are sufficient to allow translocation of excess young).

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of prior year efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog holes. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote use of radio-telemetry studies

to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter.

The goal of the Cheyenne River Sioux Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

6. *Status of Reintroduced Population:* We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive breeding population are available for reintroduction.

The proposed reintroduction would be the seventh release of ferrets back into the wild in six experimental population areas. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, and Colorado/Utah (a single reintroduction area that overlays both States). Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

7. *Location of Reintroduced Population:* Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid 1980s, BIA and the Tribe conducted black-footed ferret surveys in the Experimental Population Area. In addition to these surveys, they spent many hours surveying prairie dog colonies at the proposed reintroduction site. No ferrets or ferret sign (skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present on the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring are expected to remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. We will capture any ferret that leaves the Experimental Population Area (in an attempt to identify its origin) and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the reintroduction area, but remains within the Experimental Population Area, and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (*i.e.,* it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets that are not from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, we will move the ferret back to habitats that would support the primary population(s) of ferrets.

8. *Management:* This reintroduction will be undertaken in cooperation with the Cheyenne River Sioux Tribe, the Bureau of Indian Affairs, and the U.S. Forest Service in accordance with the ''Cooperative Management Plan for Black-footed Ferrets, Moreau River or Southeast Parade Reintroduction Areas''—Cheyenne River Sioux Reservation. Copies of the Cooperative Management Plan may be obtained from the Prairie Management Program Coordinator, P.O. Box 590, Eagle Butte, South Dakota 57625. In the future, we will evaluate whether additional black-footed ferret reintroductions are feasible within the Experimental Population Area (over 45,000 total acres of occupied prairie dog habitat exist within the Experimental Population Area). Cooperating agencies and private landowners would be involved in the selection of any additional sites. Management considerations of the proposed reintroduction project include:

(a) Monitoring: Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and test for the occurrence of sylvatic plague. Testing resident carnivores (*e.g.,* coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry on some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured animals. To meet our responsibilities to treat the Tribe on a Government to Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands, and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets must also be provided to the Service Field Supervisor (see **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed, but reported as soon as possible to appropriate Tribal and Service offices.

(b) Disease: The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us. Efforts are under way to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) Genetics: Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity that is possible from founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the maximum extent possible.

(d) Prairie Dog Management: We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to: (1) Maintain sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) maintain suitable prairie dog habitat on core release areas at or above 1999 survey levels.

(e) Mortality: We will reintroduce only ferrets that are surplus to the captive breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the Experimental Population Area provided that the take is unavoidable, unintentional, and was not due to negligent conduct. Such conduct will not constitute ''knowing take,'' and we will not pursue legal action. However, when we have evidence of knowing (*i.e.,* intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (see **ADDRESSES** section). We expect a low level of incidental take since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, black-footed ferrets can be killed by motor vehicles and dogs. We expect a rate of mortality similar to what was documented at Meeteetse, and, therefore, we estimate a human-related annual mortality rate of about 12 percent of all reintroduced ferrets and their offspring, annually. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) Special Handling: Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) Coordination With Landowners and Land Managers: The Service and cooperators identified issues and concerns associated with the proposed ferret reintroduction before preparing this proposed rule. The proposed reintroduction also has been discussed with potentially affected State agencies and landowners within the proposed release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction, if ferrets released in the Experimental Population Area are an NEP, and if land use activities in the Experimental Population Area are not constrained without the consent of affected landowners.

(h) Potential for Conflict With Grazing and Recreational Activities: We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the Experimental Population Area. If proposed prairie dog shooting or control locally affect ferret prey base within a specific area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to develop appropriate procedures to minimize conflicts.

(i) Protection of Black-footed Ferrets: We will release ferrets in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) Public Awareness and Cooperation: We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret.

The designation of the NEP on the Cheyenne River Sioux Reservation would provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and recreational interests in the affected area. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

Public Comments Solicited

Black-footed ferret kits targeted for wild release are introduced into preconditioning pens at 40–90 days of age and released at about 120 to 140 days. It is imperative that ferrets kits are preconditioned and released at proper developmental ages to enhance their survival in the wild. Because of earlier than usual ferret production at captive breeding centers in the United States and Canada (as of early June 2000), it has become urgent to expedite this nonessential, experimental rulemaking

process in order to ensure that an adequate number of ferrets can be released at proper ages and with adequate preconditioning experience on the Cheyenne River Sioux Experimental Population Area. Consequently, we are proposing a 30-day public comment period for the proposed rule instead of the standard 60 days.

The Service wishes to ensure that this proposed rulemaking to designate the Cheyenne River Sioux Reservation black-footed ferret population as an NEP and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning any aspect of this proposed rule and the draft environmental assessment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. To promulgate a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received. Such information may lead to a final rule that differs from this proposal.

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 for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, available for public inspection in their entirety.

Public Hearings

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 20 days of the date of publication of the proposal in the **Federal Register.** Such requests for a hearing must be made in writing and addressed to the South Dakota State Field Supervisor for the Fish and Wildlife Service in Pierre, South Dakota (see **ADDRESSES** section).

Required Determinations

1. Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the proposed rule to designate NEP status for the black-footed ferret reintroduction into north-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

All the lands within the NEP area are within the Cheyenne River Sioux Reservation, and the specific lands where ferrets will actually be released are Tribal Trust allotted lands. Other public areas in the NEP include South Dakota school lands, South Dakota Department of Game, Fish and Parks lands, and U.S. Army Corps of Engineers lands. Most of the prairie dogs within the NEP area occur on Tribal Trust lands, and those occurring on other lands are not needed for a successful ferret release. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.,* Bureau of Land Management) and the Department of Agriculture (Forest Service). The action proposed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at five other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of Dewey and Ziebach Counties, South Dakota. A majority of the area affected by this rule is within the Cheyenne River Sioux Reservation, which is administered by the Tribe. Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the experimental area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plants or animal species within the release area. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule 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.

4. Unfunded Mandates Reform Act

The nonessential experimental population designation will not place any additional requirements on any city, county, or other local municipalities. The site designated for release of the experimental population is predominantly Cheyenne River Sioux Tribal Trust land administered by the Cheyenne River Sioux Tribe, who

support this project. Some South Dakota State school lands may also be affected. The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Because this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.,* it is not a ''significant regulatory action'' under the Act).

5. Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action totally eliminated a reintroduced species from an NEP and jeopardized the species' continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unavoidable and unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is nonnegligent and incidental to a legal activity (*e.g.*, livestock management, mineral development) and the activity is in accordance with State laws and regulations.

Most of the lands within the Experimental Population Area are administered by the Cheyenne River Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands.

Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets would conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish and Parks has endorsed the ferret reintroduction under an NEP designation. The NEP designation will not require the South Dakota Department of Game, Fish and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

6. Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the Experimental Population Area are Tribal Trust lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

7. 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.

8. Paperwork Reduction Act

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget) under 44 U.S.C. 3501 *et seq.* Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

9. National Environmental Policy Act

The Service has prepared a draft environmental assessment as defined under authority of the National Environmental Policy Act of 1969. It is available from Service offices identified in the **ADDRESSES** section.

10. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov

References Cited

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Cheyenne River Sioux Tribe. 1992. Prairie Management Plan for the Cheyenne River Sioux Reservation. 54 pages.

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Department of Game, Fish and Parks, Technical Bulletin 4:1–36.

U.S. Fish and Wildlife Service. 1988. Black-footed ferret recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 154 pages.

Vargas, A., M. Lockhart, P. Marinari, and P. Gober. 1998. Preparing captive-raised black-footed ferrets (*Mustela nigripes*) for survival after release. Jersey Wildlife Preservation Trust 34:76–83.

Authors

The primary authors of this rule are Mike Lockhart and Scott Larson (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, 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. Amend section 17.11(h) by revising the existing entry for ''Ferret, black-footed'' under ''MAMMALS'' 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						
MAMMALS							
*	*	*	*	*	*		*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 343, 433, 545, 546, 582, 646, ____.	NA	NA
Do	.....do	.....do	U.S.A. (specific portions of AZ, CO, MT, SD, UT, and WY, see 17.84(g)(9)).	XN	433, 545, 546, 582, 646, ____.	NA	17.84(g)
*	*	*	*	*	*		*

3. Amend § 17.84 as follows: Revise the text of paragraph (g)(1) and add paragraphs (g)(6)(vi), (g)(9)(vi), and a new map to follow the five existing maps at the end of paragraph (g):

§ 17.84 Special rules—vertebrates.

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (vi) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(6) * * *

(vi) Report such taking in the Cheyenne River Sioux Tribe Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

* * * * *

(9) * * *

* * * * *

(vi) The Cheyenne River Sioux Tribe Reintroduction Area is shown on the map of north-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area are the exterior boundaries of the Cheyenne River Indian Reservation which includes all of Dewey and Ziebach Counties, South Dakota. Any black-footed ferret found in the wild within these Counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the Experimental Population Area in north-central South Dakota would initially be considered as endangered but may be captured for genetic testing. When a ferret is found outside the Experimental Population Area, the following may occur:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

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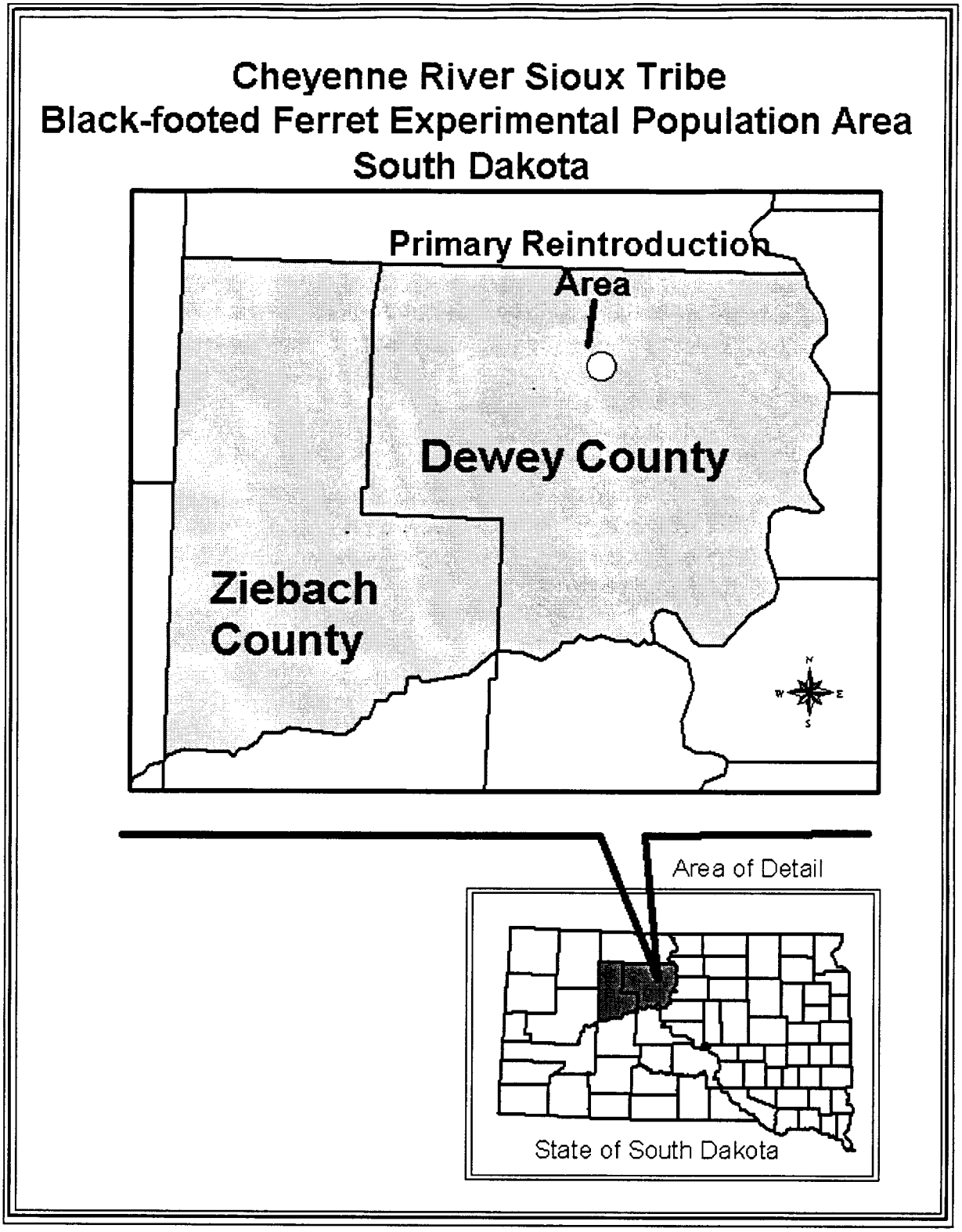

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife, and Parks.

[FR Doc. 00–18123 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 65, No. 138
Tuesday, July 18, 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

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Office of Secretary, USDA.

ACTION: Notice of renewal of charter.

SUMMARY: The Secretary of Agriculture has renewed the charter of the Lake Tahoe Federal Advisory Committee. Chartered under the Federal Advisory Committee Act, the Committee provides advice to the Secretary of Agriculture and to the Federal Interagency Partnership on how the Partnership can best fulfill its duties, pursuant to Executive Order 13057, to protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region.

DATES: The charter renewal is effective June 23, 2000. As provided by law, the charter will expire 24 months from the date of filing.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture has renewed the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture and to the Federal Interagency Partnership on how the Partnership can best fulfill its duties to protect the extraordinary natural, recreational, and ecological resources in the Lake Tahoe Region. The Partnership was established in accordance with Executive Order 13057, ''Federal Actions in the Lake Tahoe Region.'' The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conduct public meetings to discuss management strategies, gather information about and review Federal agency accomplishments, and prepare a progress report every 6 months for submission to regional Federal executives. Three members of the Committee have been selected as members-at-large. The others have been selected to represent each of the following interests: Gaming, environmental, national environmental, ski resorts, North Shore economic/recreation, South Shore economic/recreation, resort associations, education, property rights advocates, science and research, local government, Washoe Tribe, State of California, State of Nevada, Tahoe Regional Planning Agency, labor, and transportation. The Committee Chair will be recommended by the Committee and approved by the Secretary. A vacancy on the Committee will be filled in the manner in which the original appointment was made.

The Secretary of Agriculture appoints the members to the Committee. In line with USDA policies, equal opportunity practices are followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership includes to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: June 12, 2000.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 00–18125 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on July 27 and 28, 2000, at the Northern California Service Center, Training Rooms 2 and 3, 6101 Airport Road, Redding, California. The meeting on Thursday, July 27, will start at 1 p.m. and adjourn at 5 p.m. The meeting will reconvene on Friday, July 28 at 8 a.m. and will adjourn at 12 p.m. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (FERC Relicensing, an update on the Shasta-Trinity National Forest Fire Management Strategy, Southern Oregon BLM Wild & Scenic River Plan); (2) Total Maximum Daily Loads discussion and update; and (3) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Hwy 3, Fort Jones, California 96032; telephone 530–468–1281 (voice), TDD 530–468–2783.

Dated: July 19, 2000.

Constance J. Hendryx,

PAC Support Staff.

[FR Doc. 00–18078 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Chickamauga Creek Watershed: Catoosa, Walker, Whitfield Counties, Georgia; Bradley and Hamilton Counties, Tennessee

AGENCY: Natural Resources Conservation Service, U.S.D.A.

ACTION: Notice of a Finding Of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South Chickamauga Creek Watershed, Catoosa, Walker, Whitfied Counties, Georgia and Bradley and Hamilton Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Earl Cosby, State Conservationist, Natural Resources Conservation Service, Federal Building, STOP 200, 355 E. Hancock

Avenue, Athens, Georgia 30601, telephone (706) 546–2272.

SUPPLEMENTAL INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Earl Cosby, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and improvement of water quality. The planned works of improvement include animal waste management systems and accelearated pasture and cropland treatment.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials.)

Earl Cosby,

State Conservationist.

Finding of No Significant Impact for South Chickamauga Creek Watershed, Catoosa, Walker, Whitfield Counties, GA; Bradley and Hamilton Counties, TN

July 2000.

Introduction

The South Chickamauga Creek Watershed is a federally assisted action authorized for planning under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for Watershed Protection and improvement of water quality and includes measures for the control of agricultural animal waste related pollution and reduction of sediment from pasture and cropland. The plan reduces excessive animal waste and associated nutrients and bacteria entering waterways from about 10 dairy, 43 poultry and 159 beef operations. The plan also provides measures to reduce nutrient runoff and erosion on 304 acres of cropland, Sedimentation from streambanks and animal walkways will be substantially reduces and forage quality will be improves on 4,560 acres of pastureland. These measures will be accomplished by providing financial and technical assistance through a local sponsor.

The principal project measures are to:

1. Develop and install approximately 212 animal waste management systems and provide enhanced cover to 4,560 acres of pastureland and adjoining stream banks to reduce sedimentation, improve water quality and enhance forage production. These practices will include all or parts of the following: fencing, cross fencing with gates, alternative livestock water supply with piping and troughs, stream crossings, riparian buffers, animal waste, lagoons, flush down and hose down systems, solid waste separators, heavy use protection areas, solid waste stack facilities and dead bird composters on 10 dairy, 43 poultry and 159 beef operations. Conservation management with nutrient and grazing land management practices will be used when applying animal waste.

2. The measures will be planned and installed by developing long-term contracts with landowners.

Effects of Recommended Action

Installation of animal waste management measures and grazing land practices will reduce offsite nutrient, bacteria, sediment and chemical damages and increase utilization of nutrients onsite. The results will be a significant reduction in current impairments to the area's water quality, biological habitats, recreational opportunities, land values and improvement of long-term productivity and quality of pastureland in the watershed. Installation of the selected plan will also provide local and regional employment, promote rural economic development in the drainage area, and provide long term natural resource protection in the watershed.

The project measures will reduce agricultural related nutrients, bacteria and sediment entering watershed streams, the South Chickamauga Creek and Nickajack Lake in Tennessee. The project will also minimize the impact on surface and ground water quality by:

—Reducing the 76 tons of nitrogen and 21 tons of phosphorus from animal waste operations delivered annually by an average of 47%.

—Providing a significant reduction in the amount of nitrates, ammonia, and bacteria delivered annually to area waterways, thus improving biological habitats, recreational opportunities, and real estate values.

—Reducing the 45,835 tons of sediment from streambanks and overgrazed pastureland.

Grazing land practices will increase forage productivity through improved management and utilizing waste more efficiently. This will reduce stream enrichment and conserve the nutrients for plant production. The proposed plan will also encourage and promote the agricultural enterprises in the watershed through improved efficiency.

Wildlife habitat will not be disturbed during installation of animal waste systems and grazing land practices. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 1,251 acres of wetland and wetland type wildlife habitat will be improved. Conversions to permanent vegetation will provide a more diverse upland game habitat. The value of woodland habitat will not decline. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Three alternative plans, that included 25 combinations of systems and practices, was considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete and acceptable means of protecting the watershed by managing animal waste and stabilizing pasture and cropland.

Consultation—Public Participation

Water quality concerns in the South Chickamauga Creek Watershed were expressed by local citizens, Soil and Water Conservation Districts, other regional residents. NRCS personnel in partnership with interagency team members from the Tennessee Valley Authority (TVA), Georgia Department of Natural Resources (DNR) and Environmental Protection Division (EPD) made a watershed assessment and evaluated existing water quality data. The team determined that agricultural related water quality problems were negatively affecting the watershed and the region's air, plant, animal, soil, and water resources. With these concerns identified, the team agreed that a holistic approach for assistance to operators based on the watershed approach would help solve the problems. The Sponsors requested NRCS planning assistance under PL–566 authority for a watershed protection plan.

At the initiation of the planning process, meetings were held with key farmers and District representatives from the watershed area to discuss problem identification, conservation systems and PL–566 requirements. A public meeting was held on June 29, 1999 to scope the problems and concerns and to explain impacts of the PL–566 program initiatives relative to a watershed project and discuss possible solutions. Notice of the meeting appeared in the local newspaper and on radio for several weeks prior to the date. Door to door verbal invitations were also made. One hundred eighty landowners, operators and interested citizens attended the meeting.

NRCS developed an interdisciplinary, interagency planning team to work with the Sponsor, landowners, and other interested groups. The team was compiled of specialists from NRCS, TVA, Ga. Cooperative Extension Service, EPD, along with local sponsors. The team worked in the watershed area and downstream to Nickajack Lake, to gain insight to the magnitude of the problems and possible solutions. Several meetings, group discussions, and interviews were held with local planners, individuals, government officials and other technical experts. Evaluations and alternative solutions were developed with the Sponsor and other officials. The Recommended Plan was agreed upon.

Another public meeting was held in Rocksprings, Georgia on March 21, 2000. Local operators, landowners and citizens attended the meeting. The results of surveys, studies, field investigations and the Recommended Plan were presented. The Recommended Plan was agreed upon by those in attendance.

In April 2000, representatives of the NRCS, TVA, DNR, and other officials evaluated data to determine the quality and quantity of resources that would be impacted by selected practices and to consider possible mitigation measures. It was the consensus of the group that an Environmental Impact Statement (EIS) was not needed for this project. This agreement was based on the type of practices and systems planned and that each would be installed on previously disturbed land. With this consensus, an Environmental Assessment (EA) was prepared accordingly.

Upon review of the EA, this Finding of No Significant Impact (FONSI) was prepared. These documents are being distributed to all concerned agencies, groups, and interested individuals. A Notice of Availability of the FONSI is being published in the **Federal Register**.

Agency consolidations and public participation to date has shown no conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended South Chickamauga Creek Watershed Plan is not required.

Dated: July 10, 2000.

Earl Cosby,

State Conservationist.

[FR Doc. 00–17947 Filed 7–17–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Administrative Review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the seventh administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. The period of review is November 1, 1998, through October 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Gregory Campbell, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4087 or 482–2239, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351, April 1999.

Extension of Time Limit for Preliminary Results

Due to the number of companies involved, the large number of transactions and the significance of outstanding issues, it is not practicable to complete this review within the time limit currently mandated (*i.e.,* August 1, 2000). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results to not later than October 6, 2000.

Partial Rescission of Review

On November 30, 1999, Allied Tube and Conduit Corporation, Sawhill Tubular Division-Armco, Inc., and Wheatland Tube Company (the petitioners) requested a review of, inter alios, Korea Iron and Steel Company, Ltd (KISCO). As a result, an administrative review including KISCO was initiated on December 28, 1999, (*see, Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 72644 (December 28, 1999)). KISCQ did not separately request a review.

On June 15, 2000, the petitioners withdrew their request for a review of KISCO. Section 351.213(d)(1) of our regulations states that:

> The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.

Section 351.213(d)(1) of our regulations further provides that we may extend that deadline, and it is our practice to do so, where it is reasonable, i.e., where the Department has not expended considerable time and resources, and where it does not appear that the procedures are being abused. *See,* e.g., *Fresh Kiwifruit From New Zealand: Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order, and Rescission of Antidumping Duty Administrative Review,* 64 FR 45508 45509 (August 20, 1999); *see also, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27317 (May 19, 1997). In this review, the petitioners withdrew their request for review after the 90-day deadline. However, since the petitioners' withdrawal was made before the review had progressed beyond a point where it would be unreasonable to rescind, and because KISCO supports the petitioners' request for withdrawal, we find that rescinding the review with respect to KISCO would not prejudice any party to the proceeding and would, therefore, be reasonable. *See,* e.g., *Glycine From the People's Republic of China; Notice of Rescission of Antidumping Duty Administrative Review,* 63 FR 54406 56607 (October 22, 1998). Therefore, in accordance with section 351.213(d)(1) of our regulations, we have rescinded the review with respect to KISCO (*see,* Memorandum to Susan Kuhbach of June 27, 2000 on Partial Rescission of Administrative Review).

This notice is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213(h)(2).

Dated: July 11, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 00–18121 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Notice of Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to a timely request from the petitioners [1], on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited (formerly Ponds India, Ltd.), Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International, covering the period August 5, 1998, through January 31, 2000.

See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 65 FR 16875 (March 30, 2000). On June 22, 2000, the petitioners timely withdrew their request for review of the following companies: Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Saptarishi Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., and Dinesh Agro Products, Ltd.

In accordance with 19 CFR 351.213(d)(1), the Department of Commerce is now rescinding this review, in part, as to the companies named above because the petitioners have withdrawn their request for review and no other interested parties have requested a review.

EFFECTIVE DATE: July 18, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Dinah McDougall, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (1999).

Background

On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from India for the period August 5, 1998, through January 31, 2000. On February 29, 2000, the petitioners requested an administrative review of the above-referenced antidumping duty order for the period August 5, 1998, through January 31, 2000, for the following companies: Agro Dutch Foods, Ltd., Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Hindustan Lever Limited (formerly Ponds India, Ltd.), Saptarishi Agro Industries, Ltd., Techtran Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., Weikfield Agro Products, Ltd., Dinesh Agro Products, Ltd., and Himalya International. On March 30, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to these companies (65 FR 16875).

Recission in Part of Review

On June 22, 2000, the petitioners timely withdrew their request for review with respect to the following companies: Alpine Biotech, Ltd., Mandeep Mushrooms, Ltd., Saptarishi Agro Industries, Ltd., Transchem, Ltd., Premier Mushroom Farms, Flex Foods, Ltd., and Dinesh Agro Products, Ltd. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will permit a party that requests a review to withdraw the request within 90 days after the date of publication of the notice of initiation of the requested review. In this case, the petitioners have withdrawn their request for review within the 90-day

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

period. No other interested party requested a review with respect to the named companies and we have received no other submissions regarding petitioners' withdrawal of their request for review. Therefore, we are rescinding, in part, this review of the antidumping duty order on certain preserved mushrooms from India as to the companies name above.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: July 11, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–18120 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) is seeking applicants for the vacant Commercial Shipping seat on its Sanctuary Advisory Council (Council). A member is chosen based upon his or her particular expertise and experience in relation to the seat for which the individual is applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. The applicant who is chosen as a member should expect to serve a 2-year term, pursuant to the Council's Charter.

DATES: Applications are due by July 28, 2000.

ADDRESSES: Application kits may be obtained from Kellie Araki at 6700 Kalanianaole Hwy., Suite 104, Honolulu, Hawaii 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kellie Araki at (808) 397–2651, or kellie.araki@noaa.gov.

SUPPLEMENTARY INFORMATION: The HIHWNMS SAC was originally established in March 1996 (the current SAC was selected in July 1998) and has a broad representation consisting of 25 members. The SAC represents the coordination link between the Sanctuary and the state and federal management agencies, Native Hawaiians, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat.

The SAC functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping produce annual operating plans and reports by identifying education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Section 1431 *et seq.*

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 12, 2000.

Capt. Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 00–18076 Filed 7–17–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board

AGENCY: Department of the Army, DoD.

ACTION: Notice or request for nominations.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for six (6) appointments or reappointments to two-year terms that will begin January 1, 2001.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, D.C. 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph W. Westphal, Assistant Secretary of the Army (Civil Works), (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

a. Selection. Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (PL 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers

The law uses the terms ''primary users and shippers.'' Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation

The law specifies ''varous'' regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in PL 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its

tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tobigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with the representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

D. Nomination. Reflecting preceding selection criteria, the current representation by the six (6) Board members whose terms expire December 31, 2000, is one member representing region 1, two members representing region 3, one member representing region 4, one member representing region 5, and one member representing region 6. Also, these Board members represent four carriers and two shipper/carriers.

Four (4) of the six members whose terms expire December 31, 2000, are eligible for reappointment. Nominations to replace Board members whose terms expire December 31, 2000, may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented;

(2) State whether the nominee is representing carriers, shippers or both;

(3) Provide information on the nominee's personal qualifications;

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice, published on July 29, 1999, have been retained for consideration. Renomination is not required but may be desirable.

Deadline for Nominations. All nominations must be received at the address shown above no later than August 31, 2000.

John A. Hall,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 00–18063 Filed 7–17–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed new Form EIA–905, ''Monthly Natural Gas Biller Survey .''

DATES: Written comments must be submitted on or before September 18, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Roy Kass, EI–44, Form EIA–905, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Roy Kass may be reached by phone at 202–586–4790, by e-mail nathaniel.kass@eia.doe.gov, or by FAX at 202–586–4420.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Roy Kass at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3506(c) of the Paperwork Reduction Act of 1995.

EIA's coverage of prices paid for natural gas is declining as customers choose to purchase gas from alternative supplies rather than the traditional local distribution companies. The coverage of residential and commercial natural gas prices is expected to continue declining as the result of customer choice programs. Data requirements were established to assess the gas industry's performance. (See *http://www.eia.doe.gov/oil_gas/natural_gas/ng2/ng2main.html* for more information on the data requirements.) The data requirements were developed with careful consideration of the public policy and economic issues through a series of focus groups conducted by EIA with representatives from the natural gas industry, state and Federal government representatives, and others.

II. Current Actions

The proposed survey will collect monthly billing data, specifically the volume of natural gas sold and distributed (in therms), heat content (in Btu per cubic feet), and price components of natural gas (including commodity, taxes, distribution, and other charges), and number of customers by sector (residential and commercial).

The data will be collected from local distribution companies, marketers, and billing agents that bill for natural gas sold and/or delivered in deregulated states. The data will be incorporated and used in EIA's monthly and annual natural gas publications. The data will also be used in EIA's modeling and analytic efforts, and to answer questions

from Federal policy makers, Congress and the general public.

Submission of the data will be mandatory under Section 13(b) of the Federal Energy Administration Act of 1974 (FEA Act) (Pubic Law 93–275), as amended. The information collected on this questionnaire will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act.

EIA will begin cognitive testing of 20 respondents and field testing of over 200 LDCs and marketers in select states in August 2000. Information from respondents acquired through pretesting will be considered in the development of the collection instrument.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 6 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. In your opinion, how accurate is this estimate?

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Will respondents incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. July 11, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–18086 Filed 7–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed three-year extension of the Forms EIA–1605, ''Voluntary Reporting of Greenhouse Gases,'' (long version) and the Form EIA–1605EZ, ''Voluntary Reporting of Greenhouse Gases,'' (short version).

DATES: Written comments must be submitted on or before September 18, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Stephen E. Calopedis, Energy Information Administration, Office of Integrated Analysis, EI–81, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Stephen E. Calopedis may be reached by phone at (202) 586–1156, by e-mail: *stephen.calopedis@eia.doe.gov,* or by FAX: (202) 586–3045.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stephen E. Calopedis at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h)(1) and 3506 (c) of the Paperwork Reduction Act of 1995.

The Voluntary Reporting of Greenhouse Gases collections are conducted pursuant to Section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines (DOE/PO–0028). These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation. Further, the forms support President William J. Clinton's 1993 Climate Change Action Plan, by collecting information on commitments to reduce greenhouse gas emissions and to sequester carbon in future years, including the progress made toward meeting those commitments.

II. Current Actions

This request is for public comments on a proposed extension to an existing collection. The actions will include an extension from the currently approved OMB expiration dates of the Form EIA–1605 and EIA–1605EZ (from May 31, 2001 to May 31, 2004) i.e., three-year extension.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average:

1. Form EIA–1605 (long version): 40 hours per response

2. Form EIA–1605EZ (short version): 4 hours per response

The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a potential user:

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) and 3506 (c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. July 11, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–18087 Filed 7–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016–044]

City of Tacoma; Notice of Extension of Time To File Motions To Intervene and Protests, and Comments, Final Terms and Conditions, Recommendations and Prescriptions

July 12, 2000.

By letter dated July 12, 2000, Martha Bean, mediator working with the City of Tacoma and other parties on the relicensing of the Cowlitz River Project, filed on behalf of federal, state, and local agencies and the City of Tacoma, a request for an extension of time to file protests and motions to intervene, and comments, recommendations, terms and conditions, and prescriptions, in the above-docketed project. Upon consideration, notice is hereby given that an extension of time for the filing of protests and motions to intervene, and final comments, recommendations, terms and conditions, and prescriptions is granted to and including August 15, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18066 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a New License

July 12, 2000.

a. Type of Filing: Notice of Intent to File An Application for a New License.

b. Project No.: 2194.

c. Date Filed: June 30, 2000.

d. Submitted By: FPL Energy Maine Hydro LLC-current licensee.

e. Name of Project: Bar Mills Hydroelectric Project.

f. Location: On the Saco River near the towns of Hollis and Buxton, in York County, Maine.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Frank H. Dunlap, FPL Energy Maine Hydro LLC, 150 Main Street, Lewiston, ME 04240 (207) 771–3534.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: July 1, 1955.

k. Expiration date of current license: June 30, 2005.

l. Description of the Project: The project consists of the following existing facilities: (1) A 25-foot-high, 400-foot-long concrete dam and spillway section topped with 6.75-foot-high steel hinged flashboards; (2) a 263-acre reservoir at a normal pool elevation of 148.5 feet msl; (3) a 725-foot-long power canal; (4) a powerhouse containing two generating units with a total installed capacity of 4,000 kW, (5) a short 38-kV transmission line; and (6) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18067 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

July 12, 2000.

a. Type of Filing: Notice of Intent to File An Application for a Subsequent License.

b. Project No.: 7264.

c. Dated Filed: June 19, 2000.

d. Submitted By: Fox River Paper Company, and N.E.W. Hydro, Inc.—current licensees.

e. Name of Project: Middle Appleton Dam Hydroelectric Project.

f. Location: On the Fox River in the city of Appleton, Outagamie County, Wisconsin. The project does not utilize federal lands.

g. Filed Pursuant to: Section 15 of the Federal Power Act.

h. Licensee Contact: Linda D. Mitchell, Mead & Hunt, Inc., 6501 Watts Road, Madison, WI 53719, (608) 273–6380.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778.

j. Effective date of current license: July 1, 1955.

k. Expiration date of current license: June 30, 2005.

l. Description of the Project: The project consists of the following existing facilities: (1) A 10-foot-high, 372-foot-long concrete dam with 16 Taintor gates; (2) a 35.5-acre reservoir with a normal pool elevation of 721.37 feet msl; (3) a 100-foot-wide, 1,700-foot-long power canal (West's Canal); (4) Mill powerhouses 1, 2, and 3 containing two 240-kW generators, four 140-kW generators, and one 150-kW generator, respectively, with a total installed capacity of 1,190 kW; (5) a tailrace; (6) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 hours prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2003.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–18068 Filed 7–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–9]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Supplemental Distribution of a Registered Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Notice of Supplemental Distribution of a Registered Pesticide Product,* (EPA ICR No. 0278.07, OMB No. 2070–0044). The ICR, which expires on September 30, 2000 and is abstracted below, describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument. The Agency is requesting that OMB renew approval of the ICR for a three year period.

DATES: Addition comments may be submitted on or before August 17, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer by phone at 202–260–2740, or via e-mail at ''farmer.sandy@epa.gov'', or using the address indicated below. Please refer to EPA ICR No. 0278.07 and OMB Control No. 2070–0044.

ADDRESSES: Send comments, referencing EPA ICR No. 0278.07 and OMB Control No. 2070–0044, to the following addresses; Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: *Title:* Notice of Supplemental Distribution of a Registered Pesticide Product (EPA) ICR No. 0278.07; OMB Control No. 2070–0044) expiring on September 30, 2000. This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Abstract: This collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. The Environmental Protection Agency (EPA, the Agency) is responsible for the regulation of pesticides as mandated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Section 3(3) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to his own. Such distribution and sale is termed ''supplemental distribution'' and the product is termed ''distributor product.'' EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name. Since the last approval, EPA has not changed the substance or the method of collection for this activity.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 29, 1999 (64 FR 73040). No comments were received on this ICR during the comment period. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: Pesticide Registrants.

Estimated Number of Respondents: 5000.

Frequency of Response: As needed per event.

Estimated total number of responses for each respondent: 1.

Estimated Total Annual Burden: 1,250 hours.

Estimated Total Annualized Costs: $118,350.

Changes in Burden Estimates: The total burden associated with this ICR has decreased from 1,500 hours in the 1997 ICR to 1,250 for this ICR. This adjustment represents an improved estimate of the volume of responses received by the Agency. According to the procedures prescribed in 5 CFR

1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: July 13, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–18107 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6838–6]

Notice of Availability, ''Understanding and Accounting for Method Variability in WET Applications Under the NPDES Program''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of document.

SUMMARY: On June 30, 2000, EPA issued the final document, entitled ''Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program'' in response to questions on WET test method variability. WET applications are implemented under the National Pollutant Discharge Elimination System (NPDES) Program.

DATES: Final document issued June 30, 2000.

ADDRESSES: A copy of the final document and supporting documents including the public comments received by EPA on the July 26, 1999 draft document are available for review at the EPA's Water Docket, Room EB57, 401 M Street, S.W., Washington, D.C. 20460. For access the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time for an appointment.

The complete text of this **Federal Register** notice and ''Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program'' may be viewed or downloaded on the Internet at *http://www.epa.gov/owm/npdes.htm.*

FOR FURTHER INFORMATION CONTACT: For technical questions on this document, contact Debra Denton, (415–744–1919) or Laura Phillips (202–260–9522), Water Permits Division, (4203), USEPA, Office of Wastewater Management, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. Copies of the document may be requested from the Office of Water's Resource Center at (202–260–1827) or by contacting the National Center for Environmental Publications and Information (NCEPI) at (513–489–8190).

SUPPLEMENTARY INFORMATION:

Background

The Whole Effluent Toxicity (WET) approach to protection of water quality is the focus of this document. In 1989, EPA defined whole effluent toxicity as ''the aggregate toxic effect of an effluent measured directly by an aquatic toxicity test.'' At the same time, EPA promulgated regulations requiring NPDES permit limitations for WET under certain circumstances. [54 FR 23868 at 23895, June 2, 1989]. Aquatic toxicity tests are laboratory experiments that measure the biological effect (*e.g.,* growth, survival, and reproduction) of effluents or receiving waters on aquatic organisms. In aquatic toxicity tests, groups of organisms of a particular species are held in test chambers and exposed to different concentrations of an aqueous test sample, for example, a reference toxicant, an effluent, or a receiving water. Observations are made at predetermined exposure periods. At the end of the test, the responses of test organisms are used to estimate the effects of the toxicant or effluent. In the early 1980s, EPA published methods (USEPA 1985, 1988, 1989) for estimating the short-term acute and chronic toxicity of effluents and receiving waters to freshwater and marine organisms.

Effect of This Document

EPA is providing this document to clarify several issues regarding WET variability and reaffirm EPA's earlier guidance and recommendations published in the Technical Support Document for Water Quality-Based Toxics Control (TSD, USEPA 1991). Today's document is intended to provide NPDES regulatory authorities and all stakeholders, including permittees, with guidance and recommendations on how to understand and account for measurement variability in WET testing.

Three Goals of Today's Document

Today's document describes three goals EPA has defined to address issues surrounding WET variability. In addition, the document is intended to satisfy the requirements of a settlement agreement to resolve litigation over rulemaking to standardize WET testing procedures. These three goals are:

1. To quantify the variability of the promulgated test methods and report a coefficient of variation (CV) as a measure of test method variability.

2. To evaluate the statistical methods described in the Technical Support Document for Water Quality-Based Toxics Control (TSD) for determining the need for and deriving WET permit conditions.

3. To suggest guidance for regulatory authorities on approaches to address and to minimize test method variability. In addition, the document is intended to provide guidance to regulatory authorities, permittees, and WET testing laboratories on conducting the biological and statistical methods and evaluating test effect concentrations.

Principal Conclusions

The principal conclusions of this document in response to the three document goals follow.

Evaluation of Test Method Variability

- Comparisons of WET method precision with method precision for analytes commonly limited in NPDES permits demonstrate that the variability of the promulgated WET methods is within the range of variability experienced in other types of analyses. Several researchers also noted that method performance improves when prescribed methods are followed closely by experienced analysts.
- The document provides interim CVs for promulgated WET methods in Appendix A of the final document pending completion of between-laboratory studies, which may affect these interim CV estimates.

Evaluation of Approach To Incorporate Test Method Variability

- EPA's Technical Support Document for Water Quality-based Toxics Control (TSD) presents guidance for developing effluent limits that appropriately protect water quality, regarding both effluent variability and analytical variability, provided that the WET criteria and waste load allocation (WLA) are derived correctly.
- EPA's analysis of data gathered in the development of today's document indicates that the TSD approach appropriately accounts for both effluent variability and method variability. EPA does not accept that a reasonable alternative approach is available to determine a factor that would discount the effects of method variability in TSD procedures based on CVs because the approach would not assure adequate protection of water quality.

Development of Guidance to Regulatory Authorities

- EPA recommends that NPDES permitting authorities implement the statistical approach as described in the

TSD to evaluate effluent and to derive WET limits or monitoring triggers.

• EPA recommends that NPDES permitting authorities calculate the facility-specific CVs using point estimate techniques to determine the need for and to derive a permit limit for WET, even if self-monitoring data are to be determined using hypothesis testing techniques, for example, to determine a ''no effect concentration (NOEC)''. The document describes such facility-specific calculation procedures.

Additional Recommendations and Guidance

This document also provides recommendations and guidance on minimizing variability in three specific areas in order to generate sound WET test results: (1) Obtaining a representative effluent sample; (2) conducting the toxicity tests properly to generate the biological endpoints; and (3) conducting the appropriate statistical analysis to determine the effect concentrations (IC25, NOEC). If these recommendations are addressed, the reliability of the test endpoint values should improve.

• Permitting authorities should design a sampling program that collects representative effluent samples to fully characterize effluent variability for a specific facility over time.

• Permitting authorities should ensure proper application of WET statistical procedures and test methods.

• EPA recommends that NPDES permitting authorities incorporate both the upper and lower bounds using the percent minimum significant difference (PMSD) to control and to minimize within-test method variability and increase test sensitivity. To achieve the PMSD upper bound, either the replication should increase or within-test method variability should decrease, or both.

• EPA recommends that WET testing laboratories maintain control charts for PMSD and the control mean and report the PMSD with all WET test results.

• NPDES permitting authorities should develop a quality control checklist to assist in evaluating and interpreting toxicity test results.

• EPA recommends that permitting authorities and laboratories participate in the National Environment Laboratory Accreditation Program and conduct routine performance audit inspections to evaluate laboratory performance.

Dated: July 12, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–18102 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6837–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Butler Mine Tunnel De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Butler Mine Tunnel Superfund Site in Pittston Township, Luzerne County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 2, 2000, and is subject to review by the public pursuant to this document. The agreement has been approved by the Attorney General, United States Department of Justice or her designee.

The Environmental Protection Agency is proposing to enter into a de minimis settlement pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g). This proposed settlement is intended to resolve the liability under CERCLA of one de minimis party for response costs incurred by the United States Environmental Protection Agency at the Butler Mine Tunnel Superfund Site, Pittston Township, Luzerne County, Pennsylvania.

The City of College Park, a municipality, is the Settling Party who has executed binding certifications of its consent to participate in this settlement. This party has agreed to pay $4,000 to the United States Environmental Protection Agency subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before August 17, 2000.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should refer to: In Re: Butler Mine Tunnel Superfund Site, Pittston Township, Luzerne County, Pennsylvania, U.S. EPA Docket No. CERC–DEM–2000–01. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III. A copy of the Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Dawnmarie Dominski, Paralegal Specialist, at (215) 814–2614.

FOR FURTHER INFORMATION CONTACT: Charles Hayden, Assistant Regional Counsel, (215) 814–2668, United States Environmental Protection Agency, Office of Regional Counsel, (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with de minimis parties to allow them to resolve their liabilities under, inter alia, section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with a municipal party at the Butler Mine Tunnel Superfund Site who is responsible for less than one percent of the volume of identified hazardous substances at the Site. The de minimis party listed above will be required to pay its volumetric share of the Government's past response costs and the estimated future response costs at the Butler Mine Tunnel Superfund Site.

Dated: July 7, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–18106 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51947; FRL–6592–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 24, 2000 to May 19, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51947 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51947. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

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 OPPTS–51947 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51947 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 24, 2000 to May 19, 2000, consists of the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0743	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0744	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0745	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0746	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0747	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0748	04/24/00	07/23/00	CBI	(G) Component of coating with open use	(G) Urethane acrylate
P–00–0749	04/24/00	07/23/00	CBI	(G) Rheomate, the commercial formulation based on zirconyl citrate, is an additive for water based drilling fluids to be used as a thinner/deflocculant, alone or in combinatio with other additives for low and high temperature applications on-shore and off-shore	(G) Polycarboxylic acid, zirconium salt
P–00–0750	04/27/00	07/26/00	U.S. Polymers Inc.	(S) Let down vehicle ink application; component in overprint varnishes	(G) Reaction product of: 1,2 ethane diamine, aliphatic diisocyanate and polyether polyols
P–00–0751	04/24/00	07/23/00	CBI	(G) Lubricant	(G) Alkanedioic acid, diester with branched alcohols
P–00–0752	04/25/00	07/24/00	CBI	(G) Emulsifier	(G) Polyoxyethylene alkyl ether sulfosuccinate metal salts
P–00–0753	04/27/00	07/26/00	Englehard Corporation	(S) A colorant for plastics	(G) Azo maroon pigment
P–00–0754	04/27/00	07/26/00	CBI	(G) Non-dispersive use.	(G) Blocked aromatic isocyanate
P–00–0755	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0756	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0757	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0758	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0759	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer
P–00–0760	04/24/00	07/23/00	CBI	(S) Laminating adhesive	(G) Isocyanate-terminated polyester polyurethane polymer

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0761	04/28/00	07/27/00	Condea Vista Company	(S) Surfactant/emulsifier for liquid laundry detergents and general purpose cleaners, (both pmn substances a&b)	(S) 2-propanol, 1-amino-, compds. with polyethylene glycol hydrogen sulfate $C_{12–16}$-alkyl ethers*
P–00–0762	04/28/00	07/27/00	Condea Vista Company	(S) Surfactant/emulsifier for liquid laundry detergents and general purpose cleaners, (both pmn substances a&b)	(S) 2-propanol, 1,11/4,11/41/4-nitrilotris-, compds. with polyethylene glycol hydrogen sulfate $C_{12–16}$-alkyl ethers*
P–00–0763	04/28/00	07/27/00	CBI	(G) Additive for inks and coatings	(G) Polyester modified polydimethylsiloxane
P–00–0764	04/28/00	07/27/00	3M	(G) Binder resin	(G) Polyester resin
P–00–0765	05/01/00	07/30/00	CBI	(S) Chemical intermediate	(G) Alkylaryl polyether
P–00–0766	05/01/00	07/30/00	CBI	(G) An open non-dispersive use	(G) Rosin modified phenolic resin
P–00–0767	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0768	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0769	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0770	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0771	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0772	05/01/00	07/30/00	CBI	(S) Resin for automotive coatings	(G) Modified carbamate acrylic polymer
P–00–0773	05/02/00	07/31/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(S) 1-dodecanesulfonyl chloride*
P–00–0774	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0775	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0776	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0777	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0778	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Chemical intermediate	(G) Mixed butene oligomers
P–00–0779	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0780	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0781	05/02/00	07/31/00	BP Amoco Chemical Company	(G) Synthetic lubricant	(G) Mixed butene oligomers, hydrogenated
P–00–0782	05/02/00	07/31/00	CBI	(S) Aqueous dispersion of polyurethane for leather fininshing	(G) Fatty acid polymer with alkyl diols, isocyanic acid, ester, alkoxylated polyether diolsulfonate, 2-oxepanone and alkyl diamine
P–00–0783	05/03/00	08/01/00	Westvaco Corporation—Chemical Division	(S) Dye dispersant for dye formualtions	(G) Sodium derivatives of modified alkali lignin reaction products with formaldehyde
P–00–0784	05/03/00	08/01/00	Gelest, Inc.	(S) Intermediate for conversion to final product; research purposes	(S) Silane, trichloro[(ethylphenyl)ethyl]-*
P–00–0785	05/03/00	08/01/00	Gelest, Inc.	(S) Component in resin formulation for coating glass; r&d purposes	(G) Silane ester
P–00–0786	05/04/00	08/02/00	CBI	(G) Thermoplastic elastomer for industrial use	(G) Crosslinked polyolefin elastomer
P–00–0787	05/04/00	08/02/00	Alco Chem, Inc.	(G) Component of low viscosity industrial lubricant	(S) Alkanes, $C_{10–24}$-branched*
P–00–0788	05/04/00	08/02/00	Alco Chem, Inc.	(G) Solvent component	(S) Alkanes, $C_{10–24}$*
P–00–0789	05/04/00	08/02/00	Cyclics Corp.	(S) Curable thermoplastic resin	(S) 1,4-benzedicarboxylic acid, dimethy ester, polymer with 1,4-butanediol, cyclized*
P–00–0790	05/05/00	08/03/00	Huntsman Petrochemical Corporation	(G) Chemical intermediate	(G) Poly(oxyalkylene) carbonate
P–00–0791	05/05/00	08/03/00	CBI	(S) Acrylic resin used to make waterbased coatings for plastics surfaces; acrylic resin used to make various waterbased coatings	(G) Copolymer of styrene and methacrylic esters

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0792	05/05/00	08/03/00	CBI	(S) Surfactant for polyurethane foam	(G) Silicone copolymer
P–00–0793	05/05/00	08/03/00	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–00–0794	05/08/00	08/06/00	CBI	(G) Component of catalyst	(G) Chloroformate
P–00–0795	05/08/00	08/06/00	CBI	(G) Adhesive	(G) Waterbourne polyurethane
P–00–0796	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted cyclopropane ester
P–00–0797	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted cyclopropane ester
P–00–0798	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted aliphatic carboxylic acid chloride
P–00–0799	05/09/00	08/07/00	FMC Corporation	(S) Chemical intermediate	(G) Substituted aliphatic carboxylic acid chloride
P–00–0800	05/09/00	08/07/00	CBI	(G) Cross-linking agent for thermosetting resin	(G) Amine adduct of epoxy resin
P–00–0801	05/11/00	08/09/00	Arizona Chemical Company	(S) Adhesive tackifier	(S) Rosin, fumarated, C_{9-11}-isoalkyl esters, C_{10}-rich, compds. with 2-(dimethylamino)ethanol*
P–00–0802	05/11/00	08/09/00	Arizona Chemical Company	(S) Adhesive tackifier	(S) Rosin, polymd., compd. with 2-(dimethylamino) ethanol*
P–00–0803	05/11/00	08/09/00	CIBA Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 2,7-naphthalenedisulfonic acid, 5-[[4-chloro-6-[substituted] amino]-1,3,5-triazin-2-yl] amino]-4-hydroxy-3-[(1-sulfo-2-naphthalenyl)azo]-, trisodium salt
P–00–0804	05/11/00	08/09/00	Union carbide corporation	(G) Chemical intermediate	(G) Aliphatic dialdehyde
P–00–0805	05/11/00	08/09/00	Union Carbide Corporation	(G) Chemical intermediate	(G) Aliphatic dialdehyde
P–00–0806	05/11/00	08/09/00	CIBA Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 1,3,6-naphthalenetrisulfonic acid, 7-[[2-[(substituted)amino]-4-[[4-[[2-[2-[substituted]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo]-, trisodium salt
P–00–0807	05/11/00	08/09/00	Eastman Kodak Company	(G) Contained use in an article	(G) Substituted cycloalkyl heterocyclic derivative
P–00–0808	05/11/00	08/09/00	Ashland Inc.	(G) Adhesive	(G) Modified copolymer of acrylic esters and styrene
P–00–0809	05/11/00	08/09/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Heterocyclic alkyl acid derivative
P–00–0810	05/11/00	08/09/00	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Heterocyclic alkyl alcohol
P–00–0811	05/11/00	08/09/00	CBI	(S) Heat resistant filler	(G) Inorganic layer polymer
P–00–0812	05/12/00	08/10/00	CBI	(S) Adhesive for assembling furniture	(G) Aliphatic polyamide polymer
P–00–0813	05/12/00	08/10/00	CBI	(S) Adhesive for filter pleating	(G) Aliphatic polyamide polymer
P–00–0814	05/12/00	08/10/00	CBI	(G) Moisture curing polyurethane adhesive	(G) Isocyanate terminated urethane pre-polymer
P–00–0815	05/12/00	08/10/00	CBI	(S) Paint or coating component	(G) Fluoroethylene-vinylether copolymer
P–00–0816	05/12/00	08/10/00	E.I. Dupont Denemours & Co.	(G) Open, non-dispersive use	(G) Alkyl aminosulfonylcarboxylate
P–00–0817	05/12/00	08/10/00	CBI	(G) Open, non-dispersive use	(G) Silicon resin
P–00–0818	05/12/00	08/10/00	Condea Servo LLC	(S) Thickener for solvent-based industrial coating systems	(G) Fatty acids, unsatd., dimers, polymers with a,w-diisocyanate and w-hydroxyalkyl-imidazolidinone
P–00–0819	05/12/00	08/10/00	Degussa-Huls Corporation	(G) Chemical intermediate	(S) 1,1-cyclopropanedicarboxylic acid, dimethyl ester*
P–00–0820	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, 4-hydroxybutyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*
P–00–0821	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*

I. 93 PREMANUFACTURE NOTICES RECEIVED FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0822	05/15/00	08/13/00	Cytec Industries Inc.	(S) Automotive coating; wood coatings;industrial coatings;transportation coatings	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate and 2-propenoic acid, compd. with *N,N*-diethylethanamine*
P–00–0823	05/15/00	08/13/00	CBI	(G) Coating additive for open, non-dispersive use	(G) Magnesium salt of phosphate ester.
P–00–0824	05/15/00	08/13/00	CBI	(G) Agent for copier	(G) Substituted methylenebisnaphthalene
P–00–0825	05/16/00	08/14/00	CBI	(G) Open, non-dispersive use (dyestuff)	(G) Azo dyestuff
P–00–0826	05/16/00	08/14/00	CBI	(S) For use as plasticizer in acrylic polymer dispersions for use with cementitious materials	(G) Polyacrylate, partially neutralized
P–00–0827	05/16/00	08/14/00	CBI	(G) Solvent	(G) Substituted alcohol
P–00–0828	05/16/00	08/14/00	Crompton Corporation (formerly CK Witco Corporation)	(G) Polymer Additive	(S) 2,4(1*h*,3*h*)-pyrimidinedione, 6-amino-1,3-dimethyl-*
P–00–0829	05/17/00	08/15/00	Cytec Industries Inc.	(G) Uv light stabilizer in plastics	(G) Hindered amine light stabilizer
P–00–0830	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyether modified polydimethylsiloxane
P–00–0831	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyer ether modified dimethylpolysiloxane
P–00–0832	05/18/00	08/16/00	CBI	(S) Additive, open non-dispersive	(G) Polyether modified polydimethylsiloxane
P–00–0833	05/18/00	08/16/00	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polysiloxane, acrylated
P–00–0834	05/18/00	08/16/00	CBI	(S) Laminating Adhesive	(G) Polyester polyurethane methacrylic graft copolymer
P–00–0835	05/19/00	08/17/00	CBI	(G) Polymer Additive	(G) Substituted picolinate

II. 67 NOTICES OF COMMENCEMENT FROM: 04/24/00 TO 05/19/00

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0016	05/19/00	05/14/00	(G) Aqueous dispersion of a polyester polyurethane
P–00–0026	05/01/00	04/18/00	(G) Polyisocyanate prepolymer
P–00–0036	05/05/00	04/11/00	(G) Monoazo napthanilide pigment, aminomethoxybenzoyltrifluoromethylanalide
P–00–0095	05/11/00	05/08/00	(G) Formaldehyde, polymer with an aliphatic polyamine
P–00–0096	05/10/00	04/24/00	(G) Vinyl tripolymer
P–00–0100	05/08/00	04/28/00	(G) Substituted polydimethylsiloxane
P–00–0183	05/15/00	04/26/00	(G) Substituted phenylenediamide reaction products with substituted phenylenediamine, and sulfur, leuco derivs
P–00–0268	04/26/00	04/10/00	(G) Acetyl heterocyclic compound
P–00–0293	05/11/00	05/08/00	(G) Organophosphinothioyl ester
P–00–0316	05/03/00	04/19/00	(G) Propanoic acid, 3-(alkylthio)-, thiobis (alkylphenylene ester
P–00–0319	05/10/00	04/03/00	(G) Benzenedicarboxylic acid, alkyl alkylaminocarbonyloxyethyl ester
P–00–0336	05/15/00	05/01/00	(G) Liquid anionic polymer
P–00–0337	05/15/00	05/01/00	(G) Liquid anionic polymer
P–00–0348	05/10/00	04/03/00	(G) *N,N*¼-bis (octadecanoyl) hexylenediamine, or hexamethylenebisstearamide*
P–00–0356	05/02/00	04/07/00	(G) Alkarylsulfonic acid.
P–00–0357	05/04/00	04/21/00	(G) Polyether—type polyurethane
P–00–0376	05/04/00	04/18/00	(S) 1,5-naphthalenedisulfonic acid, 2 (or 3)-[[8-amino-7-[[5-[[4-[4-[2-[[4-[[3-[[1-amino-7-[[1,5 (or 4,8) -disulfo-2-naphthalenyl]azo]-8-hydroxy-3,6-disulfo-2-naphthalenyl]azo] -4-sulfophenyl]amino]-6-chloro-1,3,5-triazin-2-yl]amino]ethyl]-1-piperazinyl] -6-chloro-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]azo]-1-hydroxy-3, 6-disulfo-2-naphthalenyl]azo]-, sodium salt*
P–00–0408	05/16/00	04/13/00	(G) Calcium fatty acid complex.
P–00–0409	05/16/00	04/12/00	(G) Calcium fatty acid complex
P–00–0414	05/16/00	04/18/00	(G) Calcium fatty acid complex
P–00–0416	05/16/00	04/20/00	(G) Calcium fatty acid complex
P–00–0422	05/05/00	04/26/00	(G) Non-volatile emulsion acrylic polymer
P–00–0429	04/26/00	04/19/00	(G) Fluoroelastomer
P–00–0440	05/18/00	05/03/00	(G) Polyester resin

II. 67 NOTICES OF COMMENCEMENT FROM: 04/24/00 TO 05/19/00—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0465	05/18/00	05/02/00	(G) Isocyanate terminated urethane polymer
P–96–1460	05/04/00	04/11/00	(S) 3-amino-4-chlorobenzoic acid*
P–97–0447	04/24/00	03/29/00	(G) Hydroxy functional methacrylic copolymer
P–97–0520	05/01/00	04/07/00	(S) 1,3-dimethyl-2-piperidinone*
P–97–0521	05/01/00	04/07/00	(S) 1,5-dimethyl-2-piperidinone
P–98–0047	04/26/00	03/31/00	(G) Polyester resin
P–98–0069	05/16/00	09/14/99	(S) 1-octadecanol, manuf. of distn. lights*
P–98–0261	05/19/00	04/21/00	(S) Cyclohexane, 1-(1,1-dimethylpropyl)-4-ethoxy-,cis-; cyclohexane, 1-(1,1-dimethylpropyl)-4-ethoxy-, trans-*
P–98–0630	04/25/00	04/06/00	(G) Grace isopropanolamine salt solution
P–98–0903	05/04/00	04/11/00	(G) Acidic polyester polyamide
P–98–0905	05/04/00	04/11/00	(G) Alkenyl half-ester of alkylpolyethoxylate
P–98–1076	05/15/00	05/05/00	(G) Polycyclic alkanol
P–98–1085	05/05/00	04/11/00	(G) Diketo—pyrrolopyrrol
P–99–0165	04/28/00	12/20/99	(G) Acrylate functional polyester
P–99–0169	04/28/00	12/20/99	(G) Acrylate functional polyester emulsion
P–99–0177	04/28/00	12/20/99	(G) Acrylate functional polyester
P–99–0189	04/24/00	04/11/00	(G) Styrenated acrylic compolyer
P–99–0534	04/24/00	04/07/00	(G) Mixed thio acid amide molybdenum complexes
P–99–0595	04/25/00	03/13/00	(S) 3-cyclohexene-1-carboxylic acid, 1-methyl-1–(4-methyl-3-cyclohenen-1-yl) ethyl ester*
P–99–0596	04/25/00	03/13/00	(S) 3-cyclohexene-1-carbonyl chloride*
P–99–0597	04/25/00	03/06/00	(S) 3-cyclohexene-1-carboxylic acid*
P–99–0598	04/24/00	03/21/00	(S) 7-oxabicyclo[4.1.0]heptane-3-carboxylic acid, 1-methyl-1–(6-methyl-7-oxabicyclo [4.1.0]hept-3-yl) ethyl ester*
P–99–0845	04/28/00	04/07/00	(G) Aluminate, bis[[(substituted)azo] [hydroxyphenylbenzenesulfo namidato] hydrogen compound with tetramethylpiperidinamine
P–99–0918	05/08/00	04/22/00	(G) Halogenated polystyrene copolymer
P–99–0923	05/15/00	04/20/00	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid, ammonium salt
P–99–0930	05/15/00	04/17/00	(G) Tall oil modified acrylic polymer with rosin and tall oil fatty acid
P–99–0983	05/04/00	04/11/00	(G) Alkylol ammonium salt of a high-molecular weight carboxylic acid
P–99–0992	05/04/00	04/11/00	(G) Modified polysiloxane
P–99–1014	05/16/00	04/25/00	(G) Cycloaliphatic olefin distillate stream polymerized with substituted alkyl phenol
P–99–1080	05/01/00	04/13/00	(G) Naphthaquinone diazide sulfonyl ester mixture of a polynuclear polyhydroxy phenol
P–99–1245	05/01/00	04/16/00	(S) Carbonic dichloride, polymer with 4,4^{1}/4–(9*h*-fluoren-9-ylidene) bis[2,6-dibromophenol]*
P–99–1345	04/26/00	04/20/00	(S) Propanoyl fluoride, 2,3,3,3-tetrafluoro-2-[1,1,2,2,3,3-hexafluoro-3-(trifluoromethoxy) propoxy]-*
P–99–1351	05/04/00	03/30/00	(G) Polycarboxylate
P–99–1352	05/04/00	03/31/00	(G) Polycarboxylate
P–99–1363	05/04/00	04/11/00	(G) Aminopolyamide
P–99–1364	05/02/00	04/12/00	(G) Aminopolyamide
P–99–1372	05/01/00	04/21/00	(S) 2-naphthalenamine, *N*-(2-ethylhexyl)-1–((3-methyl-4–((3-methylphenyl)azo)phenyl)azo)-*
P–99–1376	05/09/00	05/02/00	(G) Polydimethylsiloxane resin
P–99–1377	05/18/00	05/10/00	(G) Polydimethylsiloxane resin
P–99–1385	05/17/00	04/15/00	(G) Substituted bis cyclopentadienyl metallocene
P–99–1394	05/15/00	05/02/00	(G) Polyester polyether isocyanate polymer
P–99–1395	05/17/00	05/02/00	(G) Polyester polyether isocyanate polymer
P–99–1402	05/05/00	05/02/00	(G) Acrylic acid ester copolymer with vinylimidazole, grafted with styrene-acrylnitril copolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 3, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–18101 Filed 7–17–00; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 20, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. Approval of Minutes

—June 8, 2000 (Open)

B. Reports

—Mission-Related Investment Prior Approval
—Notice and Request for Comment on National Charters Booklet

C. New Business

1. Regulations
—Civil Money Penalty Adjustment [12 CFR Part 622] (Final)
—Loan Purchase and Sales [12 CFR Parts 614 and 619] (Proposed)
—Stockholder Vote on Like Lending Authority [12 CFR Part 611] (Final)
2. Other—Corporate Approvals
—Sacramento Valley ACA
—Yosemite FLCA
3. Report
—Report on Corporate Approvals

CLOSED SESSION*

D. Report

—Litigation

Dated: July 14, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

* Session closed—exempt pursuant to 5 U.S.C. 552b(c)(10).

[FR Doc. 00–18284 Filed 7–14–00; 3:48 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the August 10, 2000 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9:00 a.m. on Tuesday, August 8, 2000. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–18285 Filed 7–14–00; 3:49 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 24, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–18309 Filed 7–14–00; 4:13 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–159]

Availability of ATSDR's Draft Research Agenda 2002–2010

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR).

ACTION: Notice and request for public comment.

SUMMARY: The Agency for Toxic Substances and Disease Registry announces the availability for public comment the draft document, Environmental Public Health Research Agenda, Agency for Toxic Substances, 2002–2010.

DATES: Comments must be received by September 1, 2000.

ADDRESSES: The document is available by contacting Robert F. Spengler, Sc.D., Associate Administrator for Science, ATSDR, Mailstop E–28, 1600 Clifton Road, Atlanta, Georgia 30333, (404) 639–0708, or (toll free) 1–888–42–ATSDR, 1–888–422–8737, rys2@cdc.gov.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry (ATSDR) is the lead Public Health Service agency addressing human health concerns and risks in communities near hazardous waste sites or other sources of environmental contamination. ATSDR has developed a research agenda that incorporates a wide range of input from governmental partners, professional associations, universities, non-governmental organizations, affected citizens, community groups, and American Indian Tribes. Six focus areas were identified through this collaborative effort: Exposure Assessment; Chemical Mixtures; Susceptible Populations; Communities and Native American Tribes; Evaluation and Surveillance of Health Effects; and Health Promotion and Intervention.

The proposed ATSDR Research Agenda will assist in the Agency's critical mission to reduce and prevent exposures and adverse health outcomes from exposure to hazardous substances. The proposed research agenda will also support the Agency's goals of identifying people at health risk and evaluating relationships between hazardous substances and human health.

This draft Research Agenda is being made available so that the Agency can benefit from public review and input before finalizing the Agenda. This **Federal Register** notice announces that ATSDR's draft Research Agenda 2002–2010 is available for public comment.

Dated: July 13, 2000.

Georgi Jones,

Director, Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–18079 Filed 7–17–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1341]

Blood Standards; Pilot Program for Licensing and Draft ''Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained From an Outside Supplier;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft guidance document entitled ''Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier,'' dated June 2000. FDA is announcing its intent to establish a pilot program for licensed manufacturers of Source Plasma seeking to supplement their licenses to include a Red Blood Cell Immunization Program (RBCIP). The pilot program is intended to allow self-certification in lieu of submission to FDA of a detailed biologics license application (BLA) supplement. The draft guidance document provides criteria for participating in the pilot program and for manufacturing, quality control, and labeling of products in an RBCIP. FDA intends to determine if this pilot program streamlines the process for licensing and is more efficient and effective without compromising the health of the donor or product safety, purity, and potency.

DATES: Submit written comments at any time, however, comments are to be submitted by September 18, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier,'' dated June 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 draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: About participation in the pilot program: Mary Ann Denham, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3543.

About this notice: Nathaniel L. Geary, 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: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier,'' dated June 2000. The draft guidance document is intended to assist those manufacturers who wish to participate in CBER's RBCIP pilot program. CBER is proposing a pilot program that would allow a licensed manufacturer of Source Plasma to self-certify conformance to specific criteria prescribed as part of a pilot program in lieu of submission of a detailed BLA supplement filing. Instead of submitting a BLA supplement with supporting operating procedures and data derived from validation and quality control testing, the manufacturer would submit: (1) An application form (Form FDA 356h); (2) a self-certification statement that provides that the manufacturer is in compliance with all applicable FDA regulations and meets the recommended criteria for RBCIP using immunogen Red Blood Cells obtained from an outside supplier, set forth in the draft guidance document entitled ''Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier,'' dated June 2000; and (3) a written request to the CBER Director for an exception to filing a detailed supplement. The pilot program provides that FDA will review for completeness Form FDA 356h, the self-certification, and written request for an exception to filing a detailed supplement, and at FDA discretion, will schedule a prelicense inspection within 90 days of receipt of the self-certification to confirm conformance with applicable Federal regulations and the recommended criteria in the draft guidance document. To participate in the program a manufacturer of Source Plasma must: (1) Hold an unsuspended and unrevoked biologics license for Source Plasma; (2) seek to supplement the license to include a RBCIP; (3) plan to use immunogen Red Blood Cells (IRBC), already thawed and deglycerolized, obtained per written agreement from an outside supplier; and (4) have identified an outside supplier of IRBC who holds an unsuspended and unrevoked biologics license for Source Plasma that already includes CBER's authorization for a RBCIP. The manufacturer should be ready for a prelicense inspection at the time it forwards Form FDA 356h, self-certification, and a request for exception to FDA. If, during the prelicense inspection, FDA finds significant deficiencies in quality assurance, manufacturing facilities, or product safety, purity, potency or effectiveness, FDA may withdraw the manufacturer from the pilot program, and the manufacturer will be required to submit a BLA supplement with complete supporting documentation prior to marketing in interstate commerce Source Plasma from donors immunized with IRBC obtained from an outside supplier.

If there is adequate interest in the pilot program, FDA will announce its implementation in the **Federal Register** and will conduct the pilot program for approximately 1 year. At the end of the pilot program period, FDA will evaluate the pilot program for efficiency and effectiveness. If the pilot program proves to be efficient and effective without compromising the health of the donor or product safety, purity, or potency, FDA intends to permit qualified manufacturers of Source Plasma to continue with the self-certification option. FDA is also announcing the availability of a draft guidance document entitled ''Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier,'' dated June 2000. At this time, the draft guidance document is

being made available for comment purposes only and is not intended for use by the industry. The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is being issued as a draft level 1 guidance document consistent with the GGP's.

This draft guidance document represents the agency's current thinking on immunization of Source Plasma donors using IRBC obtained from an outside supplier. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. However, manufacturers should conform to the specific criteria set forth in this draft guidance document for voluntary participation in this program. Manufacturers who want to use an alternative approach must submit a detailed BLA supplement under 21 CFR 601.12 or otherwise satisfy FDA that an exemption from that requirement is justified under 21 CFR 640.120. 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

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. CBER intends to revise this draft guidance document based on comments received from the public. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document and the pilot program, including those comments expressing interest in participating in the pilot program. Written comments may be submitted at any time, however, comments are to be submitted by September 18, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should 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: July 5, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–18059 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4910]

Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3.'' The final regulations implementing the Mammography Quality Standards Act of 1992 (the MQSA) became effective April 28, 1999, replacing the interim regulations. The guidance document is intended to assist facilities and their personnel to meet the MQSA final regulations.

DATES: Submit written comments concerning this guidance document at any time.

ADDRESSES: Submit written requests for single copies on a 3″ diskette of the guidance document entitled ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document. Submit written comments on the guidance document to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was published as a draft proposal for public comment in the **Federal Register** of December 8, 1999 (64 FR 68696). It has been discussed with the National Mammography Quality Assurance Advisory Committee at two separate meetings (July 1999 and January 2000). The guidance document has been modified from the original draft proposal to address public comments. While there are several clarifying changes in the guidance document, there were no major substantive changes.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the final regulations implementing the MQSA. 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 applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touchtone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1496) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also 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. Updated on a regular basis, the CDRH home page includes previously issued ''Compliance Guidance for the Mammography Quality Standards Act Final Regulations Document #3,'' device safety alerts, **Federal Register** reprints, information on premarket submissions

(including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Compliance Guidance: The Mammography Quality Standards Act Final Regulations Document #3 will be available at http://www.fda.gov/cdrh/mammography/guidance-rev.html.

IV. Comments

Interested persons may submit to the contact person (address above) written comments regarding this guidance at any time. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Dated: June 29, 2000.

Linda S. Kahan,

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

[FR Doc. 00–18060 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2152]

Guidance for Industry and FDA Reviewers on Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management.'' This guidance describes how to incorporate human factors techniques and theory into risk management during medical device design and development. The guidance is intended to assist reviewers of premarket device submissions, design control documentation, and manufacturers that develop devices. The guidance is necessary to decrease problems with the use of medical devices that impact safety and effectiveness, and help ensure safer and more effective devices.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management'' to the contact person listed below. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Ron D. Kaye, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–2436.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance is intended to provide a suggested approach for integrating human factors within risk management for medical device design and development. It also contains an introduction to both risk management and human factors and a discussion of how they are linked. The focus is on reducing hazards related specifically to the use of medical devices. Human factors techniques are discussed within the context of applying risk management. The guidance also suggests how human factors-risk management efforts should be documented and included in premarket submissions. This guidance document was published for public comment on August 3, 1999, as a draft guidance entitled ''Device Use Safety: Incorporating Human Factors in Risk Management.'' The document has been modified from the original draft version to address public comments. There were changes made in the document for the purposes of clarity, but there were no major substantive changes.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the application of human factors to new medical device design and development to help ensure that intended users can use a device safely and effectively. 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 applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touchtone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1497) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also 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. Updated on a regular basis, the CDRH home page includes ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Medical Device Use—Safety: Incorporating Human Factors Engineering into Risk Management'' is also available at http://www.fda.gov/cdrh/HumanFactors.html.

IV. Comments

Interested persons may, at any time, submit written comments on the guidance to the contact person (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Linda S. Kahan,

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

[FR Doc. 00–18061 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0331]

Medical Devices; Draft Guidance for Staff, Industry, and Third Parties Implementation of Third Party Programs Under the FDA Modernization Act of 1997; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revision to the guidance entitled, ''Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997.'' FDA is proposing to amend this guidance to provide procedures for third party review of additional moderate risk (class II) devices under the FDA Modernization Act of 1997 (FDAMA) Accredited Persons Program. As described in this document and in the draft guidance, FDA intends to expand the list of devices eligible for third party review. The revised guidance would assist those who are interested in participating in the expanded program.

DATES: Submit written comments on the draft guidance to ensure their adequate consideration in the preparation of the final document by September 1, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5 inch diskette of the draft guidance entitled ''Guidance for Staff, Industry, and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1996, FDA began a voluntary Third Party Review Pilot Program. The purpose of the pilot program was to: (1) Provide manufacturers of eligible devices an alternative review process that could yield more rapid marketing clearance decisions; and (2) enable FDA to target its scientific review resources at higher risk devices, while maintaining confidence in the review by third parties of low-to-moderate risk devices. Under the program, all class I devices that were not exempt from premarket notification (510(k)) at that time and 30 class II devices were eligible for third party review. During the first 18 months of the pilot program, FDA received 22 510(k)'s that were reviewed by Recognized Third Parties. In contrast, during the same period, FDA received more than 1,300 510(k)'s for third party eligible devices that were not reviewed by third parties.

FDAMA was signed into law by the President on November 21, 1997. Section 210 of FDAMA essentially codified and expanded the Third Party Review Pilot Program by establishing a new section 523 of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360m). Section 210 of FDAMA directs FDA to accredit third parties (Accredited Persons) in the private sector to conduct the review of 510(k)'s for low-to-moderate risk devices and make recommendations to FDA regarding the initial classification under section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)). FDA established and published criteria in the **Federal Register** on May 22, 1998 (63 FR 28388) to accredit or deny accreditation to persons who request to review 510(k)'s. In addition, FDA issued a list of devices that are eligible for review by Accredited Persons (May 20, 1998) as well as a guidance document entitled ''Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997'' (October 30, 1998). Copies of these documents can be found at http://www.fda.gov/cdrh/thirdparty. By November 21, 1998, FDA accredited 13 organizations to review 510(k)'s, and the agency was prepared to begin accepting reviews and recommendations from Accredited Persons. Concurrently, FDA terminated the Third Party Review Pilot Program that began on August 1, 1996. In the first 17 months that the FDAMA third party program has been in effect, 28 companies have used third parties to review a total of 54 510(k) submissions. During that same period, nearly 2,000 510(k) submissions from approximately 800 companies were eligible for third party review. This approach has typically yielded rapid marketing clearance decisions. In fiscal year 1999, the average total elapsed time between a third party's receipt of a 510(k) submission and FDA's substantial equivalence determination was 57 days. The portion of this time that occurred between FDA's receipt of the third party's recommendation and FDA's determination averaged just 15 days. In spite of these advantages, industry use of the third party approach has been low.

In an effort to expand the use of the Accredited Persons Program, the agency is proposing to initiate a pilot that will allow third party review of a greatly expanded list of devices (see details below). Accordingly, FDA is issuing a draft revision of the guidance document entitled ''Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997'' as well as making available an expanded list of additional devices that will be eligible under the pilot. Copies of these documents can be found at http://www.fda.gov/cdrh/thirdparty. After FDA reviews comments and finalizes this guidance, it will supersede the October 30, 1998, guidance currently in effect.

The May 20, 1998, list of devices eligible for review by Accredited Persons included 50 class I devices and 104 class II devices. FDA included all class I devices, not exempt from 510(k), because the agency determined that general guidance provided by CDRH is a sufficient basis for third party review of these relatively low risk products. However, FDA's decision to include class II devices was partly dependent on the existence of device specific guidance and/or FDA recognized standards. FDA is currently updating the May 20, 1998, list to reflect changes

in device classification and to include additional Class II devices for which device specific guidance is now available.

In addition to updating the May 20, 1998, list, the agency is now proposing to initiate a pilot that will expand the device list by allowing third party review of all class II devices regulated by the Center for Devices and Radiological Health (CDRH) that the agency believes are not prohibited from such review under the statute,[1] regardless of whether device specific guidance is available for the device. The pilot program will also include devices for which there is a limited exemption from 510(k). If a new version of a device requires a 510(k) because the change exceeds the limitation, that device is eligible for third party review unless it can not be reviewed by a third party because of the statutory exclusions under section 523 of the act. As with the current Accredited Persons Program, the expansion pilot will not include 510(k)'s that require multi-Center review (e.g., 510(k)'s for drug/device combination products) and devices for which the Center for Biologics Evaluation and Research has primary responsibility for review.

Any 510(k) for a class II device for which clinical data are needed to make a determination of substantial equivalence will continue to be subject to initial and supervisory review by FDA and will not be processed by FDA under the special procedures for the Accredited Persons Program. The decision to require clinical data is a matter of judgment that is often dependent on the nature of any differences between the new device and the device to which it is being compared (e.g., an additional specific indication for use). Manufacturers and Accredited Persons seeking guidance on the need for clinical data in a 510(k) should consult FDA's guidance documents and may also contact the appropriate review division in CDRH's Office of Device Evaluation.

FDA expects the pilot program to encourage more widespread use of the third party program. Under the pilot program, FDA will accept reviews from Accredited Persons of devices for which there is no device specific guidance under the following circumstances. An Accredited Person may review a class II device that does not have device specific guidance if:

(1) The Accredited Person has previously completed three successful 510(k) reviews under the third party program. This should include at least one 510(k) review that was in the same or similar medical specialty area as the device the Accredited Person now intends to review. The prior 510(k) reviews can be for class II devices that have device specific guidance or for class I devices.

(2) The Accredited Person contacts the appropriate CDRH Office of Device Evaluation (ODE) Branch Chief (or designee) before initiating a 510(k) review for a class II device that does not have device specific guidance to confirm that the Accredited Person meets the criteria in paragraph 1 above and to identify pertinent issues and review criteria related to this type of device.

(3) The Accredited Person prepares a summary documenting the discussions and submits the summary of those discussions to ODE.

The discussion and summary would not be binding on the agency or the Accredited Person. The presubmission discussions and the creation of a record of those discussions will help FDA ensure the consistency and timeliness that can be provided by device specific guidances. In addition, the FDA may utilize such documentation to ensure consistency in its own interactions with different Accredited Persons and regular submitters. Moreover, the record of these discussions will help FDA determine whether there is a need to issue device specific guidance and could facilitate future development of those documents.

The pilot will begin after FDA reviews comments and finalizes the guidance entitled ''Guidance for Staff, Industry and Third Parties: Implementation of Third Party Programs under the FDA Modernization Act of 1997.'' Existing Accredited Persons should refer to the guidance for procedures on how to expand the scope of their accreditation. In addition, persons seeking to become accredited under section 523 of the act also should refer to the procedures in this guidance.

The agency intends to review the pilot program in 12 months after it begins to see if the number of third party 510(k)'s has increased significantly, if the timeliness of review is maintained, and to consider whether particular divisions within CDRH's Office of Device Evaluation are devoting disproportionate staff time to presubmission discussions with Accredited Persons. The agency reserves the option to stop or reevaluate the pilot at any time it determines that additional work load generated by third party consultations compromises FDA's ability to review other applications or the agency has reason to believe the quality of the reviews is significantly diminished by lack of device specific guidance.

II. Significance of Guidance

This draft guidance represents the agency's current thinking on expanding the scope of the Accredited Persons Program to include class II devices not excluded by statute. It does not create nor 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 applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a draft Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Guidance for Staff, Industry, and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997,'' via your fax machine, call CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1160) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also 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. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance

[1] Section 523(a)(3)(A) of the act specifies that an Accredited Person may not review: (a) A class III device; (b) a class II device which is intended to be permanently implanted or life-supporting or life-sustaining; or (c) a class II device which requires clinical data in the report submitted under section 510(k). (Section 523 of the act sets limits on the number of class II devices that may be ineligible for Accredited Person review because clinical data are required.)

for Staff, Industry and Third Parties: Implementation of Third Party Programs Under the FDA Modernization Act of 1997'' will be available at http://www.gov/cdrh/dsma/3rdptythirdparty.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by September 1, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Linda S. Kahan,

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

[FR Doc. 00–18083 Filed 7–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting and Communication, Education and Outreach Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces a field trip and meeting of the Aquatic Nuisance Species (ANS) Task Force and a meeting of the Communication, Education and Outreach Committee of the ANS Task Force. The focus of the field trip and meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The field trip will take place from 12 p.m. to 6 p.m., Monday, July 31, 2000. The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m., Tuesday, August 1, 2000 and 8:30 a.m. to 12 p.m., Wednesday, August 2, 2000. The Communication, Education and Outreach Committee will meet from 1:30 p.m. to 4 p.m. on Wednesday, August 2, 2000.

ADDRESSES: The field trip will begin at the Radisson Hotel, 60 Battery Street, Burlington, Vermont. The ANS Task Force meeting will be held at the University of Vermont, Rowell Hall, Room 103, Burlington, Vermont. The Communication, Education, and Outreach Committee meeting will be held at the Lake Champlain Basin Science Center (across from the Radisson Hotel), Burlington, Vermont.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon gross@fws.gov* or Joe Starinchak, Outreach Coordinator, at 703–358–2018 or by e-mail at: *joe starinchak@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force and the Communication, Education and Outreach Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The field trip will consist of a boat tour to view the water chestnut problem and some of the control and harvesting operations in Lake Champlain, and description of some of the lake's invasive fish species. Topics to be covered during the ANS Task Force meeting on Tuesday and Wednesday include: briefings about regional nonindigenous species problems and initiatives; updates of activities from the Task Force's regional panels; a discussion of the Coast Guard's ballast water management program; a discussion of the Asian Swamp Eel initiatives; a discussion about the recent Caulerpa taxifolia invasions in Southern California and the activities of the Caulerpa taxifolia Prevention Committee; an overview of the activities of the Invasive Species Council; a discussion of the relationship of the Regional Panels with the ANS Task Force; and other topics. Topics to be covered during the Communications, Education and Outreach Committee include: Review of committee membership and roles and responsibilities; review of ANS Task Force coordination issues such as linkages with other committees and reporting relationships; review of the Act and committee charge; and discussion of products.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: July 13, 2000.

Everett Wilson,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 00–18085 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–01–24 1A]

Extension of Approved Information Collection, OMB Number 1004–0157

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of an existing approval to collect certain information from applicants who wish to acquire a right-of-way on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. Section 304(b) of FLPMA (90 Stat. 2765, 43 U.S.C. 1734) authorizes the Secretary to require applicants to reimburse the United States in advance for the expected reasonable administrative costs incurred by the United States to process rights-of-way applications. The information collection requirements found at 43 CFR 2808.3 are necessary for making a determination as to the reasonable level of reimbursement pursuant to Section 304(b) of FLPMA and to determine who may be granted a reduction or waiver of cost reimbursement.

DATES: Comments on the proposed information collection must be received by September 18, 2000 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include ''ATTN: 1004–0157'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group 202–452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The BLM grants rights-of-way on public lands through the authority of Title V of the FLPMA (90 Stat. 2776, 43 U.S.C. 1761). Section 304(b) of FLPMA authorizes the BLM to receive payment of reasonable cost to reimburse the government for the cost of processing rights-of-way applications. In determining reasonable cost, BLM must consider such things as actual cost (exclusive of management overhead), the portion of cost incurred that is for the benefit of the general public rather than for the exclusive benefit of the applicant, the public service provided, and other relevant factors must be considered to determine who may be entitled to an off-set against reimbursement of costs. The information collection requirements found at 43 CFR 2808.3 are necessary to making a determination as to the reasonable level of reimbursement pursuant to Section 304(b) of FLPMA. The following is an explanation of specific items of information requested pursuant to 43 CFR 2803.3: Information on the monetary value of the rights and privileges sought by the applicant is needed to determine both eligibility and, if eligible, the reasonable level of reimbursement. Such data consist of an estimate of the cost to construct the proposed project on public lands. If applicants believe that they are eligible for further reimbursement reductions for public benefit or service aspects of the proposed project, proof of such public benefit or service, consisting of the identification of any original study data developed, identification of tangible improvements, such as roads, trails, recreation facilities, etc., are needed. Where applicants believe they should be considered for additional reductions or a waiver of cost reimbursement requirements, a showing of information on the nature of a financial hardship, existence of an outstanding lease or permit, proof of full time residency, requirements for the relocation of an existing facility or the existence of other compelling public benefits or services are needed in accordance with 43 CFR 2808.5 to aid in determining whether the applicant meets specific statutory requirements to obtain benefits. Failure to collect the necessary information would result in the inability of the BLM to develop defendable, reasonable reimbursement costs for applicants in accordance with statutory and regulatory requirements. The effect to the government would be insufficient payment received for services rendered or increased cost to the government relating to protest and appeal actions contesting the accuracy of the reimbursement cost determinations.

The respondents are individuals or companies who request a reduction or waiver of cost reimbursement. The frequency of response is once per applicant. The BLM estimates approximately 14 requests are received annually. Based on the BLM's experience it will take an average of three hours for a respondent to supply the necessary information. Based on the estimated 14 requests received annually and the average time of three hours it takes to supply the necessary information, the total annual burden is collectively 42 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 12, 2000.

Shirlean Beshir,

BLM Information Clearance Officer.

[FR Doc. 00–18091 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1430–PD]

Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure.

SUMMARY: Under the authority of 43 CFR 8364.1(a), notice is hereby given that an emergency closure for the use and operation of motorized vehicles is in effect on public lands administered by the Salt Lake Field Office, Bureau of Land Management, as follows:

All existing and future Federal land within the North Oquirrh Management Area within the following description:

T. 1 S., R. 3 W., SLM
Section 20, SW¼; Sections 19, 29, 30, 31, 32;
T. 2 S., R. 3 W., SLM
Tract 37;
Sections 5, 6, 7, 8;
Section 16, SW¼SW¼;
Sections 17, 18, 19, 20;
Section 21, W½W½;
Section 28, W½, SE¼;
Sections 29, 30, 31, 32, 33;
Section 34, W½W½;
T. 1 S., R. 4 W., SLM
Section 24, SE¼;
Sections 25, 36;

All lands east of the Union Pacific Railroad within:

T. 2 S., R. 4 W., SLM
Tract 37;
Sections 1, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 36;

DATES: Effective July 18, 2000, this closure will remain in effect until revoked.

FOR FURTHER INFORMATION CONTACT: Michael Nelson, Acting Assistant Field Manager, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119; (801)–977–4300.

SUPPLEMENTARY INFORMATION: This order is put into effect due to extreme wildland fire conditions and the immediate threat to high value private property, degradation of watershed, and the loss of important resources values resulting from wildland fires in the area. The closure is also necessary to protect fragile slopes already burned from erosion and damage by motorized vehicles while rehabilitation actions are underway.

Violations of this closure are punishable by a fine up to $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.

Dated: July 11, 2000.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 00–18064 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Draft Environmental Assessment (EA)

AGENCY: National Park Service, Interior.

ACTION: Notice of release of draft environmental assessment.

SUMMARY: This notice announces the release of a draft environmental assessment (EA) on a proposal to construct the Joseph M. McDade Recreational Trail within the Delaware Water Gap National Recreation Area.

EA Comment Period: Comments on or before August 18, 2000.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324.

Kemp Library, East Stroudsburg University, E Stroudsburg, PA 18301.

State Library of PA, PO Box 1601, Harrisburg, PA 17105.

Easton Area Public Library, 6th and Church Street, Easton, PA 18042.

Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860.

New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625.

Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg, PA 18360.

Pike County Library, 201 Broad Street, Milford, PA 18337.

Warren County Library, 199 Hardwick St., Belvidere, NJ 07823.

This draft environmental assessment, prepared by the National Park Service, deals with the environmental consequences of constructing a 32-mile trail within the Delaware Water Gap National Recreation Area (DWGNRA). Designated by Congress as the ''McDade Recreational Trail'', it is intended to parallel the Delaware River on the Pennsylvania-side of the park, providing access to the two largest communities bordering DWGNRA: Shawnee-on-the-Delaware to the south and the borough of Milford to the north. The trail would follow historic traces, connecting historic properties, existing facilities and a variety of natural environments, thus providing an intimate glimpse of the natural and cultural history of the area. The trail would also offer a variety of difficulty levels for a wide population, including those use wheelchairs. Trail use would be restricted to hiking (including wheelchairs in some sections), biking and cross-country skiing.

SUPPLEMENTARY INFORMATION: This environmental assessment is the third phase of a series of planning efforts that have led to this proposal. In 1987, the park's General Management Plan began the process by identifying the need for a park trails system. Recently, the park adopted a Park Trails Plan (PTP) under an amendment to that 1987 General Management Plan (GMPA). This PTP/GMPA called for a primary trail or ''spine'' that parallels the Delaware River on each side of the park as the highest trail-development priority. These spines would later be the frameworks for a network of park trails. In 1996, Congress appropriated funding for the spine on the Pennsylvania side which was designated as the Joseph M. McDade Recreational Trail.

The EA is available for public comment. Any member of the public may file a written comment. Comments should be addressed to the Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324. Public workshops are tentatively scheduled for August 9 at 10 a.m. and August 10 at 7:00 p.m. at the Bushkill Visitor Center in Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: July 6, 2000.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002.

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001.

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510.

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802.

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, DC 20515–3815.

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810.

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005.

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120.

Honorable Christine Whitman, State House, Trenton, NJ 08625.

Honorable Joe Battisto, State Representative, 206 South Capitol Building, Harrisburg, PA 17120–0028

[FR Doc. 00–18034 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the American Heritage Center, University of Wyoming, Laramie, WY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the American Heritage Center (AHC), University of Wyoming, Laramie, WY. This notice is 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 that 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 AHC professional staff in consultation with representatives of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

In 1964, human remains representing one individual were donated to the AHC by Elizabeth Oskamp. This individual has been identified as Ah-Ho-Ap-Pa, daughter of Spotted Tail. No associated funerary objects are present.

Documentation for these human remains indicates that Ms. Oskamp's father collected them when he visited Fort Laramie, WY at an unknown date. Based on donor information, this individual has been identified as Native American, specifically Ah-Ho-Ap-Pa. No evidence exists to contradict this information.

Based on the above-mentioned information, officials of the American Heritage 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 American Heritage Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.

This notice has been sent to officials of the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Rick Ewig, Associate Director, American Heritage Center, University of Wyoming, P.O. Box 3924, Laramie, WY 82071; telephone: (307) 766–4114, before August 17, 2000. Repatriation of the human remains to the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota may begin after that date if no additional claimants come forward.

Dated: June 13, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18136 Filed 7–17–00; 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 Saline County, MO in the Possession of the Museum of Anthropology, University of Missouri-Columbia, Columbia, MO

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 Saline County, MO in the possession of the Museum of Anthropology, Department of Anthropology, University of Missouri-Columbia, Columbia, MO. This notice is 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 that 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 University of Missouri-Columbia professional staff in consultation with representatives of the Otoe-Missouria Tribe of Indians, Oklahoma; and the Iowa Tribe of Oklahoma.

Between 1939-1980, human remains representing a minimum of 114 individuals were recovered from site 23SA002 (Utz site), Saline County, MO during excavations conducted by University of Missouri-Columbia professional staff, supervised field school students, and volunteers of the Missouri Archaeological Society. No known individuals were identified. The 22 associated funerary objects include ceramic sherds, canine bones, limestone fragments, debitage, metal fragments, a shell gorget, burial soil, a biface, a terrapin carapace, faunal remains, a piece of daub, worked antler, and worked shell.

Based on oral tradition, types of associated funerary objects, and historical documents, these individuals have been determined to be Native American. Based on radiocarbon dating, presence of trade objects, and historical documents, the Utz site has been identified as a village occupation estimating to date to approximately A.D. 1460-1712. Oral tradition, archeological evidence, and historical documents indicate the Utz site was a village of the Missouria Tribe and the burials are reasonably believed to be culturally affiliated with the Otoe-Missouria Tribe of Indians, Oklahoma.

Based on the above-mentioned information, officials of the University of Missouri-Columbia have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 114 individuals of Native American ancestry. Officials of the University of Missouri-Columbia also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 22 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 Missouri-Columbia have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Otoe-Missouria Tribe of Indians, Oklahoma. This notice has been sent to officials of the Otoe-Missouria Tribe of Indians, Oklahoma; and the Iowa Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael J. O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri, Columbia, MO 65211, telephone (573) 882–4421, before August 17, 2000. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma on behalf of the Otoe-Missouria Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: June 22, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18137 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Barrow, AK in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE– REVISION

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 **revision** of an inventory of human remains in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska-Lincoln professional staff in consultation with representatives of North Slope Borough as the authorized representative of the Native Village of Barrow Inupiat Traditional Government**, and Mrs. C. Boellstorff**.

In 1931, human remains representing one individual were donated to the University of Nebraska State Museum by Mrs. Charles Fritch. No known individual was identified. No associated funerary objects are present.

These human remains were erroneously identified in the Notice of Inventory Completion, published April 6, 1999, as having been collected in

Barrow, AK by T.L. Richardson and donated to the Museum by Mrs. C. Boellstorff. In fact, these human remains were donated by Mrs. Fritch who lived in Pawnee County, NE. These human remains come from an unknown location and were collected under unknown circumstances and are now re-classified as culturally unidentifiable.

Based on the above-mentioned information, officials of the University of Nebraska-Lincoln 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 University of Nebraska-Lincoln also have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between these Native American human remains and any present-day Indian tribe.

This notice has been sent to officials of the North Slope Borough, the Native Village of Barrow Inupiat Traditional Government. Representatives of any other Indian tribe that wish consultation regarding these human remains should contact Dr. Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854.

Dated: June 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–18138 Filed 7–17–00; 8:45 am]

BILLING CODE BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Notice of Proposed Year-Round Closure at Fort Funston and Request for Comments

DATE: Friday, July 14, 2000.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the resource protection mandate of the National Park Service (NPS), the Golden Gate National Recreation Area, NPS, is announcing its proposal to close year-round approximately 12 acres of Fort Funston to off-trail recreational use by the public. The closure is located in the northwest portion of Fort Funston. This closure is necessary to protect habitat for the California threatened bank swallows (*Riparia riparia*), enhance significant native plant communities, improve public safety and reduce human-induced impacts to the coastal bluffs and dunes, a significant geological feature. NPS invites comments on this proposed year-round closure.

Background: Section 1.5 of Title 36 of the Code of Federal Regulations authorizes the Superintendent to effect closures and public use limits within a national park unit when necessary for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities. The proposed closure at Fort Funston is necessary to protect public safety, to protect environmental values and natural resources, and to implement management responsibilities. Because of a May 16, 2000, Federal District Court ordered preliminary injunction against the NPS, disallowing the closure until such time as appropriate public notice and opportunity for comment was provided, NPS is providing this notice and invites comments from the public on this proposed year-round closure.

Reference: Public Law 92–589 of October 27, 1972, as amended, as codified in Title 16 United States Code Sections 460bb through 460bb–5. Title 16 United States Code Sections 1 and la–1. Title 36 Code of Federal Regulations Sections 1.5, 1.7, 2.1, and 2.15. Ft. Funston Dog Walkers v. Babbitt, No. C 00–00877 WHA, N.D. Cal., Preliminary Injunction, May 16, 2000.

Comments: Public comments will be accepted for a period of 60 calendar days from the date of this notice. Therefore, public comments on this notice must be received by September 12, 2000. Public comments should be submitted to NPS as early as possible in order to assure their maximum consideration. Comments will be considered and this proposal may be modified accordingly, and the final decision of the National Park Service will be published in the **Federal Register**.

If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Send Comments To: Superintendent, Golden Gate National Recreation Area, Bay and Franklin Streets, Building 201, Ft. Mason, San Francisco, 94123.

Further Information: Detailed information concerning this proposal, including a map depicting the closure area and open park trails, is available at the following locations:

- Fort Funston Visitor Center and Ranger Office, ¼ mile south of John Muir Drive, on the west side of Hwy 35, Golden Gate National Recreation Area, National Park Service, San Francisco
- Pacific West Information Center, National Park Service, Building 201, Fort Mason, Bay and Franklin Streets, San Francisco
- San Francisco Public Library, Marina Branch, 1890 Chestnut Street, San Francisco
- San Francisco Public Library, Sunset Branch, 1305 18th Avenue, San Francisco

Contact: For further information, contact Scalla Sheen, Office of Public Affairs, GGNRA at 415–561–4730.

Brian O'Neill,

Superintendent, GGNRA.

[FR Doc. 00–18112 Filed 7–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance, National White Collar Crime Center; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection national business survey on white collar crime.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, National White Collar Crime Center (NWCCC) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 18, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instruments with instructions, or

additional information, please contact Project Director of National Business Survey on White Collar Crime, (877) 693–2874, National White Collar Crime Center, Training and Research Institute, 12 Roush Drive, Morgantown, WV 26501.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2). *Title of the Form/Collection:* National Business Survey on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form = None. National White Collar Crime Center (NWCCC), Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: United States businesses. Other: None. The NWCCC Training and Research Institute anticipates conducting a national survey of professional business persons and their perceptions of white collar crime. Particular areas of interest include victimization, perpetration, prevention measures, cyber-crime, and general demographics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,070 respondents at 25 minutes per mail survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 450 annual burden hours.

If additional information is required contact: Mrs. 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, or via facsimile at (202) 514–1534.

Dated: July 13, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–18124 Filed 7–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

July 13, 2000.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 25, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills (202) 219–5095.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503.

The Office of Management and Budget is particularly interested in comments which:

C. 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;

C. 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;

C. Enhance the quality, utility, and clarity of the information to be collected; and

C. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Welfare to Work (WtW) Formula/Competitive Cumulative Quarterly Status Reports.

OMB Number: 1205–0385.

Affected Public: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit institutions.

Requirements for ETA 9068 (formula)	1st year	2nd year	3rd year	4th year
Number of reports per entity per quarter	1	1	2	2
Total number of reports per entity per year	3	4	8	8
Number of minutes for recording/reporting per quarter per report	40	80	120	80
Total number of hours required for recording/reporting per entity per year	2	5	8	5
Number of entities reporting	55	55	55	55
Total number of hours required for recording/reporting per year	110	293	440	293

Note: Formula grants will only be issued in years 1 and 2; grantees may be eligible for a Bonus grant in year 3. All grant funds will be tracked in the same automated format. In year 1, formula grants will not be allocated until the 2nd quarter.

Requirements for ETA 9068–1 (competitive)	1st year	2nd year	3rd year	4th year
Number of reports per entity per quarter	1	1	2	2
Total number of reports per entity per year	3	4	4	4

Requirements for ETA 9068–1 (competitive)	1st year	2nd year	3rd year	4th year
Number of minutes for recording/reporting per quarter per report	40	80	120	80
Total number of hours required for recording/reporting per entity per year	2	5	8	5
Number of entities reporting	200	200	200	200
Total number of hours required for recording/reporting per year	200	1,067	1,600	1,067

Note: Competitive Grants to be awarded in years 1 and 2. Estimate 200 grants will be awarded to eligible applicants. All grant funds will be tracked in the same automated format. In year 1, competitive grants will not be let until the 2nd quarter.

Total Burden Cost (capital/startup): $0

Total Burden Cost (operating/maintaining): $0

Description: This request for approval of the WtW Formula and Competitive Cumulative Quarterly Status report formats is necessary so that the Department may collect statutorily required data from the States and other grant recipients on a quarterly basis. The information will provide a means for the Secretary of Labor to manage and evaluate the WtW program as well as to develop a formula for measuring State performance to be utilized in determining and awarding bonuses to States. These performance bonuses are authorized under the Act in Section 403(a)(5)(E).

Karin G. Kurz,

Acting Departmental Clearance Officer.

[FR Doc. 00–18092 Filed 7–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:

• May 27, 2000 Alaska's 13-week insured unemployment rate for the week ending May 6, 2000 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing Alaska to trigger ''off'' EB effective May 27, 2000.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is currently filing a claim for EB of the forthcoming end of the EB period and its effect on the individual's rights to EB (20 CFR 615.13(c)(4)).

Signed at Washington, DC., on July 12, 2000.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–18093 Filed 7–17–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Time and Date: 9:30 a.m. Tuesday, July 25, 2000.

Place: NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

Status: Open to the Public.

Matters to be Considered:

7047B Aviation Accident Report: Crash During Landing, Federal Express, Inc., Flight 14, McDonnell Douglas MD–11, N611FE, Newark International Airport, Newark, New Jersey, July 31, 1997.

News Media Contact: Telephone: (202) 314–6100 Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 21, 2000.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

July 14, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–18308 Filed 7–14–00; 4:13 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

In the Matter of Northeast Nuclear Energy Company, et al. (Millstone Nuclear Power Station, Unit 2); Exemption

I

Northeast Nuclear Energy Company, et al., is the holder of Facility Operating License No. DPR–65 which authorizes operation of Millstone Nuclear Power Station, Unit 2. Millstone Nuclear Power Station, Unit 2 is a pressurized water reactor located in Waterford, Connecticut. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to title 10 of the Code of Federal Regulations (10 CFR) part 50, establishes fire protection features required to satisfy General Design Criterion 3, ''Fire protection,'' of Appendix A to 10 CFR part 50, with respect to certain generic issues for nuclear power plants licensed to operate prior to January 1, 1979. By letter dated February 14, 2000, as supplemented by letters dated April 5 and May 31, 2000, Northeast Nuclear Energy Company, (NNECO), the licensee for Millstone Nuclear Power Station, Unit No. 2, requested an exemption from the technical requirements of 10 CFR part 50, appendix R, section III.J to the extent that it requires emergency lighting units with at least an 8-hour battery power supply to light all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. NNECO proposed to credit the security lighting system currently installed at the plant for access and egress route emergency lighting in lieu of providing separate emergency lighting units with an 8-hour battery supply in the Unit 3 yard area.

III

As a result of the decommissioning of Unit 1, the existing tie to Unit 1 Vital

Electrical Bus 14H will be disconnected. The licensee will credit a new 4160-volt electrical tie to the Unit 3 Alternate AC diesel generator as the alternate AC power source for Unit 2 to comply with Appendix R. Access to the Unit 3 Alternate AC diesel generator and associated switchgear enclosures so that Unit 3 operators could start the diesel generator and make the necessary electrical ties to the Unit 2 bus requires travel through the Unit 3 yard area.

The outdoor access and egress route to the Unit 3 Alternate AC diesel generator and switchgear enclosures extends from the west entrance of Millstone Unit 3 Building 323 (grade elevation), north through a paved area to a service road, following the road generally to the east and then south to the enclosures.

The licensee proposes to credit the security lighting system for access and egress route emergency lighting in lieu of an 8-hour battery supply in the yard area. The basis for this is as follows:

1. The security lighting system illuminates the required access and egress routes;

2. The security lighting power supply is backed by a security diesel generator with fuel storage capacity to ensure operation greater than or equal to 8 hours;

3. The security generator, components, and circuits are independent from the postulated fire areas which require access to the 4160-volt Bus 14H enclosure, Intake Structure, or RWST pipe chase.

These actions will ensure that the appendix R, section III.J requirement to the extent that emergency lighting units with at least an 8-hour supply are met.

There are also portable lighting units dedicated for operations department use that would provide additional defense-in-depth for ensuring adequate lighting is available. The equipment is administratively controlled and located inside the Millstone Unit 3 Control Room Complex.

IV

The underlying purpose of section III.J of appendix R is to ensure that fixed lighting of sufficient duration and reliability is provided to allow operation of equipment required for post-fire, safe shutdown of the reactor. Lighting for access/egress associated with the equipment is also required.

Large area applications will typically impose electrical load requirements which are beyond the normal limits of battery units. The security lighting system illuminates the required access and egress routes. The power supply is backed by a security diesel generator with fuel storage capacity to ensure operation with at least an 8-hour supply. The security generator, components and circuits are independent from the postulated fire areas which require access to the Unit 3 Alternate AC diesel generator and consistent with the defense-in-depth approach to fire protection.

Based on the availability and reliability of the security lighting of sufficient duration and the availability of portable lighting, there is reasonable assurance that the access/egress routes through the yard area that are relied on for safe shutdown of the facility can be accessed in the event of a fire.

On the basis of its evaluation, the NRC staff has concluded that the application of the regulation, pursuant to 10 CFR 50.12(a)(2)(ii), in this special circumstance is not necessary to achieve the underlying purpose of the rule.

V

The Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to allow use of security lighting is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR, part 50, appendix R, section III.J.

Pursuant to 10 CFR 51.32, the Commission has determined that this exemption will not have a significant effect on the quality of the human environment (65 FR 41738).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of July 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18114 Filed 7–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

In the Matter of Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Order Approving Transfer of License and Conforming Amendment

I.

Vermont Yankee Nuclear Power Corporation (VYNPC or the licensee) is the holder of Facility Operating License No. DPR–28, which authorizes the operation of Vermont Yankee Nuclear Power Station (Vermont Yankee or the facility) at steady-state power levels not in excess of 1593 megawatts thermal. The facility is located at the licensee's site in the Town of Vernon, Windham County, Vermont. The license authorizes VYNPC to possess, use, and operate the facility.

II.

Under cover of a letter dated January 6, 2000, AmerGen Vermont, Limited Liability Company (LLC), (AmerGen Vermont) and VYNPC, jointly submitted an application requesting approval of the transfer of Facility Operating License No. DRP–28 for Vermont Yankee from VYNPC to AmerGen Vermont. The licensee and AmerGen Vermont also jointly requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated January 13, February 18, March 13, March 30, and April 6, 2000, collectively referred to as the ''application'' herein unless otherwise indicated.

AmerGen Vermont is a Vermont limited liability company established by AmerGen Energy Company, LLC (AmerGen), to own and operate Vermont Yankee. AmerGen Vermont is a wholly owned subsidiary of AmerGen. AmerGen is a Delaware limited liability company formed to acquire and operate nuclear power plants in the United States. PECO Energy Company (PECO) and British Energy, Inc., (BE, Inc.), each own a 50-percent interest in AmerGen. BE, Inc., is a wholly owned subsidiary of British Energy, plc. The conforming license amendment would remove references to VYNPC from the license and add references to AmerGen Vermont in respective places, and make other administrative changes of a similar nature to reflect the proposed transfer.

Approval of the transfer of the facility operating license and a conforming license amendment was requested by

VYNPC and AmerGen Vermont pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and for an opportunity for a hearing was published in the **Federal Register** on February 3, 2000 (65 FR 5376). Pursuant to such notice, the Commission received two requests for hearing. One hearing request was from the State of Vermont Department of Public Service, dated February 23, 2000. A second hearing request was filed by the Citizens Awareness Network, dated February 22, 2000. Commission review of these hearing requests is pending.

Pursuant to 10 CFR 2.1316, during the pendancy of a hearing, the staff is expected to promptly proceed with the approval or denial of license transfer requests consistent with the NRC staff's findings in its Safety Evaluation Report (SER). Notice of the action shall be promptly transmitted to the Presiding Officer and parties to the proceeding. Commission action on the pending hearing requests is being handled independently of this action.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that AmerGen Vermont is qualified to be the holder of the license, and that the transfer of the license to AmerGen Vermont is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR chapter 1; that the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; that there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; that the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and that the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations, and that all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated July 7, 2000.

III.

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the license as described herein to AmerGen Vermont is approved, subject to the following conditions:

(1) AmerGen Vermont shall take no action to cause PECO or BE, Inc., or their affiliates, successors or assigns, to void, cancel, or diminish their $200 million contingency commitment to provide funding for AmerGen's nuclear power plants, including but not limited to any plant owned by any subsidiary of AmerGen, the existence of which is represented in the application, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with AmerGen or AmerGen Vermont's ability to draw upon the commitment. Also, AmerGen Vermont shall inform the NRC in writing at any time that it or AmerGen, for the benefit of AmerGen Vermont, draws upon the $200 million commitment.

(2) AmerGen Vermont shall provide decommissioning funding assurance of no less than $280 million, after payment of any taxes, deposited in the decommissioning trust fund for Vermont Yankee when Vermont Yankee is transferred to AmerGen Vermont.

(3) The decommissioning trust agreement must be in a form acceptable to the NRC.

(4) With respect to the decommissioning trust fund, investments in the securities or other obligations of PECO, BE, Inc., AmerGen, AmerGen Vermont, or their affiliates, successors, or assigns shall be prohibited. Except for investments tied to market indexes or other nonnuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(5) The decommissioning trust agreement must provide that no disbursements or payments from the trust shall be made by the trustee until the trustee has first given the NRC 30 days' prior written notice of payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation.

(6) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days' prior written notification to the Director, Office of Nuclear Reactor Regulation.

(7) The appropriate section of the trust agreement shall state that the trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a ''prudent investor'' standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(8) AmerGen Vermont shall take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the application for approval of the transfer of the Vermont Yankee license to it, the requirements of this Order approving the transfer, and the safety evaluation supporting this Order.

(9) The AmerGen Vermont Limited Liability Company Agreement dated January 1, 2000, and any subsequent amendments thereto as of the date of this Order, may not be modified in any material respect concerning decision-making authority over ''safety issues'' as defined therein without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

(10) At least half of the members of the Management Committee of AmerGen Vermont shall be appointed by a non-foreign member group of AmerGen, all of which appointees shall be U.S. citizens.

(11) The Chief Executive Officer (CEO), Chief Nuclear Officer (if someone other than the CEO), and Chairman of the Management Committee of AmerGen Vermont shall be U.S. citizens. These individuals shall have the responsibility and exclusive authority to ensure, and shall ensure, that the business and activities of AmerGen Vermont with respect to the Vermont Yankee operating license are at all times conducted in a manner consistent with the protection of the public health and safety and the common defense and security of the United States.

(12) AmerGen Vermont shall cause to be transmitted to the Director, Office of Nuclear Reactor Regulation, within 30 days of filing with the U.S. Securities and Exchange Commission, any Schedules 13D or 13G filed pursuant to the Securities Exchange Act of 1934 that disclose beneficial ownership of any registered class of stock of PECO or of any affiliate, successor, or assignee of

PECO to which PECO's ownership interest in AmerGen may be subsequently assigned with the prior written consent of the NRC, [or of the parent or owner of such affiliate, successor, or assignee, whichever entity is the issuer of such stock.]

(13) Before the completion of the sale and transfer of Vermont Yankee to it, AmerGen Vermont shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that AmerGen Vermont has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(14) After receipt of all required regulatory approvals of the transfer of Vermont Yankee, AmerGen Vermont and VYNPC shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt within 5 business days, and of the closing date of the sale and transfer of Vermont Yankee no later than 7 business days prior to the date of closing. If the transfer of the license is not completed by July 1, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may, in writing, be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this order, see the initial application dated January 6, 2000, supplemental letters dated January 13, February 18, March 13, March 30, and April 6, 2000, and the safety evaluation dated July 7, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of July 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–18115 Filed 7–17–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43024; File No. SR–AMEX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Index Fund Shares (Amex Rules 1000A and 127)

July 12, 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 June 30, 2000, the American Stock Exchange Inc. (''Amex'' 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 Exchange proposes to add Commentary .04 to Amex Rule 1000A (Index Fund Shares) regarding hours of trading for iShares Index Funds and iShares MSCI Index Funds; and to amend Commentary .02 to Amex Rule 127 (Minimum Fractional Changes), relating to these securities. Below is the text of the proposed rule change: New language is *italicized,* and deletions are bracketed.

Index Fund Shares
Rule 1000A
* * * Commentary

[.02] *.04* Transactions in [series of the] iShares SM *Index Funds* of the iShares Trust may be effected until 4:15 p.m. (*New York Time*) each business day. *Transactions in iShares MSCI Index Funds* (formerly ''WEBS Index Series'') of iShares, Inc. may be effected until 4:00 p.m. (*New York Time*).

* * * * *

Minimum Fractional Changes
Rule 127
* * * Commentary

.02 The minimum fractional change for dealings in Index Fund Shares listed under Rule 1000A et seq. shall be 1/16 of $1.00. However, the minimum fractional change for dealings in Select Sector SPDRs SM, Technology 100 Index Fund Shares and [series of] *iShares*SM *Index Funds* of the Shares SM Trust shall be 1/64 of $1.00. *Transactions in iShares MSCI Index Funds (formerly WEBS Index Series) of iShares, Inc. shall be 1/16 of $1.00.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–Amex–99–49,[3] the Commission approved Commentary .02 to Amex Rule 1000A, which provided that transactions in series of the iShares Trust may be effected until 4:15 p.m. each business day. The Exchange is renumbering this Commentary .02 to Commentary .04 to eliminate conflict with Commentary .02 to Amex Rule 1000A, approved by the Commission in SR–Amex–00–14 relating to generic listing criteria for Index Fund Shares.[4] The Exchange is further amending new Commentary .04 to distinguish between: (1) iShares MSCI Index Funds, (formerly WEBS Index Series), and (2) iShares Index Funds of the iShares Trust. As of May 15, 2000, WEBS Index Series have been renamed iShares MSCI Index Funds and WEBS Index Fund, Inc. has been renamed iShares, Inc. iShares MSCI Index Funds trade until 4:00 p.m. (New York time). However, iShares Index Funds of the iShares Trust, which do not include iShares MSCI Index Funds, trade until 4:15 p.m. (New York time). Commentary .04 to Amex rule 1000A states the different trading hours for these securities.

In File No. SR–Amex–99–49, the Commission also approved an amendment to Commentary .02 to Amex Rule 127 (Minimum Fractional Changes), to provide that trading in series of the iShares Trust will be in increments of 1/64 [5] Commentary .02 is amended to refer to these securities as ''ishares SM Index Funds of the iShares Trust.'' MSCI Index Funds trade in 1/16's, the same trading increment as the former WEBS Index Series. The

[3] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000).

[4] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33598 (May 24, 2000).

[5] *See supra* note 3.

Exchange is amending Commentary .02 to Amex Rule 127 to clarify the different trading increments between these securities.

The Exchange represents that these amendments to Amex Rules 1000A and 127 are strictly clarifying in nature and provide no change from existing hours of trading or trading increments for these securities.

2. Statutory Basis

The Exchanges believes the proposed rule change is consistent with Section 6(b) [6] of the Act in general and furthers the objectives of Section 6(b)(5) [7] in particular in that is it 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, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(3) thereunder [9] because the proposed rule change is concerned solely with the administration of the Exchange. 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 the furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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–AMEX–00–35 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18069 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(3).

[10] 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43016; File No. SR–Amex–00–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC To Establish an Interim Seat Allocation Program

July 7, 2000.

I. Introduction

On April 14, 2000, the American Stock Exchange LLC (''Amex'' 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 to establish an Interim Seat Allocation Program. The proposed rule change was published for comment in the **Federal Register** on June 7, 2000.[3] The Commission received no comments on the proposal. This order approves the Amex's proposal.

II. Description of the Proposal

Active seats on the Exchange are assigned to a person, not a firm. Consequently, when a person to whom a seat is assigned is absent from the trading floor, the seat cannot be used to participate in trading activities.

The Exchange has proposed an Interim Seat Allocation Program, which will allow an active member (*i.e.*, the person to whom the seat has been assigned and who actively participates in securities transactions on the Exchange floor) temporarily to allocate the membership to an interim member when the active member is absent from the trading floor. An interim member must be approved for membership in accordance with the Amex's Constitution and Rules. The Exchange also will require prior approval of the interim member by the lessor of the seat. An active member must pay an interim member status annual fee of $1,500 for the right make any allocations and a flat fee of $250 for each allocation. After an interim member has been approved for membership and the active member has paid the necessary fees and submitted the appropriate form to the Exchange's Membership Services Department, the active member may allocate its seat to the interim member. A temporary allocation may be for a minimum of one day to a maximum of one year.

Contracts made on the trading floor by an interim member will be considered contracts made by the active member, and the active member will be responsible for all obligations to the Exchange and all obligations to other members resulting from Exchange transactions, or transactions in other securities, conducted by the interim member. The owner of the membership, rather than the interim member, will be deemed to be the member of the Amex for purposes of participating in any distribution of the assets and funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the Exchange's affairs. The owner of the membership or active member (as the case may be), rather than the interim member, would be the Participant in the Exchange's Gratuity Fund and entitled to the benefits described in Article IX of the Exchange Constitution. In addition, and interim member may not vote the active member's seat or serve on an Exchange committee in the place of the active member.

If an interim member is not allocated the membership held by the active member within one year of approval by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42853 (May 30, 2000), 65 FR 36182.

the Exchange's Membership Services Department, the individual's eligibility for interim membership would be terminated. To become eligible again for interim member status, the individual would have to requalify for membership in accordance with the Constitution and Rules of the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[4] In particular, the Commission finds the proposal is consistent with Sections 6(b)(4) and 6(b)(5) of the Act.[5]

Section 6(b)(5) of the Act[6] requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the proposed Interim Seat Allocation program will promote just and equitable principles of trade and will protect the public interest by maximizing Amex members' use of personal and capital resources. Currently, seats on the Exchange may not be available for use during absences by active members due, for example, to vacation or illness. Allowing interim members to fill these seats, and to use then to continue trading, will provide greater liquidity on the Exchange than may exist otherwise. Furthermore, the proposed rule change is designed to protect investors because interim members must be approved for membership in accordance with the Exchange's rules in the same manner as active members. The public interest and investor protection will also be served by the requirement that the active member bear responsibility for all obligations to the Exchange and to other members resulting from Exchange transactions conducted by an interim member.

Section 6(b)(4) of the Act[7] requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. All of the Exchange's members that wish to avail themselves of the Interim Seat Allocation Program will be subject to the same fees, and these fees do not appear to be unreasonable. Therefore, the Commission believes that the Exchange's proposal meets the requirements of Section 6(b)(4) of the Act.

[4] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4) and (b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)4.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–00–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–18071 Filed 7–17–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43028; File No. SR–Amex–00–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendments to the Listing Agreement Form

July 12, 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 June 16, 2000, the American Stock Exchange LLC (''Amex'' 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 Exchange proposes to amend its Listing Agreement Form, which is submitted to the Exchange in connection with an issuer's listing application. The text of the proposed rule change follows. Additions are in *italics*; deletions are [bracketed].

The American Stock Exchange—Listing Form

Listing Agreement

(the ''Company''), in consideration of the listing of its securities, hereby agrees, with The American Stock Exchange LLC (the ''Exchange'') that [it will]:

(1) *The Company certifies that it will* [C]*comply with all Exchange rules, policies and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.*

(2) *The Company shall* [N]*notify the Exchange at least 20 days in advance of any change in the form or nature of any listed security or in the rights, benefits, and privileges of the holders of such security.*

(3) *The Company understands that the Exchange may remove its securities from listing on the Exchange, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1–2 of this agreement.*

(4) *In order to publicize the Company's listing of the Exchange, the Company authorizes the Exchange to use the Company's corporate logos, Web site address (URL): , trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, Web site address, trade names, and trade/service marks and with any subsequent changes. Questions regarding logo usage should be directed to:* at ( ) – .

The Company indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of use by the Exchange or any affiliate (''Corporations'') of the Company's corporate logos, Web site address, trade names, trade/service marks, and/or the trading symbol used by the Company.

(5) *The Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is controlled by the Exchange and is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's trading symbol at the Exchange's discretion at any time.*

Exchange Warranties: Disclaimers of Warranties. For any goods or services provided to Company, the Exchange shall endeavor to provide them in a good and workmanlike manner. Beyond the warranties stated in this section, there are no other warranties of any kind, express, implied or statutory (including the implied warranties of

[7] 15 U.S.C. 78f(b)4.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

merchantability or fitness for a particular use or purpose).

Limitation of Corporations' Liability:

(1) *In no event will the Corporations be liable for trading losses, losses of profits, indirect, special, punitive, consequential, or incidental loss or damage, even if the Corporations have been advised of the possibility of such damages.*

(2) *If the Corporations are held liable, the liability of the Corporations is lilmited:*

(a) for goods and services for which the Company is specifically charged, to the amount paid by Company for those goods or services during the twelve months preceding the accrual of the claim; and

(b) in all other instances, to the amount of the annual listing fee paid by the Company during the twelve months preceding the accrual of the claim.

(3) *For goods and services provided under a separate written agreement, the limitation of liability provisions in that agreement shall govern any claims relating to or arising from the provision of those goods and services.*

(4) *This subsection shall not relieve the Corporations from liability for damages that result from their own gross negligence or willful tortuous misconduct, or from personal injury or wrongful death claims.*

(5) *The Corporations shall not be liable for any third parties' goods or services.*

(6) *The Company agrees that these terms reflect a reasonable allocation of risk and limitation of liability.*

Dated:

By:
Name:
Title:

Accepted at New York, New York, the American Stock Exchange LLC

SIGNATURE:

NAME:

TITLE:

DATE:

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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Each listed company is required to file a Listing Agreement with the Exchange in connection with its listing application. The Listing Agreement currently requires that the company agree that it will comply with all Exchange rules, policies and procedures and that the company will notify the Exchange at least 20 days in advance of any changes in the form or nature of a listed security or in the rights, benefits and privileges of shareholders. The Commission recently approved amendments to the Exchange's Listing Agreement on March 17, 2000.[3]

The Exchange proposes to add several provisions to the Listing Agreement Form comparable to those included in the Nasdaq National Market Listing Agreement. These provisions include the following:

- A representation that the company understands that its securities can be delisted pursuant to applicable procedures, if the company does not comply with paragraphs 1 and 2 of the Listing Agreement (*i.e.*, certification that the company will comply with all Exchange rules, policies and procedures applicable to listed companies, and the requirement that the company notify the Exchange at least 20 days in advance of any change in the form or nature of the security or the rights, benefits and privileges of holders of the security).
- In connection with publicizing the company's listing, the company's authorization of the Exchange to use the company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information and other information in connection with Exchange listing and trading. The company would also indemnify the Exchange and its affiliates and hold them harmless from any third party rights and/or claims arising in the use of the above-referenced corporate information.
- The company's warranty and representation that the trading symbol used by the company does not violate any trade/service mark, trade name or other intellectual property right of any third party. This provision would specify that the Exchange reserves the right to change the company's trading symbol at the Exchange's discretion.
- The Exchange's disclaimer of warranties to the company.
- The Exchange's and Exchange affiliates' limitation of liability, which provides, among other things, that the Exchange and affiliates will not be liable to the company for trading loss, loss of profits and damages.

The Exchange believes that these amendments to the Listing Agreement improve the Exchange's listing process and regulatory function by clarifying the responsibilities and obligations of listed companies and the Exchange in connection with the listing process. In addition, the proposed amendments are similar to provisions in the Nasdaq National Market Listing Agreement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Burden 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

Because the 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 June 16, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed

[3] Securities Exchange Act Release No. 42539 (March 17, 2000), 65 FR 15672 (March 23, 2000) (SR–Amex–99–39). The Commission notes that this filing eliminated the requirement that issuers file certain documents with its Listing Agreement.

[4] 14 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

rule change at least five business days prior to the filing date, it has become effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6)[7] thereunder.[8] At any time within 60 days of the filing of such 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 change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–34 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18090 Filed 7–17–00; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 15 CFR 240.19b–4(f)(6).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43026; File No. SR–GSCC–00–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to GSCC's Fee Structure With Respect to Minimum Monthly Fees and Additional Accounts Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 29, 2000, the Government Securities Clearing Corporation (''GSCC'') 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 primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC is proposing to amend its fee structure with respect to (i) minimum monthly fees and (ii) fees for additional accounts maintained by a single member to fairly reflect the costs incurred by GSCC in providing services to its members.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its fee structure with respect to (i) Minimum monthly fees and (ii) fees for additional accounts maintained by a single member. These changes were effective as of July 3, 2000.

(i) Minimum Monthly Fees

Under GSCC's current fee structure, a member is charged a minimum monthly fee if the fees associated with its actual level of activity do not equal or exceed the minimum fee. Specifically, each comparison-only member is subject to a minimum monthly fee of $500 ($250 if it has an affiliate that is a netting member), and each netting member is subject to minimum monthly fees of $500 for its comparison system activity and $500 for its netting system activity.

The proposed rule change imposes a $1,000 minimum monthly fee on each comparison-only member (regardless of whether it has an affiliate that is a netting member) and each netting member. The increase to the $1,000 minimum for comparison-only members is necessary in order to cover the administrative and operational costs involved in opening and maintaining the comparison-only accounts. The change to the $1,000 minimum fee for netting members from the $500–$500 fee is being implemented for administrative convenience; it allows for a member's total GSCC activity to be calculated and compared against one minimum. This change will result in a decrease in fees for some netting members.

(ii) Fees Applicable to Additional Accounts

Some GSCC members maintain more than one GSCC account.[4] Additional accounts fall into two categories: (A) those that are opened at the request of a member[5] and (B) those that are opened at the direction of GSCC.[6]

(A) Additional Account Opened at the Request of a Member

The proposed rule change imposes a monthly maintenance fee of $1,000 for each additional account maintained by a member in addition to its primary account that is opened at the member's request. The maintenance fee will be in

[1] 15 U.S.C. 78s(b)(1).

[2] The revised fee structure, attached as ''Exhibit A'' to GSCC's filing, is available for inspection and copying in the Commission's Public Reference Section and through GSCC.

[3] The Commission has modified the text of the summaries prepared by GSCC.

[4] For fee purposes, GSCC will consider the account with the most activity to be the member's primary account.

[5] Under certain circumstances, a member is permitted to open one or more additional accounts in order to separate certain GSCC activity from its primary GSCC account. Such accounts can be maintained for comparison-only or netting activity. Each additional account is governed by an agreement between the member and GSCC and is subject to GSCC's rules.

[6] For example, under GSCC's rules, interdealer broker netting members are required to maintain separate accounts for their buy-sell and repo activity.

addition to any actual transaction-based fees and applicable non-transaction-based fees, such as communication fees.

The new maintenance fee reflects the costs incurred by GSCC in maintaining additional accounts for members. Such costs include the administrative costs of opening additional accounts, the operational costs of maintaining the accounts, the continuous risk surveillance that is conducted on the accounts, and the reports necessary to be provided with respect to activity in the accounts. The imposition of the proposed fee is consistent with GSCC's policy of charging fees that fairly reflect the costs incurred by GSCC in providing services to its members.

(B) Additional Accounts Opened at the Direction of GSCC

Any additional account that is opened at the direction of GSCC will not be subject to a maintenance fee. Such account's transaction-based fees will be subject to a minimum monthly fee of $1,000 per account.

GSCC believes that the proposed rule change is consistent with the requirements of the Act [7] and the rules and regulations thereunder applicable to GSCC because it proposes changes to GSCC's fee structure that fairly reflect the costs incurred by GSCC in providing services to its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [8] of the Act and Rule 19b–4(f)(2) [9] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by GSCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–07 and should be submitted by August 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18088 Filed 7–17–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43027; File No. SR–NYSE–00–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Amending Global Market Capitalization Listing Standards

July 12, 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 June 14, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. On July 3, 2000, the NYSE submitted an amendment to the proposed rule filing (''Amendment No. 1'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its global market capitalization original listing standard to reduce the minimum revenue requirements from $250 million to $100 million. The NYSE further proposes to amend the related continued listing standard to reduce the minimum total revenue requirement from $50 million to $20 million. These changes would amend Sections 102, 103, and 802 of the NYSE's Listed Company Manual and a corresponding amendment would be made to NYSE Rule 499. The text of the proposed rule change is as follows. Proposed additions are *italicized* and proposed deletions are in brackets.

NYSE Listed Company Manual

* * * * *

Section: 102.1—Minimum Numerical Standards—Domestic Companies—Equity Listings.

* * * * *

102.01C—A company must meet one of the following financial standards:

* * * * *

(II) For companies with not less than $1 billion in total worldwide market capitalization and with not less than [$250] *$100* million in revenues in the most recent fiscal year, there are no additional financial requirements.

* * * * *

Section: 103.01—Minimum Numerical Standards Non-US Companies Equity Listings Distribution.

* * * * *

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[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2)

[10] 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 Daniel P. Odell, Assistant Secretary, NYSE to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 29, 2000 (''Amendment No. 1''). In Amendment No. 1, the NYSE requests accelerated approval to accommodate the timetable of certain issuers wishing to list on the NYSE.

103.01B—A company must meet one of the following financial standards:

* * * * *

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than [$250] *$100* million in revenues in the most recent fiscal year, there are no additional financial requirements.

* * * * *

Section: 8

Section 802.01—Continued Listing Criteria.

* * * * *

802.01B Numerical Criteria for Capital or Common Stock. If a company falls below any of the following criteria, it is subject to the procedures outlined in Para. 802.02 and 802.03:

* * * * *

• For companies that qualify under the ''global market capitalization'' standard:

Total global market capitalization is less than $500,000,000 and total revenues are less than [$50,000,000] *$20,000,000* over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other standards)(C)

or

Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

NYSE Rules

Rule 499—Supplementary Material

* * * * *

.20 Numerical and Other Criteria.

* * * * *

6. For companies that qualify under the ''global market capitalization'' standard:

• Total global market capitalization is less than $500,000,000 and total revenues are less than [$50,000,000] *$20,000,000* over the last 12 months.

* * * * *

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE 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

Last year, the NYSE implemented a new stand-alone listing criterion for extremely large companies, both domestic and non-U.S., with $1 billion in total global market capitalization and revenues in their most recent fiscal year of $250 million.[4] The Exchange did so in the belief that companies of such size were appropriate for listing and trading on the Exchange, regardless of any short-term variations in profitability. The Exchange also believed that its then-current numerical criteria placed too much emphasis on a company's earnings to the exclusion of other relevant factors.

Currently, the NYSE believes that the new criteria has worked well and has permitted the Exchange to qualify and list companies that otherwise would not have qualified under the traditional criteria. However, after a year's experience under the new standard, the Exchange's analysis of the universe of companies considered suitable for Exchange listing suggests that the Exchange was too conservative in its initial approach, and that a criterion of $1 billion in total global market capitalization and a reduction in the requirement for $250 million to $100 million in revenues in the most recent fiscal year would be more appropriate. The NYSE believes that such a standard would better enable it to offer listing to companies of suitable size and scope, even though their business model differs from the traditional.

In connection with the new original listing criterion implemented last year, the Exchange also constructed new continued listing criteria applicable specifically to companies listed under the global market capitalization standard.[5] Such companies are currently considered below standards if their global market capitalization falls below $500 million *and* total revenues are below $50 million over the previous twelve months. Of course, if the company can qualify under one of the other original listing criteria, it is not considered below standards. Alternatively, companies that listed under the global market capitalization standard are considered below standards if their average global market capitalization is below $100 million over 30 consecutive trading days. In connection with amending the original listing criterion as discussed above, the Exchange proposes to proportionately reduce the minimum revenue requirement from $50 million to $20 million. The $500 million and $100 million market capitalization minimums would remain unchanged.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an Exchange have rules that are 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.

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 has neither solicited nor received any written comments on the proposal.

III. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

[4] *See* Securities Exchange Act Release No. 41834 (September 3, 1999), 64 FR 50129 (September 15, 1999).

[5] *Id.*

[6] 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's Pubic Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–27 and should be submitted by August 8, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds, for the reasons set forth below, that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires that the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because the NYSE's alternative financial listing standards with $1 billion in market capitalization and $100 million in revenues, reduced from $250 million, in the most recent fiscal year, should still allow the Exchange to list companies that the Exchange believes will prove to be financially successful in the future, although recently they may not have been as profitable. The Commission believes that the reduction in the continued listing standard from $50 million in revenues in the last fiscal year to $20 million is not inconsistent with the Act for the same reason. The Commission also believes that, by providing issuers another alternative forum for their securities in the U.S. marketplace, the proposed rule change is consistent with the requirements of the Act to remove impediments to and perfect the mechanism of a free and open market.

In addition, the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange represents that certain issuers are eager to list on the Exchange under the proposed standards. To ensure that such issuers are permitted to list on the Exchange in a timely basis, the Commission approves the proposed rule change, as amended, on an accelerated basis, pursuant to Sections 6(b)(5) and 19(b)(2) of the Act.[9]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change and Amendment No. 1 (SR–NYSE–00–27) are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18089 Filed 7–17–00; 8:45 am]

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[7] The Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43020; File No. SR–PCX–00–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Modifying PCX Transaction and On-Line Comparison Fees and Establishing a Credit for Book Executions

July 10, 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 27, 2000, the Pacific Exchange, Inc. (''PCX'' 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 Exchange proposes to modify its transaction and on-line comparison fees and establish a credit for book executions. The Exchange also proposes to clarify its treatment of the portion of the market maker transaction charge that is collected for Options Industry Conference (''OIC'') activities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the transaction fee for customer trades that are executed manually and to eliminate the fee for customer trades that are executed electronically. The Exchange is also proposing to eliminate the on-line comparison charge for customer trades and to establish a credit for book executions. Moreover, the Exchange is proposing to raise the market maker transaction fee and implement a floor brokerage charge. Finally, the Exchange also proposes to clarify its treatment of the portion of the current market maker transaction charge ($0.01 per contract) collected for OIC activities.

Currently, the PCX Schedule of Rates and Charges provides for a customer transaction charge of $0.12 per contract side for all transactions except Pacific Options Exchange Trading System (''POETS'') automated executions, and a market maker transaction charge of $0.185 per contract side. In addition, the PCX charges an on-line comparison charge of $0.05 per contract for customers, firms, and market makers.

The Exchange proposes to reduce customer transaction fees from $0.12 to $0.09 per contract side for manual (non-hand held) executions and to eliminate customer transaction charges for all other forms of electronic executions including book executions, cabinet trades, automated opening rotation and broker hand-held executions. The PCX also proposes to establish a $0.10 per contract credit for customer book executions.[3] The Exchange further

[3] Customers will receive a $0.10 credit per book execution that will be applied to each customer's total monthly Exchange fees. Customers will not receive a cash payment for unused portions of the credit and any unused portion will not carry forward to the next billing month. The credit will

proposes to eliminate the on-line comparison charge of $0.05 per contract for customer executions.[4] The Exchange will continue to charge $0.05 per contract for firm and market maker executions. The Exchange believes that these proposed changes will attract order flow to the Exchange and enable it to remain competitive.

The Exchange also proposes to increase the market maker transaction fee from $0.185 to $0.235 per contract side and to implement a floor brokerage fee of $0.01 per contract, charged to the executing floor broker member. The Exchange believes that the proposed fees will (1) help offset the proposed reduction of customer transaction fees and the elimination of customer online comparison charges, and (2) cover the operational charges associated with running the PCX options floor.

Finally, the Exchange proposes to clarify that the PCX does not pay to the OIC each $0.01 charged to PCX market makers. On August 26, 1992, the Commission approved an Exchange proposal to increase certain market maker transaction charges by $0.01 in order to fund an OIC industry-wide options education and media program.[5] Since 1992, the Exchange has continued to fund the program by reimbursing the OIC for the PCX's share of OIC expenses. These expenses are billed to the PCX on a regular basis, as the OIC incurs them.

The Exchange notes that it does not pay to the OIC each $0.01 per contract side charged to each PCX market maker. In recent years, the amount charged has exceeded the amount paid for OIC expenses by 16% to 37%.[6] The Exchange represents that if it pays less into the OIC program than it has collected (on an aggregate $0.01 per contract basis), then it will treat that excess amount as ordinary revenue. Conversely, if the PCX pays the OIC more than has been collected (on an aggregate $0.01 basis), the Exchange will treat the amount that is over and above what it has collected as an ordinary business expense.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 solicit or receive 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)(ii) of the Act,[9] and Rule 19b–4(f)(2) thereunder,[10] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise furtherance of the purposes of the Act.[11]

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 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 the File No. SR–PCX–00–14 and should be submitted by August 8, 2000.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[12]

Margaret H.McFarland,

Deputy Secretary.

[FR Doc. 00–18070 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

not apply to customer orders in the limit order book that were executed as part of an opening rotation.

[4] The Exchange charges the on-line comparison charge for matching buyers and sellers. This charge will not apply to customers orders executed manually or electronically. Telephone conversation between Michael Pierson, Vice President, Regulatory Policy, PCX, Sonia Patton, Attorney, Division of Market Regulation (''Division''), Commission, and Susie Cho, Attorney, Division, Commission, June 13, 2000.

[5] *See* Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

[6] The Exchange increased the charge for manual transactions of market makers in equity options from $0.085 to $0.095 and in index options from $0.10 to $0.11. *See* Securities Exchange Act Release No. 31098 (Aug. 26, 1992), 57 FR 40238 (Sept. 2, 1992).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78c(b)(3)(A)(ii).

[10] 17 CFT 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43025; File No. SR–PCX–99–40]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Relating to Order Book Officials

July 12, 2000.

I. Introduction

On October 8, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 modify its rules pertaining to the Exchange's order book officials (''OBOs''). The proposed rule change was published for comment in the **Federal Register** on November 4, 1999.[3] The Commission received on comments on the proposal. On May 25, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 42068 (October 28, 1999), 64 FR 60259.

[4] Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation,

Continued

II. Description of the Proposal

The Exchange proposes to amend PCX Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts'') by deleting certain Options Floor Procedure Advices (''OFPAs'') and incorporating their relevant language into the text of PCX Rule 6.

OFPA E–2 addresses market maker assignments and will be incorporated into PCX Rule 6.51(b). This proposed change will require that a list of market makers holding primary appointments in a particular issue be maintained by the OBO at each trading post where the issue is traded. This modifies the current rule by requiring the OBO to maintain the market maker appointment list, instead of the Options Floor Manager and the Options Appointment Committee, which currently maintain the lists.

OFPA A–4, which addresses the timeliness of entering orders in the limit order book, is proposed to become PCX Rule 6.52(c). In addition, the Exchange proposes to require OBOs to report to Floor Officials, instead of the Options Floor Trading Committee (''OFTC''), any instances that appear to violate a floor broker's obligation to ensure that the urgency of dealing with the book at any given moment is consistent with the maintenance of a fair and orderly book market. Floor brokers are required to enter orders into the book in a timely manner. In some instances, however, a floor broker's attempt to enter an order that is reasonably away from the market,[5] which therefore does not possess an immediate urgency, may be disruptive to the book market. In such instances, the OBO is currently required to report such disruptive behavior to the OFTC. The Exchange proposes to permit the OBO to report such violations to a Floor Official instead of the OFTC.[6][1]

In addition, the Exchange proposes to delete the last sentence of Commentary .01 to PCX Rule 6.52. This sentence currently states ''(a)s of the effective date of these rules, the Committee has not designated any additional types of orders that may be accepted by the order book officials.''

Finally, OFPA B–7, which details when a call for market makers is issued, is proposed to become Commentary .01 to PCX Rule 6.53; and OFPA G–4, which defines the term ''displayed'' as used in PCX Rule 6.56, is proposed to be added to the text of PCX Rule 6.56. Neither of these two proposals contains any substantive amendments.

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.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be 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.

The Commission believes that the proposed rule change should foster efficiency in the implementation and enforcement of the Exchange's rules. Currently, members have to refer to both the Exchange's rules as well as the OFPAs to ensure that they are complying with the rules of the Exchange. The proposal combines selected OFPAs and Exchange rules that address the obligations of OBOs into one location. The Commission believes that this change should make it easier for Exchange members to locate pertinent rule language.

The proposed rule change also contains some amendments to the Exchange's current procedures. For example, OBOs will now be required to maintain market maker assignment lists at each trading post. Currently, the Options Floor Manager, along with the Options Appointment Committee maintain the market maker assignment list. The Commission believes that because the OBO will be able to provide market maker assignment information faster than the current procedure, this change should foster efficiency on the floor of the Exchange. In addition, this proposal should assist trading functions on the floor because market makers are more readily identifiable by OBOs.

The Commission also finds the proposal to amend the procedure for reporting violations by floor brokers of their obligation to deal with the book in a manner that is consistent with the maintenance of an orderly book market to be consistent with the Act. Currently, such violations by floor brokers must be reported to the entire OFTC. Upon approval of this order, OBOs will have to report such violations to a Floor Official. This should allow the Exchange to take more immediate action after a violation occurs because OBOs will only have to report disruptive action to a Floor Official instead of the entire OFTC.

The Exchange proposed to delete language in Commentary .01 to PCX Rule 6.52, which relates to the OFTC's authority to designate the types of orders that must be accepted by the OBOs. The Commission believes that the deleted language is redundant and, therefore, unnecessary when read in relation to the first sentence of the Commentary. The first sentence specifically states that OBOs are obligated to accept limit orders and such other orders as may be designated by the OFTC. The deleted language only states that no other orders have been so designated by the OFTC as of the date of the Rules. Thus, OBOs are still required to accept all orders designated by the OFTC.

Finally, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** In Amendment No. 1, the Exchange clarified how Floor Officials determine if an order is reasonably away from the book market for purposes of proposed PCX Rule 6.52(c). In addition, the Exchange stated that floor brokers will be subject to disciplinary action for violations of proposed PCX Rule 6.52(c). The commission believes that Amendment No. 1 provides only further clarification to the proposed rule change and does not change the substance of the proposed rule. Therefore, the Commission believes that good cause exists, consistent with Section 6(b)(5)[9]

SEC, dated May 24, 2000 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified how the Exchange determines when an order is considered to be reasonably away from the book market, pursuant to PCX Rule 6.52(c). In addition, the Exchange stated that a floor broker that violates PCX Rule 6.52(c) may be subject to a Minor Rule Plan Violation under PCX Rule 10.13(h)(16) or may be found to be in violation of PCX Rule 6.2(c)(2).

[5] According to the Exchange, floor officials determine on a case-by-case basis if an order is reasonably away from the book market by considering, among other things, market volatility, spreads, unusual market conditions, and the number of contracts traded in the issue. *See* Amendment No. 1.

[6] A floor broker that attempts to enter an order that is reasonably away from the book market may be found in violation of Minor Rule Plan Violation Rule 10.13(h)(16) or may be found in violation of PCX Rule 6.2(c)(2) regarding standards of conduct on the floor. Upon a report by an OBO, the Floor Official will document the alleged violation and forward it to the Exchange's Enforcement Division for review. *See* Amendment No. 1.

[7] In approving this proposal, 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. 78f(b)(5).

and Section 19(b) [10] of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–99–40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–18072 Filed 7–17–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending June 30, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7582.

Date Filed: June 26, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 AFR 0089 dated 23 June 2000, Mail Vote 077—Resolution 010z, TC2 Within Africa Special Passenger Amending Resolution, Intended effective date: 1 July 2000.

Docket Number: OST–2000–7583.

Date Filed: June 27, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0443 dated 23 June 2000, Mail Vote 078—Resolution 010a, TC3 Special Passenger Amending Resolution (Japan/Korea-South East Asia), Intended effective date: 1 July 2000.

Docket Number: OST–2000–7584.

Date Filed: June 27, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0647, Mail Vote 079—Resolution 010b, TC2/12/23 Special Passenger Amending Resolution from Kuwait, Intended effective date: 1 July 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18132 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

[10] 15 U.S.C. 78s(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending July 7, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7612.

Date Filed: July 3, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0093 dated 30 June 2000, Europe-Middle East Expedited Resolution 002j, Intended effective date: 1 August 2000.

Docket Number: OST–2000–7613.

Date Filed: July 3, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR 0102 dated 27 June 2000 North Atlantic USA–Europe Resolutions r1–r26, PTC12 USA–EUR 0103 dated 30 June 2000 (Technical Correction), Minutes—PTC12 USA–EUR 0100 dated 23 June 2000, Tables—PTC12 USA–EUR Fares 0045 dated 30 June 2000, Intended effective date: 1 November 2000.

Docket Number: OST–2000–7614

Date Filed: July 5, 2000.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0287 dated 2 June 2000, Worldwide Area Resolutions, (Except USA/US Territories), Minutes—CTC COMP 0292 dated 20 June 2000, Intended effective date: 1 October 2000 .

Docket Number: OST–2000–7615.

Date Filed: July 6, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0094 dated 4 July 2000, TC2 Europe-Middle East Expedited Resolutions r1-r3, Intended effective date: 15 August/1 September 2000.

Docket Number: OST–2000–7621.

Date Filed: July 7, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC2 ME 0081 dated 23 June 2000, TC2 Within Middle East Expedited Resolution 002e, Intended effective date: 15 August 2000.

Docket Number: OST–2000–7622.

Date Filed: July 7, 2000.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0286 dated 2 June 2000, Composite Resolutions, Intended effective date: 1 October 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18133 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Certificates of Public Convenience; Applications

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending June 30, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1999–6385.

Date Filed: June 27, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 2000.

Description: Motion of United Air Lines, Inc. for leave to file a Supplement to its application for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between the United States and the addition of the following points to the list of countries included in Appendix A of its application: Comoros; Cyprus; Dominica; French Guyana; French Polynesia; Lesotho; Macau; Maldives; Marshall Islands; Micronesia, Federated States of Mongolia; Palau; Portugal; Qatar; St. Kitts & Nevis; St. Vincent & Grenadines; Samoa; Swaziland; Turks and Caicos; for the Department's convenience, United has attached a Revised Appendix A, which includes all of these points. United is supplementing it's application to include countries with which the U.S. has signed open skies agreements since United filed its original application as well as countries which were included in competing omnibus certificate applications of other carriers.

Docket Number: OST–2000–7588.

Date Filed: June 27, 2000.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 2000.

Description: Application of Kitty Hawk International, Inc. (''Kitty Hawk'') pursuant to 49 U.S.C. 41105 and Subpart Q, applies for authority to transfer its certificate of public convenience and necessity for interstate air transportation issued by the Department to a newly-created and wholly-owed subsidiary of Kitty Hawk to be named Kitty Hawk Air, Inc. (''Kitty Hawk Air'').

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–18131 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2000, there were six applications approved. This notice also includes information on one application, approved in April 2000, inadvertently left off the April 2000 notice. Additionally, 13 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Blair County Airport Authority, Martinsburg, Pennsylvania.

Application Number: 00–03–C–00–AOO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $206,335.

Earliest Charge Effective Date: July 1, 2000.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxis/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Altoona-Blair County Airport.

Brief Description of Projects Approved for Collection and Use:

Preparation of PFC application.
Runway 12/30 and taxiway D lighting.
Security fencing.
Master plan update.

Brief Description of Projects Approved for Collection:

Avigation easement acquisition and obstruction removal.
Land acquisition.
Purchase of snow removal equipment (SRE).
Improve aircraft rescue and firefighting (ARFF)/SRE building.
Runway 12/30 rehabilitation.

Brief Description of Projects Withdrawn: Land acquisition for runway 12/30 extension.

Determination: This project was withdrawn by the public agency in its letter dated April 25, 2000. Therefore, the FAA did not rule on this project in this decision.

Decision Date: April 28, 2000.

For Further Information Contact: Roxane Wren, Harrisburg Airports District Office, (717) 730–2830.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 00–09–C–00–HSV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $557,969.

Earliest Charge Effective Date: January 1, 2009.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: (1) Any air taxi/commercial operator having fewer than 500 annual enplanements; (2) certified air carriers having fewer than 500 annual enplanements; (3) certified route air carriers having fewer than 500 annual enplanements.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.

Brief Description of Projects Approved for Collection and Use:

Air cargo expansion.
Replace airline counters/heating, ventilation, and air conditioning improvements.
Terminal renovations/baggage claim expansion design.
Year 2000 upgrades.
Security vehicle.
Access/security road.
Snozzle for crash vehicle.
Air carrier apron repair.
Two 7.5KV regulators.

Decision Date: June 6, 2000.

For Further Information Contact: Roderick T. Nicholson, Jackson Airports District Office, (601) 664–9884.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Number: 00–04–C–00–SJU.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $98,663,704.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: November 1, 2020.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection at San Juan International Airport (SJU) and Use at SJU:

Development of utilities master plan.
Preliminary engineering for development of dual midfield cross taxiway system.
Environmental assessment for runway 26 safety area and extension of taxiway Sierra.
Computer controlled access system.
Acquire two runway sweepers.
Design and installation of terminal signage and airfield signage.
Design and build an ARFF facility.
Expansion of midfield taxiway.
Cargo access road.
Development of new south general aviation area (apron and taxiway).

Brief Description of Project Approved for Collection at SJU and Use at Fernando Ribas Dominici Airport: Develop an airport layout plan including property map.

Brief Description of Project Approved for Collection at SJU and Use at Humacao Regional Airport: Design and construct apron.

Brief Description of Projects Approved for Collection at SJU and Use at Rafael Hernandez Airport:

Installation of automatic weather observation system.
Relocation of taxiway A.
Preliminary engineering runway reconstruction.
Final design runway reconstruction.
Reconstruct runway.

Brief Description of Project Partially Approved for Collection at SJU and Use at Rafael Hernandez Airport: Improvements to computer controlled access system.

Determination: Partially approved. The approved amount was reduced from that requested due to funding provided by an Airport Improvement Program (AIP) grant.

Brief Description of Project Partially Approved for Collection at SJU and Use at San Antonio Rivera Rodriguez Airport: Runway obstruction removal, threshold relocation, and associated taxiway work.

Determination: Partially approved. The approved amount was reduced from that requested due to funding provided by an AIP grant.

Brief Description of Projects Approved for Collection at SJU and Use at Mercedita Airport:

Install airport signage.
Acquire jaws of life and safety equipment.
Improvements to computer controlled access system.
Acquire runway sweeper.
Install loading bridges.
Reconstruct taxiway light system.
Improve runway 12 safety area.
Reconstruct terminal apron.
Reconstruct runway and taxiway connectors.

Brief Description of Project Approved for Collection at SJU and Use at Benjamin Noriega Airport: Widen runway and extend taxiway; construct apron.

Brief Description of Projects Approved for Collection at SJU:

Construct standard safety area, runway 26.
Design extension, taxiway Sierra.

Decision Date: June 14, 2000.

For Further Information Contact: Ilia Quinones, Orlando Airports District Office, (407) 812–6331, ext. 30.

Public Agency: City of Lynchburg, Virginia.

Application Number: 00–02–C–00–LYH.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $832,756.

Earliest Charge Effective Date: September 1, 2000.

Estimated Charge Expiration Date: February 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lynchburg Regional Airport.

Brief Description of Projects Approved for Collection and Use:

PFC formulation and annual administrative costs.
Construct airport service road.
Overlay runway 3/21.
Acquire land runway 21 runway protection zone.
Overlay general aviation apron.

Brief Description of Project Disapproved for Collection and Use: Relocate State Route 758 to recover full extended runway safety area to runway 21 (design only).

Determination: Disapproved. Two parcels of land must be acquired by the public agency in order to successfully accomplish the relocation of the highway. One of the necessary parcels included a life-estate clause in the purchase agreement. Therefore, the FAA has no reasonable expectation that the public agency will be able to acquire the parcel and, thus, begin the road relocation within the 2-year timeframe required by § 158.33(a)(1) and has disapproved the project.

Decision Date: June 16, 2000.

For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Birmingham Airport Authority, Birmingham, Alabama.

Application Number: 00–03–C–00–BHM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $8,000,000.

Earliest Charge Effective Date: October 1, 2000.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Birmingham International Airport.

Brief Description of Project Approved for Collection and Use: Rehabilitate air carrier apron.

Decision Date: June 21, 2000.

For Further Information Contact: Keafur Grimes, Jackson Airports District Office, (601) 664–9886.

Public Agency: City of Pendleton, Oregon.

Application Number: 00–02–C–00–PDT.

Application Type: Impose and use a PFC.

PFC Level $3.00.

Total PFC Revenue Approved in This Decision: $303,739.

Earliest Charge Effective Date: December 1, 2002.

Estimated Charge Expiration Date: January 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Eastern Oregon Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Replace ARFF vehicle.
Rehabilitate pavement on west general aviation apron A.
Rehabilitate pavement of taxiway D.
Install precision approach path indicator on runway 25.
Rehabilitate runway 11/29.
Rehabilitate terminal apron.

Decision Date: June 23, 2000.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Kansas City—Aviation Department, Kansas City, Missouri.

Application Number: 00–03–C–00–MCI.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $99,645,586.

Earliest Charge Effective Date: August 1, 2009.

Estimated Charge Expiration Date: May 1, 2013.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Kansas City International Airport (MCI).

Brief Description of Project Approved for Collection at MCI and Use at MCI:

Terminal equipment.
Airfield lighting generator.

Brief Description of Projects Approved for Collection at MCI and Use at Kansas City Downtown Airport (MKC): Relocate airfield generator.

Brief Description of Project Approved for Collection at MCI: Overlay runway 1/19–MKC.

Decision Date: June 29, 2000.

For Further Information Contact: Mark Schenkelberg, Central Region Airports Division, (816) 329–2645.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–03–CO–01–TYS, Knoxville, TN	05/10/00	$1,617,216	$1,497,864	07/01/21	07/01/21
97–01–C–02–COD, Cody, WY	06/06/00	123,662	123,441	07/01/02	07/01/02
92–01–C–02–PDX, Portland, OR	06/06/00	22,000,000	22,000,000	05/01/16	05/01/16
95–01–C–01–PDT, Pendleton, OR	06/07/00	153,381	182,801	01/01/02	12/01/02
96–03–C–01–MQT, Marquette, MI	06/12/00	32,500	29,799	11/01/02	11/01/02
00–03–C–01–AOO, Altoona, PA	06/15/00	206,335	223,500	11/01/02	03/01/03
95–02–C–02–COS, Colorado Springs, CO	06/21/00	11,864,672	11,333,785	04/01/05	04/01/05
96–02–C–01–CPR, Casper, WY	06/21/00	427,704	490,749	05/01/04	05/01/04
97–04–C–01–COS, Colorado Springs, CO	06/26/00	15,050,000	0	05/01/04	01/01/01
98–05–C–01–COS, Colorado Springs, CO	06/26/00	9,029,906	10,353,578	05/01/04	01/01/01
95–01–C–03–MCI, Kansas City, MO	06/29/00	145,661,106	215,381,098	01/01/02	01/01/08
99–02–C–01–MCI, Kansas City, MO	06/29/00	28,723,139	23,844,977	05/01/06	08/01/09
97–01–C–01–TUS, Tucson, AZ	06/30/00	26,717,799	101,234,420	12/01/02	05/01/15

Issued in Washington, DC, on July 11, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–18135 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Transit Administration

Environmental Impact Statement; King County, Washington

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA and FTA, in cooperation with Sound Transit (ST) and Washington State Department of Transportation (WSDOT) are issuing this notice to advise the public, affected Indian tribes and agencies that an environmental impact statement (EIS) will be prepared for improvements within the SR 520 corridor from Seattle to Redmond in King County, Washington. High capacity transit (HCT) alternatives across Lake Washington, including the SR 520 and I–90 corridors, will also be considered at a programmatic level.

FOR FURTHER INFORMATION CONTACT: James A. Leonard, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501–1284, Telephone: (360) 753–9408; Jennifer Bowman, Federal Transit Administration, 915 2nd Avenue, Seattle, Washington 98174, Telephone: (206) 220–7954; Rob Fellows, Washington State Department of Transportation, Office of Urban Mobility, 401 Second Avenue South, Suite 301, Seattle, Washington 98104–2887, Telephone (206) 464–6234; Barb Gilliland, Sound Transit, 401 S. Jackson Street, Seattle, Washington 98104–2826, Telephone (206) 398–5051; or see website at http://www.wsdot.wa.gov/translake

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond to address the following needs in the corridor. Land uses and transportation systems are not integrated in their planning and implementation; the transportation system suffers from extensive congestion; reliability and safety of the system are impaired; and neighborhoods, business centers and the environment are negatively impacted by high traffic volumes.

Alternatives under initial consideration include: (1) No action; (2) maintain SR 520 as four lanes, but improve access, operation, and safety; (3) add one HOV lane in each direction; (4) add one HOV lane and high-capacity transit in each direction; (5) add one HOV lane and one general purpose lane in each direction; and (6) add one HOV lane, high-capacity transit, and one general purpose lane in each direction. Each ''build'' alternative will also include Transportation System Management (TSM) measures, Transportation Demand Management (TDM) measures, bicycle and pedestrian facilities, and environmental and neighborhood mitigation and enhancement measures. HCT alternatives across Lake Washington, including the SR 520 and I–90 corridors, will also be considered at a programmatic level.

Letters describing the proposed action and soliciting comments on the scope of the EIS will be sent to appropriate Federal, State, and local agencies, affected Indian tribes, and to organizations and citizens who have previously expressed or are known to have interest in this proposal. A public hearing will be held and notice will be given of the time and place of the hearing. A series of agency and public scoping meetings are scheduled to be held during July 2000. (See below for details.)

Each public scoping meeting will consist of an informal open house setting from 5–7 p.m. and a formal meeting format beginning at 7 p.m. The formal meeting will begin with a short presentation, after which, comments will be received in the group forum. A court reporter will be available to record oral comments in an informal one-on-one setting, for the open house, and will also record the formal meeting and comments from individuals in the group setting.

Comments may be made at one of the following public scoping meetings.

- Tuesday, July 18, 2000 at the Museum of History and Industry, 2700 24th Ave. East, Seattle, WA
- Wednesday, July 19, 2000 at Medina Elementary School, 8001 NE 8th Street, Medina, WA
- Thursday, July 20, 2000 at North Bellevue Community/Senior Center, 4063 148th Avenue NE, Bellevue, WA

In addition, a scoping meeting for governmental agencies and tribes will be held on July 12, 2000 at 9 a.m. at the Museum of History and Industry, 2700 24th Ave. East, Seattle, WA. A second

agency scoping meeting will be held on July 26, 2000 at 9 a.m. at the WSDOT Office of Urban Mobility, 401 Second Avenue S., Suite 300, Seattle, WA.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments on the scope of alternatives and impacts to be considered are requested by August 3, 2000 and should be sent to: Rob Fellows, WSDOT Office of Urban Mobility, 401 Second Avenue South, Suite 300, Seattle, WA 98104–2887; fax number (206) 464–6084; or e-mail to translake@wsdot.wa.gov.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 10, 2000.

Helen M. Knoll,

Regional Administrator, Federal Transit Administration, Region 10.

James A. Leonard,

Transportation and Environmental Engineer, Federal Highways Administration, Washington Division.

[FR Doc. 00–18065 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–7638]

NHTSA's Recommendations for Global Technical Regulations Under the United Nations/Economic Commission for Europe 1998 Global Agreement; Motor Vehicle Safety

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

ACTION: Request for comments.

SUMMARY: In anticipation of the entry into force of the United Nations/Economic Commission for Europe 1998 Global Agreement, NHTSA seeks public comments on its preliminary recommendations for the first motor vehicle safety technical regulations to be considered for establishment under that Agreement.

DATES: Written comments may be submitted to this agency and must be received by September 1, 2000.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Julie Abraham, Director, Office of International Policy and Harmonization, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2114. Fax: (202) 366–2559.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (*e.g.*, the comments submitted in response to this notice by other interested persons) by visiting the address given above under **ADDRESSES**. The hours of the Docket Management System (DMS) are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (http://dms.dot.gov/).

(2) On that page, click on ''search'' near the top of the page or scroll down to the words ''Search the DMS Web'' and click on them.

(3) On the next page (http://dms.dot.gov/search/), scroll down to ''Docket Number'' and type in the four-digit docket number (7638) shown in the title at the beginning of this notice. After typing the docket number, click on ''search.''

(4) On the next page (''Docket Summary Information''), which contains docket summary information for the materials in the docket you selected, scroll down to ''search results'' and click on the desired materials. You may download the materials.

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I. Background

A. 1998 Global Agreement

On June 25, 1998, the U.S. became the first signatory to the United Nations/Economic Commission for Europe (UN/ECE) [1] Agreement Concerning the Establishment of Global and Technical Regulations for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted And/or Be Used On Wheeled Vehicles (the ''1998 Global Agreement''). [2] The 1998 Global Agreement provides for the establishment of global technical regulations regarding the safety, emissions, energy conservation and theft prevention of wheeled vehicles, equipment and parts. [3] The Agreement contains procedures for establishing global technical regulations by either harmonizing existing regulations or developing a new regulation.

The establishment of global technical regulations is expected to lead to a significant degree of convergence in motor vehicle regulations at the regional and national levels. However, while in some instances the result may be the adoption of identical or substantially identical regulations at those levels, in other instances, the result may be regulations that differ but do not conflict with each other. While the Agreement obligates the Contracting Parties, under certain circumstances, to *consider* adopting the global technical regulations within their own jurisdictions, it does not obligate the Parties to adopt them. The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their own particular safety needs. Those needs vary from country to country due to differences in the traffic environment, vehicle fleet composition, driver

[1] The Economic Commission for Europe was established by the United Nations (UN) in 1947 to help rebuild post-war Europe, develop economic activity and strengthen economic relations between European countries and between them and the other countries of the world.

[2] To aid persons unfamiliar with the 1998 Global Agreement in gaining an understanding of its provisions, this agency has summarized the key aspects in an appendix to this notice. The complete text of the Agreement may be found on the Internet at the following address: http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob.html.

[3] The covered equipment and parts include, but are not limited to, exhaust systems, tires, engines, acoustic shields, anti-theft alarms, warning devices and child restraint systems.

characteristics and seat belt usage rates. Further, the Agreement explicitly recognizes the right of governments to adopt and maintain technical regulations that are more stringently protective of health and the environment than the global technical regulations.

The Agreement was negotiated under the auspices of the UN/ECE's World Forum for Harmonization of Vehicle Regulations (WP.29) [4] under the leadership of the United States (U.S.), [5] the European Community (EC), and Japan. Becoming a Contracting Party to the 1998 Global Agreement accomplishes several purposes for the U.S. First, it provides the U.S. with a vote in the establishment of global technical regulations for wheeled vehicles, equipment and parts under the UN/ECE and enables the U.S. to take a leading role in effectively influencing the selection of the level of vehicle safety regulations world wide. [6] Second, it ensures that U.S. standards and their benefits will be properly considered in any effort to adopt a harmonized global technical regulation.

B. Why NHTSA Is Issuing This Request for Comments

The 1998 Global Agreement is nearing entry into force. The Agreement provides that it will enter into force 30 days after the number of Contracting Parties [7] reaches eight. There are now seven Contracting Parties and an eighth country has signed the Agreement subject to ratification. [8]

In early 1999, NHTSA began making preparations for the 1998 Global Agreement's entry into force by issuing a notice requesting public comments on a draft policy statement describing the agency's activities and practices for facilitating public participation with respect to motor vehicle safety issues that arise in the implementation of the Agreement. [9] The draft statement also set forth the general substantive policy goals regarding vehicle safety that the agency will pursue in participating in the implementation of the agreement. Those goals are: (a) Advance vehicle safety by identifying the best safety practices among the safety standards from around the world and incorporating those practices into the U.S. standards or by developing and adopting new standards reflecting anticipated technological advances and current and anticipated safety problems, [10] (b) preserve the agency's ability to adopt standards that meet U.S. vehicle safety needs, and (c) harmonize the U.S. safety standards with those of other countries to the extent consistent with maintaining or improving existing levels of motor vehicle safety in the U.S. NHTSA will issue a final version of the policy statement shortly.

Now that the Agreement's entry into force appears imminent, NHTSA is issuing this notice to obtain public comments on a list of preliminary recommendations of standards or aspects of standards for consideration by the Contracting Parties in prioritizing the development and establishment of global technical regulations under the Agreement. The agency believes that the recommendations will serve the interest of improving motor vehicle safety in the U.S. They will also help to carry out the 1998 Global Agreement's goal of continuously improving and seeking high levels of safety around the world. In turn, accomplishing that goal will promote the development of new and/or better U.S. standards, thus leveraging NHTSA's resources available for such development.

NHTSA cautions that its list of preliminary recommendations for the initial priorities under the 1998 Global Agreement should not be mistaken for the much more inclusive list of its activities under the former National Traffic and Motor Vehicle Safety Act, 49 U.S.C. 30101 *et seq.* (''the Vehicle Safety Act'').

Based on available information and analysis concerning the relative level of stringency and benefits of U.S. and foreign standards and regulations, NHTSA has placed its preliminary recommendations into two categories: (1) Priority recommendations, and (2) Other recommendations.

The ''priority recommendations'' category includes some foreign standards or aspects of those standards that may represent best current safety practices among the existing national and regional standards and should therefore be considered by the Contracting Parties when establishing global technical regulations. [11] If those standards or aspects of standards do, in fact, represent best practices, their addition to the U.S. standards would improve vehicle safety in the U.S. [12] In allocating its resources among its preliminary recommendations, the agency will give priority to the recommendations in this category. If NHTSA's research and analysis indicates that a foreign standard, in whole or in part, is indeed more beneficial to safety, the agency anticipates that it will propose under the Vehicle Safety Act to raise its standards at least to the level of that foreign standard. [13] The standards in this category were largely drawn from NHTSA's ongoing upward harmonization activities under the Vehicle Safety Act.

The ''other recommendations'' category includes some U.S. standards or aspects of those standards that appear to represent best current safety practices and should therefore be considered by the Contracting Parties when establishing global technical regulations. NHTSA would like to obtain international review and feedback concerning these U.S. standards. Such feedback and review

[4] Formerly, ''Working Party on the Construction of Vehicles (WP.29)''.

[5] The U.S. was represented in those negotiations by this agency and the U.S. Environmental Protection Agency (EPA).

[6] The U.S. does not have a vote under an existing earlier UN/ECE agreement regarding wheeled vehicles, equipment and parts, known as the ''1958 Agreement'' because it is not a contracting party to that agreement. Historically, the United States did not become a contracting party to the 1958 Agreement because (1) it was not feasible to develop regulations regarding motor vehicle safety in what was then a primarily common European regulatory development forum and (2) NHTSA's enforcement procedures precluded the U.S. from engaging in the 1958 Agreement's mutual recognition obligations. Although the 1958 Agreement was amended in late 1995 to reduce the impediments to becoming a contracting party, the U.S. determined that further amendments were desirable. Ultimately, it determined in talks with the contracting parties to the 1958 Agreement that the most desirable course of action was to develop a new, parallel agreement.

[7] As used here and in the balance of this notice, ''Contracting Parties'' refers to Contracting Parties to the 1998 Global Agreement.

[8] The first seven Contracting Parties are: Canada, the EC, France, Germany, Japan, United Kingdom, and the U.S. The Republic of South Africa has signed the Agreement subject to ratification. The Russian Federation reports that its signing of the Agreement is imminent.

[9] Draft NHTSA statement of policy concerning the agency's goals in the implementation of the 1998 Global Agreement. (January 5, 1999; 64 FR 563)

[10] For example, if the U.S. examined its standard and those of other countries addressing a particular safety problem and concluded that the standard of country A represented best safety practices, i.e., produced more safety benefits than all the other counterpart standards, the U.S. would propose to raise its standard to the level of country A's standard. Consideration of anticipated technological advances and current and anticipated safety problems might lead the U.S. to propose to raise its standard even higher.

[11] NHTSA wants to emphasize that neither the list in this category nor the list in the second category is exhaustive. The purpose in developing these lists is not to provide a complete census of all standards or aspects of standards that may represent best practices. Instead, the purpose is to provide recommendations regarding a limited number of standards on which the Contracting Parties should initially focus their efforts.

[12] Whether a standard or aspect of a standard actually represents best practices is best determined through analysis of real world crash data and research data.

[13] During the development of all proposals and during WP.29 proceedings, best available technology and future technology will be considered.

may lead to improvements in the U.S. standards. Further, the agency believes that it is important to ensure that global technical regulations are established at levels not less than those of the U.S. standards. The standards in this category were selected largely because they address safety problems that are the subject of either NHTSA's ongoing upward harmonization activities under the Vehicle Safety Act or WP.29's ongoing activities.

In anticipation of the 1998 Global Agreement's entry into force, interest groups and other governments have also begun to make recommendations concerning vehicle safety priorities for harmonization activities under the Agreement. At the 120th Session of WP.29 in March 2000, the U.S. and other Contracting Parties were asked to develop their own recommendations. We have placed a document in the docket for this notice, entitled ''Summary of Suggestions by the Governments of Japan and the Russian Federation and by Various Industry and Consumer Groups for Technical Regulations to be Established under 1998 Global Agreement.'' The documents from which those suggestions were drawn have also been placed in the docket for this notice.

II. NHTSA's Preliminary Recommendations for the Initial Subjects To Be Considered Under the 1998 Global Agreement

A. Priority Recommendations

Head Restraints: NHTSA received a petition from the former American Automobile Manufacturers Association (AAMA) and the Association of International Automobile Manufacturers (AIAM) requesting that NHTSA recognize the ECE head restraint standard as functionally equivalent to the U.S. head restraint standard (Federal Motor Vehicle Safety Standard (FMVSS) No. 202). Based on the agency's comparison of the dimensional requirements of the standards, the ECE standard appears to be more stringent in several important respects. NHTSA intends to propose upgrading the U.S. head restraint standard to at least the level of the ECE standard.

Steering column movement: Currently, the ECE regulation limits rearward and vertical movement of the steering column, while the U.S. standard (FMVSS No. 204) limits rearward movement only. Vertical displacement and misalignment of the steering wheel may result in head, upper chest and abdominal injuries. NHTSA has begun studying the safety consequences of rearward and vertical displacement as part of its offset frontal crash test evaluation program. (See the next entry entitled ''Frontal offset.'')

Frontal offset: NHTSA believes that the use of a full frontal crash test, supplemented by a frontal offset crash test, would enhance the safety of all passengers. The full frontal crash test requirements have led to significant reductions in head, neck and chest injuries, while frontal offset crash test requirements are expected to reduce lower extremity injuries.

In fiscal years 1996 and 1997, Congress provided NHTSA with funds to be used toward establishing a U.S. standard for frontal offset crash testing. It directed NHTSA to work with interested parties, including the automotive industry, to develop such a standard under established rulemaking procedures and further stated that these activities should reflect ongoing efforts to enhance international harmonization of safety standards. NHTSA has been evaluating the European offset test and plans to propose a high speed belted offset test with a fixed deformable barrier as a supplement to its existing full frontal test. A lower speed offset requirement (i.e., 40 kmph) already has been incorporated as part of the agency's advanced air bag final rule issued in May 2000. That test is intended to ensure that crash sensors work properly in offset crashes.

Dummy (10 year old child): Currently, the largest dummy specified in the ECE child restraint regulation is a 10 year old dummy, while the largest child dummy specified in the U.S. child restraint standard (FMVSS No. 213) is a 6 year old dummy. A 10 year old dummy represents children weighing 70–75 lb., while a 6 year old dummy represents children weighing about 50 lb. NHTSA's addition of a 10 year old dummy to FMVSS No. 213 would allow it to assess the safety of 70–75 lb. children restrained in lap/shoulder belt with or without a booster seat, as well as in belt positioning devices that are marketed for use by older children and small-statured adults. The addition of that dummy to the U.S. occupant protection (air bags and seat belts) standard (FMVSS No. 208) could also aid in minimizing the risk of air bag-induced injuries to children in that weight range.

Side impact dummy (SID): In 1996, Congress instructed NHTSA to develop a plan to harmonize the U.S. side impact standard and the ECE side impact regulation. In 1997, NHTSA received a petition from AAMA, AIAM and the Insurance Institute for Highway Safety to recognize the ECE regulation as functionally equivalent to the U.S. standard (FMVSS No. 204). NHTSA has recently denied the petition based on test results and analyses (May 24, 2000; 65 FR 33508). However, in its denial, as well as its report to Congress, NHTSA stated that it will consider proposing to adopt EuroSID–2, a modified version of the ECE dummy, EuroSID–1, and the ECE injury assessment criteria.[14] The EuroSID–2 measures the potential for injury not only to the same portions of body measured by the U.S. dummy, but also to portions (*i.e.,* head, upper neck and abdomen) that the U.S. dummy does not measure.

Car tires: The Rubber Manufacturers Association and five other tire industry organizations from around the world petitioned NHTSA to amend the U.S. standard (FMVSS No. 109) to adopt a standard, Global Tire Standard 2000, which was agreed upon by the tire industry worldwide. The same proposal was submitted to WP.29 for consideration as a global regulation. The agency considers tire harmonization to be a priority because FMVSS No. 109, which was developed primarily for bias-ply tires, needs to be updated and upgraded for radial tires. The agency also believes that certain test requirements in other national standards are more appropriate for radial tires and that their adoption would be an improvement over the bias-ply tire provisions in the U.S. standard. The goal is to harmonize the performance requirements of tires by adopting best practices in national tire standards from around the world and, to the extent that supporting data are available, improve those practices.

Signal lamp visibility: The ECE lighting performance requirements are set forth in several different regulations. We are seeking to harmonize the ECE regulations and any other national regulations regarding signal lamp visibility with the counterpart provisions in the U.S. standard on lighting (FMVSS No. 108).

NHTSA has issued a notice for proposed rulemaking (NPRM) based on the ECE requirements for signal lamp visibility. The agency initiated this rulemaking in response to a petition by Working Party ''Brussels 1952'' (also known as Groupes Travails Bruxelles (GTB)), a association of lighting and vehicle manufacturers' technical experts, requesting that the U.S. adopt more objective lamp visibility requirements. The geometric visibility angles for some lamps are greater under the ECE regulation. The proposal uses

[14] ''Status of NHTSA Plan for Side Impact Regulation Harmonization and Upgrade, Report to Congress, March 1999.'' See Docket No. NHTSA–98–3935–10.

the area measurement method for determining signal visibility as contained in the current U.S. standard and, as an alternative, the light intensity measurement of the ECE regulation. The proposal also includes specified angles for viewing locations that are specified only in the ECE regulation. The adoption of this proposal would improve enforceability through increasing objectivity and improve safety through increasing the visibility of some lamps.

Vehicle classification: Vehicle classification is a fundamental issue because it affects the applicability of all safety standards and regulations. A significant difference in classification is that vans and sport utility vehicles are classified as passenger cars in many countries, but as multipurpose passenger vehicles in the U.S. and Canada.

In response to a submission by Japan, the Administrative Committee of WP.29 agreed during the 121st Session of WP.29 in July 2000 that an informal group should be established under the Working Party on General Safety Provisions for the purpose of developing common definitions of vehicle classes and vehicle mass and dimensions for vehicle safety purposes. The Committee agreed further that the group should be chaired by Japan. One possible outcome of revising the definitions would be to increase the extent to passenger carrying vehicles are regulated in similar ways.

B. Other Recommendations

Upper interior impact protection: WP.29 is contemplating the possibility of updating the ECE head impact regulation. Thus, the opportunity exists for developing a harmonized global regulation. The development of such a regulation should reflect due consideration of NHTSA activity in this area in the mid-1990's. NHTSA upgraded the U.S. interior impact protection standard (FMVSS No. 201) in 1995 by adding performance requirements for the upper interior of vehicles. The standard utilizes an up-to-date free motion headform that is propelled into various interior target locations at various angles. The standard was later amended to incorporate a side impact pole test in order to allow and/or encourage inflatable devices that provide superior head protection.

Full frontal crash test: For the reasons stated above, NHTSA believes that the safety of all passengers would be enhanced by assessing the protection provided to both 50th percentile adult male dummies and 5th percentile adult female dummies in a full frontal crash test, and a supplementary frontal offset crash test. NHTSA notes that the ECE regulations do not currently specify a full frontal crash test. Further, the ECE offset crash test regulation does not assess the protection of 5th percentile adult female dummies and does not assess the risks posed by air bags to either those dummies or child dummies.

Lower anchors and tethers for children: The U.S. standard (FMVSS No. 225) requires a new, dedicated system of anchorages for securing child restraints in motor vehicles. The system consists of two anchorages in the vehicle seat bight (*i.e.*, the area where the seat back and the seat cushion meet) and a top tether. [15] The U.S. strength requirements differ from the International Organization for Standardization (ISO) [16] requirements for lower anchorages and the Canadian requirements for tethers. This is because the U.S. requirements are intended to protect children who weigh up to 50 pounds, while both the ISO and Canadian requirements are based on a 3 year old, 33-pound child. Further, new child seats have recently been marketed for use to restrain children weighing up to 65 pounds. NHTSA has made efforts to ensure that the requirements in the U.S. standard are objective and meet the need to protect those larger children. For example, NHTSA specified the failure of an anchorage in terms of a measurable displacement instead of a subjective criterion such as whether the anchorage ''withstands'' a specified force.

WP.29 is currently working on upgrading the ECE child restraint regulation and is leaning toward adopting slightly different bars and using legs, *i.e.*, braces extending between the lower front of the child restraint and the vehicle floor, instead of tethers. Working with WP.29 at this stage will minimize divergences in the U.S. standard and the ECE regulations while ensuring that children worldwide receive the best protection possible.

Door retention components: The existing U.S. and foreign standards have been in place a long time. NHTSA has already begun work to upgrade the U.S. standard (FMVSS No. 206). Sharing this work with WP.29 and seeking comments at the outset about current and future best practices could eliminate potential future divergences and lead to a global technical regulation.

Fuel system integrity: The existing U.S. and foreign standards are, for the most part, similar and have been in place a long time. NHTSA has already begun work to upgrade the U.S. standard (FMVSS No. 301). Sharing this work with WP.29 and seeking comments at the outset about current and future best practices could eliminate potential future divergences and lead to a global technical regulation.

Controls and displays: No ECE regulation exists on this subject. Further, the European Union (EU) directive on this subject lacks many of the location and illumination requirements of the U.S. standard (FMVSS No. 101) and concentrates mainly on symbols. WP.29 is interested in developing an ECE regulation on controls and displays and has asked the U.S. and Canada to develop a draft harmonized standard that will incorporate control and display requirements currently in standards of other countries. The draft will include requirements regarding visibility, illumination and location of controls and displays, and will specify many standardized ISO symbols as mandatory or optional.

Area of windshield cleared by defrosters, defoggers, and windshield wipers: The agency was petitioned by the AAMA and AIAM to recognize the EU directive as functionally equivalent to the U.S. standards (FMVSS No. 103 and 104). Based on its assessment of the differences between the directive and standard, NHTSA denied the petition. The swept and cleared areas in the U.S. standards are greater that those in the EU directive. In its denial notice, NHTSA announced that it will seek a globally harmonized regulation under WP.29 that would include the larger swept and cleared areas under the U.S. standards. WP.29 is interested in establishing a global regulation on this subject.

III. Technical Regulations for Future Consideration by NHTSA

Under the International Harmonized Research Activities (IHRA), working groups have been formed to address specific issues. These six groups are: (1) Biomechanics, (2) Side Impact, (3) Advanced Offset Frontal Crash

[15] Each lower anchorage will include a rigid round rod or ''bar'' unto which a hook, a jaw-like buckle or other connector can be snapped. The upper anchorage will be a ring-like object to which the upper tether of a child restraint system can be attached.

[16] The International Standards Organization (ISO) is a non-governmental, worldwide federation of national standards bodies from approximately 130 countries. *(http://www.iso.ch/)* It was established in 1947. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. Its work is carried out through a hierarchy of technical committees, subcommittees, and working groups.

Protection, (4) Vehicle Compatibility, (5) Pedestrian Safety, and (6) Intelligent Transportation Systems. The working groups are comprised of government officials and of industry and other nongovernmental organization members nominated by their respective governments.

The following working groups are conducting research in areas that the NHTSA foresees contributing to future harmonization activity:

Side impact (side impact barrier and test procedure): The group is considering a proposal for a dynamic side crash test. The details of the test procedures are still under discussion. It is hoped that the quantified requirements that evolve will be flexible enough to allow the various countries to select requirements suited to their individual needs. Participating members of the working group will test vehicles to assess the validity of the proposed test procedures.

Advanced offset frontal crash: The working group's approach is to develop a fixed deformable barrier offset test for the near term, and for the long term to develop a test procedure based on the use of a moving deformable barrier. Major topics of discussion have included vehicle categories for consideration, type of barrier (rigid vs. deformable), impact speed, performance criteria, air bag performance, impact angle, and trolley characteristics.

Vehicle compatibility: The aim of this work is to develop internationally agreed upon test procedures designed to improve the compatibility of passenger car and light truck structures in front-to-front and in front-to-side impacts, thus enhancing the level of occupant protection in these crash modes. A concept for improved vehicle compatibility that has emerged from discussions to date involves limiting the amount of crush that the occupant compartment sustains while also limiting the magnitude and location of crash loading that a colliding vehicle can impose during a crash. Activities have been recently initiated by the working group members to explore this concept.

Pedestrian safety: The working group is assembling field data from the various countries into a unified database. Research priorities are being established based on these data, with the first priority given to head protection for both adults and children. Adult leg protection is also high on the priority list. Existing component level test procedures for head, leg, and thigh/pelvis are being examined for future harmonization efforts.

IV. Issues for Public Comment

To facilitate NHTSA's selection of the initial technical regulations to be recommended for development under the 1998 Global Agreement, NHTSA requests responses to the following questions. If you respond to any of the questions by suggesting changes to the agency's list of preliminary recommendations, we request that you support your suggestions with real world crash data and research data.

1. Should any changes be made to the agency's list of preliminary recommendations? If you believe that any changes should be made to the list, describe the changes and explain why they should be made.

For example, should the agency add to its list any other standards (*e.g.,* brakes and lighting) on which significant amounts of time and resources have already been spent in an effort to update/upgrade and harmonize them? Should the agency add any of the standards that are being harmonized under an earlier agreement administered by WP.29 known as the ''1958 Agreement''? [17]

2. Should any of the standards or items listed in ''Summary of Suggestions by the Governments of Japan and the Russian Federation and by Various Industry and Consumer Groups for Technical Regulations to be Established under 1998 Global Agreement'' be added to the agency's list of preliminary recommendations? (As noted above, that document has been placed in the docket for this notice.) If so, explain why they should be added.

3. In the long term, what relationship should NHTSA establish between its rulemaking activities under the Vehicle Safety Act and WP.29's priority activities under the 1998 Global Agreement? To what extent, and how, should those two different sets of activities be linked so that both sets advance vehicle safety?

V. Future Actions

NHTSA will take all public comments into account and publish a revised list of recommendations. The agency will present its list to WP.29 in November and use it in deliberating with other Contracting Parties concerning the establishment of priorities under the 1998 Global Agreement.

[17] The full formal title of the 1958 Agreement is the ''Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions.''

Appendix—Highlights of the 1998 Global Agreement

- The Agreement establishes a global process under the United Nations, Economic Commission for Europe (UN/ECE), for developing and harmonizing global technical regulations ensuring high levels of environmental protection, safety, energy efficiency and anti-theft performance of wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles. Motor vehicle engines are included. (Preamble, Art. 1)
- Members of the ECE, as well as member countries of the United Nations that participate in certain ECE activities, are eligible to become Contracting Parties to the 1998 Global Agreement. Specialized agencies and organizations that have been granted consultative status may participate in that capacity. (Art. 2)
- The Agreement will enter into force when a minimum of eight (8) countries or regional economic integration organizations become Contracting Parties. At least one of the eight must be either the EC, Japan, or the U.S. (Art. 11)
- The Agreement explicitly recognizes the importance of continuously improving and seeking high levels of safety and environmental protection and the right of national and subnational authorities, *e.g.,* California, to adopt and maintain technical regulations that are more stringently protective of health and the environment than those established at the global level. (Preamble)
- The Agreement explicitly states that one of its purposes is to ensure that actions under the Agreement do not promote, or result in, a lowering of safety and environmental protection within the jurisdiction of the Contracting Parties, including the subnational level. (Art. 1)
- To the extent consistent with achieving high levels of environmental protection and vehicle safety, the Agreement also seeks to promote global harmonization of motor vehicle and engine regulations. (Preamble)
- The Agreement recognizes that governments have the right to determine whether the global technical regulations established under the Agreement are suitable for their needs. (Preamble)
- The Agreement emphasizes that the development of global technical regulations will be transparent. (Art. 1)

Annex A provides that the term ''transparent procedures'' includes the opportunity to have views and arguments represented at:

(1) Meetings of Working Parties of Experts through organizations granted consultative status; and

(2) Meetings of Working Parties of Experts and of the Executive Committee (*i.e.,* the Contracting Parties to the 1998 Global Agreement) through pre-meeting consulting with representatives of Contracting Parties.

- The Agreement provides two different paths to the establishment of global technical regulations. The first is the harmonization of existing standards. The second is the establishment of a new global technical regulation where there are no existing standards. (Article 6.2 and 6.3)

• The process for developing a harmonized global technical regulation includes a technical review of existing regulations of the Contracting Parties and of the UN/ECE regulations, as well as relevant international voluntary standards (*e.g.,* standards of the International Standards Organization). If available, comparative assessments of the benefits of these regulations (also known as functional equivalence assessments) are also reviewed. (Art. 1.1.2, Article 6.2)

• The process for developing a new global technical regulation includes the assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative regulatory requirements and the test method(s) by which compliance is to be demonstrated. (Article 6.3)

• To establish any global technical regulation, there must be a consensus vote, *i.e.,* all Contracting Parties present and voting must vote for establishment. Thus, if any Contracting Party votes against a recommended global technical regulation, it would *not* be established. (Annex B, Article 7.2)

• The establishment of a global technical regulation does not obligate Contracting Parties to adopt that regulation into its own laws and regulations. Contracting Parties retain the right to choose whether or not to adopt any technical regulation established as a global technical regulation under the Agreement. (Preamble, Article 7)

• Consistent with the recognition of that right, Contracting Parties have only a limited obligation when a global technical regulation is established under the Agreement. If a Contracting Party voted to establish the regulation, that Contracting Party must initiate the procedures used by the Party to adopt such a regulation as a domestic regulation. (Article 7)

For the U.S., this would likely entail initiating the rulemaking process by issuing an Advanced Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM). If the U.S. were to adopt a global technical regulation into national law, it would do so in accordance with all applicable procedural and substantive statutory provisions, including the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, the Vehicle Safety Act, and comparable provisions of other relevant statutes, such as the Clean Air Act.

• The Agreement allows the inclusion in global technical regulations of a ''global'' level of stringency for most parties and ''alternative'' levels of stringency for developing countries. In this way, all countries, including the developing ones, will have an interest in participating in the development, establishment, adoption and implementation of global technical regulations. It is anticipated that a developing country may wish to begin by adopting one of the lower levels of stringency and later successively adopt higher levels of stringency. (Article 4)

Issued on: July 12, 2000.

Julie Abraham,

Director, Office of Harmonization.

[FR Doc. 00–18130 Filed 7–17–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33896]

Ohio Southern Railroad, Inc.—Acquisition and Operation Exemption—Glouster Coal Company, Glouster, OH

Ohio Southern Railroad, Incoporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by lease from Glouster Coal Company (Glouster Coal) and operate approximately 0.6 miles of existing right-of-way and industrial trackage (milepost 56.7-milepost 57.3), near Glouster, OH (line).[1]

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be consummated was July 7, 2000, 7 days after the exemption was filed.

The transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company,* STB Finance Docket No. 33895 (STB served July 18, 2000), and *Ohio Southern Railroad, Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company,* STB Finance Docket No. 33902 (STB served July 18, 2000) to exempt OSRR's extension of its lines from Wilbren, OH, to New Lexington, OH, and OSRR's trackage rights over Norfolk Southern Railway Company's (NSR) West Secondary line from New Lexington to a point near Glouster. Upon consummation of these transactions OSSR will be able to provide coal transportation service in conjunction with NSR from the Buckingham Mine to Glouster Coal's customers located on or accessed via the lines of OSRR.[2]

[1] According to the verified notice of exemption, the trackage is presently exempt industrial track within the meaning of 49 U.S.C. 10906; it is located entirely on property owned by Glouster Coal and was built and intended to be used for the sole purpose of enabling Glouster Coal to ship coal from its Buckingham Mine.

[2] On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between Pennsylvania Lines, LLC, NSR and OSRR for the grant by OSRR to NSR of overhead and local trackage rights over the line. The trackage rights will enable NSR to initiate new operations over the line to serve the existing customer and to provide a competitive alternative to OSRR for any new customers that may choose to locate on the line. *See Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Athens County, OH,* STB Finance Docket No. 33899 (STB served July 18, 2000).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33896, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18044 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33899]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Ohio Southern Railroad, Inc. in Athens County, OH

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead and local trackage rights to Norfolk Southern Railway Company (NS) over OSRR's mainline of railroad between the division of control/ownership between OSRR and the Pennsylvania Lines LLC line of railroad operated by NS, milepost RR–65.7 (OSRR's milepost 56.7) at Glouster, OH, and the end of OSRR's line of railroad at OSRR's milepost 57.3 at South Glouster, OH, a total distance of approximately 0.6 miles.

The transaction is related to and will be effective on the consummation of OSRR's acquisition of the line pursuant to its notice of exemption filed June 30, 2000, in STB Finance Docket No. 33896, *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Glouster Coal Company, Glouster, OH.*

NS says that the purpose of this trackage rights is to permit it to initiate new operations over the line to serve the existing customer and to provide a competitive alternative to OSRR for any

new customers that may choose to locate on the line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33899, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John V. Edwards, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Decided: July 11, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18045 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33900]

Norfolk Southern Railway Co.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead trackage rights to Norfolk Southern Railway Company (NS) over OSRR's mainline of railroad between the division of control/ownership between OSRR and the Pennsylvania Lines LLC (PRR) line of railroad operated by NS, (1) between milepost RQ–36.0 at Wilbren, and the south wye connection, milepost RQ–38.1, at New Lexington, OH, known as the Rosevillle Industrial Track, and (2) the above-mentioned milepost RQ–38.1 and milepost RR–47.3 of PRR's line knows as the West Virginia Secondary, a total distance of approximately 2.3 miles.

NS states that the transaction is related to and will be effective on the consummation of OSRR's acquisition of the line pursuant to its notice of exemption filed June 30, 2000, in STB Finance Docket No. 33895, *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company.*

The purpose of this trackage rights is to permit NS to continue operations over the line recently subleased by NS and PRR to OSRR and to facilitate the development of a more efficient routing for both OSRR and NS. *See* STB Finance Docket No. 33895.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33900, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John V. Edwards, Norfolk Southern Railway Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18047 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33895]

Ohio Southern Railroad, Inc.—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company

Ohio Southern Railroad, Incorporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by sublease from Pennsylvania Lines LLC (PRR) and Norfolk Southern Railway Company (NSR) and operate approximately 2.1 route miles of rail line between milepost RQ 36.0, at Wilbren, OH, and milepost RQ 38.1, at New Lexington, OH (line).[1]

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be consummated was July 7, 2000, 7 days after the exemption was filed.

The transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Glouster Coal Company, Glouster,* OH, STB Finance Docket No. 33896 (STB served July 18, 2000) and *Ohio Southern Railroad, Incorporated—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company,* STB Finance Docket No. 33902 (STB served July 18, 2000), to exempt OSRR's extension of service over Glouster Coal Company's line serving its Buckingham Mine and OSRR's trackage rights over NSR's West Secondary line from New Lexington to a point near Glouster, OH. Upon consummation of these transactions OSRR will be able to provide coal transportation service in conjunction with NSR from the Buckingham Mine to customers of Glouster Coal Company located on or accessed via the lines of OSRR.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33895, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036.

[1] On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between PRR, NSR and OSRR for the grant by OSRR to NSR of overhead trackage rights over the line. The trackage rights will enable NSR to continue operations over the line and facilitate the development of a more efficient routing for both OSRR and NSR to move traffic more expeditiously in the region. *See Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH,* STB Finance Docket No. 33900 (STB served July 18, 2000).

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18043 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33902]

Ohio Southern Railroad, Inc.—Trackage Rights Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Co.

Pennsylvania Lines LLC and Norfolk Southern Railway Company (NSR) have agreed to grant overhead trackage rights to Ohio Southern Railroad, Incorporated (OSRR) over 18.4 miles of the West Virginia Secondary line between milepost RR 47.3, at New Lexington, OH, and milepost RR 65.7, near Glouster, OH (line).[1]

The earliest the transaction can be consummated is July 12, 2000, the effective date of the exemption. However, the parties have stated that consummation will not occur until an agreed upon date has been established by OSRR and NSR, which is expected to occur following the latter of (1) the effective date of the exemption, or (2) the expiration of any NSR's labor notice to its employees.

The trackage rights will permit OSRR to bridge presently unconnected segments of its line, and to initiate direct, single carrier service from Glouster Coal Company's Buckingham Mine to Zanesville, OH.[2] The purpose of the transaction is to maintain and enhance the financial and operational stability of OSRR, to maintain efficient rail service over its lines, and to reduce the number of inter-carrier interchanges needed to move coal from the Buckingham Mine to Glouster Coal Company's customers.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33902, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 11, 2000.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–18046 Filed 7–17–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is owned by PRR and operated by NSR.

[2] This transaction is related to *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company,* STB Finance Docket No. 33895 (STB served July 18, 2000), and *Ohio Southern Railroad, Incorporated-Acquisition and Operation Exemption-Glouster Coal Company, Glouster, OH,* STB Finance Docket No. 33896 (STB served July 18, 2000), to exempt OSRR's extension of its lines from Wilbren, OH, to New Lexington, and from a point on NSR's West Virginia Secondary line near Glouster, to the Buckingham Mine.

Corrections

Federal Register

Vol. 65, No. 138

Tuesday, July 18, 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 HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–02]

Announcement of Funding Awards for Fiscal Year 1999 for the Rental Voucher and Rental Certificate Programs

Correction

In notice document 00–8203, beginning on page 17661, in the issue of Tuesday, April 4, 2000, make the following corrections:

1. On page 17663, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

2. On page 17664, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

3. On page 17665, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

4. On page 17666, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

5. On page 17668, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

6. On page 17669, in the table, under the heading ''Address'', remove ''Litigation (Vouchers)''.

7. On page 17670, in the table, under the heading ''Address'',remove ''Litigation (Vouchers)''.

[FR Doc. C0–8203 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

Correction

In rule document 00–14496, beginning on page 36946, in the issue of Monday, June 12, 2000, make the following corrections:

1. On page 36953, in the third column, above the table, after ''annual fees:'' remove ''FY 1999 FY 2000''.

2. On page 36954, in Table I, under the heading ''Reactor program''

a. In the third line ''$98.8'' should read ''$98.8M''.

b. In the fourth line, ''$ 255.3'' should read ''$ 255.3M''.

c. In the fifth line, ''-1'' should read ''-.1M''.

d. In the sixth line, '' $255.2'' should read '' $ 255.2M''.

3. On page 36954, in the table, under the heading '' Materials Program'':

a. In the third line, ''$27.9'' should read '' $27.9M''.

b. In the fourth and sixth lines, '' $72.2'' should read '' $72.2M ''.

§ 171.16 [Corrected]

4. On page 36965, in § 171.16(c)(4), in the second column, in the second line, ''2,300'' should read $2,300''.

Appendix A [Corrected]

5. On page 36971, in appendix A, in Table 2:

a. Under the heading ''Services 3N'', in the third line, add '' 130''.

b. Under the heading '' Industrial radiography 3O'', in the third line, add '' 280''.

c. Under the heading '' Gauges 3P'', in the third line, add '' 80''.

d. Under the heading ''Well logging 5A'', in the third line, add '' 320''.

[FR Doc. C0–14496 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

Correction

In rule document 00–14015 beginning on page 35810 in the issue of Tuesday, June 6, 2000, make the following corrections:

§121.201 [Corrected]

1. On page 35812, in the third column, the heading for section 121.201 should be moved down so that it is above amendatory instruction 3.

2. On page 35813, in the first column, in the table, in the column for ''Size standards in number of employees or millions of dollars'', ''10.0'' should read ''$10.0''.

[FR Doc. C0–14015 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8878]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

Correction

In rule document 00–5817 beginning on page 15548 in the issue of Thursday, March 23, 2000, make the following correction:

On page 15550, at the end of the first column, footnote 8 should read as follows: ''See §1.125–3, published as a proposed rule at 60 FR 66229 (December 21, 1995).''

[FR Doc. C0–5817 Filed 7–17–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 18, 2000

Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2000; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 00–58; FCC 00–240]

Assessment and Collection of Regulatory Fees For Fiscal Year 2000

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for Fiscal Year 2000. The Communications Act of 1934 (''Act''), as amended, provides for the annual assessment and collection of regulatory fees. For Fiscal Year 2000, changes to the Schedule of Regulatory Fees will be made per section 9(b)(2) of the Act. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Effective September 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445, or Roland Helvajian, Office of Managing Director at (202) 418–0444.

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I. Introduction

1. By this *Report and Order,* the Commission concludes a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 2000.[1]

2. Congress has required that we collect $185,754,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 2000.[2] This amount is $13,231,000 or approximately 7.67% more than the amount that Congress designated for recovery through regulatory fees for FY 1999.[3] Thus, we are revising our fees to collect the increased amount that Congress has specified. Additionally, we are amending the Schedule in order to simplify and streamline it.

3. In revising our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 9(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

4. We also note that Congress has before it for consideration a Supplemental Appropriation Act ''[u]nder the heading 'Federal Communications Commission, salaries and Expenses' in title V of H.R. 3421 of the 106th Congress, as enacted by section 1000(a)(1) of Public Law 106–113,'' which proposes to increase the amount we must collect in FY 2000 regulatory fees by $5.8 million to an aggregate total of $191,554,000. This would be an increase of approximately 3.12 percent over the $185,754,000 the Congress originally requested. If this additional increase or (any other increase) is enacted by the Congress, we will adjust the Schedule of Regulatory Fees adopted in this Report and Order by first applying the increase percentage to the expected revenues contained in this decision. Then, we will divide the new expected revenues by the estimated number of payment units detailed in this decision and adjust for rounding as required by section 9(b)(2). 47 U.S.C. 159(b)(2). We delegate to the Managing Director authority to issue a subsequent order amending the Schedule of Regulatory Fees for FY2000 to reflect the change in the law, should it be enacted.

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[5] See Attachment G for a description of these activities. In our *FY 1994 Fee Order,*[6] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[7] Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our prior experience administering the program.[8]

6. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.[9] Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress

[1] 47 U.S.C. 159 (a) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2000,* FCC 00–117, Notice of Proposed Rulemaking (NPRM) released April 3, 2000, 65 FR 19580 (Apr. 11, 2000).

[2] Public Law 106–113 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* FCC 98–200, released June 18, 1999, 64 FR 35831 (Jul. 1, 1999).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984 (Jun. 16, 1994).

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 CFR 1.1151 *et seq.*

[9] 47 U.S.C. 159(b)(2), (b)(3).

requires us to recover through regulatory fees.[10]

7. Section 9(b)(3), entitled ''Permitted Amendments,'' requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to ''add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services.'' [11]

8. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.[12] For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the ''mandatory adjustments'' to the FY 1997 fees without incorporation of costs. This methodology, which we continued to use for FY 1998, enabled us to develop regulatory fees which we believed would be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, while still consistent with the public interest, on the actual costs of regulating those services that are subject to a fee. However, we found that developing a regulatory fee structure based on cost information did not produce the desired results. We were anticipating that our regulatory costs would level off or, perhaps, decline causing these adjustments to decrease from the 25 percent towards zero. Since our regulatory costs have continued to rise, this methodology was discontinued. Therefore, we chose to base the FY 1999 fees only on the basis of ''Mandatory Adjustments''. Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[13]

[10] 47 U.S.C. 159(b)(2).

[11] 47 U.S.C. 159(b)(3).

[12] 47 U.S.C. 159(i).

[13] 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 2000 Fee Methodology

9. As noted, Congress has required that the Commission recover $185,754,000 for FY 2000 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[14]

10. In developing our FY 2000 fee schedule, we first determined that we should continue to use the same general methodology for ''Mandatory Adjustments'' to the Fee Schedule that we used in developing the FY 1999 fee schedule. Our regulatory costs continue to rise, and using cost information produced by our current cost accounting system to determine a regulatory fee schedule does not produce the desired result of collecting the amount required by Congress. Therefore, we estimated the number of payment units [15] for FY 2000 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1999 fees. Then we compared this revenue amount to the $185,754,000 that Congress has required us to collect in FY 2000 and pro-rated the difference among all the existing fee categories.

11. Once we established our tentative FY 2000 fees, we evaluated proposals made by Commission staff concerning changes to the Fee Schedule and our collection procedures. These proposals are discussed in paragraphs 15–19 and are factored into our FY 2000 Schedule of Regulatory Fees, set forth in Attachment D.

12. Finally, we have incorporated, as Attachment F, a section entitled ''Guidance'' that contains detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2000.[16] In the following paragraphs, we describe in greater detail our methodology for establishing our FY 2000 regulatory fees.

[14] 47 U.S.C. 159(a).

[15] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[16] Attachment F contains updated information concerning any changes made to the proposed fees adopted by this *Report and Order.*

B. Development of FY 2000 Fees

i. Adjustment of Payment Units

13. In calculating FY 2000 regulatory fees for each service, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1999 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[17]

ii. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by the FY 1999 fees for each category to determine how much revenue we would collect without any change to the FY 1999 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately $191.6 million. This amount is approximately $5.9 million more than the amount the Commission is required to collect in FY 2000. We then adjusted the revenue requirements for each category on a proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect $185,754,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term, if applicable, for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

[17] It is important to also note that Congress' required revenue increase in total regulatory fee payments of approximately 7.67 percent in FY 2000 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees. Further, distribution of various overhead costs and rounding of fees will also affect the final percentage increase or decrease.

iv. Discussion of Issues and Changes to Fee Schedule

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).[18] Further, we have reviewed the comments received in this proceeding. As a result of this review, we are making the following ''Mandatory Adjustments'' and adjustments to our Fee Schedule and Guidance:

a. INTELSAT Satellites

17. In our NPRM, we reversed the approach taken in our prior fee orders [19] of treating Comsat as exempt from section 9 geostationary space station fees. We proposed that: ''it is clear, that, for FY 2000, Comsat as the United States Signatory to INTELSAT is subject to regulatory fees.'' *Assessment and Collection of Fees for Fiscal Year 2000,* FCC 00–117 (Apr. 3, 2000) at paragraph 17. We cited the decision of the United States Court of Appeals for the District of Columbia Circuit in *Panamsat Corp.* v. *FCC,* 198 F.3d 890 (D.C. Cir. 1999), which set aside and remanded our 1998 fee order, which did not assess a fee against Comsat. We also cited Congress' enactment on March 17, 2000 of the Open Market Reorganization for the Betterment of International Telecommunications Act (ORBIT). Act of March 17, 2000, Pub. L. 106–180, 114 Stat. 48 (2000). That legislation provides that:

(c) Parity of Treatment—Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory [*i.e.,* Comsat] which it imposes on other entities providing similar services.

18. Comsat contends in its comments that no justification exists for assessing a regulatory fee against it. According to Comsat, the geostationary space station fee contained in the rules since 1993 does not apply to INTELSAT space stations because: (1) they are not licensed by the Commission; (2) they are not regulated under 47 C.F.R. Part 25; and (3) they are non-U.S. facilities outside of United States jurisdiction.[20] Moreover, Comsat asserts that neither *Panamsat* nor ORBIT establishes any new fee uniquely applicable to Comsat, and that Comsat already pays the fees applicable to similarly situated parties. Finally, Comsat urges that any fee imposed on it should be discounted to reflect that: (1) Comsat utilizes only 17.01 percent of INTELSAT'S transponder capacity, and (2) ORBIT was not enacted until March 17, 2000, 2½ months after the October 1, 1999 cut-off for determining liability for FY 2000 regulatory fees. Panamsat Corporation and GE American Communications, Inc. support the analysis set forth in the NPRM. They assert that they will unfairly bear the costs associated with Comsat's participation in INTELSAT unless Comsat assumes its proportionate share of the space station fees.

19. We disagree with Comsat and agree in substance with the views of Panamsat and GE Americom.[21] Our analysis of Comsat's arguments is guided by the mandate of the court of appeals in *Panamsat,* as well as by the will of Congress as embodied in ORBIT. *Panamsat* holds that:

* * * the statute [*i.e.*, section 9] does not require—and may not permit—Comsat's exemption from space station regulatory fees. Nor would the legislative history [*see* note 2, *supra*] change the result, assuming the statute to be ambiguous enough to allow its consideration.

Panamsat, 198 F.3d at 895. Further, *Panamsat* rejects the view, now argued by Comsat, that Comsat's operation of INTELSAT space stations is not licensed or within Commission jurisdiction, as arguably required to make Comsat subject to the space station fee. As the court of appeals noted (198 F.3d at 896), Comsat must seek Commission authorization under Title III for its participation in the operation of INTELSAT satellites. *See also Communications Satellite Corp.*, 46 FCC 2d 338 (1974) (establishing procedures for Comsat to obtain Commission authorization to participate in the construction and operation of INTELSAT facilities, pursuant to Title III and section 214 of the Communications Act, and section 201(c) of the Communications Satellite Act).[22]Comsat has received such authorizations whether or not the satellite in question served North America. The court concludes:

* * * it seems perfectly reasonable to say under these circumstances that the Commission ''licenses'' Comsat's operation of Intelsat satellites. Thus, the legislative history's embrace of fees for satellites ''directly licensed by the Commission under Title III'' seems reasonably to encompass Comsat.

Panamsat, 198 F.3d at 896. The court further noted that Comsat pays Title III space station application fees under section 8 in connection with its satellite authorizations. *Panamsat,* 198 F.3d at 895. In view of the foregoing, Comsat cannot be heard to argue—based on the same language considered by the court of appeals—that its INTELSAT operations are not licensed or that they are ''foreign'' within the relevant meaning of those terms.[23]

20. In this regard, we see no merit to Comsat's suggestion that the Commission may not impose regulatory fees on Comsat unless it imposes the same fees on the users of foreign-licensed satellites and on direct access users of INTELSAT's system. We do not grant Title III authorizations to direct access users, who are merely customers of INTELSAT. Comsat is the U.S. Signatory to INTELSAT. As such, it is the largest and the sole U.S. investor in the system receiving a return on its investment. It also is the U.S. entity that participates in INTELSAT commercial decisions involving procurement and operation of satellites and development and pricing of services provided by INTELSAT. Comsat, therefore, is the U.S. entity responsible for operation of the INTELSAT satellites. This unique status, established by the Communications Satellite Act, makes Comsat subject to obtaining Title III authorization. Neither the investors in foreign-licensed systems nor direct access users of INTELSAT's system (now codified by ORBIT) have similar status.

[18] In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999 and FY 2000, none of the proposed fee increases exceed 25%.

[19] *See Assessment and Collection of Fees for Fiscal Year 1994,* 9 FCC Rcd 5333 (1994); *Assessment and Collection of Fees for Fiscal Year 1995,* 10 FCC Rcd 13512 (1995); *Assessment and Collection of Fees for Fiscal Year 1996,* 11 FCC Rcd 18774 (1996); *Assessment and Collection of Fees for Fiscal Year 1997,* 12 FCC Rcd 17161 (1997); *Assessment and Collection of Fees for Fiscal Year 1998,* 13 FCC Rcd 19820 (1998); *Assessment and Collection of Fees for Fiscal Year 1999,* 14 FCC Rcd 9868 (1999).

[20] Comsat relies on the following language contained in H.R. Rep. No. 207, 102nd Cong., 1st Sess. 1991, *incorporated by reference in* H.R. Rep. No. 213, 103rd Cong., 1st Sess. 1993:

The Committee intends that fees in this category [space stations] be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act, 22 U.S.C. Section 288 *et seq.* [*e.g.*, INTELSAT].

[21] Because our analysis largely overlaps those of Panamsat and GE Americom, we will not summarize their arguments at length.

[22] The Communications Satellite Act expressly designates Comsat as a common carrier fully subject to the provisions of Title II and Title III of the Communications Act. 47 U.S.C. section 741.

[23] We recognize that this analysis departs from our treatment of this issue in past fee orders. *Panamsat,* however, establishes the applicable law, and we are bound by its teachings.

21. Comsat also makes a related argument, noting that the pertinent fee is described as follows: ''Space Station (per operational station in geosynchronous orbit) (47 CFR Part 25).'' 47 U.S.C. section 159(g). Comsat maintains that the parenthetical reference to Part 25 indicates that the fee only applies to space stations that are licensed subject to the technical and other regulations contained in Part 25. INTELSAT's facilities are not subject to the licensing provisions of Part 25. In this regard, the court in *Panamsat* left open the question of whether ''* * * there is some ambiguity in the coverage of the 'space station' category in section 9, such that the Commission might 'permissibly' read the statute as allowing a Comsat exemption.'' *Panamsat,* 198 F.3d at 896.[24]

22. We find that adopting the interpretation of section 9 proposed by Comsat would be contrary to the intent of Congress. Section 9's primary mandate is for the Commission to recover the costs of its regulatory activities, including international activities, through the collection of fees assessed against those who benefit from the Commission's activities. 47 U.S.C. section 159(a)(1), (b)(1)(A). In enacting section 9, Congress established an initial schedule of fees, which the Commission may modify under appropriate circumstances. It would unreasonably frustrate the intent of Congress to suppose that it framed the fee schedule in a way that made a category of costs either unrecoverable or not chargeable against the party most directly related to them, without creating an express exemption. This leads us to conclude that section 9's reference to part 25 is essentially clerical, *i.e.*, that it simply calls attention to the section of the rules most relevant to the fee, but does not reflect a substantive limitation. To hold otherwise would elevate form over substance. It is reasonable to infer that Congress intended to relate the fee to the costs of effectuating all of our statutory satellite responsibilities and not simply those that happen to have been codified as part 25. For example, we have held that the section 9 regulatory fee applies to DBS satellites although they are regulated under part 100 rather than part 25. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* 11 FCC Rcd 18774, 1811 (1996); *Direct Broadcast Satellites*, 90 FCC 2d 676 (1982) (establishing interim rules for DBS).[25] Moreover, Part 25 is, in part, a manifestation of some of the statutory responsibilities set forth in the Communications Satellite Act. *See* 47 U.S.C. section 721(c)(11); 47 CFR section 25.101(a). Thus, for example, when we place Comsat's applications on public notice, we apply the pleading requirements of 47 CFR section 25.154, although Comsat's applications are not, strictly speaking, ''Part 25 applications.'' *See, e.g., Applications Accepted for Filing,* Rep. No. SPB–109 (Oct. 28, 1997).

23. We further find that the foregoing analysis is consistent with and reinforced by the ''Parity of Treatment'' provision of ORBIT. Indeed, we agree with Comsat that in pertinent respects a degree of ''redundancy'' exists between ORBIT and *Panamsat*. Comments of Comsat Corporation at 18 n.9. As Comsat points out, the Parity of Treatment provision is a carryover from a previous satellite privatization bill (H.R. 1872, 105th Cong., 2nd Sess.). In 1998, when the provision was first introduced, the United States Court of Appeals for the District of Columbia Circuit had recently decided *Comsat Corp.* v. *FCC*, 114 F.3d 223 (D.C. Cir. 1997), which had struck down a Commission attempt to impose a novel ''signatory fee'' against Comsat.[26] In our view, the provision codifies the proposition, also reflected in *Panamsat,* that the invalidity of the signatory fee does not mean that Comsat is exempt from the space station fee. The House Report accompanying H.R. 1872 states:

> The Committee believes that the Commission currently has the statutory authority to impose such fees [*i.e.,* fees similar to the regulatory fees imposed on other entities providing similar services] but wishes to make explicit here that the Commission does indeed have such authority. This subsection should not be interpreted to imply that the Commission does not currently have the authority to enact such regulatory fees.

H.R. Rep. No. 494, 105th Cong., 2nd Sess. 1998. We reject Comsat's attempt to avoid the implications of this provision. ORBIT, like *Panamsat,* makes clear that Comsat is not exempt from the space station fee as regards INTELSAT facilities. To accept Comsat's interpretation, that it is not subject to the space station fee despite ORBIT, would give the relevant provision of ORBIT no effect at all. Thus, we reject Comsat's argument that ORBIT's reference to ''similar services'' as opposed to ''similar facilities'' applies only to Comsat's international bearer circuits, as to which there has been no dispute over Comsat's liability.[27] We also reject Comsat's baseless suggestion that ORBIT establishes a requirement that the space station fee would be applicable to Comsat only if its satellites were ''similarly situated'' to other satellites. Each of these arguments, if accepted, would nullify the parity provision of ORBIT.

24. In sum, we conclude that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations. As we concluded in years past, the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1996,* 11 FCC Rcd 18774, 18790 paragraphs 45–46 (1996). These costs are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees. If Comsat does not pay its share, these costs will be borne by other holders of Title III authorizations.

25. We disagree with Comsat's suggestion that imposing a fee pursuant to ORBIT would have an improper retroactive effect. We see no significance to the fact that ORBIT was not enacted until March 17, 2000, after the October 1, 1999 cut-off established pursuant to our rules for authorizations that will be subject to annual regulatory fees for fiscal year 2000. *See Assessment and Collection of Fees for Fiscal Year 2000,* FCC 00–117 (Apr. 3, 2000) at paragraph 27. As discussed above, we find that ORBIT merely reaffirms Comsat's

[24] Elsewhere, however, the Court states: ''The plain terms of section 9 * * * clearly do not require an exemption for Comsat, and there is no obvious hook in the language on which to hang an exemption.'' *Panamsat,* 198 F.3d at 895.

[25] Since its establishment in 1982, the Part 100 DBS service has referred to satellite systems operating on the Ku-band at frequencies and orbital positions different from satellites authorized under Part 25. *See Policies and Rules for the Direct Broadcast Satellite Service,* 13 FCC Rcd 6907, 6909 paragraph 2 (1998) (proposing to make Part 25 applicable to DBS); *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992,* 8 FCC Rcd 1589, 1589–90 paragraphs 3–4 (1993). *See also Satellite Communications Services,* 56 Fed. Reg. 24014, 24016 (May 28, 1991) (amending the rules to add: ''§ 25.109 Cross-reference. The space radiocommunications stations in the following services are not licensed under this part: * * * Direct Broadcasting Satellite Service, see 47 CFR part 100 * * *.)

[26] The court held that the signatory fee, which was not among those initially specified by Congress in section 9, could not be added consistent with the section's requirement that new fees must reflect additions deletions, or changes in the nature of service.

[27] Additionally, we note that Comsat's own literature indicates that it provides ''satellite capacity services'' as ''the U.S. owner of the INTELSAT satellite system * * *.'' *COMSAT Corporation: Satellite Capacity Services, available at* <http://www.comsat.com/sat_cap/> (visited May 10, 2000).

liability for fees under section 9 and does not create any new liability. Thus, the date of its enactment has no significance with respect to the fees chargeable to Comsat. In any event, we do not in this proceeding contemplate retroactively imposing, pursuant to ORBIT, any fees due prior to ORBIT's enactment.[28] The fees at issue here are due prospectively in September 2000. We note further that irrespective of the date of ORBIT's enactment, Comsat held the authorizations relevant to the fee as of October 1, 1999. Thus, while the cut-off would normally bar applying fees to authorizations issued or acquired after October 1, 1999, no such action is contemplated here.

26. We also find no basis to discount the fees based on the level of Comsat's usage of INTELSAT's system. We have previously rejected proposals to base the space station fee on the number of transponders used rather than the number of space segments. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995,* 10 FCC Rcd 13512, 13550–51 paragraph 111 (1995). Comsat has furnished no justification for us to adopt a utilization-based approach generally. In this regard, our decision in *Columbia Communications Corp.,* 14 FCC Rcd 1122 (1999), should not be read as endorsing a utilization-based approach to the space station fee. In that case, we granted Columbia a partial waiver of the fee based on the unique circumstances present. Specifically, Columbia leased transponder capacity on two NASA Tracking Data and Relay Satellites (TDRSS). Under the terms of the lease, NASA could preempt Columbia's usage on minimal notice. Moreover, Columbia already paid 70 percent of its revenues to the United States Government under the lease. Because the usefulness of Columbia's license had been impaired by another governmental body, and because Columbia already paid the government for the use of the satellites, we found that a partial waiver was appropriate.

27. We note that Comsat has also requested a reduction in any fees that may be assessed. We express no view in this rulemaking proceeding whether such a reduction in fees should be granted. Waivers and reductions in fees are granted on a case-by-case basis under section 1.1166 of our rules. Comsat is free to submit such a request in accordance with the requirements of that section.

[28] We will consider elsewhere to what extent the court's decision in *Panamsat* may require the adjustment of past fees.

b. Interstate Telephone Service Providers

28. The Commission is required under the Communications Act of 1934, as amended,[29] to establish procedures that will finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of the local number portability (LNPA) program. In a series of separate proceedings, the Commission has already established procedures that permits the administrators of these programs to collect contributions from all providers of telecommunications services in support of the above mandates.[30] In 1999, as part of its paperwork streamlining efforts, the Commission amended its rules and required contributors to file only a single form FCC Form 499–A, Telecommunications Reporting Worksheet, and eliminated FCC Form 431, TRS Fund Worksheet.[31] Previously, Form 431, TRS Fund Worksheet, was used to obtain base revenue data from which telephone services regulatory fees were calculated. Because of this form change, it is no longer feasible to obtain base telephone services revenue data using adjusted gross interstate revenues as derived from data previously provided on FCC Form 431, TRS Fund Worksheet. Therefore, beginning in FY 2000, we are requiring that the interstate telephone services regulatory fee be derived from interstate and international end-user revenues data submitted on FCC Form 499–A, Telecommunications Reporting Worksheet, rather than from data provided on Form 431, TRS Fund Worksheet. A copy of the form and instructions can be downloaded at: <*http://www.fcc.gov/formpage.html*>.

29. All providers of telecommunications services within the United States, with very limited exceptions, must file a FCC Form 499–A, Telecommunications Reporting Worksheet. For this filing, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island. Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete and file separately a copy of the Telecommunications Reporting Worksheet.

30. In determining who must file Form 499–A, the term ''telecommunications'' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing the Telecommunication Reporting Worksheet, the term ''interstate telecommunications'' includes, but is not limited to, the following types of services: wireless telephony including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. For example, all local exchange carriers provide access services and, therefore, provide interstate telecommunications. Included are entities that offer interstate telecommunications services to the public for a fee, even if only a narrow or limited class of users could use the services. Also included are entities that provide interstate telecommunications services to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as ''pay telephone aggregators,'' must file the worksheet. Most telecommunications carriers must file the worksheet even if they qualify for the *de minimis* exemption under the commission's rules for universal service.[32]

31. With the introduction of a new form, FCC Form 499–A, it is no longer feasible to base the interstate telephone services regulatory fee on the adjusted gross interstate revenues because this data was derived from a previously used form (FCC 431) to contribute to the Telecommunication Relay Services Fund. Therefore, beginning in FY 2000, we are requiring that the interstate and international telephone services regulatory fee be derived from interstate

[29] 47 U.S.C. 151, 225, 251, 254.

[30] These contributions are separate and apart from regulatory fees collected to fund the Commission's operations.

[31] *1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms,* Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (July 30, 1999) (*Contributor Reporting Requirements Order*).

[32] 47 CFR 54.708.

and international end-user revenues as submitted by providers on FCC Form 499–A, Telecommunications Reporting Worksheet, as part of the telecommunications provider reporting requirements. The following providers are exempt from paying the interstate telephone service provider regulatory fees: interstate service providers that have mobile service or satellite service revenue, but no local or non-satellite toll service; [33] government entities within the meaning of the term 47 CFR 1.1162; and carriers whose payment obligation would be less than $10.[34] Note, the interstate telephone service provider fee is based on interstate and international end-user revenues for local and most toll services only. Filers are not allowed to deduct any expenses from subject interstate and international end-user revenues.

32. There have been no comments received regarding the proposal to rely on the FCC Form 499-A data as the basis for computing the interstate telephone service provider regulatory fee. Therefore, we are adopting the proposal. We are, however, making a minor adjustment in our revenue estimate as a result of more current data from the April 2000 filing. The most current estimate is $74,124,558,460; however, the fee factor remains unchanged at 0.00117 per revenue dollar.

c. Commercial Radio and Television

33. The National Association of Broadcasters (''NAB'') commented on several aspects of how the radio and television station fees were developed and collected. NAB suggests that the fees should be based on the cost of regulating a particular class of License. The Commission's Cost Accounting System does not provide cost detail at that level. NAB recommends that the number of payment units within a class and population should determine the amount of fees paid by each category group. In fact, that is exactly what is done for AM and FM radio fees. NAB argues that costs of regulating the new non-commercial low power FM operations should be separated from the costs for regulating full-power radio stations and applied as overhead to all feeable services. Our cost accounting system is not capable of adequately performing this recommendation. A new cost accounting system is being planned for future development, and this concept will be discussed and considered at the appropriate time. Finally, NAB criticizes the accuracy of posting of fee payments and the level of research performed before taking collections actions against suspected non-payers. The Commission is dedicated to improving its processes and will carefully consider recommendations from the NAB or other interested parties of additional sources of reliable information about radio and television payees.

34. Sunbelt Communications Company and Ruby Mountain Broadcasting Company (collectively, ''Sunbelt'') argue that small television stations located near large designated market areas (DMA) are assessed disproportionately high fees because the A.C. Nielsen ratings include them in the DMA but they do not serve households in the DMA. Fees for television stations are based on market size as determined by Nielsen. This is the only consistent source the Commission has for determining which market a station serves. Sunbelt asserts that it is not in the public interest to force small, local television stations out of the market. Sunbelt further suggests that a provision should be made for small television stations to pay a reduced fee comparable to the satellite television fee, or alternatively a fee based on the number of households (rather than DMA). It is certainly not the Commission's intent to force anyone out of the market. As Sunbelt acknowledges in its comments, the Commission has an established procedure for a case-by-case determination of requests for waiver or reduction of a regulatory fee. *See* 47 CFR 1. The Commission has previously addressed the issues raised by Sunbelt and set standards for determining, on a case-by-case basis, whether fees for a small station may be reduced below the fees assessed for an assigned DMA and whether fees may be reduced because their payment will create financial hardship. *See Implementation of Section 9 of the Communications Act,* 10 FCC Rcd 12759, 12761–63 (1995). Finally, the Commission is unaware of the existence of any reliable published source that can identify which television stations are serving small markets at the fringe of larger DMA's. We would encourage interested parties to submit a copy of or reference to such a publication that may enable us to predetermine small market television stations for the FY 2001 regulatory fee cycle.

d. Non-Geostationary Orbit Space Station Systems

35. Space Imaging LLC (''Space Imaging'') is constructing a non-geostationary orbit (NGSO) space station system that is not currently subject to regulatory fees because it is not operational. However, Space Imaging revives an issue, which we have previously addressed asking that we create a small constellation fee for systems of less than five satellites. As we have stated before, our regulatory costs are constant without respect to the number of satellites in a constellation. We believe that endless controversy will ensue in determining the appropriate number of satellites for determining the cut-off point. Finally, there simply are not enough systems in operation, and subject to a fee, to warrant creation of multiple categories for FY 2000. In fact, one feeable system has ceased operation leaving only two operational systems.

36. As referenced in the preceding paragraph, Iridium LLC has ceased providing services to its customers and is in bankruptcy. Space Systems License, Inc., Motorola Pacific Communications, Inc., and Motorola Satellite Communications, Inc. (collectively, ''Motorola'') argue that ''it would not be equitable, consistent with prior Commission policy, or otherwise in the public interest to require Motorola to pay the fiscal year 2000 regulatory fees associated with the satellite and Earth station authorizations for the Iridium system.'' [35] Procedures for requesting a waiver or reduction of regulatory fees are specified in section 1.1166 of the Commission's Rules.[36] Therefore, no waiver or reduction decision will be made in this *Report and Order.*

e. Commercial Mobile Radio Services (CMRS)

37. The Cellular Telecommunications Industry Association (CTIA) questions our methodology and calculations used to determine the FY 2000 regulatory fees. CTIA argues that the CMRS industry is being levied a 42 percent increase versus the 7.67 percent increase imposed by the Congress. The 7.67 percent figure represents the increase in the aggregate amount that we must collect rather than the increases for specific industries or services within them. In the *NPRM* it is clearly stated that the percentage will not fall equally on all payers due to a variety of factors.[37] CTIA further argues that fees should be based on the number of units and the costs associated with a particular sector, rather than across all telecommunications sectors. We agree, however, in its current state, our cost accounting system contains certain

[33] However, these service providers may be subject to payment of regulatory fees under other categories, *e.g.* space stations.

[34] *See* 47 U.S.C. 159(h); *see also* paragraph 29, *infra.*

[35] Motorola comments at page 4.

[36] 47 CFR 1.1166

[37] 37 *NPRM* at footnote 18.

anomalies that require us to make adjustments in the public interest. Specifically, our cost data indicates that the CMRS Mobile Services sector has incurred costs in excess of $30 million, which has been reduced by our methodology to approximately $25 million. Further, this adjustment resulted in a reduction in the fee from $0.32 in FY 1999 to our *NPRM* estimate of $0.31 per unit for FY 2000. However, figures released by CTIA in April 2000 indicate that wireless subscribers reached 86 million by the end of 1999. Using such publicly available documents as news releases, cellular industry surveys including surveys conducted by CTIA, and filings with the Securities and Exchange Commission, we adjusted our estimate to 86 million payment units which reduced the CMRS Mobile Services fee to $0.30 per unit.

38. Several parties which include: BellSouth Corporation (''BellSouth''), Council of Independent Communications Suppliers (''CICS'') and the USMSS, Inc. (''USMSS''), and the American Mobile Telecommunications Association (''AMTA'') have expressed concern that we may have reversed our decision from FY 1999 that small specialized mobile radio (SMR) systems be treated as CMRS Messaging Service for purposes of assessing regulatory fees. This is not true. Specific language stating that small SMR systems possessing less than 10 MHz of bandwidth are to be considered in the CMRS Messaging Services fee category was inadvertently omitted from the text of the Guidelines in Attachment F of the *NPRM*. That oversight has been corrected in this *Report and Order*.

C. Procedures for Payment of Regulatory Fees

39. Generally, we are retaining the procedures that we have previously established for the payment of regulatory fees. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. 159(f)(2). Consistent with section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

i. Annual Payments of Standard Fees

40. As we have in the past, we are treating regulatory fee payments by certain licensees as ''standard fees'' which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in this *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

41. As we noted in the *NPRM,* time constraints will preclude an opportunity for installment payments. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, there will not be sufficient time for installment payments, and regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for a single payment will be announced either in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

42. As we have in the past, we are treating regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order,* and to those additional payers set forth herein.[38] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in this *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

43. As we have in the past, we are establishing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2000.

v. Standard Fee Calculations and Payment Dates

44. As noted, the time for payment of standard fees and any installment payments will be announced in this *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees must be paid for any authorization issued on or before *October 1, 1999.* Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

45. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's' subscribers, units or circuits on *December 31, 1999,* will be used to calculate the fee payment.[39] Regulatory fees are due and payable by the holder of record of the license or permit of the

[38] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

[39] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers=Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 1999, rather than on a count as of December 31, 1999.

service as of December 31, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 1999, the licensee or holder of the authorization on the date that payment is due must pay the fee.

vi. Improved Fee Collection Systems

46. The Commission is taking several steps to improve its fee collection program. Development of a new fee collection system has begun by which it is expected will provide a single improved internal source of information for all of the Commission's financial transactions. In addition, we are implementing procedures that will require assignment of a unique identifier (FCC Registration Number) to each entity doing business with the FCC to enable it to track payments and other transactions made by the entity, even when its name or ownership changes. These enhancements will assist the FCC in identifying all feeable entities and ensuring that proper payments are received and recorded accurately.

vii. Late or Insufficient Regulatory Fee Payment

47. As a reminder, in accordance with section 1.1164 of the Commission's Rules, regulatees will be subject to a 25 percent penalty for late or insufficient regulatory fee payment. All payments not received by the due date shall be assessed the penalty.

D. Schedule of Regulatory Fees

48. The Commission's Schedule of Regulatory Fees for FY 2000 is contained in Attachment D of this *Report and Order.*

IV. Procedural Matters

A. Ordering Clause

49. It is ordered that the rule changes specified herein be adopted. It is further ordered that the rule changes made herein will become effective September 10, 2000, which is no less than 60 days from the date of publication in the **Federal Register**. A Final Regulatory Flexibility Analysis (FRFA) has been performed and is found in Attachment A, and it is ordered that the Federal Communications Commission's Consumer Information Bureau, Reference Information Center, send this to Small Business Administration (SBA). Finally, it is ordered that this proceeding is *Terminated.*

B. Authority and Further Information

50. This action is taken pursuant to sections 4(i) and (j), 9, and 303 (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 159, and 303(r).

51. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, communications common carriers, radio, telecommunications, television.

Federal Communicaitons Commission.

William F. Caton,

Deputy Secretary.

Note: The attachments will not appear in the Code of Federal Regulations.

Attachment A—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[40–41] an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2000,* 65 FR 19580 (Apr. 11, 2000). The Commission sought written public comments on the proposals in its FY 2000 regulatory fees *NPRM,* including on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding was initiated in order to collect regulatory fees in the amount of $185,754,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

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

3. None.

III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, herein adopted.[42] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[43] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[44] 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).[45] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[46] Nationwide, as of 1992, there were approximately 275,801 small organizations.[47] ''Small governmental jurisdiction''[48] generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[49] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[50] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[51] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, herein adopted.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[52] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[53]

[40–41] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[42] 5 U.S.C. 603(b)(3).

[43] *Id.* 601(6).

[44] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[45] Small Business Act, 15 U.S.C. 632 (1996).

[46] 5 U.S.C. 601(4).

[47] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[48] 47 CFR 1.1162.

[49] 5 U.S.C. 601(5).

[50] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[51] *Id.*

[52] 13 CFR 121.201, SIC code 4841.

[53] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4841 (U.S.

Continued

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[54] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[55] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [56] The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[57] Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.[58] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[59] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[60] multipoint distribution systems (MDS),[61] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[62] However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers.[63] These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.[64] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [65] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[66] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[67] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not ''independently owned and operated.'' [68] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, herein adopted.

13. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. [69] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. [70] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, herein adopted.

14. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is

Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[54] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[55] Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[56] 47 U.S.C. 543(m)(2).

[57] 47 CFR 76.1403(b).

[58] Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[59] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[60] Direct Broadcast Services (DBS) are discussed with the international services, *infra.*

[61] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra.*

[62] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000).

[63] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000).

[64] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[65] 5 U.S.C. 601(3).

[66] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[67] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[68] *See generally* 15 U.S.C. 632(a)(1).

[69] *1992 Census, supra,* at Firm Size 1–123.

[70] 13 CFR 121.201, SIC code 4813.

for telephone communications companies other than radiotelephone (wireless) companies.[71] According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[72] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, herein adopted.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[73] According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.[74] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 171 small entity IXCs that may be affected by the proposed rules, herein adopted.

16. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[75] According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.[76] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rules, herein adopted.

17. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[77] According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services.[78] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 24 small entity operator service providers that may be affected by the proposed rules, herein adopted.

18. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[79] According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.[80] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 615 small entity pay telephone operators that may be affected by the proposed rules, herein adopted.

19. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[81] According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.[82] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rules, herein adopted.

20. *Toll-Free 800 and 800-Like Service Subscribers.*[83] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service (''toll free'') subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[84] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, less than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the proposed rules, herein adopted.

International Services

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[85] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[86] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[87] The Census report does not provide more precise data.

22. *International High Frequency Broadcast Stations.* Commission records show that there are 18 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition.

[71] 71 Id.

[72] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[73] 13 CFR 121.201, SIC code 4813.

[74] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[75] 13 CFR 121.201, SIC code 4813.

[76] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[77] 13 CFR 121.201, SIC code 4813.

[78] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[79] 13 CFR 121.201, SIC code 4813.

[80] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[81] 13 CFR 121.201, SIC code 4813.

[82] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000).

[83] We include all toll-free number subscribers in this category, including 888 numbers.

[84] FCC, CCB Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

[85] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[86] 13 CFR 120.121, SIC code 4899.

[87] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

23. *International Public Fixed Radio (Public and Control Stations).* There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

26. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. There are 304 current VSAT System authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. *Mobile Satellite Earth Stations.* There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. *Space Stations (Geostationary).* There are 64 current Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

30. *Space Stations (Non-Geostationary).* There are 12 current Non-Geostationary Space Station authorizations, of which only three systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.'' [88] This definition provides that a small entity is one with $11.0 million or less in annual receipts. [89] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS service, and thus are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

32. *Commercial Radio and Television Services.* These rules and policies will apply to television broadcasting licensees and radio broadcasting licensees. [90] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business. [91] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. [92] Included in this industry are commercial, religious, educational, and other television stations. [93] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. [94] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. [95] There were 1,509 television stations operating in the nation in 1992. [96] That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 30, 1999. [97] For 1992, [98] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. [99] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business. [100] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. [101] Included in this industry are commercial, religious, educational, and other radio stations. [102] Radio broadcasting stations, which primarily are engaged in, radio broadcasting and which produce radio program materials are similarly included. [103] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. [104] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. [105] Official Commission records indicate that 11,334 individual radio stations were operating in 1992. [106] As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations. [107] Only commercial stations are subject to regulatory fees.

34. Thus, the rules may affect approximately 1,616 full power television stations, approximately 1,200 of which are considered small businesses. [108]

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[88] 13 CFR 120.121, SIC code 4841.

[89] 13 CFR 121.201, SIC code 4841.

[90] While we tentatively 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 *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

[91] 13 CFR 121.201, SIC code 4833.

[92] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1,* Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[93] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[94] *1992 Census, Series UC92–S–1,* at Appendix A–9.

[95] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[96] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1,* at Appendix A–9.

[97] FCC News Release, ''Broadcast Station Totals as of September 30, 1999.''

[98] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a ''2'' or ''7.'' See *1992 Census, Series UC92–S–1*, at III.

[99] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[100] 13 CFR 121.201, SIC code 4832.

[101] *1992 Census, Series UC92-S–1,* at Appendix A–9.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[106] FCC News Release, No. 31327 (Jan. 13, 1993).

[107] FCC News Release, ''Broadcast Station Totals as of September 30, 1999.''

[108] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to

Additionally, these rules will affect some 12,615 full power radio stations, approximately 11,670 of which are small businesses. [109] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,194 low power television stations (LPTV). [110] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting. [111] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements. [112] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 5,186, of which 340 are television stations. [113]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[114]

37. There are currently 3,237 FM translators and boosters, and 2,964 TV translators.[115] The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[116]

38. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[117] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[118] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[119] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[120] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[121] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[122] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[123] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[124] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, herein adopted.

40. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[125] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[126] Therefore, if this general ratio

arrive at 1,200 stations categorized as small businesses.

[109] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[110] FCC News Release, No. 7033 (Mar. 6, 1997).

[111] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

[112] *See, e.g.,* 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees). *See also, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding,* FCC 00–20, released February 2, 2000 (''*Review of EEO Rules*'').

[113] See Review of EEO Rules, Appendix B, Sec. C [from compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395-B), Equal Employment Opportunity Staff, Mass Media Bureau, FCC].

[114] 13 CFR 121.201, SIC code 4832.

[115] FCC News Release, *Broadcast Station Totals as of September 30, 1999,* No. 71831 (Jan. 21, 1997).

[116] 15 U.S.C. 632.

[117] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[118] 47 CFR 1.2110 (a)(1).

[119] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[120] 47 U.S.C. 309(j).

[121] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pages 36–39.

[122] 13 CFR 121.201, SIC code 4812.

[123] *1992 Census, Series UC92–S–1,* at Table 5, SIC code 4812.

[124] *Trends in Telephone Service,* Table 19.3 (March 2000).

[125] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[126] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5,

Continued

continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order,* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[127] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[128] The SBA has approved these definitions.[129] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[130] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[131]

42. *Private and Common Carrier Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. A small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons.[132] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[133] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, herein adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[134] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[135] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, herein adopted.

44. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[136] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[137] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[138] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[139] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[140] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[141] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[142] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[143] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[144] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and

Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[127] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paragraphs 291-295 (1997).

[128] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, paragraph 291.

[129] See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[130] See generally Public Notice, ''220 MHz Service Auction Closes,'' Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[131] Public Notice, ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' Report No. AUC–18-H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[132] 13 CFR 121.201, SIC code 4812.

[133] *Trends in Telephone Service,* Table 19.3 (February 19, 1999).

[134] 13 CFR 121.201, SIC code 4812.

[135] *Trends in Telephone Service.* No. 7,744 (released Jan. 14, 1997.)

[136] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, paragraphs 57-60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

[137] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order,* FCC 96–278, WT Docket No. 96–59, paragraph 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[116] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 9 FCC Rcd 5532, 5581–84 (1994).

[139] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released Jan. 14, 1997).

[140] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[141] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[142] 13 CFR 121.201, SIC code 4812.

[143] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[144] 13 CFR 121.201, SIC code 4812.

900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[145] In the context of 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. These fees apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [146] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact every small business in the United States.

53. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2000. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[147]

55. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,800 will be subject to FY 2000 regulatory fees.

56. *Fixed Microwave Services.* Microwave services include common carrier,[148] private-operational fixed,[149] and broadcast auxiliary radio services.[150] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[151] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

57. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[152] There are a total of approximately 127,540 licensees within these services. Governmental entities [153] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[154] All licensees in this category are exempt from the payment of regulatory fees.

58. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[155] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[156] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

60. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area

[145] 47 CFR 90.814(b)(1).

[146] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994,* at page 116.

[147] 13 CFR 121.201, SIC code 4812.

[148] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[149] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[150] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[151] 13 CFR 121.201, SIC 4812.

[152] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[153] 47 CFR 1.1162.

[154] 5 U.S.C. 601(5).

[155] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[156] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[157] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Applicants who pay small fees in advance may supply fee information as part of their application and may not need to use FCC Form 159.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[158] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[159] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency. [160] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq*., and the *Debt Collection Improvement Act of 1996,* Public Law 194–134. Appropriate enforcement measures, *e.g.,* interest as well as administrative and judicial remedies, may be exercised by the Commission. Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[161]

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[162] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

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

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra,* which gives ''Detailed Guidance on Who Must Pay Regulatory Fees.'' Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

66. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999,* Public Law 105–277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2000. [163] As noted, we have sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

67. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology we are adopting in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services, which, for the most part, are larger entities.

68. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 149, *supra,* and Attachment F of the *Report and Order, infra.*

Report to Small Business Administration: The Commission will send a copy of this *Report and Order,* including a copy of the final certification, to the Chief Counsel for Advocacy of the Small Business Administration. The certification will also be published in the **Federal Register** pursuant to 5 U.S.C. 605(b).

Report to Congress: The Commission shall include a copy of this Final Regulatory Flexibility Analysis, along with this *Report and Order,* including a copy of the final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this FRFA (or summary thereof) will also be published in the **Federal Register**, along with this *Report and Order.*

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[157] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[158] 47 CFR 1.1164(a).

[159] 159 47 CFR 1.1164(c).

[160] Public Law 104–134, 110 Stat. 1321 (1996).

[161] 31 U.S.C. 7701(c)(2)(B).

[162] 47 CFR 1.1166.

[163] 47 U.S.C. 159(a).

SOURCES OF PAYMENT UNIT ESTIMATES FOR FY 2000

In order to calculate individual service fees for FY 2000, we adjusted FY 1999 payment unites for each service to more accurately reflect expected FY 2000 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2000 estimates with actual FY 1999 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2000 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2000 payment units are based on FY 1999 actual payment units, it does not necessarily mean that our FY 2000 projection is *exactly* the same number as FY 1999. It means that we have either rounded the FY 2000 number or adjusted it slightly to account for these variables.

Attachment B

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz[164], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on industry estimates of growth between FY 1999 and FY 2000 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1999 payment units.
UHF/VHF Television Stations	Based on actual FY 1999 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1999 payment units.
LPTV, Translators and Boosters	Based on actual FY 1999 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau (WTB) projections.
MDS/MMDS	Based on actual FY 1999 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1999 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1999 interstate revenues associated with the Telecommunications Reporting Worksheet, adjusted to take into consideration FY 2000 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1999 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 1999 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on actual FY 1999 payment units.

[164] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for 218-219 MHz (formerly IVDS) in FY 2000.

Attachment C

CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee Category	FY 2000 Payment Units	(times) FY 1999 Fee	(times) Payment Years	(equals) Computed FY 2000 Revenue Requirement	Pro-Rated Revenue Requirement**	Rounded New FY 2000 Regulatory Fee	Expected FY 2000 Revenue
PLMRS (Exclusive Use)	3,800	13	5	247,000	239,408	13	239,408
Microwave	6,250	13	10	812,500	787,525	13	787,525
218-219 MHz (Formerly IVDS)	0	13	10	0	0	0	0
Marine (Ship)	6,300	7	10	441,000	427,444	7	427,444
GMRS/PLMRS (Shared Use)	59,000	7	5	2,065,000	2,001,526	7	2,001,526
Aviation (Aircraft)	3,300	7	10	231,000	223,889	7	223,889
Marine (Coast)	1,500	7	5	52,500	50,886	7	50,886
Aviation (Ground)	1,750	7	5	61,250	59,367	7	59,367
Amateur Vanity Call Signs	8,000	1.4	10	112,000	108,557	1.4	112,000
AM Class A	72	1,942	1	139,824	135,526	1,875	135,000
AM Class B	1,155	1,491	1	1,722,105	1,669,171	1,450	1,674,750
AM Class C	806	738	1	594,828	576,544	715	576,290
AM Class D	2,001	970	1	1,940,970	1,881,308	940	1,880,940
FM Classes A, B1 & C3	2,656	1,491	1	3,960,096	3,838,370	1,445	3,851,200
FM Classes B, C, C1 & C2	2,555	1,942	1	4,961,810	4,809,293	1,875	4,790,625
AM Construction Permits	60	260	1	15,600	15,120	250	15,000
FM Construction Permits	341	780	1	265,980	257,804	755	257,455
Satellite TV	70	1,300	1	91,000	88,203	1,250	87,500
Satellite TV Construction Permit	4	460	1	1,840	1,783	445	1,780
VHF Markets 1-10	44	41,225	1	1,813,900	1,758,144	39,950	1,757,800
VHF Markets 11-25	54	34,325	1	1,853,550	1,796,575	33,275	1,796,850
VHF Markets 26-50	67	23,475	1	1,572,825	1,524,479	22,750	1,524,250
VHF Markets 51-100	115	13,150	1	1,512,250	1,465,766	12,750	1,466,250
VHF Remaining Markets	195	3,400	1	663,000	642,621	3,300	643,500
VHF Construction Permits	19	2,775	1	52,725	51,104	2,700	51,300
UHF Markets 1-10	70	15,550	1	1,088,500	1,055,041	15,075	1,055,250
UHF Markets 11-25	75	11,775	1	883,125	855,979	11,425	856,875
UHF Markets 26-50	102	7,300	1	744,600	721,712	7,075	721,650
UHF Markets 51-100	148	4,350	1	643,800	624,011	4,225	625,300
UHF Remaining Markets	163	1,175	1	191,525	185,638	1,150	187,450
UHF Construction Permits	93	2,900	1	269,700	261,410	2,800	260,400
Auxiliaries	22,500	12	1	270,000	261,701	12	261,701

Fee Category	FY 2000 Payment Units	(times) FY 1999 Fee	(times) Payment Years	(equals) Computed FY 2000 Revenue Requirement	Pro-Rated Revenue Requirement**	Rounded New FY 2000 Regulatory Fee	Expected FY 2000 Revenue
International HF Broadcast	5	520	1	2,600	2,520	505	2,525
LPTV/Translators/Boosters	2,710	290	1	785,900	761,743	280	758,800
CARS	1,687	55	1	92,785	89,933	53	89,933
Cable Systems	66,690,000	0.48	1	32,011,200	31,027,233	0.47	31,027,233
Interstate Telephone Service Providers	74,124,558,460	0.00121	1	89,419,000	86,670,419	0.00117	86,670,419
CMRS Mobile Services (Cellular/Public Mobile)	86,000,000	0.32	1	26,240,000	25,433,429	0.30	25,433,429
CMRS Messaging Services	38,900,000	0.04	1	1,556,000	1,508,171	0.04	1,508,171
MDS/MMDS/LMDS	3,036	285	1	865,260	838,663	275	834,900
International Bearer Circuits	595,614	7	1	4,169,298	4,041,141	7	4,041,141
International Public Fixed	3	410	1	1,230	1,192	395	1,185
Earth Stations	2,679	180	1	482,220	467,397	175	468,825
Space Stations (Geostationary)	63.5	130,550	1	6,201,125	6,010,513	94,650	6,010,275
Space Stations (Non-geostationary)	3	180,800	1	542,400	525,728	175,250	525,750
****** Total Estimated Revenue Collected				191,644,821	185,754,000		185,753,420
****** Total Revenue Requirement				185,754,000	185,754,000		185,754,000
Difference				5,890,821	0		(243)

** 0.969261778 factor applied

Attachment D

FY 2000 SCHEDULE OF REGULATORY FEES

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
PLMRS (Shared Use) (per license) (47 CFR part 90)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.30
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04
Multipoint Distribution Services (Includes MMDS & LMDS)(per call sign) (47 CFR parts 21	275

Fee Category	Annual Regulatory Fee (U.S. $'s)
and 101)	
AM Radio Construction Permits	250
FM Radio Construction Permits	755
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	39,950
Markets 11-25	33,275
Markets 26-50	22,750
Markets 51-100	12,750
Remaining Markets	3,300
Construction Permits	2,700
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	15,075
Markets 11-25	11,425

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 26-50	7,075
Markets 51-100	4,225
Remaining Markets	1,150
Construction Permits	2,800
Satellite Television Stations (All Markets)	1,250
Construction Permits - Satellite Television Stations	445
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	280
Broadcast Auxiliary (47 CFR part 74)	12
CARS (47 CFR part 78)	53
Cable Television Systems (per subscriber) (47 CFR part 76)	.47
Interstate Telephone Service Providers (per revenue dollar)	.00117
Earth Stations (47 CFR part 25)	175
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also	

Fee Category	Annual Regulatory Fee (U.S. $'s)
includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	94,650
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	175,250
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	395
International (HF) Broadcast (47 CFR part 73)	505

RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50.001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

Attachment E

COMPARISON BETWEEN FY 1999 & FY 2000

PROPOSED & FINAL REGULATORY FEES

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13	13	13
Microwave (per license) (47 CFR part 101)	13	13	13
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13	13	13
Marine (Ship) (per station) (47 CFR part 80)	7	7	7
Marine (Coast) (per license) (47 CFR part 80)	7	7	7
General Mobile Radio Service (per license) (47 CFR part 95)	7	7	7
PLMRS (Shared Use) (47 CFR part 90)	7	7	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7	7	7
Aviation (Ground) (per license) (47 CFR part 87)	7	7	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40	1.40	1.40

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.32	.31	.30
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04	.04	.04
Multipoint Distribution Services (Includes MMDS and LMDS)(per call sign) (47 CFR part 21 and 101)	285	275	275
AM Construction Permits	260	250	250
FM Construction Permits	780	755	755
TV (47 CFR part 73) VHF Commercial			
Markets 1-10	41,225	39,950	39,950
Markets 11-25	34,325	33,275	33,275
Markets 26-50	23,475	22,750	22,750
Markets 51-100	13,150	12,750	12,750
Remaining Markets	3,400	3,300	3,300
Construction Permits	2,775	2,700	2,700
TV (47 CFR part 73) UHF Commercial			

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
Markets 1-10	15,550	15,075	15,075
Markets 11-25	11,775	11,425	11,425
Markets 26-50	7,300	7,075	7,075
Markets 51-100	4,350	4,225	4,225
Remaining Markets	1,175	1,150	1,150
Construction Permits	2,900	2,800	2,800
Satellite Television Stations (All Markets)	1,300	1,250	1,250
Construction Permits – Satellite Television Stations	460	445	445
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290	280	280
Broadcast Auxiliary (47 CFR part 74)	12	12	12
CARS (47 CFR part 78)	55	53	53
Earth Stations (47 CFR part 25)	180	175	175
Cable Television Systems (per subscriber) (47 CFR part 76)	.48	.47	.47
Interstate Telephone Service Providers (per revenue dollar)	.00121	.00117	.00117
Space Stations (per operational station in geostationary orbit)			

Fee Category	Annual Regulatory Fee FY 1999	NPRM Proposed Fee FY 2000	Annual Regulatory Fee FY 2000
(47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	130,550	94,650	94,650
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,800	175,250	175,250
International Bearer Circuits (per active 64KB circuit)	7	7	7
International Public Fixed (per call sign) (47 CFR part 23)	410	395	395
International (HF) Broadcast (47 CFR part 73)	520	505	505

FY 1999 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	430	325	225	275	325	430
20,001 - 50,000	825	650	325	450	650	825
50.001 - 125,000	1,350	875	450	675	875	1,350
125,001 - 400,000	2,000	1,400	675	825	1,400	2,000
400,001 - 1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

FY 2000 RADIO STATION REGULATORY FEES

(Proposed and Final)

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50.001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[165] as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, 1998 and 1999 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[166]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[167] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[168] For FY 2000, PMRS licensees will pay a $13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[169] The total regulatory fee due is either $65 for a license with a five-year term or $130 for a license with a 10-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2000, Microwave licensees will pay a $13 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $130 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private

[165] 47 U.S.C. 159(g).

[166] 47 U.S.C. 159(b)(2), (3).

[167] 47 U.S.C. 159(b)(1)(A).

[168] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[169] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

carrier basis. The Commission does not anticipate receiving any applications in the 218–219 MHz service during FY 2000. However, for FY 2000, the annual regulatory fee for 218–219 MHz licensees is set at $13 should there be any applications submitted. The total regulatory fee due would be $130 for the ten-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2000, licensees of Marine (Coast) Stations will pay a $7 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 per call sign for the five-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2000, licensees of services in this category will pay a $7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, *i.e.,* possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2000, licensees of Aviation (Ground) Stations will pay a $7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $35 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2000, GMRS licensees will pay a $7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.40 annual regulatory fee per call sign, as prescribed in the FY 1999 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2000 fee schedule becomes effective. The total regulatory fee due would be $14 per license for the ten-year license term. [170] For FY 2000, Amateur Vanity Call Sign applicants will again pay a $1.40 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.,* Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90); [171] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2000, the regulatory fee is $.30 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.,* Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.,* one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2000, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it

[170] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)'' from the requirement. However, section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[171] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is ''active'' on the ''as-of'' date for payment of these fees. The unit becomes ''feeable'' if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[172] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2000 are as follows:

FY 2000 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	400	300	200	250	300	400
20,001 - 50,000	800	625	300	425	625	800
50.001 - 125,000	1,325	850	425	650	850	1,325
125,001 - 400,000	1,950	1,350	625	775	1,350	1,950
400,001 - 1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

19. Licensees may determine the appropriate fee payment by referring to a list, which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov) by calling the FCC's National Call Center (1–888–225–5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file.

Note: Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment.

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 2000, permittees will pay a fee of $250 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct new Commercial FM Stations. For FY 2000, permittees will pay a fee of $755 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook,* Stations Volume No. 68, 2000 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$39,950
VHF Markets 11–25	33,275
VHF Markets 26–50	22,750
VHF Markets 51–100	12,750
VHF Remaining Markets	3,300
UHF Markets 1–10	15,075
UHF Markets 11–25	11,425
UHF Markets 26–50	7,075
UHF Markets 51–100	4,225
UHF Remaining Markets	1,150

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the

[172] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

primary station are assessed a fee of $1,250 annually. Those stations designated as Television Satellite Stations in the 2000 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 2000, VHF permittees will pay an annual regulatory fee of $2,700. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 2000, UHF Television permittees will pay an annual regulatory fee of $2,800. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2000 is $445. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order.* Community based Translators are exempt from regulatory fees. For FY 2000, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $280 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2000, licensees of Commercial Auxiliary Stations will pay a $12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2000, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $275 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2000, Cable Systems will pay a regulatory fee of $.47 per subscriber.[173] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1999. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2000, licensees will pay an annual regulatory fee of $53 per CARS license.

[173] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

b. Interstate Telephone Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline and fixed wireless local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as ''interstate telephone service providers''.

Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), Interexchange carriers (long distance telephone companies), wireless telephone service carriers that provide fixed local or toll services (Cellular, Personal Communications Service, and Specialized Mobile Radio), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, pre-paid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

In order to avoid imposing any double payment burden on resellers, we base the regulatory fee on end-user revenues. Accordingly, interstate telephone service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[174] Interstate telephone service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2000, carriers must multiply their interstate and international revenue

[174] *See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (*Contributor Reporting Requirements Order*).

from subject local and toll services by the factor 0.00117 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

Calendar 1999 revenue information (show amounts in whole dollars)		
1	Service provided by U.S. carriers that both originates and terminates in foreign points. Form 499-A Line 412 (e)	
2	Interstate end-user revenue from all telecommunications services. Form 499-A Line 420 (d)	
3	International end-user revenue from all telecommunications services exception international-to-international. Form 499-A Line 420 (e)	
4	Total interstate and international end-user revenues (Sum of Lines 1, 2 and 3)	
5	End user interstate mobile service monthly and activation charges. Form 499-A Line 409 (d)	
6	End user international mobile service monthly and activation charges. Form 499-A Line 409 (e)	
7	End user interstate mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (d)	
8	End user international mobile service message charges including roaming charges but excluding toll charges. Form 499-A Line 410 (e)	
9	End user interstate satellite service. Form 499-A Line 416 (d)	
10	End user international satellite service. Form 499-A Line 416 (e)	
11	Total end user interstate and international mobile and satellite service revenue. (sum lines 5 through 10)	
12	Total end-user interstate and international revenues from local and subject toll services (Line 4 minus Line 11)	
13	Common carrier fee factor	.00117
14	2000 Regulatory Fee (Line 12 times Line 13) *	
* You are exempt from filing if the amount on line 14 is less than $10.		

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[175] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas*, authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) Earth stations, and Earth station uplinks. For FY 2000, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $175 per authorization or registration *as well as a separate fee of $175 for each associated Hub Station.*

35. *Receive-only Earth stations.* For FY 2000, there is no regulatory fee for receive-only Earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the Earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and Earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2000, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $94,650 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

[175] Mobile Earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2000.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the Earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and Earth stations on a common carrier and/or private carrier basis. For FY 2000, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $175,250 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because § 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 2000, the regulatory fee is $7 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel	No. of equivalent 64 kbps circuits
Size in MHz:	
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2000, International Public Fixed Radio Service licensees will pay a $395 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2000, International HF Broadcast Stations will pay an annual regulatory fee of $505 per station license.

Attachment G—Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[176]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services

[176] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

associated with policy and rulemaking activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. [177] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials. [178] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment I—Parties Filing Comments on the Notice of Proposed Rule Making

Space System License, Inc., Motorola Pacific Communications, Inc. and Motorola Satellite Communications, Inc. (collectively, ''Motorola'')
Sunbelt Communications Company and Ruby Mountain Broadcasting Company (collectively, ''Sunbelt'')
Space Imaging LLC (''Space Imaging'') GE American Communications, Inc. (''GE Americom'')
PanAmSat Corporation (''PanAmSat'')
COMSAT Corporation (''COMSAT'')
National Association of Broadcasters (''NAB'')
The Cellular Telecommunications Industry Association (''CTIA'')
The Council of Independent Communications Suppliers (''CICS'') and the USMSS, Inc. (''USMSS'')
American Mobile Telecommunications Association, Inc. (''AMTA'')
BellSouth Corporation (''BellSouth'')

Parties Filing Reply Comments on the Notice of Proposed Rule Making

GE American Communications, Inc. (''GE Americom'')
PanAmSat Corporation (''PanAmSat'')
COMSAT Corporation (COMSAT'')

Attachment J—AM and FM Radio Regulatory Fees

The List of regulatory fees is available from the FCC Public Reference Room, CY-A257, 445 12th St. SW, Washington, DC 20554.

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH, Approving in Part, Dissenting in Part

Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00–58 (rel. July 10, 2000).

I generally support today's item. However, two aspects of the Order particularly concern me. First, I am troubled by yearly increases in fees that do not appear tied to any corresponding increase in the services provided to these licensees by the Commission. Congress requires that the Commission collect $185,754,000 this year to cover the costs of regulation and services.[179] Implicitly, this amount is ''reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [180] Over the past 6 years, however, these regulatory fees have increased over 200% and now cover 88.5% of the Commission's operating budget. It is hard to imagine that these increases reflect corresponding increases in Commission services.

These immense sums are not true ''fees,'' but instead are more accurately described as taxes. Ordinarily, administrative fees are distinguishable from taxes in that the payor of fees receives a benefit in return. Conversely, taxes ''confer[ ] no special benefit on the payee,'' rather, they are ''intended to raise general revenue'' or are ''imposed for some public purpose.''[181] At this point, our regulatory fees cover nearly 90% of the FCC's total operating budget. It is difficult to contend that the payors of these fees account for 90% of the FCC's costs. ''Fees'' should not be used as a back door to impose tax-like obligations on licensees.

My second concern is the assessment of fees upon Comsat for the Intelsat satellite system. This order purports to find Comsat liable for certain of these fees. The order contends that Comsat is liable under the fee category, ''space station[s] (per operational station in geosynchronous orbit) (47 CFR Part 25).''[182] Comsat satellites are not, however, and never have been regulated or licensed under Part 25. The majority contends that the parenthetical reference to Part 25 following the fee is ''essentially clerical'' and ''does not reflect a substantive limitation.''[183] Needless to say, I am troubled by this characterization, particularly since the other parentheticals do not seem designed to merely ''call attention to'' certain ''relevant'' portions of our rules. In fact, other parentheticals regarding this fee category seem quite directive: ''per operational station in geosynchronous orbit.'' I do not believe we possess the authority to interpret away that limitation to impose the fee based on some other calculus. I fear that imposition of the fee on non-part 25 systems leads us down that dangerous road.

The Commission does possess clear authority to amend the Schedule of Regulatory Fees.[184] Congress mandates that in ''making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.'' [185] However, just as we failed to follow this obligation in the original Comsat ''Signatory Fee'' proceeding,[186] here too the Commission has not undertaken a proceeding

[177] 47 CFR 73.150 and 73.152.

[178] 47 CFR 73.313.

[179] See Public Law 105–277 and 47 U.S.C. 159(a)(2).

[180] 47 U.S.C. § 159(a)(1)(A).

[181] *Thomas* v. *Network Solutions,* 2 F.Supp.2d. 22 (D.C. 1998).

[182] See 47 U.S.C. 159(g). Imposition of fees on Comsat has already endured a troubled history. See Panamsat Corp. v. FCC, 198 F.3d 890 (D.C. Cir. 1999); Comsat Corp. v. FCC, 114 F.3d 223 (D.C. Cir. 1997).

[183] Order at ¶ 22. Indeed, such an interpretation would render the parenthetical ''mere surplusage''—contrary to established rules of statutory construction. See Mail Order Ass'n of America v. USPS, 986 F.2d 509 (D.C. Cir. 1993).

[184] See *id.* § 159(b)(3).

[185] *Id.*

[186] See *Comsat Corp.* v. *FCC,* 114 F.3d 223 (D.C. Cir. 1997) (holding that the Commission cannot make an amendment to the fee schedule unless pursuant to a rulemaking or change in the law).

to formally amend the fee schedule based on a ''rulemaking proceedings or changes in law.'' [187] I do not believe we should interpret away such limitations, rather the FCC is obligated to implement the statutory fee schedule as written or formally change it, not merely read purportedly inconvenient limitations out of the statute.[188]

For the foregoing reasons, I respectfully dissent.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR, Part 90):		
(a) New, Renew/Mod (FCC 601 & 159)	$13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5245.
220 MHz Nationwide (a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
2. Microwave (47 CFR Pt. 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	13.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	13.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	13.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
4. Shared Use Services, Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 601 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (FCC 601 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Coast:		
(a) New Renewal (FCC 503 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal (FCC 452R & 159)	7.00	FCC, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(c) Renewal (Electronic Filing) (FCC 900 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Aviation Ground:		
(a) New, Renewal (FCC 406 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Renewal (FCC 452R & 159)	7.00	FCC, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(c) Renewal (Electronic Filing) (FCC 601 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Marine Ship:		
(a) New, Renewal (Electronic Filing) (FCC 506 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
Aviation Aircraft:		
(a) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
(c) Renewal (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Renewal (Electronic Filing) (FCC 605 & 159)	7.00	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
5. Amateur Vanity Call Signs:		
(a) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.40	FCC, P.O. Box 358130, Pittsburgh, PA, 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	1.40	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	.30	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[187] In light of the longstanding nature of the Comsat service and the existing fee category structure, it is not clear that there has been the requisite ''additions, deletions, or changes in the nature of its services.'' See 47 U.S.C. 159(b)(3)

[188] The Order's interpretation seems more like a rewrite. See *Indiana Michigan Power Co.* v. *Department of Energy,* 88 F.3d 1272, 1276 (1996) (Stating that the Department's ''treatment of this statute is not an interpretation but a rewrite.'').

Exclusive use services (per license)	Fee amount [1]	Address
7. CMRS Messaging Services (per unit) (FCC 159)	.04	FCC, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[1] Note that ''small fees'' are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table must be multiplied by the 5- 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also as detailed in § 1.1102 of this chapter.

3. Section 1.1153 is revised to, read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
Radio [AM and FM] (47 CFR, Part 73)		
1. *AM Class A:*		
<=20,000 population	$400	FCC, Radio.
20,001–50,000 population	800	P.O. Box 358835.
50,001–125,000 population	1,325	Pittsburgh, PA.
125,001–400,000 population	1,950	15251–5835.
400,000–1,000,000 population	2,725	
>1,000,000 population	4,375	
2. *AM Class B:*		
<=20,000 population	300	
20,001–50,000 population	625	
50,001–125,000 population	850	
125,001–400,000 population	1,350	
400,001–1,000,000 population	2,200	
>1,000,000 population	3,575	
3. *AM Class C:*		
<=20,000 population	200	
20,001–50,000 population	300	
50,001–125,000 population	425	
125,001–400,000 population	625	
400,001–1,000,000 population	1,200	
>1,000,000 population	1,725	
4. *AM Class D:*		
<=20,000 population	250	
20,001–50,000 population	425	
50,001–125,000 population	650	
125,001–400,000 population	775	
400,001–1,000,000 population	1,450	
>1,000,000 population	2,225	
5. AM Construction Permit	250	
6. FM *Classes A, B1 and C3:*		
<=20,000 population	300	
20,001–50,000 population	625	
50,001–125,000 population	850	
125,001–400,000 population	1,350	
400,001–1,000,000 population	2,200	
>1,000,000 population	3,575	
7. *FM Classes B, C, C1 and C2:*		
<=20,000 population	400	
20,001–50,000 population	800	
50,001–125,000 population	1,325	
125,001–400,000 population	1,950	
400,001–1,000,000 population	2,725	
>1,000,000 population	4,375	
8. FM Construction Permits	755	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	39,950	FCC, TV Branch.
2. Markets 11 thru 25	33,275	P.O. Box 358835.
3. Markets 26 thru 50	22,750	Pittsburgh, PA.
4. Markets 51 thru 100	12,750	15251–5835.
5. Remaining Markets	3,300	
6. Construction Permits	2,700	
UHF Commercial		
1. Markets 1 thru 10	15,075	FCC, UHF Commercial.
2. Markets 11 thru 25	11,425	P.O. Box 358835.
3. Markets 26 thru 50	7,075	Pittsburgh, PA.
4. Markets 51 thru 100	4,225	15251–5835.
5. Remaining Markets	1,150	
6. Construction Permits	2,800	
Satellite UHF/VHF Commercial		
1. All Markets	1,250	FCC Satellite TV.
2. Construction Permits	445	P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR Part 74).	280	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

	Fee amount	Address
Broadcast Auxiliary Markets	12	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Multipoint Distribution	275	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$13	FCC, P.O. Box 358994, Pittsburgh, PA, 15251–5994.
Carriers:		
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund).	.00117	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$53	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Cable TV System (per subscriber)	.47	

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities:		
1. International (HF) Broadcast	$505	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. International Public Fixed	395	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Space Stations:		
(Geostationary Orbit)	94,650	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
(Non-Geostationary Orbit	175,250	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations:		
Transmit/Receive & Transmit Only (per authorization or registration).	175	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. International Bearer Circuits (per active 64KB circuit or equivalent).	7.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

[FR Doc. 00–17937 Filed 7–17–00; 8:45 am]

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Federal Register

Tuesday,
July 18, 2000

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6734–3]

RIN 2060–AG97

National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for facilities that coat metal coil. The EPA has identified metal coil coating as a major source of hazardous air pollutant (HAP) emissions such as methyl ethyl ketone, glycol ethers, xylenes (isomers and mixtures), toluene, and isophorone. These proposed standards will implement section 112(d) of the Clean Air Act (CAA or Act) by requiring all major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed standards would eliminate approximately 55 percent of nationwide HAP emissions from these major sources.

DATES: Comments. Submit comments on or before September 18, 2000.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 7, 2000, a public hearing will be held on August 17, 2000.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–47, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at our Office of Administration Auditorium in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946 to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–47 contains supporting information used in developing the proposed standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Rhea Jones, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2940, facsimile number (919) 541–5689; electronic mail address: jones.rhea@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–97–47. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Rhea Jones, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Eck to verify the time, date, and location of the hearing. The public hearing would provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Plain Language. In compliance with President Clinton's June 1, 1998 Executive Memorandum on plain language in government writing, this preamble is written using plain language, thus, the use of ''we'' and ''us'' in this document refers to the EPA. The use of ''you'' refers to the reader, and may include industry; State, local, and tribal governments; environmental groups; and other interested individuals.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC codes	Examples of potentially regulated entities
Metal coil coating industry ...	3479 [a], 2591, 2796, 3053, 3081, 3083, 3086, 3316, 3312, 3313, 3317, 3334, 3341, 3352, 3353, 3355, 3441, 3444, 3446, 3448, 3465, 3471, 3490, 3499, 3555, 3699, 3714, 3861, 5051, 5084, 7389, 8731, 8734.	Those facilities that perform surface coating of metal coil.

[a] The majority of facilities are included in SIC 3479.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section II of this preamble and in § 63.5090 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the TTNWWW; the metal coil coating docket (A–97–47); the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777; or the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Please refer to ''National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating NESHAP—Background Information for Proposed Standards'' (EPA 453/P–00–001).

Outline. The information presented in this preamble is organized as follows:

I. What are the subject and purpose of this proposed rule?
II. Does this proposed rule apply to me?
III. What is the proposed emission standard?
IV. When do I show initial compliance with the proposed rule?
V. What testing and monitoring must I do?
VI. What notification, recordkeeping, and reporting requirements must I follow?
VII. What are the environmental, energy, and economic impacts of this proposed rule?
VIII. What is the basis for selecting the level of the proposed standards?
IX. What is the basis for selecting the format of the proposed standards?
X. Why did we select the proposed monitoring requirements?
XI. Why did we select the proposed test methods?
XII. Why did we select the proposed notification, recordkeeping, and reporting requirements?
XIII. Administrative Requirements

I. What Are the Subject and Purpose of This Proposed Rule?

The CAA requires us to establish standards to control HAP emissions from source categories identified under section 112(c). An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The source category list identifies ''Metal Coil Coating (Surface Coating)'' as a source category because it contains major sources. Under the CAA, a major source is defined as ''. . . any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, at least 10 tons per year (tpy) or more of any one HAP or 25 tpy of any combination of HAP.'' Sources that emit or have the potential to emit less than these amounts are considered area sources. We have estimated that there are over 90 existing facilities in the source category; all are believed to be major sources.

The purpose of the proposed rule is to reduce emissions of HAP from major sources that coat metal coil. We estimate that annual baseline HAP emissions from this source category are approximately 2,258 megagrams per year (Mg/yr) (2,484 tpy). The proposed rule would eliminate approximately 1,241 Mg/yr (1,366 tpy) or 55 percent of the major source organic HAP emissions.

The major HAP emitted from the metal coil coating process include methyl ethyl ketone and gycol ethers. These compounds account for over 50 percent of the nationwide HAP emissions from this source category. Other HAP identified in emissions include xylenes (isomers and mixtures), toluene, and isophorone. Each of these major HAP can cause reversible or irreversible toxic effects following sufficient exposure. The potential toxic effects include eye, nose, throat, and skin irritation, and blood cell, heart, liver, and kidney damage.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

II. Does This Proposed Rule Apply to Me?

A. What Facilities Are Subject to This Proposed Rule?

Metal coil surface coating is a process-specific rather than a product-specific operation. Accordingly, the proposed rule applies to you if you own or operate any metal coil coating operation at a facility that is a major source of HAP emissions. We have defined a coil coating operation as the application system used to apply an organic coating to the surface of any continuous metal strip at least 0.006 inch thick that is packaged in a roll or coil, which includes the web unwind or feed station; the series of one or more coating stations and any associated curing ovens; the wet section/pretreatment operations; equipment and parts cleaning operations; the quenching operations; the mixing/thinning operations; and the storage and wastewater operations.

A major source would also be subject to all other applicable NESHAP for the various source categories, other than metal coil coating, that may be present at the facility. This means your facility may be subject to multiple NESHAP, and you would be responsible for complying with the standards set for each NESHAP. Coating equipment that is dedicated to research and development is not covered by the proposed NESHAP.

B. How Is the Affected Source Defined?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific emission standard applies. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the proposed metal coil NESHAP, the floor level of control on which the emission standard is based is 98 percent overall control efficiency of the capture and control system. The affected source subject to the emission standard is proposed to be the collection of coil coating lines at a facility. Specific emission sources that will be subject to the proposed emission limitations include the coating application stations and associated curing ovens. Wet section/pretreatment and quench operations are part of the metal coil coating line, but are not subject to the proposed emission limitations.

We are not proposing requirements for the storage, wastewater, mixing/thinning, and parts and equipment cleaning operations. The proposed standard would apply to emissions of all organic HAP listed in section 112(b) of the CAA and apply to HAP present in coatings applied to the metal coil.

Some facilities may perform both foil and coil coating operations on the same equipment. Where this situation occurs, both coating operations will be subject to the proposed metal coil coating NESHAP.

III. What Is the Proposed Emission Standard?

A. What Are the Emission Limits?

In the proposed rule, you have two options to limit HAP emissions: (1) Reduce emissions of the organic HAP applied for the month by 98 percent; or (2) limit HAP emissions to no more than 0.029 kilograms per liter (kg/l) of solids applied (0.24 pounds per gallon (lbs/gal)) for the month. The second option can be met through a combination of coating formulation and add-on capture and control devices, or by limiting the amount of HAP in your coatings to no more than 0.029 kg/l of solids (0.24 lbs/gal) on average for the month.

Before your initial compliance demonstration, you would choose one of these emission limit options for your coating lines. In your initial compliance certification, you would notify the Administrator of your choice, and after that you would monitor and report compliance results accordingly. If you decide to change to the other emission limit option, you are required to notify the Administrator, as with other changes at the facility discussed in section VI of this preamble.

In submitting comments, please specify whether the comment pertains to one or all of the emission limitation and compliance options. We will further evaluate the standard based on our review of public comments and other information we may receive. The final rule may reflect either or both of the proposed options to limit HAP emissions.

The General Provisions (40 CFR part 63, subpart A) would also apply to you, as outlined in table 1 of the proposed rule. The General Provisions codify procedures and criteria we use to carry out all part 63 NESHAP promulgated under the CAA. The General Provisions contain administrative procedures, preconstruction review procedures, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The proposed subpart SSSS refers to individual sections of the General Provisions to highlight key sections that we believe will be of particular interest to you. However, unless specifically overridden in table 1 of subpart SSSS, all of the applicable General Provisions requirements would apply to you.

You may be subject to the proposed metal coil NESHAP and other future or existing rules, such as State rules requiring reasonably available control technology limits on volatile organic compounds (VOC) emissions or the new source performance standards (NSPS) in 40 CFR part 60, subpart TT. You must comply with all rules that apply to you. Compliance with different numerical standards should be resolved through your title V permit.

B. What Pollutants Are Limited by This Proposed Rule?

We propose to limit total organic HAP emissions from coating lines. Inorganic HAP are present in pigments and film-forming components of some coatings. These components remain on the substrate for the life of the product and are not expected to be emitted into the air. Therefore, inorganic HAP are not covered by the proposed NESHAP. In section 112, the CAA lists the HAP to be regulated.

IV. When Do I Show Initial Compliance With the Proposed Rule?

Existing sources would have to comply with the final rule no later than 3 years after the effective date of the final rule. The effective date is the date on which the final rule is published in the **Federal Register**. New or reconstructed sources would have to comply upon start-up of the affected source or the effective date of the final rule, whichever is later. Details of compliance demonstrations can be found in the General Provisions, as outlined in table 1 of subpart SSSS.

V. What Testing and Monitoring Must I Do?

In addition to the testing and monitoring requirements specified below for the affected source, the proposed rule adopts the testing requirements specified in § 63.7.

A. Test Methods and Procedures

You may comply with the proposed standards by applying materials meeting the organic HAP emission rate limit, by using capture and control equipment to reduce organic HAP emissions by 98 percent, or by using a combination of low organic HAP materials and capture and control equipment to meet the organic HAP emission rate limit.

If you demonstrate compliance based on the materials applied on your coating lines, you must determine the organic HAP content or the volatile matter content, and the solids content of materials applied. To determine organic HAP content, you may either use EPA Method 311 of appendix A of 40 CFR part 63, use an alternative method for determining the organic HAP content (but only after obtaining EPA approval), or use the volatile matter content of the materials applied as a surrogate for the organic HAP content. The volatile matter content must be determined by EPA Method 24 of appendix A of 40 CFR part 60, or an EPA approved alternative method. The volume solids content of the material must be determined using ASTM D2697–86, or ASTM D6093–97. You may rely on manufacturer's data to determine the organic HAP content or volatile matter and solids content when these data are equivalent to those obtained from Method 311, Method 24, ASTM D2697–86, or ASTM D6093–97 (or an EPA approved alternative method), respectively. You must determine the mass of each coating material applied using company records. If diluent solvents or other ingredients are added to a material prior to application, then the total organic HAP fractions and mass must be adjusted appropriately to account for such additions. You must calculate the organic HAP content and mass of all materials applied on the coating lines for each monthly period. However, only changes in a material formulation would require a re-determination of total organic HAP weight fraction for that material. To demonstrate compliance, you must calculate the average mass of organic HAP in materials applied and show that it is less than the organic HAP emission limit.

If you use an emission capture and control system to comply with the

standard, you must demonstrate that the overall control efficiency reduces total organic HAP by at least 98 percent. Alternatively, you may use capture and control equipment in combination with low organic HAP materials and demonstrate you meet the organic HAP emission limitation specified. To comply using the combined approach, you must determine the overall control efficiency of the equipment and the organic HAP and solids content of the materials applied. These values must be determined for each monthly period.

The overall control efficiency for a capture and control system would be demonstrated based on capture and reduction efficiency. You must determine the capture efficiency or verify the presence of a total enclosure using EPA Method 204 of 40 CFR part 51, appendix M. The EPA Method 204A through F of 40 CFR part 51, appendix M, is used to determine the capture efficiency of enclosures that do not meet the criteria for total enclosures. You must determine the emission reduction efficiency of a control device by conducting a performance test or using a continuous emission monitoring system (CEMS). If you use CEMS, you must determine the inlet and outlet concentration to calculate the control efficiency. The CEMS must comply with performance specification 8 or 9 in 40 CFR part 60, appendix B.

If you conduct a performance test, we are proposing that the removal efficiency of a control device be determined based on three runs, each run lasting 1 hour. Method 1 or 1A of 40 CFR part 60, appendix A is used for selection of the sampling sites. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine the gas volumetric flow rate. Method 3, 3A, or 3B of 40 CFR part 60, appendix A, is used for gas analysis to determine dry molecular weight. Method 4 of 40 CFR part 60, appendix A, is used to determine stack moisture. Method 25 or 25A of 40 CFR part 60, appendix A, is used to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used upon obtaining EPA approval.

If you use a solvent recovery system, you may alternatively determine the overall control efficiency using a liquid-liquid material balance. If you demonstrate compliance with the material balance, you must measure the amount of all materials applied during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month and calculate the overall solvent recovery efficiency.

B. Monitoring Requirements

Monitoring is required by the proposed standards to ensure that the affected source is in continuous compliance. Monitoring requirements apply if you comply with the proposed rule using emission capture and control devices to meet the standards expressed as a percent control or as an organic HAP emission rate limit.

Monitoring to demonstrate compliance is accomplished by measuring site-specific operating parameters, the values of which you establish during the performance test described in section V.A of this preamble. You must install, calibrate, maintain, and operate all monitoring equipment according to manufacturer's specifications. If you use control devices other than those identified in the proposed standards you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by the Administrator and is not delegated.

The operating parameter value is defined as the minimum or maximum (as applicable) value established for a control device or process parameter achieved during the most recent performance test that demonstrated compliance with the emission standard.

If you use a capture and control system to meet the proposed standards and you do not use liquid-liquid material balances to demonstrate compliance, you are required to submit a plan identifying the operating limit and monitoring procedures for the capture efficiency. You must monitor in accordance with your plan unless we require an alternate monitoring procedure.

If you use a thermal or catalytic oxidizer, you must monitor temperature using a continuous recorder. If you use a thermal oxidizer, you must establish the minimum combustion temperature recorded during the performance test as the operating limit. If you use a catalytic oxidizer, you must establish as the operating parameters the minimum gas temperatures both upstream and downstream of the catalyst bed. These minimum temperatures are the operating parameters used to demonstrate continuous compliance. The time weighted average of the values recorded during the performance test shall be computed to establish the parameter value(s). For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

If you operate metal coil coating lines with intermittently-controllable work stations, you must demonstrate that HAP emissions from each curing oven associated with these work stations are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four procedures:

(1) Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;

(2) Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;

(3) Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or

(4) Automatic shutdown system to stop operation of the metal coil coating line when flow is diverted from the control device when the control device is operating.

If you use a solvent recovery system, you must conduct monthly liquid-liquid mass balances or operate CEMS as described above in the test methods and procedures section of this preamble.

If you use a combination of capture and control devices and low-HAP materials, you are required to monitor the parameter of the capture and control device as indicated above. In addition, you must record data on the HAP and solids content of the materials applied to determine the HAP emission rate as described in the performance test section.

VI. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

A. Initial Notification

If the NESHAP apply to you, you must send notification to the appropriate EPA Regional Office, and to your State or local agency, at least 1 year before the compliance date for existing sources and within 120 days after the date of initial start-up for new and reconstructed sources, or 120 days after publication of the final rule, whichever is later. New major affected sources must submit an application for approval of construction or reconstruction according to § 63.5(d)(1). This application satisfies the initial notification requirement. The initial notification informs us and your State

agency that you have an existing facility that is subject to the proposed NESHAP or that you have constructed a new facility. Thus, it allows you and the enforcement agency to plan for compliance activities.

B. Notification of Performance Test

If you demonstrate compliance by using a capture and control system to reduce emissions of HAP, you must conduct a performance test as described above. Prior to conducting the performance test, you must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

C. Notification of Compliance Status

Your compliance procedures will depend on which compliance option you choose. You are required to send a notification of compliance status within 180 days after the compliance date. The notification of compliance status should specifically identify whether low-HAP materials, emission capture and control systems, or a combination of the two were used to demonstrate compliance, and, for capture and control systems, the results of performance tests and monitoring, and a description of how you will determine continuing compliance. Your notice must also specify what operating limits were established during the performance test, the range of each monitored parameter for your affected source, information verifying that this range shows compliance with the emission standard, and information showing that the source has operated within its designated operating parameters. To comply with the proposed NESHAP, your compliance report must contain at least 5 months of coating content data where low-HAP materials are used and monitoring data where capture and control systems are used to demonstrate that you have been in compliance since the compliance date.

D. Recordkeeping Requirements

Depending on the compliance approach you choose, you may have to keep records of one or more of the following:

- Organic HAP, volatile matter, and solids content of the coatings, as applied.
- Monthly usage of all coatings and other materials applied.
- Equipment monitoring parameter measurements.

Deviations from the proposed standard, as calculated from these records, need to be reported as described in the section below.

E. Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period you would submit a semiannual report stating that the affected source has been in compliance. The following semiannual reports would be required under this proposal when deviations occur:

- If you are complying by using oxidizers, report all times when a 3-hour average temperature was below the average temperature established during the most recent performance test when compliance was demonstrated.
- If you are complying with the HAP percent reduction limitation by using solvent recovery systems and you choose to show compliance by means of a liquid-liquid mass balance, report information on all months when the material balances did not meet the standard.
- If you are complying by using oxidizers or solvent recovery systems where liquid-liquid material balances are not conducted, report all days when, for any 3-hour period, the average value of the site-specific operating parameter used to monitor the capture system performance was greater than or less than (as appropriate) the operating parameter value established for the capture system.
- If you are complying by using low-HAP materials, report each deviation from the emission limit.
- If you are complying by using a combination of capture and control systems and low-HAP materials, report information on control device parameter deviations as described above. In addition, you would be required to submit semiannual reports of deviations of monthly calculated HAP emission limitations.

You would also have to send us reports for each semiannual reporting period in which the following occur:

- A change occurs at your facility or within your process that might affect its compliance status.
- A change occurs at your facility or within your process that you must normally report in the initial notice.
- You decide to change to another emission limitation option.

F. Other Reports

You are required to submit other reports, including those you must do for periods of start-up, shutdown, and malfunction. For example, if you use a capture and control system to reduce HAP emissions, you must develop a start-up, shutdown, and malfunction plan. You would have to make the plan available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source is no longer subject to the standard. If the procedures you follow during any start-up, shutdown, or malfunction are inconsistent with your plan, you must report those procedures with your semiannual reports.

VII. What Are the Environmental, Energy, and Economic Impacts of This Proposed Rule?

As explained below, we do not expect any significant adverse environmental or energy impacts resulting from the proposed rule. Any negative economic impacts are also expected to be small. Actual compliance costs will depend on each source's existing equipment and the modifications made to comply with the standard. We have estimated that the installation of permanent total enclosures and the installation of, or improvement to, thermal oxidizers at existing facilities could require nationwide capital costs of approximately $11.6 million and annual operating costs of about $6.2 million. Costs could be much lower if facilities choose to use low-HAP coatings.

A. Emission Reductions

For existing sources in the metal coil coating industry, the nationwide baseline HAP emissions are estimated to be 2,258 Mg/yr (2,484 tpy). We estimate that implementation of the final rule would reduce emissions from these sources by 1,241 Mg/yr (1,366 tpy), or approximately 55 percent.

Since the emission limits for new and existing sources are the same, emission reductions for new sources are expected to be similar to the 55 percent emission reduction estimated for existing sources.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emission reductions discussed in the previous section.

Most of the organic HAPs are VOC. Capture and control of HAP that are presently emitted will result in a decrease in VOC emissions. In addition, the proposed emission control systems used to reduce HAP emissions will reduce non-HAP VOC emissions as well. We do not have information on non-HAP VOC emissions from metal coil coating operations; consequently,

we cannot quantify the reduction of VOC emissions. However, the percent reduction should be similar to the percent reduction in HAP emissions (i.e., about 55 percent). Emissions of VOC have been associated with a variety of health and welfare impacts. The VOC emissions, together with nitrogen oxides, are precursors to the formation of ground level ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

The use of newly installed or upgraded control devices will result in greater electricity consumption. Increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide, as well as certain HAP, from electric utilities could result. In the metal coil coating industry, some plants will comply by installing or upgrading oxidizers. Supplemental fuel, typically natural gas, will be used, particularly for thermal oxidizers. Combustion of this fuel will result in additional carbon dioxide emissions and may result in additional emissions of nitrogen oxides and carbon monoxide.

A small number of facilities using waterborne coatings may install condenser systems to comply with the proposed standard. This will result in the generation of wastewater streams that may require treatment to remove the HAP. It also is expected that some metal coil coating facilities will comply with the proposed standard by substituting non-HAP materials for HAP presently in use. In some cases, the non-HAP materials may be VOC, however, in other cases, non-VOC (*e.g.,* water) materials may be used. Facilities converting to waterborne materials as a means or partial means of compliance may have reduced Resource Conservation and Recovery Act hazardous waste disposal if the status of the waste material changes from hazardous to nonhazardous. An increase in wastewater discharge may occur if waste material and waterborne wash-up materials are discharged to publicly owned treatment works. There is no assurance that facilities converting to low-HAP formulations will adopt waterborne rather than non-HAP VOC-based materials.

New and upgraded catalytic oxidizers will require catalysts. Catalyst life is estimated to be more than 10 years. Spent catalysts will represent a small amount of solid waste, and sometimes the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is returned to the manufacturer at the end of its useful life and converted to other salable products. Little solid waste impact is expected from this source.

C. Energy Impacts

The operation of new and upgraded control devices will require additional energy. Capture of previously uncontrolled solvent-laden air will require fan horsepower. Operation of oxidizers, particularly thermal oxidizers, may require supplemental fuel (typically natural gas).

The total additional electrical energy required to meet the standard is estimated to be 14.6 million kilowatt-hours per year. Nationwide incremental natural gas usage is expected to increase by 110.6 million standard cubic feet per year.

D. Cost Impacts

The total nationwide capital and annualized costs (1997 dollars) attributable to compliance with the proposed standards have been estimated for existing sources. These costs are based on model plant analysis of the least-cost measure needed for facilities to attain one of the compliance options. For existing facilities, with the exception of facilities applying waterborne coatings that do not meet the emission rate limit, the compliance costs represent the incremental costs associated with upgrading existing HAP emission controls.

Compliance Costs for New Sources. Since the proposed HAP emission limits for existing and new sources are the same, the incremental costs required to upgrade existing HAP emission controls are an indication of the incremental costs that will be incurred by new sources to install and operate the level of HAP emission controls required to achieve the proposed emission limits. For example, for a small coating line with one application station enclosed by a permanent total enclosure and a thermal oxidizer to control HAP emissions, the incremental capital costs are estimated to be about $213,000, and the annual costs including monitoring, recordkeeping, and reporting costs approximately $78,000. Similarly, for a large coating line with two application stations enclosed by permanent total enclosures and two thermal oxidizers, the incremental capital costs are estimated to be about $406,000, and the annual costs around $182,000, including monitoring, recordkeeping, and reporting costs. A coating line applying waterborne coatings is estimated to incur capital costs of around $780,000 and annual costs of approximately $277,000, including monitoring, recordkeeping, and reporting to install and operate a condenser system to control HAP emissions.

The incremental costs incurred for coating lines controlled by thermal incinerators include retrofit factors, and, thus for new sources, the incremental costs are probably overstated. Nonetheless, the estimated costs should not deter the construction of new metal coil coating lines or the entry of new companies into the industry.

Capital Costs for Existing Sources. Capital costs would be incurred by installing capture and control systems at those facilities presently without controls and upgrading capture and control systems at existing facilities that do not meet the proposed standard. Additionally, the purchase of monitoring equipment may be needed as a capital investment to meet the monitoring, recordkeeping, and reporting requirements of the proposed rule. Total nationwide capital costs are estimated at $11.6 million, based on the use of permanent total enclosures, thermal oxidizers, solvent recovery systems, and monitoring equipment. The total nationwide capital costs with other methods of control are expected to be lower.

Annual Costs at Existing Sources. Total nationwide annual costs of the proposed standard have been estimated at approximately $6.0 million per year with the use of permanent total enclosures and new or upgraded thermal oxidizers or solvent recovery systems. These costs include capital recovery over a 15-year period, operating costs for the newly installed and upgraded capture and control systems, and costs for monitoring, recordkeeping, and reporting. These are net costs after taking into account the costs presently being incurred for the baseline control level. The total nationwide annual costs with methods of control other than thermal oxidizers are expected to be lower.

E. Economic Impacts

The Economic Impact Analysis (EIA) (included in the BID, EPA 453/P–00–001) shows that the expected price increase for coated metal coils would be approximately 0.2 percent as a result of the proposed standards. Therefore, no adverse impact is expected to occur for those industries that consume coated metal coils such as building and construction, appliances, automotive parts, and other consumer products.

The distribution of costs across metal coil coating facilities is slanted toward the lower impact levels with many

facilities incurring no costs or only those related to initial performance testing and annually recurring monitoring, recordkeeping, and reporting. The EIA indicates that these regulatory costs are expected to represent less than 1 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closure because of the proposed standards. For more information, consult the docket for this project.

VIII. What Is the Basis for Selecting the Level of the Proposed Standards?

A. Source of Authority for Standards Development

Section 112(c) of the CAA directs us to develop a list of all categories of major sources and appropriate area sources that emit one or more of the 188 HAP listed under section 112(b). Metal coil coating is a listed source category because of its HAP emissions that include, but are not limited to, toluene, methanol, methyl ethyl ketone, xylenes, phenol, methylene chloride, ethylene glycol and glycol ethers, hexane, methyl isobutyl ketone, cresols and cresylic acid, dimethylformamide, vinyl acetate, formaldehyde, and ethyl benzene.

B. What Is the Basis for Defining the Affected Source?

In defining the affected source for the proposed metal coil coating NESHAP, we considered available information on HAP emissions, control configurations, industry practices, and products produced.

A metal coil coating operation is the application system used to apply an organic coating to the surface of any continuous metal strip at least 0.006 inch thick or more that is packaged in a roll or coil. It includes the affected source and associated operations that support the coating process.

In general, metal coil-coating facilities are covered by the SIC codes listed in the Regulated Entities table. However, facilities classified under other SIC codes may be subject to the proposed standards if the facility meets the definition of a major source and conducts metal coil coating.

Although the coil coated metal is used in an extensive list of products, the coating processes used by the different segments of the coil coating industry are very similar. Typically, the coil (or roll) of bare sheet metal strip is unwound, cleaned and treated in a wet section, air-dried, and coated on one or both sides. A prime coat is applied, cured in an oven and quenched (*i.e.,* cooled by an air or water spray), followed by application of a top or finish coat. Curing and quenching are repeated, and the finished strip is cut or rewound and packaged for shipment or additional processing. The coating line may include one coating station or multiple coating stations. A variety of coatings may be applied. These may be decorative or protective, adhesives, or printed patterns.

The primary HAP emission source in metal coil coating is the solvent used in the coatings. The solvent basically acts as a vehicle for the material that is used to coat the coil; this solvent is usually evaporated in curing ovens, with HAP emissions occurring from both application and curing of the coating. Most, if not all, of the solvent emitted can be collected if capture equipment is installed to collect solvent vapors. Solvents are also contained in cleaning solutions that are used to clean residual coating material from the coating equipment. If a facility mixes coatings on site, this process can also be a source of HAP solvent emissions.

In the various segments of the metal coil coating industry, the same primary HAP emission sources can be found. On average, coating application and curing oven HAP emissions represent about 90 percent of the total HAP emissions from metal coil surface coating operations.

We have identified one facility that coats metal coil by electrodeposition. This method of coating application is different than the roll coating method used by most coil coaters. The company which operates this facility has expressed concern about the appropriateness of having the electrodeposition coil coating line subject to the same emission limits as other coil coaters. We have not determined that electrodeposition coating of metal coil warrants a different emission limit. Therefore, in this proposed rule, the electrodeposition coating of metal coil is subject to the same emission limits as all other coil coating. We welcome specific comments on the appropriateness of the proposed emission limits to electrodeposition coating of metal coil.

The affected source is broadly defined as the collection of all coil coating lines at a facility. This definition allows for flexibility with compliance demonstrations, *i.e.,* averaging emissions from all coil coating lines rather than demonstrating compliance for each individual line. The proposed rule limits would apply to only the coating application and curing sections of the affected source.

C. What Is the MACT Floor That Is the Basis for the Proposed Standards?

Quantitative data on HAP use and emission control were obtained from a total of over 90 metal coil coating facilities. Qualitative data providing descriptions of metal coil coating processes, HAP control technologies, and process and control technology concerns also were obtained from site visits and industry trade groups, such as the National Coil Coaters Association. These data verified that the metal coil coating processes and HAP emission sources are similar across all industry segments, and that HAP control technologies also are the same.

The most common approach is capture/control of emissions. At many facilities, coating application stations are enclosed in rooms, and the ventilation air is directed to the control device. This type of capture system can achieve 100 percent capture of emissions when designed to meet the criteria specified in EPA Method 204 of 40 CFR part 51, appendix M. This capture system is called a permanent total enclosure (PTE). Of the surveyed facilities, 45 reported the use of PTE. Oven emissions typically are controlled by a thermal or catalytic incinerator (also known as an oxidizer). Of the surveyed facilities, 72 facilities reported they operate incinerators. Of 105 controlled lines, 79 were controlled with thermal incinerators, and 24 with catalytic oxidizers. Two lines had condenser/scrubber systems. All of the top 12 percent of existing facilities use thermal oxidizers, and eight of the facilities report achieving 100 percent capture of application station emissions through the use of permanent total enclosures. This is, therefore, the control technology that reflects the MACT floor for existing sources.

Reported values show that control systems may be capable of achieving greater than 99 percent HAP destruction, based on 100 percent capture and greater than 99 percent destruction efficiencies. The average reported overall control efficiency (OCE) of the MACT floor facilities is 99.4 percent. However, to determine the level of emission control achievable with this technology, it is important to consider not only the level of control reported, but also the control levels that EPA has generally found to be achievable for this type of control technology. This approach ensures that factors that affect control levels, such as variations in source operating conditions and inlet loadings to the control device, are accommodated in the selection of the MACT floor.

A study conducted by EPA indicated that a 98 percent reduction is the control efficiency achievable by all new oxidizers. Information from vendor guarantees supports the determination of a destruction efficiency of 98 percent for thermal incinerators. Therefore, a 98 percent facilitywide coating line OCE, based on 100 percent capture efficiency of PTE and 98 percent destruction efficiency of thermal oxidizers, was determined to be the MACT floor for existing sources.

A 98 percent facilitywide coating line OCE also was determined to be the MACT floor for new sources. No technology was identified that could achieve a better OCE, that would be applicable for all segments of the industry, than the use of PTE to capture emissions from coating application stations, and a thermal incinerator to destroy emissions from application stations and curing ovens.

Data from the surveyed facilities were used to calculate an alternative facility emission rate limit. This rate was calculated by applying the 98 percent OCE to a pre-controlled facility HAP emission rate representative for this industry. This calculation process, described in the BID (EPA 453/P–00–01), resulted in a facility HAP emission rate of 0.029 kg/l (0.24 lb/gal) of solids applied.

IX. What Is the Basis for Selecting the Format of the Proposed Standards?

Where control devices are or can be used, the proposed format for the emission standards is an overall percent reduction of emissions, taking into account both capture and control device efficiencies.

To encourage the use of low and non-HAP materials, alternative standards based on HAP content are also proposed that will achieve HAP reductions comparable to the overall percent reduction limit. Sources applying materials containing 0.029 kg organic HAP or less per l of solids applied on coating lines will not be required to operate a control device to comply with the standard because we believe that this HAP level is equivalent to an overall HAP control efficiency of 98 percent. Facilities may use a combination of capture and control systems and reduced HAP content in coatings to meet the 0.029 kg per kg of solids (0.24 lb/gal) applied emission limit.

X. Why Did We Select the Proposed Monitoring Requirements?

According to paragraph (a)(3) of section 114 of the CAA, monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the proposed standards with capture and control systems, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. We are proposing the parameters to be monitored for certain types of control devices now used in the industry. The values of these parameters that correspond to compliance with the proposed standards are set by the owner or operator during the initial compliance test. These values are your operating limits. If future monitoring shows that control equipment is operating outside operating limits, then you are deviating from the operating limits, except as specified for malfunctions.

We believe that the selected monitoring parameters will adequately establish that the facility is limiting HAP emissions to the same level as the proposed MACT standards. The rationale for selecting the control device parameters for thermal and catalytic oxidizers in this proposed rule is long standing. The same monitoring parameters have also been required for previous standards. For more information, see the proposal notice for the synthetic organic chemical manufacturing industry reactor processes NSPS (55 FR 26966, June 29, 1990).

XI. Why Did We Select the Proposed Test Methods?

The proposed rule requires emissions tests for cases in which a source uses an add-on control device to reduce emissions. For the case in which no add-on control device is used, the proposed rule would require determination of the HAP content of each material applied. The test methods we propose to require are existing EPA methods that are familiar to the industry, readily available, and appropriate to the device or the parameter being measured. The tests selected are expected to adequately establish whether the facility is complying with the standard.

XII. Why Did We Select the Proposed Notification, Recordkeeping, and Reporting Requirements?

The proposed rule requires you to comply with notification, recordkeeping, and reporting requirements, generally as described in the General Provisions (40 CFR part 63, subpart A) (see table 1 of subpart SSSS) and specifically as designed to support demonstration of compliance with this proposed rule. We believe that these requirements are necessary and sufficient to ensure that you comply with the requirements in proposed subpart SSSS.

XIII. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of 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. The 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 proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. Although section 6 of Executive Order 13132 does not apply to this proposed rule, the EPA did consult with State and local officials to enable them to provide timely input in the development of this proposed rule.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

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

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate metal coil coating operations. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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 EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks and because it is not ''economically significant.''

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The rule does not impose any enforceable duties on State, local, or tribal governments, *i.e.*, they own or operate no sources subject to this proposed rule and, therefore, are not required to purchase control systems to meet the requirements of this proposed rule. Regarding the private sector, EPA believes the proposed rule will affect approximately 90 existing facilities nationwide. The EPA projects that annual economic effects will be $6.2 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this proposed rule, EPA consulted with States to enable them to provide meaningful and timely input in the development of this proposed rule.

In addition, the EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards by 4-digit SIC code of the owning entity (in this case, ranging from 100–1,000 employees); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA and SBREFA, EPA conducted an assessment of the proposed standard on small businesses within the metal coil coating industry. Based on SBA size definitions and reported sales and employment data, EPA identified 19 of the 49 companies owning metal coil coating facilities as small businesses. Although small businesses represent almost 39 percent of the companies within the source category, they are expected to incur only 8.5 percent of the total industry compliance costs of approximately $6.0 million. Under the proposed standards, the average annual compliance cost share of sales for small businesses is less than 0.2 percent with 7 of the 19 small businesses not expected to incur any additional costs because they are permitted as synthetic minor HAP emission sources. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of this proposed rule on small entities. For example, the requirements of the proposed rule only apply to major sources as defined in 40 CFR part 63 and a title V or part 70 permit application can be used in lieu of an initial notification under certain conditions. Also, during the background information development phase of the rulemaking, numerous stakeholder meetings were held at which input was solicited from small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1957.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The public burden of monitoring, recordkeeping, and reporting for this collection is estimated to average 281 hours per year per coil coating facility for each year after the date of promulgation of the rule including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Monitoring, recordkeeping, and reporting costs also include the startup costs associated with initial performance tests and associated notifications and reports required to demonstrate initial compliance; emission rate limit monthly compliance determinations; semiannual reports when someone does not follow a plan for start-ups, shutdowns, and malfunctions; quarterly and semiannual reports on excess emissions; maintenance inspections; notices; and recordkeeping. The total annualized costs associated with monitoring, recordkeeping, and reporting have been estimated at $784,179, which include the estimated annualized capital costs of $232,076.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 18, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by August 17, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by one or

more VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

Consistent with the NTTAA, EPA conducted searches to identify VCS for use in emissions monitoring. The search for emissions monitoring procedures identified 20 VCS that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that ten of the candidate consensus standards (ASTM D3154–91, ASTM D3271–87, ASTM D3464–96, ASTM D3796–90, ASTM D3960–98, ASTM D6053–96, ASTM E337–84, ISO 9096: 1992, PTC 19–10–1981, and EN 1093–4:1996) identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, documentation, and validation data (Docket A–97–47). Seven of the remaining candidate consensus standards (BSR/ASME MFC 13m, ASTM Z6871Z, ISO/DIS 14164, ISO PWI 17895, ISO/DIS 11890–1, ISO/DIS 11890–2, and PREN 12619) are under development. The EPA plans to follow, review, and consider adopting these standards after their development is completed.

The ASTM 2369–95 is practical for EPA use as an acceptable alternative in measuring the volatile matter content of surface coatings. This VCS uses the same techniques, equipment, and procedures as Method 24. The EPA will incorporated by reference (IBR) ASTM D2369–95 into 40 CFR 63.14 in the near future.

The ASTM D2697–86 (Reapproved 98) and ASTM D6093–97 are acceptable procedures for use in determining the volume fraction of solids for a variety of coatings. The EPA will IBR ASTM D2697–86 (Reapproved 98) and ASTM D6093–97 into 40 CFR 63.14 in the near future.

Six consensus standards: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already IBR in EPA Method 24; and five consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

The EPA takes comment on proposed compliance demonstration requirements proposed in this rule and specifically invites the public to identify potentially-applicable VCS. Commentors should also explain why this proposed rule should adopt these VCS in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.5160 of the proposed standards lists EPA testing methods and performance standards included in the proposed rule. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, § 63.5160 allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in § 63.5160.

List of Subjects in 40 CFR Part 63

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

Dated: July 5, 2000.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart SSSS to read as follows:

Subpart SSSS—National Emission Standards for Hazardous Air Pollutants: Metal Coil Coating

Sec.

What This Subpart Covers

63.5080 What is in this subpart?
63.5090 Does this subpart apply to me?
63.5100 Which of my emissions sources are affected by this subpart?
63.5110 What special definitions are used in this subpart?

Emission Standards and Compliance Dates

63.5120 What emission standards must I meet?
63.5130 When must I comply?

General Requirements for Compliance with the Emission Standards and for Monitoring and Performance Tests

63.5140 What general requirements must I meet to comply with the standards?
63.5150 What monitoring must I do?
63.5160 What performance tests must I complete?

Requirements for Showing Compliance

63.5170 How do I demonstrate compliance with the standards?

Reporting and Recordkeeping

63.5180 What reports must I submit?
63.5190 What records must I maintain?

Delegation of Authority

63.5200 What authorities may be delegated to the States?
63.5201—63.5209 [Reserved.]

Tables

Table 1 to Subpart SSSS. Applicability of General Provisions to Subpart SSSS

What This Subpart Covers

§ 63.5080 What is in this subpart?

This subpart describes the actions you must take to reduce emissions of hazardous air pollutants (HAP) if you own or operate a facility that performs metal coil coating operations and is a major source of HAP. This subpart establishes emission standards and states what you must do to comply. Certain requirements apply to all who must comply with the subpart; others depend on the means you use to comply with an emission standard.

§ 63.5090 Does this subpart apply to me?

The provisions of this subpart apply to each facility that is a major source of HAP, as defined in § 63.2, at which a coil coating line is operated.

§ 63.5100 Which of my emissions sources are affected by this subpart?

The affected source subject to this subpart is the collection of all of the coil coating lines at your facility except any coil coating line that is part of a research or laboratory facility.

§ 63.5110 What special definitions are used in this subpart?

(a) All terms used in this subpart that are not defined in this section have the meaning given to them in the Clean Air Act (CAA or Act) and in subpart A of this part.

Always-controlled work station means a work station associated with a curing oven from which the exhaust is delivered to a control device with no provision for the dryer exhaust to bypass the control device. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that is delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions and conveying them to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (*e.g.*, from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Coating means material applied onto or impregnated into a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, inks, adhesives, maskants, and temporary coatings. Decorative, protective, or functional materials that consist only of solvents, protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coil coating line means a process for metal coil coating that includes a web unwind or feed section, a series of one or more coating stations, any associated curing oven, wet section, and quench station. A coil coating line does not include ancillary operations such as mixing/thinning, cleaning, wastewater treatment, and storage of coating material.

Coil coating operation means the collection of equipment used to apply an organic coating to the surface of any continuous metal strip at least 0.15 millimeter (0.006 inch) thick or more that is packaged in a roll or coil.

Coil coating station means a work station on which a coil coating operation is conducted.

Coating materials means all coatings and products that are combined at the coating facility to create a coating (*e.g.*, a catalyst and resin in multi-component coatings) that are applied to a metal roll or coil. For the purposes of this subpart, an organic solvent that is used to thin coating material prior to application to the metal roll or coil is considered a coating material.

Control device means a device such as a solvent recovery device or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total HAP emissions that are introduced into the control device, expressed as a percentage.

Curing oven means the device that uses heat or radiation to dry or cure the coating applied to the metal coil.

Day means a 24-consecutive-hour period.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

HAP applied means the organic HAP content of all coating materials applied to a substrate by a coil coating line.

Intermittently-controllable coil coating work station means a work station associated with a curing oven with provisions for the curing oven exhaust to be delivered to or diverted from a control device depending on the position of a valve or damper. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Never-controlled coil coating work station means a work station which is not equipped with provisions by which any emissions, including those in the exhaust from any associated curing oven, may be delivered to a control device.

New source means any affected source the construction or reconstruction of which is commenced after July 18, 2000.

Overall organic HAP control efficiency means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency as determined in accordance with the requirements of § 63.5160(e) or (f) and the control device efficiency as determined in accordance with the requirements of § 63.5160(a)(1) (i) and (ii) or § 63.5160(d); or

(2) A liquid-liquid material balance in accordance with the requirements of § 63.5160(a)(3).

Permanent total enclosure (PTE) means a permanently installed enclosure that completely surrounds a source of emissions such that all emissions are captured and discharged through a control device, as defined in Method 204 of 40 CFR part 51, appendix M.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Temporary total enclosure (TTE) means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source, as defined in Method 204 of 40 CFR part 51, appendix M.

Work station means a unit on a coil coating line where material is deposited onto a substrate.

(b) The symbols used in equations in this subpart are defined as follows:

(1) C_{ahi}=the monthly average, as-applied, organic HAP content of solids-containing coating material, i, expressed as a weight fraction, kilogram (kg)/kg.

(2) C_{asi}=the monthly average, as applied, solids content, of solids-containing coating material, i, expressed as, liter of solids applied/kg of material applied.

(3) C_{hi}=the organic HAP content of coating material, i, expressed as a weight-fraction, kg/kg.

(4) C_{hij}=the organic HAP content of solvent, j, added to coating material, i, expressed as a weight fraction, kg/kg.

(5) C_{hj}=the organic HAP content of solvent, j, expressed as a weight fraction, kg/kg.

(6) C_i=the organic volatile matter concentration in parts per million (ppm), dry basis, of compound, i, in the vent gas, as determined by Method 25 or Method 25A.

(7) C_{si}=the solids content of coating material, i, expressed as, liter of solids/kg of material.

(8) C_{vi}=the volatile matter content of coating material, i, expressed as a weight fraction, kg/kg.

(9) D_i=the density of coating material, i, kg/l.

(10) D_j=the density of solvent, j, kg/l.

(11) E_k=the organic volatile matter control efficiency of control device, k, percent.

(12) F_A=the organic volatile matter capture efficiency of the capture system for coil coating station, A, percent.

(13) H_e=the total monthly organic HAP emitted, kg.

(14) H_m=the facility total monthly organic HAP applied on uncontrolled coil coating stations, kg.

(15) H_s=the monthly average, as-applied, organic HAP to solids ratio, kg organic HAP/liter solids applied.

(16) H_{si}=the as-applied, organic HAP to solids ratio of material, i, kg organic HAP/liter solids applied.

(17) L=the mass organic HAP emitted per volume of solids applied, kg/liter.

(18) M_{Ai}=the mass of coating material, i, applied on coil coating station, A, in a month, kg.

(19) M_{Aij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, applied on coil coating station, A, in a month, kg.

(20) M_{Aj}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (including H_2O), j, applied on coil coating station, A, in a month, kg.

(21) M_{Bi}=the sum of the mass of solids-containing coating material, i, applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing coating material, i, applied on never-controlled work stations, in a month, kg.

(22) M_{Bj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on intermittently-controllable work stations operating in bypass mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on never-controlled work stations, in a month, kg.

(23) M_{ci}=the sum of the mass of solids-containing coating material, i, applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing coating material, i, applied on always-controlled work stations, in a month, kg.

(24) M_{cj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, applied on always-controlled work stations in a month, kg.

(25) M_f=the total organic volatile matter mass flow rate, kg/per hour (h).

(26) M_{fi}=the organic volatile matter mass flow rate at the inlet to the control device, kg/h.

(27) M_{fo}=the organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(28) M_i=the mass of coating material, i, applied in a month, kg.

(29) M_{ij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material, j, added to solids-containing coating material, i, in a month, kg.

(30) M_j=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing coating material (including H2O), j, applied in a month, kg.

(31) M_{kvr}=the mass of volatile matter recovered in a month by solvent recovery device, k, kg.

(32) MW_i=the molecular weight of compound, i, in the vent gas, kg/kg-moles (mol).

(33) V_i=the volume of coating material, i, l.

(34) V_j=the volume of solvent, j, l.

(35) V_{si}=the volume fraction of solids in coating, i, l/l.

(36) n=the number of organic compounds in the vent gas.

(37) p=the number of different coating materials applied in a month.

(38) q=the number of different solvents, thinners, reducers, diluents, or other non-solids-containing coating materials applied in a month.

(39) s=the number of solvent recovery devices used to comply with the standard of § 63.5120 of this subpart, in the facility.

(40) w=the number of always-controlled coil coating stations in the facility.

(41) w_i=the number of intermittently-controllable coil coating stations in the facility.

(42) x=the number of uncontrolled coil coating stations in the facility.

(43) Q_{sd}=the volumetric flow rate of gases entering or exiting the control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters (dscm)/h.

(44) R=the overall organic HAP control efficiency, percent.

(45) R_v=the organic volatile matter collection and recovery efficiency, percent.

(46) 0.0416=conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

Emission Standards and Compliance Dates

§ 63.5120 What emission standards must I meet?

(a) Each coil coating affected source must limit emissions to:

(1) No more than 2 percent of the organic HAP applied for the month; or

(2) No more than 0.029 kg of HAP per liter of solids applied for the month.

(b) You must demonstrate compliance with one of these standards by following one of the procedures in § 63.5170.

§ 63.5130 When must I comply?

(a) Your compliance date is 3 years after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(b) If you own or operate a new affected source subject to the provisions of this subpart, you must comply immediately upon start-up of the affected source, or by [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], whichever is later.

(c) Affected sources which have undergone reconstruction are subject to the requirements for new affected sources.

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.5140 What general requirements must I meet to comply with the standards?

(a) You must be in compliance with the standards in this subpart at all times, except during periods of start-up, shutdown, and malfunction of any capture system and control device used to comply with this subpart. If you are complying with the emission standards of this subpart without the use of a capture system and control device, you must be in compliance with the standards at all times, including periods of start-up, shutdown, and malfunction.

(b) Table 1 of this subpart provides cross references to subpart A of this part, indicating the applicability of the General Provisions requirements to this subpart.

§ 63.5150 What monitoring must I do?

(a) To demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device required to comply with § 63.5120 following the date on which the initial performance test of a control device is completed. You must install and operate the monitoring equipment as specified in paragraphs (a)(1) through (4) of this section.

(1) *Bypass monitoring.* If you operate coil coating lines with intermittently-controllable work stations, you must follow at least one of the procedures in paragraphs (a)(1)(i) through (iv) of this section for each curing oven associated with these work stations to monitor for potential bypass of the control device:

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the curing oven is directed to the control device or is diverted from the control device. The time and flow control position must be recorded at least once per hour, as well as every time the flow direction is changed. The flow control position indicator must be

installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration when the control device is in operation; a visual inspection of the seal or closure mechanism will be performed at least once every month to ensure that the valve or damper is maintained in the closed position, and the exhaust stream is not diverted through the bypass line.

(iii) *Valve closure continuous monitoring.* Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the control device is in operation. The monitoring system must be inspected at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coil coating line is stopped when flow is diverted away from the control device to any bypass line when the control device is in operation. The automatic shutdown system must be inspected at least once every month to verify that it will detect diversions of flow and shut down operations.

(2) *Continuous emission monitoring.* If you are demonstrating continuous compliance with the standards in § 63.5120 through continuous emission monitoring of a control device, you must install, calibrate, operate, and maintain continuous emission monitors to measure the total organic volatile matter concentration at both the control device inlet and the outlet, and you must continuously monitor flow rate.

(i) All continuous emission monitoring systems (CEMS) must comply with performance specification 8 or 9 of 40 CFR part 60, appendix B, as appropriate for the detection principle you choose. The requirements of 40 CFR part 60, procedure 1, appendix F must also be followed. In conducting the quarterly audits of the monitors as required by procedure 1, appendix F, you must use compounds representative of the gaseous emission stream being controlled.

(ii) As specified in § 63.8(c)(4)(ii), each CEMS and each flow rate monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Information which must be determined for recordkeeping purposes, as required by § 63.5190(a)(1)(i) includes:

(A) The hourly average of all recorded readings;

(B) The daily average of all recorded readings for each operating day; and

(C) The 30-day average for each 30-day period during the semiannual reporting period.

(3) *Temperature monitoring of oxidizers.* If you are complying with the requirements of the standards in § 63.5120 through the use of an oxidizer and demonstrating continuous compliance through monitoring of an oxidizer operating parameter, you must:

(i) Determine the value of the oxidizer operating parameter during the initial performance test as specified in § 63.5160(d)(3).

(ii) Install, calibrate, maintain, and operate temperature monitoring equipment according to manufacturer's specifications. The calibration of the chart recorder, data logger, or temperature indicator must be verified every 3 months; or the chart recorder, data logger, or temperature indicator must be replaced. You must replace the equipment either if you choose not to perform the calibration, or if the equipment cannot be calibrated properly.

(iii) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1 °Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the combustion chamber at a location in the combustion zone.

(iv) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1 degree Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature rise across the catalyst.

(4) *Capture system monitoring.* If you are complying with the requirements of the standards in § 63.5120 through the use of a capture system and control device, you must submit a monitoring plan containing the information specified in paragraphs (a)(4)(i) and (ii) of this section. You must monitor the capture system in accordance with paragraph (a)(4)(iii) of this section. You must submit the monitoring plan to the Administrator with the compliance status report required by § 63.9(h).

(i) The monitoring plan must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained, explain why this parameter is appropriate for demonstrating ongoing compliance, and identify the specific monitoring procedures.

(ii) The plan also must set the operating parameter value, or range of values, that demonstrate compliance with the standards in § 63.5120. The specified operating parameter and the specified range must represent the conditions indicative of proper operation and maintenance of the capture system.

(iii) You must conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(b) Any deviation from the required operating parameters which are monitored in accordance with paragraphs (a)(3) and (4) of this section, unless otherwise excused, will be considered a deviation from the operating limit.

TABLE 1 TO § 63.5150.—CONTROL DEVICE MONITORING REQUIREMENTS INDEX

If you operate a coil coating line and have the following:	Then you must:
(1) Intermittently controlled work station.	Monitor parameters related to possible exhaust flow through any bypass to a control device (§ 63.5150(a)(1)).
(2) Continuous emission monitor.	Operate continuous emission monitors and perform a quarterly audit (§ 63.5150(a)(2)).
(3) Oxidizer	Monitor oxidizer operating parameters and calibrate oxidizer temperature sensors quarterly (§ 63.5150(a)(3)).
(4) Capture system.	Monitor capture system operating parameters (§ 63.5150(a)(4)).

§ 63.5160 What performance tests must I complete?

(a) If you use a control device to comply with the requirements of § 63.5120, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (a)(1) through (3) of this section are met:

(1) A control device that is in operation prior to July 18, 2000 does not need to be tested if:

(i) It is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall HAP control efficiency can be calculated; and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.5150(a)(2); or

(2) You have received a waiver of performance testing; or

(3) The control device is a solvent recovery system and you choose to comply by means of a monthly liquid-liquid material balance.

(b) *Organic HAP content.* You must determine the organic HAP weight fraction of each coating material applied by following one of the procedures in paragraphs (b)(1) through (3) of this section:

(1) *Method 311.* You may test the material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the manufacturer of the material and the results provided to you. The organic HAP content must be calculated according to the criteria and procedures in paragraph (b)(1)(i) through (iii) of this section. If these values cannot be determined using Method 311, you must submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(i) Count only those organic HAP that are measured to be present at greater than or equal to 0.1 weight percent for carcinogens and greater than or equal to 1.0 weight percent for noncarcinogens. Do not count any organic HAP that is measured to be present at less than 0.1 weight percent for carcinogens and less than 1.0 weight percent for noncarcinogens.

(ii) The weight fraction of each organic HAP measured to be present at greater than or equal to 0.1 weight percent for carcinogens and greater than or equal to 1.0 weight percent for noncarcinogens shall be expressed as a value truncated four places after the decimal point.

(iii) Calculate the weight fraction of organic HAP in the tested material by summing the counted individual organic HAP weight fractions. The total HAP content shall be expressed as a value truncated three places after the decimal point.

(2) *Method 24.* You must determine the volatile matter content of each coating material applied. You may determine the volatile matter weight fraction using Method 24 of 40 CFR part 60, appendix A or an EPA approved alternative method, or you may use formulation data. The Method 24 determination may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on volatile matter content data provided by material suppliers. In the event of any inconsistency between the formulation data and the results of Method 24 of 40 CFR part 60, appendix A, the Method 24 results will govern.

(3) *Formulation data.* You may use formulation data. Formulation data may be provided to you by the manufacturer of the coating material. In the event of any inconsistency between the Method 311 of appendix A of this part test data and a facility's formulation data, the Method 311 test data will govern. Formulation data may be used provided that the information represents all organic HAP present at a level greater than 0.1 percent for carcinogens and greater than 1.0 percent for noncarcinogens in any raw material used, weighted by the mass fraction of each raw material used in the material.

(c) *Solids content.* You must determine the solids content of each coating material applied. You may determine the volume solids content using ASTM D2697–86 or ASTM D6093–97, or an EPA approved alternative method. The ASTM D2697–86 or ASTM D6093–97 determination may be performed by the manufacturer of the material and the results provided to you. Alternatively, you may rely on formulation data provided by material providers for your volume solids determination.

(d) *Destruction efficiency of oxidizer.* If you use an oxidizer to comply with the standard in § 63.5120, you must conduct a performance test to establish the destruction efficiency of the oxidizer according to the methods and procedures in paragraphs (d)(1) and (2) of this section. Oxidizer inlet and outlet testing to determine control efficiency must be conducted simultaneously. You must establish the associated combustion zone temperature for a thermal oxidizer and the associated catalyst bed inlet temperature for a catalytic oxidizer according to the procedures in paragraph (d)(3) of this section.

(1) An initial performance test to establish the destruction efficiency of an oxidizer must be conducted and the data reduced in accordance with the following methods and procedures:

(i) Method 1 or 1A of 40 CFR part 60, appendix A, is used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, is used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of 40 CFR part 60, appendix A, used for gas analysis to determine dry molecular weight.

(iv) Method 4 of 40 CFR part 60, appendix A, is used to determine stack gas moisture.

(v) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run, as specified in paragraph (d)(1)(vii) of this section.

(vi) Method 25 of 40 CFR part 60, appendix A, is used to determine total gaseous non-methane organic matter concentration, except as provided in paragraphs (d)(1)(vi)(A) through (C) of this section. You must submit notification of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(c). You may use Method 25A of 40 CFR part 60, appendix A, if:

(A) An exhaust gas volatile organic matter concentration of 50 parts per million by volume (ppmv) or less is required to comply with the standards in § 63.5120; or

(B) The volatile organic matter concentration at the inlet to the control system and the required level of control are such that result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(C) Because of the high efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Each performance test must consist of three separate runs, except as provided by § 63.7(e)(3); each run must be conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic matter concentrations and mass flow rates, the average of the results of all runs will apply.

(viii) For each run, determine the volatile organic matter mass flow rates using Equation 1:

$$M_f = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}] \qquad \text{(Eq 1)}$$

(ix) For each run, determine the emission control device efficiency using Equation 2. The control device efficiency is determined as the average, E, of the three runs:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq 2)}$$

(2) You must record such process information as may be necessary to determine the conditions during the performance test. Operations during periods of start-up, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test.

(3) For the purpose of determining the value of the oxidizer operating parameter that will demonstrate continuing compliance, the time-weighted average of the values recorded during the performance test will be computed. For an oxidizer other than catalytic oxidizer, you must establish as the operating parameter the minimum combustion temperature in the combustion chamber at a location in the combustion zone. For a catalytic oxidizer, you must establish as the operating parameter the minimum gas temperature at the inlet of the catalyst bed. These minimum temperatures are the operating parameter values that demonstrate continuing compliance with the requirements of § 63.5120.

(e) *Capture efficiency.* If you are required to determine capture efficiency to meet the requirements of § 63.5170(e)(2), (f)(1) through (2), (h)(2) through (4), or (i)(2) through (3), you must determine capture efficiency using the procedures in paragraph (e)(1) or (2) of this section, as applicable.

(1) For PTE and TTE that meet the criteria for total enclosures, capture efficiency will be assumed as 100 percent. Method 204 of 40 CFR part 51, appendix M (or an EPA approved alternative method), must be used to confirm that an enclosure meets the requirements for PTE.

(2) For enclosures that do not meet the criteria for total enclosures, the capture efficiency will be determined according to the protocol specified in Method 204A through F of 40 CFR part 51, appendix M. You may exclude never-controlled work stations from such capture efficiency determinations.

(3) As an alternative to the procedures specified in paragraphs (e)(1) and (2) of this section, if you are required to conduct a capture efficiency test, you may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach as described in appendix A to subpart KK of this part. You may exclude never-controlled work stations from such capture efficiency determinations.

TABLE 1 TO § 63.5160.—REQUIRED PERFORMANCE TEST SUMMARY

If you control HAP on your coil coating line by:	You must:
Limiting HAP or volatile matter content of coatings.	Determine the HAP or volatile matter and solids content of coating materials according to the procedures in § 63.5160(b) and (c).
Using an add-on control device.	Conduct performance tests to determine: (1) the destruction efficiency of oxidizers according to § 63.5160(d), and (2) capture efficiency of capture systems according to § 63.5160(e).

Requirements for Showing Compliance

§ 63.5170 How do I demonstrate compliance with the standards?

(a) *As-purchased compliant coatings.* If you elect to use coatings that individually meet the limits in § 63.5120(a)(2) as-purchased, to which you will not add HAP during distribution or application, you must demonstrate that each coating material applied during the month contains no more than 0.029 kg HAP per liter of solids on an as-purchased basis.

(1) Determine the organic HAP content for each coating material in accordance with § 63.5160(b) and the volume solids content in accordance with § 63.5160(c).

(2) Combine these results using Equation 3 and compare the result to the allowable limit to demonstrate that each coating material contains no more organic HAP than the allowable limit.

$$H_{siap} = \frac{C_{hi} D_i}{V_{si}} \qquad \text{(Eq 3)}$$

(b) *As-applied compliant coatings.* You must demonstrate that each coating material applied contains no more than 0.029 kg of organic HAP per liter of solids applied in accordance with paragraph (b)(1) of this section, or demonstrate that the monthly average of all coating materials applied contain no more than 0.029 kg of organic HAP per liter of solids applied in accordance with paragraph (b)(2) of this section.

(1) Demonstrate that the organic HAP content on the basis of solids applied for each coating material applied, H_{Si}, is less than 0.029 kg HAP per liter solids applied as determined by Equation 4:

$$H_{Si} = \frac{V_i D_i C_{ahi} + \sum_{i=1}^{q} V_j D_j C_{hij}}{V_i V_{si}} \qquad \text{(Eq 4)}$$

(2) Demonstrate that the monthly average organic HAP content on the basis of solids applied, H_S, of all coating materials is less than 0.029 kg HAP per liter solids applied as determined by Equation 5:

$$H_{Sa} = \frac{\sum_{i=1}^{p} V_i D_i C_{ahi} + \sum_{j=1}^{q} V_j D_j C_{hij}}{\sum_{i=1}^{p} V_i \sum_{i=1}^{p} V_{si}} \qquad \text{(Eq 5)}$$

(c) *Capture and control to reduce emissions to no more than the allowable limit.* If you use one or more capture systems and one or more control devices and demonstrate a facilitywide average overall organic HAP control efficiency of at least 98 percent for each month, you must follow one of the procedures in paragraphs (c)(1) through (3) of this section.

(1) If the affected source uses one compliance procedure and has only always-controlled coil coating stations, then you must demonstrate compliance with the provisions of paragraph (e) of this section when emissions from the affected source are controlled by one or more solvent recovery device.

(2) If the affected source uses one compliance procedure and has only always-controlled coil coating stations, then you must demonstrate compliance with the provisions of paragraph (f) of this section when emissions are controlled by one or more oxidizers.

(3) If the affected source operates both solvent recovery and oxidizer control devices, one or more never-controlled coil coating stations, or one or more intermittently-controllable coil coating stations, or uses more than one compliance procedure, then you must demonstrate compliance with the provisions of paragraph (g) of this section.

(d) *Capture and control to achieve the emission rate limit.* If you use one or more capture systems and one or more control devices and limit the facility organic HAP emission rate to no more than 0.029 kg organic HAP emitted per liter of solids applied on a monthly average as-applied basis, then you must follow one of the procedures in paragraphs (d)(1) through (3) of this section.

(1) If you use one or more solvent recovery devices, you must demonstrate compliance with the provisions in paragraph (e) of this section.

(2) If you use one or more oxidizers, you must demonstrate compliance with the provisions in paragraph (f) of this section.

(3) You must demonstrate compliance with the provisions in paragraph (g) of this section if you use:

(i) Both solvent recovery and oxidizer control devices.

(ii) One or more never-controlled work stations.

(iii) One or more intermittently controlled work stations.

(e) *Use of solvent recovery to demonstrate compliance.* If you use one or more solvent recovery devices to control emissions from always-controlled coil coating stations, you must show compliance by following the procedures in either paragraph (e)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a liquid-liquid material balance for each and every month as specified in paragraphs (e)(1)(i) through (vi) of this section and use the applicable equations in paragraphs (e)(1)(viii) and (ix) of this section to convert the data to units of this standard. All determinations of quantity of coating and composition of coating must be determined at a time and location in the process after all ingredients (including any dilution solvent) have been added to the coating, or appropriate adjustments must be made to account for any ingredients added after the amount of coating has been determined.

(i) Measure the mass of each coating material applied on the coil coating station or group of coil coating stations controlled by one or more solvent recovery devices during the month.

(ii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(iii) Determine the volatile matter content of each coating material applied during the month following the procedure in § 63.5160(c).

(iv) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(v) For each solvent recovery device used to comply with § 63.5120(a), install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(vi) For each solvent recovery device used to comply with § 63.5120(a), measure the amount of volatile matter recovered for the month.

(vii) *Recovery efficiency, R_v.* Calculate the facilitywide average volatile organic matter collection and recovery efficiency, R_v, using Equation 6:

$$R_v = 100 \frac{\sum_{k=1}^{s} M_{kvr}}{\sum_{i=1}^{p} M_i C_{vi} + \sum_{j=1}^{q} M_j} \qquad \text{(Eq 6)}$$

(viii) *Organic HAP emitted, H_e.* Calculate the facility organic HAP emitted during the month, H_e, using Equation 7:

$$H_e = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p}(C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij})\right] \qquad \text{(Eq 7)}$$

(ix) *Facility organic HAP emission rate based on solids applied, L.* Calculate the facility organic HAP emission rate based on solids applied, L, using Equation 8:

$$L = \frac{H_e}{\sum_{i=1}^{p} C_{si} M_i} \qquad \text{(Eq 8)}$$

(x) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if:

(A) The facilitywide average volatile organic matter collection and recovery efficiency, R_v, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors to demonstrate recovery efficiency, conduct an initial performance test of capture efficiency and volumetric flow rate, and continuously monitor a site specific operating parameter to ensure that capture efficiency and volumetric flow rate are maintained following the procedures in paragraphs (e)(2) (i) through (xi) of this section:

(i) *Control device control efficiency, E.* For each control device used to comply with § 63.5120(a), continuously monitor the gas stream entering and exiting the control device to determine the total volatile organic matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second, such that the total volatile organic matter mass flow rate in grams per second can be calculated using Equation 1 of § 63.5160, such that the percent control efficiency, E, of the control device can be calculated for each month using Equation 2 of § 63.5160.

(ii) Determine the percent capture efficiency, F, for each coil coating station in accordance with § 63.5160(e).

(iii) *Capture efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(iv) *Control efficiency, R.* Calculate the facilitywide average overall organic HAP control efficiency, R, achieved for each month using Equation 9:

$$R = 100\,\frac{\sum_{A=1}^{w}\left[(E_K F_A)\left(\sum_{i=1}^{p} M_{Ai} C_{vi} + \sum_{j=1}^{q} M_{Aj}\right)\right]}{\sum_{i=1}^{p} M_i C_{Vi} + \sum_{j=1}^{q} M_j} \qquad \text{(Eq 9)}$$

(v) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each coil coating station during the month.

(vi) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month in accordance with § 63.5160(b).

(vii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the solids content of each coating material applied during the month in accordance with § 63.5160(c).

(viii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, calculate the organic HAP emitted during the month, H_e, for each month using Equation 10:

$$H_e = \sum_{A=1}^{w}\left[\left(1-(E_K F_A)\left(\sum_{i=1}^{p}\left(C_{hi} M_{Ai} + \sum_{j=1}^{q} C_{hij} M_{Aij}\right)\right)\right)\right] \qquad \text{(Eq 10)}$$

(ix) *Facility organic HAP emission rate based on solids applied, L.* Calculate the organic HAP emission rate based on solids applied, L, using Equation 8 of this section.

(x) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if each capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.5150 for each 3-hour period; and

(A) The facilitywide average overall organic HAP control efficiency, R, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(f) *Use of oxidation to demonstrate compliance.* If you use one or more oxidizers to control emissions from always controlled coil coating stations, you must follow the procedures in either paragraph (f) (1) or (2) of this section:

(1) *Continuous monitoring of capture system and control device operating parameters.* Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (f)(1) (i) through (xi) of this section:

(i) For each oxidizer used to comply with § 63.5120(a), determine the oxidizer control efficiency, E, using the procedure in § 63.5160(d).

(ii) *Destruction efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(3).

(iii) Determine the capture system capture efficiency, F, for each coil coating station in accordance with § 63.5160(e).

(iv) *Capture efficiency monitoring.* Whenever a coil coating station is operated, continuously monitor the operating parameter established in accordance with § 63.5150(a)(4).

(v) Calculate the facilitywide average overall organic HAP control efficiency, R, achieved using Equation 9 of this section.

(vi) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, measure the mass of each coating material applied on each coil coating station during the month.

(vii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine the organic HAP content of each coating material applied during the month following the procedure in § 63.5160(b).

(viii) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, determine

the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(ix) *Organic HAP emitted, H_e.* Calculate the organic HAP emitted during the month, H_e, for each month:

$$H_e = \sum_{A=1}^{w}\left[(0.02)\left(\sum_{i=1}^{p} C_{hi} M_{Ai} + \sum_{j=1}^{q} C_{hij} M_{Aij}\right)\right] \qquad \text{(Eq 11)}$$

(A) For each coil coating station and its associated oxidizer ($E_K * F_A/100$) ≤98, use Equation 10 of this section.

(B) For each coil coating station and its associated oxidizer ($E_K * F_A/100$) >98, and you have CEMS data to support this calculated efficiency, use Equation 10 of this section.

(C) For each coil coating station and its associated oxidizer ($E_K * F_A/100$) >98, for which you do not have CEMS data to support this calculated efficiency but have operated within its established operating parameter value, use Equation 11:

(D) For periods when the oxidizer has not operated within its established operating parameter value, your control device efficiency is determined to be zero.

(x) *Facility organic HAP emission rate based on solids applied, L.* If demonstrating compliance with the facility organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, for each month using Equation 8 of this section.

(xi) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) if each oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in § 63.5150(a)(3) for each 3-hour period, and each capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in § 63.5150(a)(4) for each 3-hour period; and

(A) The facilitywide average overall organic HAP control efficiency, R, is 98 percent or greater; or

(B) The facility organic HAP emission rate based on solids applied, L, is 0.029 kg organic HAP per liter solids applied or less.

(2) *Continuous emission monitoring of control device performance.* Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to ensure that capture efficiency is maintained. Compliance will be demonstrated in accordance with paragraph (e)(2) of this section.

(g) *Combination of capture and control.* You must demonstrate compliance according to the procedures in paragraphs (g) (1) through (8) of this section if both solvent recovery and oxidizer control devices, one or more never-controlled coil coating stations, one or more intermittently-controllable coil coating stations are operated, or more than one compliance procedure is used.

(1) *Solvent recovery system using liquid-liquid material balance compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of a liquid-liquid material balance, you must determine the organic HAP emissions for those coil coating stations controlled by that solvent recovery system either:

(i) In accordance with paragraphs (e)(1) (i) through (iii) and (e)(1) (v) through (viii) of this section if the coil coating stations controlled by that solvent recovery system are only always-controlled coil coating stations; or

(ii) In accordance with paragraphs (e)(1) (ii) through (iii), (e)(1) (v) through (vi), and (h) of this section if the coil coating stations controlled by that solvent recovery system include one or more never-controlled or intermittently-controllable coil coating stations.

(2) *Solvent recovery system using performance test and continuous monitoring compliance demonstration.* For each solvent recovery system used to control one or more coil coating stations for which you choose to comply by means of an initial test of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, you must:

(i) For each capture system delivering emissions to that solvent recovery system, monitor an operating parameter established in § 63.5150(a)(4) to ensure that capture system efficiency is maintained; and

(ii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that solvent recovery system either:

(A) In accordance with paragraphs (e)(2) (i) through (iii) and (e)(2) (v) through (viii) of this section if the coil coating stations served by that capture system are only always-controlled coil coating stations; or

(B) In accordance with paragraphs (e)(2) (i) through (iii), (e)(2) (v) through (vii), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating stations.

(3) *Oxidizer using performance test and continuous monitoring of operating parameters compliance demonstration.* For each oxidizer used to control emissions from one or more coil coating station for which you choose to demonstrate compliance through performance tests of capture efficiency, control device efficiency, and continuing compliance through continuous monitoring of capture system and control device operating parameters, you must:

(i) Monitor an operating parameter established in § 63.5150(a)(3) to ensure that control device efficiency is maintained; and

(ii) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (f)(1) (i) through (v) and (ix) of this section if the coil coating stations served by that capture system are only always-controlled coil coating stations; or

(B) In accordance with paragraphs (f)(1) (i) through (v), (ix), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating station.

(4) *Oxidizer using continuous emission monitoring compliance demonstration.* For each oxidizer used to control emissions from one or more coil coating station for which you choose to demonstrate compliance through an initial capture efficiency

test, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, you must:

(i) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in § 63.5150(a)(4) to ensure capture efficiency; and

(ii) Determine the organic HAP emissions for those coil coating stations served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (e)(2) (i) through (iii) and (e)(2) (v) through (viii) of this section if the coil coating stations served by that capture system are only always-controlled work stations; or

(B) In accordance with paragraphs (e)(2) (i) through (iii), (e)(2) (v) through (vii), and (h) of this section if the coil coating stations served by that capture system include one or more never-controlled or intermittently-controllable coil coating station.

(5) *Uncontrolled coil coating stations.* For uncontrolled coil coating stations, you must determine the organic HAP applied on those coil coating stations using Equation 12 of this section. The organic HAP emitted from an uncontrolled coil coating station is equal to the organic HAP applied on that coil coating station:

$$H_m = \sum_{A=1}^{x}\left(\sum_{i=1}^{p} C_{hi} M_{Ai} + \sum_{j=1}^{q} C_{hij} M_{Aij}\right) \qquad \text{(Eq 12)}$$

(6) If demonstrating compliance with the facility organic HAP emission rate based on solids applied, you must determine the solids content of each coating material applied during the month following the procedure in § 63.5160(c).

(7) *Organic HAP emitted.* You must determine the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (g)(1), (g)(2)(ii), (g)(3)(iii), (g)(4)(ii), and (g)(5) of this section.

(8) *Compare actual performance to performance required by compliance option.* The affected source is in compliance with § 63.5120(a) for the month if all operating parameters required to be monitored under paragraphs (g) (2) through (4) of this section were maintained at the values established in § 63.5150; and

(i) The total mass of organic HAP emitted by the affected source was not more than 0.029 kg HAP per liter of solids applied; or

(ii) The total mass of organic HAP emitted by the affected source was not more than 2 percent of the total mass of organic HAP applied by the affected source. You must determine the total mass of organic HAP applied by the affected source in the month using Equation 12 of this section.

(h) *Organic HAP emissions from intermittently-controllable or never-controlled coil coating stations.* If you have been expressly referenced to this paragraph by paragraphs (g)(1)(ii), (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section for calculation procedures to determine organic HAP emissions, you must for your intermittently-controllable or never-controlled coil coating stations:

(1) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable coil coating stations in bypass mode, and the mass of all solids-containing coating materials which are applied on never-controlled coil coating stations during the month, M_{Bi}.

(2) Determine the sum of the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on intermittently-controllable coil coating stations in bypass mode, and the mass of all solvents, thinners, reducers, diluents or other nonsolids-containing coating materials which are applied on never-controlled coil coating stations during the month, M_{Bj}.

(3) Determine the sum of the mass of all solids-containing coating materials which are applied on intermittently-controllable coil coating stations in controlled mode, and the mass of all solids-containing coating materials which are applied on always-controlled coil coating stations during the month, M_{Ci}.

(4) Determine the sum of the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on intermittently-controllable coil coating stations in controlled mode, and the mass of all solvents, thinners, reducers, diluents, or other nonsolids-containing coating materials which are applied on always-controlled coil coating stations during the month, M_{Cj}.

(5) *Liquid-liquid material balance calculation of HAP emitted.* For each coil coating station or group of coil coating stations for which you use the provisions of paragraph (g)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 13:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{hi} + \sum_{j=1}^{q} M_{Cj} C_{hj}\right]\left[1 - \frac{\sum_{k=1}^{s} M_{kvr}}{\sum_{i=1}^{p} M_{Ci} C_{vi} + \sum_{j=1}^{q} M_{Cj}}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{hi} + \sum_{j=1}^{q} M_{Bj} C_{hj}\right] \qquad \text{(Eq 13)}$$

(6) *Control efficiency calculation of HAP emitted.* For each coil coating station or group of coil coating stations for which you use the provisions of paragraphs (g)(2)(ii)(B), (g)(3)(iii)(B), or (g)(4)(ii)(B) of this section, you must calculate the organic HAP emitted during the month, H_e, as follows:

(i) For each coil coating station and its associated control device ($E_K * F_A/100$) ≤ 98, use Equation 14:

$$H_e = \sum_{A=1}^{w_i}\left[\left(\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right)\left(1 - E_K F_A\right)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \qquad \text{(Eq 14)}$$

(ii) For each coil coating station and its associated oxidizer (E_K*F_A/100) > 98, and you have CEMS data to support this calculated efficiency, use Equation 14 of this section.

(iii) For each coil coating station and its associated oxidizer (E_K*F_A/100) > 98, and you do not have CEMS data to support this calculated efficiency, use Equation 15:

$$H_e = \sum_{A=1}^{w_i}\left[\left(\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right)(0.02)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \qquad \text{(Eq 15)}$$

TABLE 1 TO § 63.5170.—COMPLIANCE DEMONSTRATION REQUIREMENTS INDEX

If you choose to demonstrate compliance by:	Then you must demonstrate that:
(1) Use of ''as purchased'' compliant coatings.	Each coating material used does not exceed 0.029 kg HAP per liter solids, as purchased. Paragraph (a) of this section.
(2) Use of ''as applied'' compliant coatings.	(i) Each coating material used does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraphs (b)(1) of this section; or (ii) Monthly average of all coating materials used does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraph (b)(2) of this section.
(3) Use of a control device.	Overall organic HAP control efficiency is equal to 98 percent on a monthly basis. Paragraph (c) of this section.
(4) Use of a combination of compliant coatings and control devices and maintaining an acceptable equivalent emission rate.	Average equivalent emission rate does not exceed 0.029 kg HAP per liter solids on a monthly average as applied basis. Paragraph (d) of this section.

Reporting and Recordkeeping

§ 63.5180 What reports must I submit?

(a) Submit the reports specified in paragraphs (b) through (i) of this section to the EPA Regional Office that serves the State or territory in which the affected source is located and to the delegated State agency:

(b) You must submit an initial notification required in § 63.9(b).

(1) Initial notification for existing sources will be submitted no later than 2 years after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(2) Initial notification for new and reconstructed sources will be submitted as required by § 63.9(b).

(3) For the purpose of this subpart, a title V permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA.

(4) Permit applications used in lieu of the initial notification required under § 63.9(b) will be submitted by the same due dates as those specified in paragraphs (b)(1) and (2) of this section for the initial notifications.

(c) You must submit a Notification of Performance Tests specified in §§ 63.7 and 63.9(e) if you are complying with the emission standard using a control device. This notification and the site-specific test plan required under § 63.7(c)(2) must identify the operating parameter to be monitored to ensure that the capture efficiency measured during the performance test is maintained. You may consider the operating parameter identified in the site-specific test plan to be approved unless explicitly disapproved, or unless comments received from the Administrator require monitoring of an alternate parameter.

(d) You must submit a Notification of Compliance Status as specified in § 63.9(h). You must submit the Notification of Compliance Status by 180 days after the compliance date specified in § 63.5130.

(e) You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standards and you have not obtained a waiver from the performance test requirement.

(f) You must submit start-up, shutdown, and malfunction reports as specified in § 63.10(d)(5). Unless a control device is used to comply with this subpart, the provisions in subpart A of this part pertaining to start-ups, shutdowns, and malfunctions do not apply.

(1) If your actions during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3), you must state such information in the report. The start-up, shutdown, or malfunction report will consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that will be submitted to the Administrator.

(2) Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (g) of this section.

(g) You must submit semi-annual compliance reports containing the information specified in paragraphs (g)(1) and (2) of this section.

(1) Compliance report dates.

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5130(a) and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5130(a).

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5130(a).

(iii) Each subsequent compliance report must cover the semiannual

reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(v) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (g)(1)(i) through (iv) of this section.

(2) The semi-annual compliance report must contain the following information:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) A statement that there were no deviations from the standards during the reporting period, and that no CEMS were inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(h) You must submit, for each deviation occurring at an affected source where you are not using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section and the information in paragraphs (h)(1) through (3) of this section:

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable, and the corrective action taken.

(3) Information on the number, duration, and cause for monitor downtime incidents (including unknown cause other than downtime associated with zero and span and other daily calibration checks, if applicable).

(i) You must submit, for each deviation occurring at an affected source where you are using CEMS to comply with the standards in this subpart, the semi-annual compliance report containing the information in paragraphs (g)(2)(i) through (iv) of this section, and the information in paragraphs (i)(1) through (12) of this section:

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CEMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of start-up, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period (recorded in minutes for opacity, hours for gases, and in the averaging period specified in the regulation for other types of standards), and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to start-up, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CEMS downtime during the reporting period (recorded in minutes for opacity, hours for gases, and in the averaging period specified in the regulation for other types of standards), and the total duration of CEMS downtime as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(9) A brief description of the metal coil coating line.

(10) The monitoring equipment manufacturer(s) and model number(s).

(11) The date of the latest CEMS certification or audit.

(12) A description of any changes in CEMS, processes, or controls since the last reporting period.

§ 63.5190 What records must I maintain?

(a) You must maintain the records specified in paragraphs (a) and (b) of this section in accordance with § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this subpart, including:

(i) Continuous emission monitor data in accordance with § 63.5150(a)(2);

(ii) Control device and capture system operating parameter data in accordance with § 63.5150(a)(1), (3), and (4);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with § 63.5160(b);

(iv) Volatile matter and solids content data for the purpose of demonstrating compliance in accordance with § 63.5160(c);

(v) Overall control efficiency determination using capture efficiency tests and oxidizer destruction efficiency tests in accordance with § 63.5160(d), (e), and (f); and

(vi) Material usage, HAP usage, volatile matter usage, and solids usage and compliance demonstrations using these data in accordance with § 63.5170(a), (b), and (d);

(2) Records specified in § 63.10(b)(3); and

(3) Additional records specified in § 63.10(c) for each continuous monitoring system operated by the owner or operator in accordance with § 63.5150(a)(2).

(b) Maintain records of all liquid-liquid material balances that are performed in accordance with the requirements of § 63.5170.

Delegation of Authority

§ 63.5200 What authorities may be delegated to the States?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and not transferred to the State, local, or tribal agency.

(c) Authority which will not be delegated to States, local, or tribal agencies:

(1) Approval of alternatives to the emission limitations in § 63.5120;

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.5160;

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.5150; and

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in §§ 63.5180 and 63.5190.

§§ 63.5201–63.5209 [Reserved.]

TABLE 1 TO SUBPART SSSS.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.1(a)(1)–(4)	Yes.	
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart SSSS specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	Yes.	
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart SSSS.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes	Only total HAP emissions in terms of tons per year are required for § 63.5(d)(1)(ii)(H).
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(5)	Yes.	
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)	Yes	Provisions in § 63.6(e)(3) pertaining to start-ups, shut-downs, malfunctions, and CEMS only apply if an add-on control system is used.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart SSSS does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes	With the exception of § 63.7(a)(2)(vii) and (viii), which are reserved.
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes	Provisions only apply if an add-on control system is used.
§ 63.8(c)(4)	No.	
§ 63.8(c)(5)	No	Subpart SSSS does not require COMS.
§ 63.8(c)(6)	Yes	Provisions only apply if CEMS are used.
§ 63.8(c)(7)–(8)	Yes.	
§ 63.8(d)–(e)	Yes	Provisions only apply if CEMS are used.
§ 63.8(f)(1)–(5)	Yes.	
§ 63.8(f)(6)	No	Section 63.8(f)(6) provisions are not applicable because subpart SSSS does not require CEMS.
§ 63.8(g)(1)–(4)	Yes.	
§ 63.8(g)(5)	No.	
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	

TABLE 1 TO SUBPART SSSS.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSS—Continued

General provisions reference	Applicable to subpart SSSS	Explanation
§ 63.9(b)(2)	Yes	With the exception that § 63.5180(b)(1) provides 2 years after the proposal date for submittal of the initial notification.
§ 63.9(b)(3)–(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.9(g)	No	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	
§ 63.9(h)(4)	No	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(3)	Yes	Provisions pertaining to start-ups, shutdowns, malfunctions, and maintenance of air pollution control equipment and to CEMS do not apply unless an add-on control system is used. Also, paragraphs (b)(2) (vi), (x), (xi), and (xiii) do not apply.
§ 63.10(c)(1)	No	
§ 63.10(c)(2)–(4)	No	Reserved.
§ 63.10(c)(5)–(8)	No.	
§ 63.10(c)(9)	No.	Reserved.
§ 63.10(c)(10)–(15)	No.	
§ 63.10(d)(1)–(2)	Yes.	
§ 63.10(d)(3)	No	Subpart SSSS does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(5)	Yes.	
§ 63.10(e)	No.	
§ 63.10(f)	Yes.	
§ 63.11	Yes.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	

[FR Doc. 00–17614 Filed 7–17–00; 8:45 am]

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- Tebuconazole; published 7-18-00
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- National oil and hazardous substances contingency plan—
  - National priorities list update; published 5-19-00

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  - Court decisions, ANDA approvals, and 180-day exclusivity; published 7-13-00

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- TeleFile voice signature test; published 7-18-00

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Irradiation phytosanitary treatment of imported fruits and vegetables; comments due by 7-25-00; published 5-26-00

AGRICULTURE DEPARTMENT

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- Arizona; comments due by 7-24-00; published 6-22-00
- Various States; comments due by 7-24-00; published 6-22-00

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H.R. 4425/P.L. 106–246

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. (July 13, 2000; 114 Stat. 511)

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