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U.S. GOVERNMENT
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Federal Register

8–9–00 Wednesday
Vol. 65 No. 154 August 9, 2000
Pages 48601–48884

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

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Arrangement of Transportation of Freight and Cargo

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a size standard of $5.0 million in average annual receipts for the Arrangement of Transportation of Freight and Cargo industry (Standard Industrial Classification (SIC) code 4731). In addition, for brokers and agents in this industry such as Freight Forwarders and Customs Brokers, SBA is also changing the way average annual receipts are calculated for these firms to allow pass-through of funds held in trust for unaffiliated third parties. SBA is adopting two exceptions to this size standard. For Non-Vessel Owning Common Carriers and for Household Goods Forwarders (who sometimes classify themselves in SIC 4731), the current $18.5 million size standard will remain in effect. These revisions better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs.

DATES: This rule is effective on September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia Holden, Office of Size Standards, (202) 205–6385.

SUPPLEMENTARY INFORMATION: SBA has received requests from the public to review the size standard for the Arrangement of Transportation of Freight and Cargo industry (Standard Industrial Classification (SIC) code 4731). In particular, these requests express a concern about the method in which average annual receipts are calculated for Freight Forwarders and Custom Brokers within this industry. In response to those requests, on July 26, 1999, SBA published a proposed rule to revise the size standard for the Arrangement of Transportation of Freight and Cargo industry from $18.5 million to $5.0 million. (See 64 FR 40314.) The rule also proposed to revise the way average annual receipts are calculated to exclude pass-through of funds held in trust for unaffiliated third parties.

SBA proposed this size standard based on its analysis of the latest available U.S. Bureau of the Census (the Census Bureau) industry data for SIC 4731 and Federal contract award data from the Federal Procurement Data Center. SBA evaluated certain factors describing the economic characteristics of firms in the Arrangement of Transportation of Freight and Cargo industry. These factors were average firm size, the distribution of industry revenues by size of firm, start-up costs, and industry competition. SBA compared the characteristics of the Arrangement of Transportation of Freight and Cargo industry to the average characteristics of all industries with a $5.0 million size standard which is the most common size standard established for nonmanufacturing industries and is referred to as the ''anchor'' size standard for the nonmanufacturing industries. Doing so enabled SBA to determine if the size standard for Arrangement of Transportation of Freight and Cargo industry should be higher, lower or the same as the $5 million anchor size standard. In addition, SBA reviewed the percent of total Federal contract dollars awarded to small businesses to determine if they were obtaining a reasonable share of Federal contracts. For a further discussion of SBA's size standards methodology and the analyses leading to the proposed size standard see the proposed rule of July 26, 1999 (64 FR 40314).

We also evaluated whether certain funds should be excluded in the calculation of a firm's average annual receipts. We examined five industry characteristics under which it might be appropriate to exclude from a firm's receipts funds received for and then later transmitted to an unaffiliated third party. These five characteristics are: (1) A broker or agent-like relationship exists between a firm and a third party provider and this relationship represents a dominant or crucial activity of firms in the industry; (2) the pass-through funds associated with the broker or agent-like relationship are a significant portion of the firm's total receipts; (3) consistent with the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee; (4) the firm does not usually consider billings that are reimbursed to other firms as its own income, preferring instead to count only receipts that are retained for its own use; and, (5) Federal government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the industry firms on an adjusted receipts basis. SBA's review of information found that these characteristics generally exist for the bulk of firms in the industry. Since most firms classified in this industry are Freight Forwarders and Customs Brokers who work on commission, those characteristics supported the proposal to exclude from the calculation of a firm's receipts funds received in trust for unaffiliated third parties.

The comments we received revealed that among the 19 activities listed in SIC 4731, there are two major types of firms in the industry—those that operate as agents/brokers and have funds held in trust for others, and those that do not. For those that operate as agents/brokers the two changes proposed in the rule work together and result in an effective increase in their size standard. For those that do not, the size standard is effectively reduced because they do not benefit from the pass-through provision. To address the different situations between the two groups, we are retaining the current size standard for some of the 19 activities, while adopting the proposed size standard for most other types of firms in SIC 4731. The final rule makes explicit how the remaining non-agent/broker firms included in SIC 4731 are affected by this change in the size standard. We clarify which activities in SIC 4731 will have a size standard of $5.0 million, which activities will benefit from the exclusion of pass-through of funds held in trust in calculating average annual receipts, and which activities continue to use the $18.5 million on gross receipts.

This final rule adopts a size standard of $5.0 million in average annual receipts (after excluding funds received in trust for unaffiliated third parties) for all firms in SIC 4731, except for Household Goods Forwarders and Non-Vessel Owning Common Carriers. Firms engaged in agent/broker activities, such as Freight Forwarder and Customs Broker, receive a significant amount of receipts as pass-through funds which will not be counted in calculating their size. Activities listed in SIC 4731 in which firms do not operate as agents/brokers, such as Freight Consolidation, Freight Rate Auditors, and Tariff Consultants, will also have a size standard of $5.0 million in average annual receipts. However, the calculation of their average annual receipts will be the same as before since they do not receive pass-through funds. Although these firms will not benefit directly from the pass-through exclusion, SBA's analysis of the characteristics of firms in SIC 4731 strongly support the $5 million size standard for this industry. We received no comments from any of these firms in SIC 4731 indicating otherwise.

Included in SIC 4731 but not listed among the 19 activities, is one activity which does not operate either as auditor/consultant or as broker/agent. It is the Non-Vessel Owning Common Carriers. They acquire bulk space on vessels they do not own and sell that space in smaller units to shippers. They do not operate on an agency basis or hold funds in trust for unaffiliated third parties. They therefore must calculate average annual receipts based on gross receipts. These firms have substantial expenses not usually incurred by either the ''arranging'' or ''auditing'' types of firms. The $5.0 million size standard would not be reflective of their size operation, therefore we have decided to retain the size standard of $18.5 million for Non-Vessel Owning Common Carriers.

A group of firms not included as part of SIC 4731, but who sometimes use that SIC code for Federal contracting purposes, is Household Goods Forwarders. These firms also incur substantial investment and overhead (such as owning or leasing large trucks and employing drivers) not usually found in the ''arranging'' or ''auditing'' firms. They do not operate on commission as agents and do not hold funds in trust for unaffiliated third parties that can be ''passed-through'' when calculating average annual receipts. To change their size standard from $18.5 million to $5.0 million without benefit of the pass-through provision would have an unintentional adverse impact. Therefore, we are also retaining the $18.5 million size standard for Household Goods Forwarders. This is the same size standard for movers in the transportation industries in Major Group 42.

Discussion of Comments

SBA received 12 timely comments on the proposed SIC 4731 size standards. Two comments are from associations and 10 are from businesses. Nine of the 12 comments opposed the proposed size standard. The objections are from Household Goods Forwarders and Non-Vessel Owning Common Carriers who do not receive any funds that would qualify for the pass-through provision and so would see their size standard reduced. The three comments in support of the proposed size standard are from the Freight Forwarders and Customs Brokers who operate on commissions and fees and who comprise the majority of the firms in SIC 4731. The benefit to this group by allowing average annual receipts to be calculated after excluding pass-through funds effectively increases their size standard by about three times even though the nominal size standard is decreased.

One firm, that operates as a freight forwarder on a commission basis, was strongly in favor of the proposed changes. The commenter discussed the substantial benefit the proposed change in size standard would have for his firm and the approximately 500 other similar firms in his area.

A Freight Forwarder and Customs Broker association, representing over 1,000 members, discussed the diversity of its membership. It noted that ''SIC 4731 is not a homogenous classification''. It explained that there are two subsets of activities that operate within the Arrangement of Transportation of Freight and Cargo industry: Household Goods Forwarders and Non-Vessel Owning Common Carriers. The association expressed support for the speedy adoption of the proposed rule for its members who operate as agents/brokers on commission. It also urged SBA to segregate the industries within SIC 4731 and to establish a different size standard for those industries that operate on contract or profit from leasing and sub-leasing activities. Their alternate recommendation, if SBA was to adopt a ''one-size-fits-all'' size standard, is to make the size standard $10.0 million, not $5.0 million.

Another association also partially supported the proposed rule changes. It represents a large membership divided between those who operate as Freight Forwarders and Customs Brokers for commissions and fees and those who operate as Household Movers on a contract (and sub-contract) basis. It discussed how the activities of its members are diverse enough that different regulatory agencies are responsible for licensing and oversight. The Household Movers are licensed by the Federal Highway Administration (FHWA) while the Freight Forwarders are licensed by the Federal Maritime Commission (FMC). This association also urged us to adopt two different size standards for the industries within SIC 4731. It recommended that SBA retain ''the present $18.5 million standard for FHWA freight forwarders and adopt the $5 million standard with its concomitant reduction in receipts for pass-through funds for companies that are engaged in business as FMC ocean freight forwarders and/or customs brokers.''

One group of comments opposing the proposed rule changes was from firms engaged in household moving and storage. Many of these firms obtain contracts from the Department of Defense on a ''Single Rate Factor'' for ''door-to-door'' service and subcontract out parts of the contract. They pay the subcontractor (*e.g.,* the long-distance hauler) out of the single rate. Since these firms do not operate on commission and hold no pass-through funds, the proposed rule would have significantly reduced their size standard. Some of these firms have the word ''forwarder'' in their names, but their comments describe their activities as the actual mover or as the general contractor responsible for the entire move. For example, their comments included statements such as: ''they have to invest in equipment/trucks; * * * sometimes use third parties in providing door-to-door service, but never on an agent-like relationship;'' they are ''active in the movement of personal household goods''; ''sometimes they provide storage;'' ''they use the services of port agents, etc., but not as brokers;'' they are ''primarily a household goods forwarder providing door-to-door moving service for the Department of Defense * * * using the ''Single-Rate Factor'' on a contract basis;'' and ''as a small business in the moving industry * * *'' Only one of the comments from these firms noted that the five industry characteristics discussed in the proposed rule ''clearly defines brokers'' and agreed that, ''it might be appropriate to exclude certain funds'' in those cases.

The other group of firms that objected to the change in the proposed size standard operate as entrepreneurs. They are not agents or brokers and they do

not operate off of the ''one-rate'' fee schedule as do the Household Goods Forwarders. This group, known as Non-Vessel Owning Common Carriers, acquire large (bulk) space on ships they do not own, then ''retail'' that space in smaller lots to actual shippers. They do not view themselves as transportation firms in Major Group 42 (Transportation) because they neither own the ships nor drive the trucks (as do household movers). Their income is derived through the profit (or loss) from the resale of space they acquire in bulk from ship owners. If the ship sails before they have sold all their space, it is possible for the cost of the space to exceed the income derived from the space. They assume that risk as entrepreneurs. In this respect, they operate like wholesalers. The relevant point for this size standard is that their income (like Household Goods Forwarders) is not derived on a commission or fee basis. If the proposed size standard were adopted, they would be limited to the $5.0 million size standard without the benefit of the pass-through funds exclusion because they do not hold any such funds in trust for unaffiliated third parties. They are not currently listed as one of the 19 activities in SIC 4731. Never-the-less, the Census Bureau advised us that they are included in this SIC.

The comments from Household Goods Forwarders and Non-Vessel Owning Common Carriers express a consistent and serious concern. For businesses between $5.0 million and $18.5 million in size that do not operate as agents or brokers that have substantial overhead such as buying trucks or bulk ship space, and that do not derive any receipts from commissions or fees that would qualify as pass-through funds, the change in the size standard from $18.5 million to $5.0 million would effectively lower the size standard and take away their current eligibility to compete for Federal contracts reserved for small business or obtain SBA financial assistance.

The comments revealed that two types of firms who do not operate on commission would be significantly impacted by the proposed size standard through an unintended lowering of the size standard. The purpose of the proposed rule was to recognize that much of the receipts of Freight Forwarders and Customs Brokers (like real estate agents) are held in trust for others and should not be included in the calculation of their size. SBA accepts the significance of the concerns of the Household Goods Forwarders and the Non-Vessel Owning Common Carriers and is therefore retaining the $18.5 million gross average annual receipts size standard for these types of firms.

SBA believes the Household Goods Forwarders who use SIC 4731 will be a small group. In most cases where firms do more than just ''arrange'' transportation, and do not operate as agents/brokers, SBA believes that a different SIC code is usually more appropriate. Household goods moving and storage is listed by name in SIC 4213 (Trucking, Except Local), SIC 4214 (Local Trucking with Storage), and SIC 4226 (Special Warehousing and Storage, Not Elsewhere Classified). The size standard for these industries is $18.5 million.

The distinction between firms actually moving freight and cargo and those that only arrange or provide transportation services will be more obvious in the North American Industry Classification System (NAICS) which will be effective October 1, 2000 for size standard purposes (see further discussion below). Household movers will be classified in NAICS code 484210—''Used Household and Office Goods Moving,'' not Freight Forwarding. The same $18.5 million size standard now applicable to the Transportation industries was also included in the NAICS final rule (65 FR 30836, dated May 15, 2000).

NAICS code 484210 is comprised of parts of SIC 4212, 4213 and 4214 (See NAICS Manual at 859). The definition states ''This industry comprises establishments primarily engaged in providing local or long-distance trucking of used household, used institutional, or used commercial furniture and equipment. Incidental packing and storage activities are often provided by these establishments.''(See NAICS Manual at 471). We are aware that some of the activities in which moving firms engage can be classified as ''arranging'' transportation of freight or cargo. However, firms that provide multiple services should classify themselves under the SIC or NAICS code for their dominant activity. Firms that provide trucks and staff to actually pack, load trucks, drive trucks, store goods on a temporary basis, but who also subcontract out (''arrange for'') parts of the job they cannot or chose not to handle, are more properly classified under an appropriate code within Major Group 42 in the SIC Manual because acting as agents or brokers is not their dominant activity.

In the proposed rule, SBA asked for comments on whether or not Freight Forwarders and Customs Brokers that work on commission usually work for about 6 percent to 10 percent of the total billing. One association responded to this question. It polled its members and verified that the range of commissions is approximately 6 percent to 10 percent.

We accepted the comments and are retaining the $18.5 million size standard for Household Goods Forwarders and Non-Vessel Owning Common Carriers who classify themselves in SIC 4731. This is also the size standard for the transportation industries in Major Group 42 (Transportation) so that regardless of how a Moving and Storage or Non-Vessel Owning Common Carrier firm is classified, it has the same size standard. We believe this is a better approach than establishing a $10.0 million size standard for all firms in SIC 4731 since it takes into account the differences in the firms currently classified under this size standard.

Furthermore, the Census Bureau data does not support a size standard as high as $10.0 million for the entire industry. The Census data collects revenue information in this industry excluding funds received for unaffiliated third parties. Therefore, the data is collected as if the pass-through provision is in effect. We recognize that not all firms in SIC 4731 have trust funds to exclude. Even so, (except for the Non-Vessel Owning Common Carriers and the Household Goods Forwarders) a size standard of $5.0 million fit the data well when differences in how the broker/agent and auditor/consultant firms (classified in SIC 4731) account for their funds are explicitly recognized. The Census Bureau is already making that accommodation in data collection.

Reclassification of Activities Under the North American Industry Classification System

The 19 activities currently listed in SIC 4731 will be divided into two industries under the NAICS, which SBA will adopt on October 1, 2000 for its size standards. SBA published a final rule in the **Federal Register** May 15, 2000 to adopt the NAICS classification, listing each industry and its corresponding size standard (65 FR 30836). SBA's final rule established guidelines to use in cases where activities included in a SIC code were reclassified in NAICS. Newly created classifications generally retained the same size standards that the activity had under the SIC classification. In cases where an activity was removed from one industry group to be included in another industry group, the proposed rule stipulated that the size standard for that industry group would be that of the predominant activity.

As mentioned above, activities currently listed in SIC 4731 will be put into two different classifications in

NAICS. Firms that do not operate as agent/brokers such as Freight Rate Auditors and Tariff Consultants currently listed in SIC 4731 will be classified as NAICS 541614, ''Process, Physical Distribution, and Logistics Consulting'' which is part of ''Management Consulting Services.'' Other non-agent/broker activities currently included in SIC 4731 include Freight Rate Information Service, Tariff Rate Information Service, Transport Clearinghouse, Transportation Rate Service, Customs Clearance of Freight, Freight Consolidation, Shipping Documents Preparation, and Freight Agencies Railroad, (not operated by Railroad Companies). Of these, Freight Rate Information Service, Freight Consolidation, and Freight Agencies Railroad, (not operated by Railroad Companies) are reclassified as ''Freight Traffic Consulting Services,'' ''Freight Rate Consulting Services'' or ''Transportation Management Consulting Services'' and are also in NAICS 541614.

Using the NAICS procedures for establishing size standards when industries are reclassified, when Tariff Consultants and Freight Rate Auditors are added to the 'Logistics' industry (NAICS code 541614), they will have the same $5.0 million size standard applicable to the entire 'Logistics' industry. This size standard is consistent with what was proposed for these activities as part of SIC 4731 and what we are adopting in this final rule. All activities in NAICS 541614 will have the $5.0 million size standard and there is no pass-through of commissions for the non-commission entities.

All other activities currently listed in SIC 4731, including agent/broker activities who ''arrange transportation'' are classified in NAICS 488510, ''Freight Transportation Arrangement.'' It will be a more homogenous group of firms in NAICS than in the SIC. It is described in the NAICS manual (page 487) as establishments that are ''usually known as freight forwarders, marine shipping agents, or customs brokers, and offer a combination of services * * *.'' The SBA will also adopt the $5 million size standard for NAICS 488510 when it establishes NAICS-based size standards. It will also allow pass-through of trust funds when calculating average annual receipts for those firms that hold funds in trust for unaffiliated third parties.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. 3501, Ch. 35.)

This rule is a ''significant'' regulatory action under Executive Order 12866 and was reviewed by the Office of Management and Budget. However, it is noteworthy that the total value of Federal procurement and SBA guaranteed loans combined is less than $50 million annually to this $9.1 billion industry (1992 Economic data). It is unlikely that these programs would be significantly affected by this change to the size standard. Although potentially 1,000 firms could gain small business status as a result of this rule, historically only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Regulatory Flexibility Act, this rule will not have a substantial impact on a significant number of small entities. As mentioned above, although potentially 1,000 additional firms could gain small business status as a result of this rule, historically only a very small percentage of firms in the industry compete for Federal procurements or obtain guaranteed loans through SBA's financial assistance programs.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose new reporting or record-keeping requirements.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For reasons stated in the preamble, SBA is amending 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188.

2. Revise § 121.104(a)(1) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) * * *

(1) *Receipts* means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined or reported on Internal Revenue Service (IRS) Federal tax return forms; Form 1120 for corporations; Form 1120S for Subchapter S corporations; Form 1065 for partnerships; and Form 1040, Schedule F for farm or Schedule C for sole proprietorships). However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

* * * * *

3. In § 121.201, currently in effect, amend the table ''Size Standards by SIC Industry'' as follows:

a. Under the heading Division E—Transportation, Communications, Electric, Gas, and Sanitary Services, Major Group 47—Transportation Services, revise the entry for 4731.

b. Revise footnote 6 at the end of the table.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?

* * * * *

SIZE STANDARD BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
* * * * * * *	
Division E—Transportation, Communications, Electric, Gas, and Sanitary Services	
* * * * * * *	
4731 Arrangement of Transportation of Freight and Cargo	[6] $5.0
Non-Vessel Owning Common Carriers and Household Goods Forwarders	$18.5
* * * * * * *	

Footnotes:

* * * * *

[6] SIC codes 4724, 4731 (part), 6531,7311,7312, 7313, 7319, and 8741 (part): As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: July 14, 2000.

Fred P. Hochberg,

Deputy Administrator.

[FR Doc. 00–19018 Filed 8–8–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–01–AD; Amendment 39–11854; AD 2000–15–21]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc.—Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Bell Helicopter Textron Inc. (BHTI)-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD requires removing and replacing certain main rotor mast (mast) assemblies. This AD is prompted by a BHTI-manufactured Model UH–1B accident due to fatigue failure of a thin-wall mast installed on the helicopter. The actions specified by this AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters was published in the **Federal Register** on March 24, 2000 (65 FR 15882). That action proposed to require removing any mast assembly, part number (P/N) 204–011–450–001 or –005, and replacing it with an airworthy mast assembly.

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

One commenter states that the FAA's reference to the affected aircraft as ''BHTI-manufactured'' implies BHTI responsibility. The commenter states that BHTI never obtained an FAA type certificate for the affected helicopters. Although BHTI originally manufactured the affected helicopters for the U.S. military, they have not produced any helicopters of these types for 20 years. The commenter requests that we refer to the affected aircraft as ''FAA type certificated U.S. military surplus UH–1 helicopters.'' The FAA agrees that BHTI is neither the type certificate holder nor the production certificate holder. However, the FAA does not concur that the terminology ''Bell Helicopter Textron Inc.-manufactured'' implies BHTI responsibility. The type certificate holder is responsible for defining corrective actions for the aircraft on their type certificate (see 14 CFR 21.99). The FAA uses the terminology ''Bell Helicopter Textron Inc.-manufactured Model * * *'' only to identify the original manufacturer of the helicopter. The use of this terminology in no way intends to assign or imply responsibility to BHTI.

The commenter also requests that the FAA type certificate holders or the applicable entities be specifically identified in the applicability section of the AD. The FAA does not agree to this request because the type certificate holders are already specifically identified by name in the paragraph immediately preceding the ''applicability'' paragraph of the AD.

The commenter also states that the mast pole referred to in the NPRM was retired by the Army years ago. Since the commenter understands that the Army manuals are used by the FAA in certifying the affected helicopters, the commenter questions why the helicopters are not already out of configuration. The configuration change

to remove these masts from installation eligibility may or may not have been incorporated in the Army manuals. In order to ensure correction of this unsafe condition, the FAA is requiring the design change by issuance of this AD.

The commenter further states that BHTI does not refer to the mast pole as a ''thin-walled mast,'' but as the ''standard wall mast,'' and requests that the nomenclature be changed to identify a specific dash numbered mast. The FAA uses the terminology ''thin-wall masts'' because that wording was used by the U.S. Army in Safety of Flight Message UH–1–84–08 dated July 1984. The terminology is being retained in the summary of this AD for consistency. Specific dash numbers in this AD are used for identifying the affected mast assemblies to be removed. For replacement parts, it is unnecessary to specify the specific dash number; it is only necessary that they be airworthy.

The commenter also states that the term ''airworthy mast'' is ambiguous. The FAA does not agree. The term ''airworthy'' is standard aviation terminology and means a part that meets type design and is in a condition for safe operation.

Finally, the commenter states that no mention of the Retirement Index Number (RIN) procedure of counting torque events is mentioned in the NPRM. The commenter states that repeated heavy lifting, such as is involved in logging, greatly reduces the life of the mast as well as other components. The FAA has imposed RIN counting requirements for any replacement masts in Emergency AD 2000–08–53, issued April 26, 2000. RIN counting procedures for the masts, P/N 204–011–450–001 and –005, were mandated by that Emergency AD.

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

The FAA estimates that 75 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Replacing a mast assembly will cost approximately $8,862. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $709,650 to replace all the masts in the fleet.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–15–21 Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Arrow Falcon (Previously Utah State University); Western International Aviation, Inc.; and U.S. Helicopter, Inc.: Amendment 39–11854. Docket No. 2000-SW–01-AD.

Applicability: Bell Helicopter Textron Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters with a main rotor mast (mast) assembly, part number (P/N) 205–011–450–001 or –005, installed, certificated in any category.

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

Compliance: Required within 25 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, part number (P/N) 204–011–450–001 or –005, from service. Replace with an airworthy mast assembly. Neither mast, P/N 204–011–450–001 nor 204–011–450–005, are eligible for installation on any affected helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(d) This amendment becomes effective on August 24, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–20186 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–09–AD; Amendment 39–11852; AD 2000–15–19]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, N1, and AS–365N2, N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters. This action requires inspecting the sand filter ejection nozzle (nozzle) for cracks and replacing any cracked nozzle. This amendment is prompted by the discovery of a cracked nozzle during a preflight inspection. This condition, if not corrected, could result in loss of the nozzle in flight, impact with the main or tail rotor, and a subsequent forced landing.

DATES: Effective August 24, 2000. Comments for inclusion in the Rules Docket must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–09–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters with CENTRISEP EAPS sand filters installed. The DGAC advises that a crack on a nozzle can result in separation of the nozzle from the helicopter. The DGAC has issued AD No. 2000–108–050(A), dated March 22, 2000, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365N, N1, and AS–365N2, N3 helicopters of the same type design registered in the United States, this AD is being issued to prevent loss of a nozzle in flight, impact with the main or tail rotor, and a subsequent forced landing. This AD requires inspecting each nozzle for a crack before further flight, and thereafter before the first flight of each day. Replacing any cracked nozzle with an airworthy nozzle is also required before further flight.

No helicopters on the U.S. registry will be affected by this AD since the sand filter kit (kit) that contains the nozzles is not currently installed on any helicopter in the U.S. fleet. Should a kit be installed on a helicopter listed on the U.S. Registry, it would take approximately 1.0 work hour per helicopter to inspect the nozzles and 2 work hours to replace a nozzle, if necessary. The average labor rate is $60 per work hour. Based on these figures, and assuming that the kit is installed on a helicopter, the total cost impact of this AD on a U.S. operator is estimated to be $60 for each day of flight operations assuming a nozzle does not need to be replaced.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–09–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters registered in the United States have the affected sand filter kit installed. The FAA has also determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–15–19 **Eurocopter France:** Amendment 39–11852. Docket No. 2000–SW–09–AD.

Applicability: Model SA–365N, N1, and AS–365N2, N3 helicopters with CENTRISEP EAPS sand filters, part number QB0261, QB0262, QB0486, or QB0487, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of a sand filter ejection nozzle (nozzle) in flight, impact with the main or tail rotor, and a subsequent forced landing, accomplish the following:

(a) Before further flight, and thereafter before the first flight of each day, visually inspect the left-hand and right-hand nozzles for a crack. Replace any cracked nozzle with an airworthy nozzle before further flight.

Note 2: Eurocopter AS 365 Service Bulletin No. 71.00.14, dated February 21, 2000, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(d) This amendment becomes effective on August 24, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2000–108–050(A), dated March 22, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–20183 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–19]

Amendment to Class E Airspace; Atwood, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments and correction.

SUMMARY: This document corrects an error in the latitude of the Atwood Nondirectional Radio Beacon (NDB) and the bearing from the Atwood NDB in the airspace description for the Atwood-Rawlins County, City-County Airport, Atwood, KS. This action revises the Class E airspace, corrects an error in the latitude of the Atwood NDB, and corrects the NDB bearing in the airspace designation for Atwood-Rawlins County-City County Airport as published in the **Federal Register** July 14, 2000 (65 FR 43684), Airspace Docket No. 00–ACE–19.

DATES: The direct final rule, request for comments published at 65 FR 43684 is effective on 0901 UTC, November 30, 2000.

This correction is effective on November 30, 2000.

Comment Date: Comments must be received on or before September 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On July 14, 2000, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Atwood, KS (FR document 00–17870, 65 FR 43684, Airspace Docket No. 00–ACE–19). An error was subsequently discovered in the latitude of the Atwood NDB and the bearing in the airspace designation for Atwood-Rawlins County, City-County Airport. This action corrects those errors. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the Atwood NDB latitude and the airspace designation.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule; request for comments 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 November 30, 2000.

Correction to the Direct Final Rule; Request for Comments

Accordingly, pursuant to the authority delegated to me, the airspace designation for Atwood-Rawlins County City-County Airport, as published in the **Federal Register** on July 14, 2000 (65 FR 43684), (**Federal Register** Document 00–17870; page 43686, column one) is corrected as follows:

§ 71.1 [CORRECTED]

ACE KS E5 Atwood, KS [Corrected]

On page 43686, in the first column under Atwood NDB remove latitude 39°50′20″ N. and substitute 39°50′19″

N., and in line five of the airspace designation, correct the airspace designation by removing ''258'' and adding ''358''.

Issued in Kansas City, MO on July 27, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–20167 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AEA–1]

RIN 2120–AA66

Amendment of VOR Federal Airway V–162

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of Federal Airway V–162 by deleting the portion of the route between the Martinsburg, WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Harrisburg, PA, VORTAC. The FAA is taking this action because the route segment between the Harrisburg VORTAC and the Hyper Intersection is unusable for navigation due to signal roughness and scalloping.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 18, 2000, the FAA proposed to amend 14 CFR part 71 to delete a segment of V–162 that is unusable for navigation (65 FR 31504). Flight inspection found that the radial between the Harrisburg VORTAC and Hyper Intersection is not usable due to signal roughness and scalloping. This problem renders the affected segment unusable for navigation purposes. The FAA has issued a Flight Data Center Notice to Airmen advising users of this restriction.

Interested parties were invited to participate in this rulemaking proceeding by submitting comments. No comments were received. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This action amends part 71 by deleting the portion of VOR Federal Airway V–162 between the Martinsburg, WV, VORTAC and the Harrisburg, PA, VORTAC. Flight inspection has found that the radial extending from the Harrisburg VORTAC to the Hyper Intersection is not usable for navigation due to signal roughness and scalloping. As a result of this problem, the portion of the airway between Martinsburg VORTAC and Harrisburg VORTAC is being deleted. Other existing published airways provide alternative routing between the Martinsburg VORTAC and Harrisburg VORTAC.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–162 [Revised]

From Harrisburg, PA; INT Harrisburg 092° and East Texas, PA, 251° radials; East Texas; Allentown, PA; to Huguenot, NY.

* * * * *

Issued in Washington, DC, on August 3, 2000.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–20165 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 98N–1134]

Gastroenterology and Urology Devices; Reclassification of the Extracorporeal Shock Wave Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to reclassify from class III to class II the extracorporeal shock wave lithotripter, when intended for use to fragment kidney and ureteral calculi. FDA is taking this action on its own initiative in order to assure that these devices are regulated according to the appropriate degree of regulatory control needed to provide reasonable assurance of their safety and effectiveness. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document, which will serve as the special control for the reclassified device.

DATES: This rule is effective September 8, 2000.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food

and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

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

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

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

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Section 216 of FDAMA replaced the ''four of a kind'' rule in the old section 520(h)(4) of the act (21 U.S.C. 360j(h)(4)) with a provision that frees safety and effectiveness data in PMA's approved 6 or more years earlier for use by the agency in certain actions, including device reclassifications. Under section 520(h)(4) of the act, as amended by FDAMA, the agency has supplemented other sources of information that support reclassification of the extracorporeal shock wave lithotripter with data contained in PMA's approved 6 or more years before the date of this rule. Although FDA has sufficient information to support this reclassification without relying upon data available under section 520(h)(4) of the act, the agency decided to use such data in taking this action. In this instance, the data used would have been available to the agency under the superseded four of a kind rule.

Under section 513(f)(2)(B)(i) of the act, the Secretary of Health and Human Services (the Secretary), for good cause shown, may refer a proposed reclassification to a device classification panel. The panel shall make a recommendation to the Secretary respecting approval or denial of the proposed reclassification. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the proposed reclassification was initiated.

II. Response to Comments

FDA referred the issue of reclassification of the extracorporeal shock wave lithotripter to the Gastroenterology and Urology Devices Advisory Panel (the Panel) for review and recommendation. At a public meeting on July 30, 1998, the Panel unanimously recommended that the extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi be reclassified from class III to class II. The Panel believed that the special controls of consensus standards, clinical performance testing, labeling restrictions, and physician training restrictions would provide reasonable assurance of the safety and effectiveness of the device. In the **Federal Register** of February 8, 1999 (64 FR 5987), FDA published a summary of the Panel recommendation and a proposed rule to reclassify the extracorporeal shock wave lithotripter. FDA invited interested persons to submit written comments by May 10, 1999. FDA received one comment that raised several issues. The following is FDA's response to the issues raised by the comment.

(Comment 1) The comment suggested that FDA should identify the PMA's and PMA supplements that FDA relied upon in reclassifying the device and make the summaries of safety and effectiveness for those submissions available in the Dockets Management Branch.

FDA agrees. The PMA's that FDA relied upon are listed in section VII ''References'' below and the summaries of safety and effectiveness are available in the Dockets Management Branch, as stated there. Section 520(h)(4)(b) of the act states that the summaries of safety and effectiveness shall be available for use by FDA as the evidentiary basis for a reclassification action. FDA notes, however, that section 520(h)(2) of the act provides that the summaries of safety and effectiveness may not be used to establish the safety or effectiveness of another device by any person other than the person who submitted the information. In the case of certain supplements for which a summary of safety and effectiveness was not prepared, FDA will make available a redacted version of the supplement.

(Comment 2) The comment questions whether FDA believes that section 520(h)(4) of the act allows for the use of information from PMA supplements as well as original PMA's.

Yes. Section 520(h)(4) of the act authorizes FDA to use data contained in applications for premarket approval submitted under section 515(c) of the act. The 6-year provision, then, applies equally to initial PMA submissions and PMA supplements, which are applications for premarket approval of a changed device and are submitted under

section 515(c) of the act, the general PMA authority.

(Comment 3) The comment also said that persons submitting a premarket notification (510(k)) other than holders of approved PMA's and PMA supplements should only be able to use as predicate devices model numbers or modified versions of extracorporeal shock wave lithotripters legally marketed under a 510(k), PMA, or PMA supplement no sooner than 6 years before the applicant's 510(k) submission for a new or modified device. Holders of an approved PMA or PMA supplement should be the only applicants permitted to cite as a predicate the device for which they have an approved application fewer than 6 years old.

FDA disagrees with this comment. Section 513(i) of the act provides that substantial equivalence may be determined based upon comparison with any legally marketed device. The intent of section 520(h)(4) of the act is to provide an additional source of information upon which certain actions can be based. Section 520(h)(4) of the act does not place any limitations on the type of device that may be used as a predicate device.

(Comment 4) The comment said that the indications for use in the proposed rule are inconsistent with those in the approved PMA's and PMA supplements to date. The comment also said that the labeling restrictions in the rule do not address indications for use and questioned how manufacturers may switch to the broad intended use in the rule.

FDA disagrees. The intended use in the rule (i.e., ''fragmentation of urinary calculi within the kidney and ureter'') is consistent with prior approvals. Although some devices were restricted in their intended use to certain stone locations or size ranges based on the results or circumstances of their specific clinical studies, others had adequate data supporting the more general intended use. Therefore, the broad intended use in the rule incorporates both of the individual intended uses that have been approved to date. This approach was based on findings in the literature that the differences in intended use of approved lithotripters were not primarily related to differences in technological characteristics. Because FDA is reclassifying a broad intended use, FDA believes that it is appropriate to list the various stone characteristics known to be associated with reduced effectiveness as precautions in the labeling. Manufacturers who have cleared devices with the limited intended uses can seek clearance to market their devices for the broad intended use by submitting a 510(k) comparing the device to a predicate that has the broad intended use.

(Comment 5) The comment noted that the guidance suggests that a confirmatory clinical study should enroll at least 20 patients at 2 sites. The comment questioned whether this means 20 patients at each site or 20 patients total at both sites. The comment further said that, in either case, the number is insufficient. The comment suggested that FDA should require 30 patients each at 3 sites and the study should include an assessment of treatment success and adverse effects immediately post-procedure and at 2 weeks and 1 month thereafter.

The guidance has been revised to clarify that clinical testing of devices that are similar in technological characteristics to legally marketed devices should include at least 20 patients total at 2 sites. FDA disagrees with the comment that there is a need to assess device safety and effectiveness outcomes in a statistically justified sample size. FDA believes that clinical testing in these circumstances is intended only to confirm device functionality and the adequacy of the proposed labeling rather than to assess device safety and effectiveness. FDA believes that the characterization testing described in the guidance is sufficient to demonstrate safety and effectiveness with respect to clinical outcomes for devices with similar technological characteristics. As noted in the proposed rule and guidance document, however, 510(k)'s for devices that have different technological characteristics from legally marketed predicates will likely require larger, statistically justified, clinical studies to investigate the effect of the new technological characteristics on safety and effectiveness outcomes. For these cases, the study design should be tailored to the specifics of the new characteristics; therefore, we do not believe that a standard detailed study design should be spelled out.

(Comment 6) The comment suggested that the restricted device legend for the device should be revised to read: ''CAUTION: Federal law restricts this device to sale, distribution, and use only upon the lawful order of a physician trained and/or experienced in the use of this device as outlined in the required training program.'' The comment also suggested that this statement should be included in the regulation and not just in the guidance.

FDA agrees in part with this comment. FDA has added the words ''distribution or use'' after ''sale'' so as to track the language in section 520(e) of the act. FDA does not believe that it would not be correct to replace the phrase ''appropriate training program'' with ''required training program'' as suggested by the comment, because FDA does not regulate all aspects of the training program. Also, FDA does not believe that it is necessary to add the language to the regulation, because the requirement is already covered by 21 CFR 801.109(b)(1). FDA has decided not to include the labeling in an appendix to § 876.5990 (21 CFR 876.5990). Instead, the labeling will be included in the guidance document only. FDA also slightly revised the identification section in § 876.5990(a) by removing the words ''through a water-filled rubber cushion or by direct contact of the patient's skin with the water'' and replacing them with ''using an appropriate acoustic interface.''

III. Final Rule

Therefore, FDA is finalizing the rule reclassifying the extracorporeal shock wave lithotripter into class II with the FDA guidance document entitled ''Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi,'' as the special control. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the guidance document.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The agency believes that this reclassification action is consistent with the regulatory

philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace at lower costs. The agency therefore certifies that this reclassification action will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Paperwork Reduction Act of 1995

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

VII. References

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

1. P840008/S24, MFL 5000 Lithotripter, Dornier Medical Systems, Inc., July 3, 1991.
2. P840008/S26, MFL 9000 Lithotripter, Dornier Medical Systems, Inc., August 12, 1991.
3. Summary of Safety and Effectiveness, P890013, Piezolith Lithotripter, Model 2300, Richard Wolf Medical Instruments Corp., September 9, 1991.
4. Summary of Safety and Effectiveness, P880042, LT.01 Lithotripter, EDAP International Corp., December 12, 1991.
5. Summary of Safety and Effectiveness, TP890006, Therasonic Lithotripsy Treatment System, Diasonics, Inc., December 20, 1991.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

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

2. Section 876.5990 is added to subpart F to read as follows:

§ 876.5990 Extracorporeal shock wave lithotripter.

(a) *Identification*. An extracorporeal shock wave lithotripter is a device that focuses ultrasonic shock waves into the body to noninvasively fragment urinary calculi within the kidney or ureter. The primary components of the device are a shock wave generator, high voltage generator, control console, imaging/localization system, and patient table. Prior to treatment, the urinary stone is targeted using either an integral or stand-alone localization/imaging system. Shock waves are typically generated using electrostatic spark discharge (spark gap), electromagnetically repelled membranes, or piezoelectric crystal arrays, and focused onto the stone with either a specially designed reflector, dish, or acoustic lens. The shock waves are created under water within the shock wave generator, and are transferred to the patient's body using an appropriate acoustic interface. After the stone has been fragmented by the focused shock waves, the fragments pass out of the body with the patient's urine.

(b) *Classification*. Class II (special controls) (FDA guidance document: ''Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi.'')

Dated: July 12, 2000.

Linda S. Kahan,

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

[FR Doc. 00–20089 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–030]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations found at 33 CFR 100.515 during the Defender's Day fireworks display to be held September 9, 2000, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. on September 9, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor the Defender's Day fireworks display on September 9, 2000 on the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: July 20, 2000.

J. E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 00–20169 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–028]

RIN 2115–AE46

Special Local Regulations for Marine Events; Harford County Power Boat Regatta, Bush River, Abingdon, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the Harford County Power Boat Regatta to be held on the waters of the Bush River near Abingdon, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Bush River during the event.

DATES: This rule is effective from 11:30 a.m. on August 12, 2000 until 6:30 p.m. on August 13, 2000.

ADDRESSES: You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–028 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number (CGD05–00–028), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on June 14, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance on the event. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the event.

Background and Purpose

On August 12 and August 13, 2000, the Harford County Power Boat Club will sponsor the Harford County Power Boat Regatta on the waters of the Bush River, near Abingdon, Maryland. The event will consist of 60 hydroplanes and runabouts racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Bush River. The temporary special local regulations will be in effect from 11:30 a.m. to 6:30 p.m. on August 12 and August 13, 2000, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without first obtaining permission from the official patrol. Non-participating vessels will be allowed to transit the event area at minimum wake speed, at the Patrol Commander's discretion. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Bush River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the fact that the Coast Guard Patrol Commander will allow non-participating vessels to transit at minimum wake speed whenever it is safe to do so, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Bush River during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of the Bush River during the event, the effect of this regulation will not be significant because of its limited duration, the fact that the Coast Guard Patrol Commander will allow non-

participating vessels to transit at minimum wake speed whenever it is safe to do so, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–028 is added to read as follows:

§ 100.35–T05–028 Special Local Regulations for Marine Events; Harford County Power Boat Regatta, Bush River, Abingdon, Maryland.

(a) *Definitions.*

(1) *Regulated Area.* The waters of the Bush River bounded on the south by the Amtrak railroad drawbridge, thence northerly from the eastern end of the drawbridge along the shoreline to Church Point at latitude 39°27′48″ N, longitude 76°13′42″ W, thence westerly to Bush Point at latitude 39°27′42″ N, longitude 76°14′30″ W, thence southwesterly along the shoreline to Otter Point at latitude 39°26′48″ N, longitude 76°15′42″ W, thence southerly to Flying Point at latitude 39°26′30″ N, longitude 76°15′30Prime; W, thence southeasterly along the shoreline to the western end of the Amtrak railroad drawbridge. All coordinates reference Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant.* Includes all vessels participating in the Harford County Power Boat Regatta under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations.*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(iii) Unless otherwise directed by the official patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Effective Dates:* This section is in effect from 11:30 a.m. on August 12, 2000 until 6:30 p.m. on August 13, 2000. This section will be enforced from 11:30 a.m. to 6:30 p.m. each day.

Dated: July 20, 2000.

J. E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 00–20170 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 00–059]

RIN 2115–AA97

Safety Zone Regulations; Guayanilla Bay, Guayanilla, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary moving and fixed safety zones around Liquefied Natural Gas (LNG) Carriers with product aboard in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. Due to its highly volatile cargo, size, and draft, the LNG vessel will require use of the center of the channel for safe navigation. These regulations are necessary for the protection of life and property on the navigable waters of the United States.

DATES: This rule becomes effective at 1 a.m. on July 9, 2000, and terminates at midnight on December 31, 2000. All times are Atlantic Standard Time (AST).

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Juan 00–059, and are available for inspection and copying at the USCG Marine Safety Office San Juan, Rodriguez and Del Valle Building, 4th Floor, Calle San Martin, Road #2, Guaynabo, Puerto Rico, between the hours of 7 a.m. to 3:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers

at Coast Guard Marine Safety Office San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to attempt to publish a NPRM for this situation due to the uncertainty surrounding the scheduling of the first LNG ship into the EcoElectrica facility.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the imminent arrival of the first LNG ship into the EcoElectrica facility. Publishing an NPRM and delaying its effective date would be contrary to public safety since immediate action is needed to minimize potential danger to the public upon arrival of the LNG carrier.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from hazards associated with LNG carriers. The safety zones are established because of the significant risks LNG ships present with their highly volatile cargoes, their size, and draft. A safety zone will be established in a 100 yard radius surrounding an LNG carrier with product aboard while transiting north of Latitude 17°56.0′N in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. This Safety Zone remains in effect until the LNG vessel is alongside the Eco-Electrica waterfront facility in Guayanilla Bay. A Safety Zone will also be established in the waters within 150 feet of an LNG vessel when the vessel is alongside the Eco-Electrica waterfront facility. This Safety Zone remains in effect while the LNG vessel remains at the dock with product aboard or is transferring liquefied natural gas.

We anticipate periodic arrivals of LNG carriers in Guayanilla Bay. Therefore, in conjunction with this temporary rule necessary for immediate arrivals, we will undertake a permanent rulemaking with opportunity for notice and comment.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary due to the relatively infrequent arrivals of LNG carriers and the sparse nature of commercial traffic in Guayanilla Bay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic effect upon a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit a portion of Guayanilla Bay during the entry of an LNG vessel into the bay and its subsequent docking and transfer operations at the Eco-Electrica facility. This regulation will not have a significant economic impact on a substantial number of small entities because of the infrequent LNG vessel arrivals into Guayanilla Bay and the short transit time into the bay. Vessel traffic will not be impeded while the LNG carrier is moored to the dock at the Eco-Electrica facility.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and

has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation because it is establishing a temporary Safety Zone.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Temporary § 165.T07–059 is added to read as follows:

§ 165.T00–059 Safety Zone; Guayanilla, Puerto Rico

(a) *Regulated Area.* Temporary safety zones are established during the specified conditions: (1) In a 100 yard radius surrounding a Liquefied Natural Gas (LNG) Carrier with product aboard while transiting north of Latitude 17°56.0′ N in the waters of the Caribbean Sea and Guayanilla Bay, Puerto Rico. The safety zone remains in effect until the LNG vessel is alongside the Eco-Electrica waterfront facility in Guayanilla Bay, at position 17°58.55′N, 066°45.3′W.

(2) The waters and land area within 150 feet of an LNG vessel when the vessel is alongside the Eco-Electrica waterfront facility. This safety zone remains in effect while the LNG vessel remains at the dock with product aboard or is transferring liquefied natural gas.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in these zones is prohibited unless authorized by the Coast Guard Captain of the Port.

(c) *Dates.* These regulations become effective at 1 a.m. Atlantic Standard Time (AST) on July 9, 2000, and expire at 11:59 p.m. AST, December 31, 2000. Notifications of LNG vessel arrivals will be made using a Broadcast Notice To Mariners on VHF Channel 16.

Dated: July 7, 2000.

J. A. Servidio,

Commander, U. S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 00–20171 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–191]

RIN 2115–AA97

Safety Zone: Saybrook Summer Pops Concert, Saybrook Point, Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Saybrook Summer Pops Concert Fireworks Display to be held at Saybrook Point, on the Connecticut River on August 13, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 8:30 p.m. until 10:30 p.m. on August 13, 2000.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

SUPPLEMENTARY INFORMATION:

Requlatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and making this rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The Old Saybrook Chamber of Commerce, of Old Saybrook, CT is sponsoring a fireworks display after the Saybrook Summer Pops concert. The fireworks will be launched from Saybrook Point on the Connecticut River, Old Saybrook, CT. The fireworks display will occur on August 13, 2000, following the concert. The safety zone covers all waters of the Connecticut River within a 400 foot radius of the fireworks launching area which will be located north of the dock on Saybrook Point, Connecticut River, CT in approximate position: 41°-17′35″N, 072°-21′20″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of the Connecticut River and entry into this zone will be restricted for only 120 minutes on August 13, 2000. Although this regulation prevents traffic from transiting this section of the Connecticut River, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Connecticut River from 8:30 p.m. until 10:30 p.m. on August 13, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468–4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under Addresses.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–191 to read as follows:

§ 165.T01–CGD1–191; Saybrook Summer Pops Concert, Saybrook, Point, Connecticut River, Old Saybrook, CT.

(a) *Location.* The safety zone includes all waters of Connecticut River within a 400 foot radius of the launch site located on Saybrook Point, Old Saybrook, CT in approximate position 41°-17′35″N, 072°-21′20″W (NAD 1983).

(b) *Effective date.* This section is effective from 8:30 p.m. until 10:30 p.m. on August 13, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

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

Dated: July 24, 2000.

David P. Pekoske,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 00–20168 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301024; FRL–6597–9]

RIN 2070–AB78

Fenpropathrin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for residues of the herbicide fenpropathrin in or on currants at 15.0 parts per million (ppm) and soybean forage at 15.0 ppm, soybean hay at 20.0 ppm, soybean hulls at 1.0 ppm, soybean meal at 0.2 ppm, soybean refined oil at 1.5 ppm, and soybean seed at 0.1 ppm for an additional 18-month period. These tolerances will expire and are 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 (FIFRA) authorizing use of the pesticide on currants and soybeans. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic

Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301024, must be received by EPA on or before October 10, 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–301024 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Mosby-Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6792; and e-mail address: gwaltney.jackie@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	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed 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,'' ''Regulations and Proposed Rules,'' 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–301024. 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 January 20, 1999 (64 FR 3003) (FRL–6047–3), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for residues of fenpropathrin in or on soybean forage at 15.0 ppm, soybean hay at 20.0 ppm, soybean hulls at 1.0 ppm, soybean meal at 0.2 ppm, soybean refined oil at 1.5 ppm, and soybean seed at 0.1 ppm, with an expiration date of June 30, 2000. EPA established these tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. In the **Federal Register** of September 9, 1998 (63 FR 48113) (FRL–6020–2), EPA issued a Final Rule extending a time-limited tolerance for residues of fenpropathrin in or on currants at 15.0 ppm, with an expiration date of June 30, 2000.

EPA received a request to extend the use of fenpropathrin on soybeans for this year's growing season; the Applicant stated that the two-spotted spider mite is a serious pest of soybeans in Delaware and Maryland.

Delaware: During the 1997 field season in Delaware, fields were sprayed 3–5 times with dimethoate, Lorsban and Parathion. While dimethoate provided systemic activity, it has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. The two-spotted spider mite may also be developing resistance to dimethoate. Since July 17, 1998, the mite population in Delaware has begun to explode in soybean fields and dimethoate applications have not provided control.

Maryland: Maryland's emergency situation is very similar to Delaware. Maryland too used dimethoate and Lorsban with control ranging from 0 to less than 30%. Maryland growers have experienced increasing problems with spider mites in soybean fields. In 1997, the mite population reached record high levels on more than 50% of the soybean acreage and caused significant losses in yield and increased production costs. Dimethoate has been the chemical of choice in Maryland because of its systemic and longer residual action. However, numerous control failures with dimethoate have been reported in 1997. Dimethoate has been ineffective in recent years due to reduced systemic activity when fields are drought stressed resulting in poor absorption and translocation of the chemical into the leaf tissue. In the Eastern Shore where the problem is more intense, control failures are also believed to be the result of dimethoate-tolerant populations caused by repeated use of this product over the years. EPA has authorized under FIFRA section 18 the use of fenpropathrin on soybeans for control of two-spotted spider mite (*tetranychus*

urticae) in Delaware and Maryland. EPA concurs that emergency conditions exist for these states. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of fenpropathrin on soybeans for control of pest.

EPA assessed the potential risks presented by residues of fenpropathrin in or on currants, and soybeans. 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 July 14, 1997 (62 FR 37516) (FRL–5731–3). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18 month–period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances have expired and are revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on currants, and soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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–301024 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 October 10, 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–301024, 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 27, 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.

§ 180.466 [Amended]

2. In § 180.466, amend the table in paragraph (b) by revising the date under the heading ''Expiration/Revocation Date'', ''6/30/00'' to read ''12/31/01'' wherever it appears.

[FR Doc. 00–19661 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301025; FRL–6597–7]

RIN 2070–AB78

Carfentrazone-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of carfentrazone-ethyl and its metabolite carfentrazone-chloropropionic acid in or on the cereal grain crop group. In addition, the tolerance expression for the commodity corn, field, forage established in 40 CFR 180.515(a) is being raised from 0.1 parts per million (ppm) to 0.2 ppm to harmonize with the proposed tolerance on corn, sweet, forage under the cereal grain crop group. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301025, must be received by EPA on or before October 10, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301025 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; and e-mail address: miller.joanne@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,'' ''Regulations and Proposed Rules,'' 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–301025. 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 January 30, 1998 (63 FR 4631) (FRL–5766–2), 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 for tolerance by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.515 be amended by establishing a tolerance for residues of the herbicide carfentrazone-ethyl, (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), in or on cereal grain at 0.1 ppm; in or on hay at 0.3 ppm; in or on straw at 0.2 ppm; in or on forage at 1.0 ppm; in or on stover at 0.15 ppm; and in or on sweet corn, K + CWHR (kernels plus cob with husk removed) at 0.1 ppm, and in or on the raw agricultural commodities (RACs) soybeans and soybean seed 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 carfentrazone-ethyl and its metabolite carfentrazone-chloropropionic acid in or on grain, cereal, group at 0.1 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain, cereal, straw (excluding rice) at 0.1 ppm; grain, cereal, stover at 0.3 ppm; grain, cereal, hay at 0.3 ppm; corn, field, forage at 0.2 ppm; corn, sweet, forage at 0.2 ppm; sorghum, forage at 0.2 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

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

1. A battery of acute toxicity studies places the technical-grade herbicide in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90-day subchronic feeding study was conducted in rats at intake levels of 0, 58, 226, 470, 831 and 1,197 milligrams/kilograms/day (mg/kg/day) for males and 0, 72, 284, 578, 1,008 and 1,427 mg/kg/day in females, respectively. The no observed adverse effect level (NOAEL) was 226 mg/kg/day in males and 284 mg/kg/day in females. The lowest observed adverse effect level (LOAEL) was 470 mg/kg/day in males and 578 mg/kg/day in females based on decreases in body weight, reductions in food consumption and histopathological lesions.

3. A 90-day subchronic feeding study was conducted in mice at dietary intake doses of 0, 143, 571, 1,143, 2,000, and 1,857 mg/kg/day. The LOAEL was 1,143 mg/kg/day based on findings in the liver

pathology. The NOAEL was 571 mg/kg/day.

4. A 90-day subchronic feeding study in dogs administered by dietary intake doses of 0, 50, 150, 500 and 1,000 mg/kg/day. The NOAEL was 50 mg/kg/day and the LOAEL was 150 mg/kg/day based on systemic toxicity (decrease in the rate of weight gain in females and an increase in porphyrin levels in both sexes).

5. An 18-month mouse carcinogenicity study was conducted in mice at dietary intake doses of 0, 10, 110, and 1,090 mg/kg/day for males and 0, 12, 119, and 1,296 mg/kg/day for females. The study found the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOAEL was 70 ppm (equivalent to 10 mg/kg/day for males and 12 mg/kg/day for females), and the systemic LOAEL was 700 ppm (equivalent to 110 mg/kg/day for males and 119 mg/kg/day for females) based on increased mortality and microscopic signs of hepatotoxicity.

6. A 2-year rat chronic toxicity/carcinogenicity study was conducted in rats at intake levels of 0, 2, 9, 37, and 188 mg/kg/day for males and 0, 3, 12, 49, and 242 mg/kg/day for females. The study found the compound to be noncarcinogenic to rats under the conditions of the study. The NOAEL was 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females. The LOAEL was 800 ppm (37 mg/kg/day) for males and 200 ppm (12 mg/kg/day) for females, based on liver histopathology and total urinary porphyrin.

7. A 1–year feeding study in dogs dosed at levels of 0, 50, 150, 500, and 1,000 mg/kg/day in both sexes with a NOAEL of 50 mg/kg/day and a LOAEL of 150 mg/kg/day, based on an increase mean total urinary porphyrins.

8. A developmental toxicity study in rats was conducted in rats at dose levels of 0, 100, 600, and 1,250 mg/kg/day in females, with a maternal LOAEL of 600 mg/kg/day based on staining of the abdominogenital area and a maternal NOAEL of 100 mg/kg/day; a developmental LOAEL of 1,250 mg/kg/day based upon a significant increase in the litter incidences of wavy and thickened ribs; and a developmental NOAEL of 600 mg/kg/day.

9. A developmental toxicity study in rabbits was conducted at gavage dose levels of 0, 10, 40, 150, and 300 mg/kg/day. Evidence of treatment-related maternal toxicity consisted of unthriftiness and emaciation in two does at 300 mg/kg/day. There were no treatment-related mortalities or gross pathological findings. No effects on body weight, body weight change, or organ weight data were identified at any treatment level. However, when considered in conjunction with the findings of the two pilot dose-setting studies, which were conducted at higher dose levels and which identified a steep dose-response curve with maternal mortality occurring at doses of 350 mg/kg/day and above, it was determined that 300 mg/kg/day provided an adequate high-dose assessment of maternal toxicity in rabbits. The maternal toxicity NOAEL is greater than/equal to 150 mg/kg/day and maternal LOAEL of 300 mg/kg/day. There was no evidence of treatment-related prenatal development toxicity, the developmental LOAEL was not determined and the developmental NOAEL is greater than/equal to 300 mg/kg/day.

10. A 2-generation reproduction study in the rat at dietary levels of 0, 8.6, 42.4, 127, 343 mg/kg/day for males, and 0, 9.5, 47.8, 142, and 387 mg/kg/day for females established a parental NOAEL for systemic and reproductive/developmental parameters of 127 mg/kg/day for males and 142 mg/kg/day for female. The parental LOAEL for systemic and reproductive development parameters was 343 mg/kg/day for males and 387 mg/kg/day for females. There was no systemic toxicity demonstrated at dose levels of less than/equal to 1,500 ppm. There were no treatment-related clinical signs of toxicity or increases in mortality at any dose levels. The offspring NOAEL was 142 mg/kg/day and the LOAEL was 387 mg/kg/day. The NOAEL for reproductive toxicity was greater than/equal to 387 mg/kg/day; the highest dose tested. There were no clinical signs of toxicity reported for the pups of either generation.

11. In an acute neurotoxicity study in rats at gavage doses of 0, 500, 1,000, and 2,000 mg/kg, a NOAEL of 500 mg/kg and a LOAEL of 1,000 mg/kg were based upon clinical observations (i.e., salivation) and motor activity. There was no evidence of neuropathology.

12. A 90-day subchronic neurotoxicity study in the rat was conducted at dietary levels of 0, 59, 603, and 1,178 mg/kg/day for males and 0, 71, 718, and 1,434 mg/kg/day for females, with a NOAEL of 59 mg/kg/day for males and 71 mg/kg/day for females. The LOAEL was 603 mg/kg/day for males and 718 mg/kg/day for females based on decreased body weight.

13. Two reverse gene mutation assays (*salmonella typhimurium*) at dose yielded negative results, both with and without metabolic activation.

14. An *in vitro* mammalian cell forward gene mutation assay in CHO cells yielded negative results both with and without activation.

15. An *in vitro* chromosomal abberation assay yielded positive results under nonactivated conditions following doses of 3.75, 12.5, 37.5, and 125 micrograms/milliliter (mu;g/mL). There were consistent and statistically significant increased incidences of cells with aberrations at 125 mu;g/mL, the highest dose tested in the absence of metabolic activation.

16. An *in vivo* mouse micronucleus cytogenic assay test was negative for clastogenic and/or aneugenic activity, following intraperitoneal injection doses of 600, 1,200, and 2,400 mg/kg. Dosed animals showed no reduction in the ratio of polychromatic erythrocytes to total erythrocytes. There was no evidence of polychromatic erythrocytes associated with exposure to the test material.

17. An unscheduled *in vivo/in vitro* DNA synthesis assay was negative following a single IP injection doses of 750, 1,500, 3,000 mg/kg. Slight lethargy was seen in the high dose animals. Higher levels (4,000 mg/kg/) were lethal in a preliminary study. Cytotoxicity for the hepatocytes was not apparent at any dose. The results obtained with the positive controls confirmed the sensitivity of the test system to detect unscheduled DNA synthesis (UDS). There was, however, no evidence that the test material induced agenotoxic response at any dose or sacrifice time.

18. A metabolism study in rats indicated that approximately 72.4 to 87% of the administered dose of carfentrazone-ethyl was rapidly absorbed and excreted in the urine within 24 hours after dosing. The major metabolites in both the urine and feces were F8426-chloropropionic acid (48.4 to 66.06%). The proposed metabolic pathway appeared to be the conversion of the parent compound by hydrolysis of the ester moiety to form F8426-chloropropionic acid, followed by oxidative hydroxylation of the methyl group to form 3-hydroxymethyl-F8426-chloropropionic acid, or dehydrochlorination to form F8426-cinnamic acid.

B. Toxicological Endpoints

1. *Acute toxicity.* The acute population adjusted dose (aPAD) is based on the acute neurotoxicity study in rats. The NOAEL of 500 mg/kg/day, was based on clinical observations (i.e., salivation) and decreased motor activity at the LOAEL of 1,000 mg/kg/day. The aPAD of 5 mg/kg/day is based on interspecies extrapolation (10x), intraspecies variability (10x), and the FQPA 1x factor.

2. *Short- and intermediate-term toxicity.* No systemic toxicity was seen at the limit-dose 1,000 mg/kg/day in a 21-day dermal toxicity study in rats.

3. *Chronic toxicity.* The chronic PAD (cPAD) is based on a 2-year chronic toxicity study in rats. The NOAEL of 3 mg/kg/day was based on liver histopathology (increases in microscopic red fluorescence of the liver, liver pigment) and total mean urinary porphyrin observed at the LOAEL of 12 mg/kg/day. The cPAD of 0.03 mg/kg/day is based on interspecies extrapolation (10x), intraspecies variability (10x), and the FQPA 1x factor.

4. *Carcinogenicity.* EPA classified carfentrazone-ethyl as a ''not likely'' human carcinogen according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

C. Exposures and Risks

1. *From food and feed.* Tolerances have been established (40 CFR 180.515) for the combined residues of carfentrazone-ethyl and its chloropropionic acid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures in food from carfentrazone-ethyl 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 acute dietary risk assessment was conducted using the Dietary Exposure Evaluation Model (DEEM TM ver. 7.075) and consumption data from the U.S. Department of Agriculture (USDA) 1989–92 Nationwide Continuing Surveys of Food Intake by Individuals (CSF II). The acute analysis assumed tolerance level residues and 100% crop treated for all registered and proposed uses. The acute dietary food exposure estimates to carfentrazone-ethyl were less than the Agency's level of concern (less than 100% aPAD) for the general U.S. population and all population subgroups.

ii. *Chronic exposure and risk.* A chronic dietary exposure analysis was conducted using the Dietary Exposure Evaluation Model (DEEM TM ver. 7.075) and consumption data from the USDA 1989–92 Nationwide Continuing Surveys of Food Intake by Individuals (CSF II). The chronic analysis assumed tolerance level residues and 100% crop treated for all registered and proposed uses. The chronic dietary food exposure estimates to carfentrazone-ethyl, for all population subgroups, were less than the Agency's level of concern (less than 100% cPAD).

2. *From drinking water.* Carfentrazone-ethyl breaks down rapidly in the environment to carfentrazone-chloropropionic acid (F8426–ClPAc). The chloropropionic acid degradate subsequently breaks down to F8426-cinnamic acid, F8426-propionic acid, F8426-benzoic acid, and 3-hyroxymethyl-F8426-benzoic acid at slower rates than the parent compound. Aquatic dissipation and anerobic soil metabolism studies suggest that residues in the subsurface may be longer lived than residues in surface water. Ground and surface water estimated environmental concentrations (EECs) for carfentrazone-ethyl and degradates (F8426-cinnamic acid, F8426-propionic acid, F8426-benzoic acid, and 3-hyroxymethyl F8426-benzoic acid) were generated using screening models GENEEC (surface water) and SCI–GROW (ground water). Both models assumed an application rate of 0.031 lbs ai/acre. The surface water estimates are 1.69 µg/L; peak concentration (0.65 µg/L; 56-day average). The ground water estimate is 6.55 µg/L. Carfentrazone-ethyl may also be applied to flooded rice fields and the treated water subsequently released to surface water. Based on the aquatic dissipation study submitted by the petitioner, the concentration of carfentrazone-ethyl and degradates on day zero was 409 µg/L. The time weighted average of carfentrazone-ethyl plus degradates in treated rice water was 14.2 µg/L. Assuming a two-fold dilution of paddy water into receiving waters, the acute and chronic surface water concentration for carfentrazone-ethyl and its degradates, as a result of the application to a flooded rice field, are 205 µg/L and 7.1 µg/L.

i. *Acute exposure and risk.* For the acute scenario, the drinking water levels of comparison (DWLOCs) are 170,000, 50,000, 50,000 and 50,000 parts per billion (ppb) for the U.S. population, all infants (less than 1 year), children (1–6 years), and children (7–12 years), respectively.

ii. *Chronic exposure and risk.* For the chronic scenario, the DWLOCs are 1,000, 290, 290, and 290 ppb for the U.S. population, all infants (less than 1 year), children (1–6 years), and children (7–12 years), respectively.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for carfentrazone-ethyl.

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

EPA does not have, at this time, available data to determine whether carfentrazone-ethyl 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, carfentrazone-ethyl 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 carfentrazone-ethyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

Aggregate exposures are calculated by summing dietary (food and water) and residential exposures. Carfentrazone-ethyl is not registered for residential uses. Therefore aggregate exposures are only concerned with food and water. Since EPA does not have ground and surface water monitoring data to calculate a quantitative aggregate exposure, drinking water levels of comparison (DWLOC) were calculated. The DWLOC is the theoretical upper limit of a chemical's concentration in drinking water that will result in an aggregate exposure less than a specified PAD. The DWLOC is used as a point of comparison against model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water.

1. *Acute risk.* The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed commodities (Tier 1). Dietary exposures from food for all population subgroups were less than 1% of the aPAD. The DWLOC for the U.S. population is 170,000 ppb. The EECs for surface water (205 ppb) and ground water (6.6 ppb) are less than the DWLOC. Therefore, acute exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

2. *Chronic risk.* The chronic dietary exposure analysis assumed tolerance level residues and 100% crop treated for

all registered and proposed commodities (Tier 1). Dietary exposures from food for all population subgroups were less than or equal to 3% of the cPAD. The DWLOC for the U.S. population is 1,000 ppb. The EECs for surface water (7.1 ppb) and ground water (6.6 ppb) are less than the DWLOC. Therefore, chronic exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

3. *Short- and intermediate-term risk.* The Agency concludes with reasonable certainty that residues of carfentrazone-ethyl and its chloropropionic acid metabolite would not result in unacceptable levels of short- and intermediate-term human health risk. There are no residential uses or exposure scenarios and no toxicological endpoints were identified for short- and intermediate-term exposure scenarios.

4. *Aggregate cancer risk for U.S. population.* Carfentrazone-ethyl is classified as a ''not likely'' human carcinogen according to EPA's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996).

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 carfentrazone-ethyl 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 carfentrazone-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Prenatal and postnatal sensitivity.* There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to the chemical. The toxicological data base is complete.

iii. *Conclusion.* There is a complete toxicity data base for carfentrazone-ethyl, and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that a 10x safety factor was not required. The rationale is based on the following: there was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to the chemical; the toxicological data base is complete; and the fact that there are no registered residential products, in conjunction with the use of generally high quality data, conservative models and/or assumptions in the exposure assessment provide adequate protection for infants and children.

2. *Acute risk.* Dietary exposure for all of the population subgroups were less than 1% of the aPAD. Surface water and ground water EECs for all population subgroups were 205.0 and 6.6 ppb, respectively. The acute DWLOC for the subgroups: All infants (less than 1–year), children (1–6 years), children (7–12 years) was 50,000 ppb. Since the EECs are less than the DWLOC, acute exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

3. *Chronic risk.* Dietary exposure for all of the population subgroups were less than 3% of the cPAD. Surface water and ground water EECs for all population subgroups were 7.1 and 6.6 ppb, respectively. The chronic DWLOC for the subgroups: All infants (less than 1–year), children (1–6 years) and children (7–12 years) was 290 ppb. Since the EECs are less than the DWLOC, chronic exposure to carfentrazone-ethyl, as a result of all registered and proposed uses, is below the Agency's level of concern.

4. *Short- or intermediate-term risk.* There are no residential uses or exposure scenarios and no toxicological endpoints were identified for short- and intermediate-term exposure scenarios.

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 carfentrazone-ethyl residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

Metabolism studies performed on soybeans, corn, wheat, lactating goats, and laying hens were previously reviewed and presented to the Metabolism Assessment and Review Committee (MARC). The MARC determined that considering the crops for which the petitioner was requesting registration (corn, wheat, soybeans), the appropriate tolerance expression for livestock and plant commodities was carfentrazone-ethyl and its chloropropionic acid metabolite (F8426–ClPAc). In addition, these two compounds were sufficient for the dietary risk assessment. However, since the hydroxyl metabolite, 3–OH–F8426–Cl–PAc, was found as the major residue in soybean forage and hay, the registrant was instructed to monitor for this metabolite in all field trials of additional future crops.

B. Analytical Enforcement Methodology

There is a practical method for detecting and measuring levels of carfentrazone-ethyl and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis followed by gas chromatography with electron capture detection for the parent, and hydrolysis and derivitization followed by gas chromatography with mass selective detection for the metabolites.

The method may be requested from: The Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; contact Francis D. Griffith, Jr. telephone (410) 305–2905, e-mail: griffith.francis@epa.gov. The analytical standards for these methods are also available from the EPA National Pesticide Standard Repository at the same location.

C. Magnitude of Residues

The residue data submitted support the establishment of the following tolerances; grain, cereal, group at 0.10 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain,

cereal, straw (excluding rice) at 0.10 ppm; grain, cereal, stover at 0.30 ppm; grain, cereal, hay at 0.30 ppm; corn, field, forage at 0.20 ppm; corn, sweet, forage at 0.20 ppm; sorghum, forage at 0.20 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances or maximum residue limits established for carfentrazone-ethyl in/on cereal grains. There are no compatibility problems that exists between the proposed U.S. and Codex tolerances.

E. Rotational Crop Restrictions

Based on the confined accumulation in rotational crops study, the MARC determined that the carfentrazone-ethyl and F8426–CIPAc are the residues of concern in rotational crops. The committee also expressed concern for the residues of the benzoic acid compounds if the levels found are similar to or greater than the parent and the metabolite. The confined rotational crop study demonstrated that the combined residues of carfentrazone-ethyl and the chloropropionic acid metabolite were less than 0.01 ppm at all plant-back intervals for lettuce, radishes, wheat grain, and wheat forage. Parent was found at detectable levels in wheat straw at 32 days after treatment (DAT: 0.012–0.013 ppm) and at 277 DAT (0.017–0.048 ppm). Based on the confined rotational crop study, the labeling will require the following rotational crop restrictions are appropriate: soybean and cereal grains—no waiting period, root and leafy vegetables—30 days; all other crops—12 months.

V. Conclusion

Therefore, the tolerances are established for combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1yl]-4-fluorobenzene-propanoate) and its metabolite: carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-yl]-4-fluorobenzenepropanoic acid) in or on grain, cereal, group at 0.10 ppm; grain, cereal, forage (excluding corn and sorghum) at 1.0 ppm; grain, cereal, straw (excluding rice) at 0.10 ppm; grain, cereal, stover at 0.30 ppm; grain, cereal, hay at 0.30 ppm; corn, field, forage at 0.20 ppm; corn, sweet, forage at 0.20 ppm; sorghum, forage at 0.20 ppm; rice, straw at 1.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 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–301025 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 October 10, 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, 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 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–301025, 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).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 20, 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 § 180.515, by revising paragraph (a) to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[-4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and its metabolite: carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[-4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, forage	0.20
Corn, sweet, forage	0.20
Corn, sweet, kernel plus cob with husk removed	0.10
Grain, cereal, forage (excluding corn and sorghum)	1.0
Grain, cereal, hay	0.30
Grain, cereal, group	0.10
Grain, cereal, stover	0.30
Grain, cereal, straw (excluding rice)	0.10
Rice, straw	1.0
Sorghum, forage	0.20

* * * * *

[FR Doc. 00–19793 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301033; FRL–6599–2]

RIN 2070–AB78

Pymetrozine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene)amino] in or on cucurbit vegetables (Crop Group 8) at 0.05 parts per million (ppm) and fruiting vegetables (Crop Group 9) at 0.05 ppm. Novartis Crop Protection, Inc. of Greensboro, NC 27419 requested this

tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301033, must be received by EPA on or before October 10, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301033 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Peacock, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5407; e-mail address: peacock.dan@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,'' ''Regulations and Proposed Rules,'' 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–301033. 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 May 20, 1998 (63 FR 27723–27727) (FRL–5773–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Novartis Crop Protection, Inc. of Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.556 be amended by establishing a tolerance for residues of the insecticide pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino], in or on hops at 5 ppm, fruiting vegetables at 0.05 ppm, and cucurbits and potatoes at 0.02 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pymetrozine, 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] on cucurbit vegetables (Crop Group 8) at 0.05 parts per million (ppm) and fruiting vegetables at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

toxic effects caused by pymetrozine, 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] are discussed in this unit or in a previous **Federal Register** notice.

1. *Acute toxicity*. In general, technical pymetrozine has low acute toxicity, being classified as Toxicity Category III for acute dermal and primary eye irritation studies and Toxicity Category IV for acute oral, acute inhalation and primary dermal studies. It is a slight sensitizer.

2. *Subchronic and chronic toxicity*. EPA's September 29, 1999, **Federal Register** notice (64 FR 52438–52450) (FRL–6385–6) summarized the results of the subchronic and chronic toxicity, metabolism, and dermal penetration studies in animals.

B. Toxicological Endpoints

EPA's September 29, 1999, **Federal Register** notice (64 FR 52438–52450) (FRL–6385–6) discussed the toxicological endpoints in detail and will not be repeated here.

C. Exposures and Risks

1. *Current and proposed uses.* Pymetrozine is an insecticide of the pyridine azomethine type and was first registered in 1999. Pymetrozine controls aphids and suppression of whiteflies in a variety of crops. The mode of action of pymetrozine has not been precisely determined biochemically; physiologically, it appears to act by preventing these insects from inserting their stylus into the plant tissue.

Currently, EPA has registered pymetrozine for use on tuberous and corm vegetables (Subgroup 1–C) and tobacco under Fulfill® (EPA Reg. No. 100–912) and ornamental plants under Endeavor® (EPA Reg. No. 100–913). There are no homeowner applications for pymetrozine. However; postapplication (residential) exposure could occur due to contact with treated ornamental plants. For both Fulfill® and Endeavor® , pymetrozine is formulated as a water-dispersible granule containing 50% active ingredient.

Fulfill® may be applied by either ground or aerial broadcast equipment, in a minimum of 10 gallons of water per acre; chemigation is not permitted. Pymetrozine is applied to the foliage of affected plants where it is quickly absorbed. Potato and tobacco crops may be treated up to twice, each at a maximum rate of 0.09 lb active ingredient/acre (ai/A). The maximum seasonal use rate is 0.17 lb ai/acre. The retreatment and pre-harvest intervals are 7 and 14 days, respectively. The label for Fulfill® specifies a restricted-entry interval of 12 hours.

Endeavor® may be broadcast-applied to ornamentals at a rate not to exceed 10 ounce/acre/application (oz./A/application). Multiple applications may be made on a 7– to14–day interval. For indoor use, the yearly application rate is not to exceed 100 oz./A/year; for outdoor use, the maximum rate is 48 oz./A/year.

Novartis Crop Protection has proposed that the use of pymetrozine be expanded on the Fulfill® label to included cucurbit and fruiting vegetables. The rates, number of applications, pre-harvest intervals, and restricted-entry interval will remain the same for these additional uses.

2. *From food and feed uses*. This Rule establishes two new tolerances for pymetrozine: in or on cucurbit vegetables (Crop Group 8) at 0.05 parts per million (ppm) and fruiting vegetables (Crop Group 9) at 0.05 ppm.

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 crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: 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; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Most of the dietary risk assessments performed on pymetrozine used a Tier 1 approach for fruiting vegetables, cucurbits, and potatoes, crops originally requested in the petition. That is, the Agency assumed 100% crop treated and tolerance level residues. For carcinogenicity risk assessment, the Agency used a Tier 3 chronic dietary exposure analysis for fruiting, cucurbit, and tuberous and corm vegetables. This was based on 6–20% of the crop treated and an anticipated residue of 0.0046 ppm to refine the cancer risk. Novartis supplied this estimate of PCT to the Agency. The Agency reviewed Novartis' estimate and found it reasonable.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. EPA finds that the PCT information is reliable and has a valid basis. Before the petitioner can increase production of product for treatment of greater than 340,000 acres (20% of 1,700,000 total acres for fruiting, cucurbit, and the tuberous and corm subgroup), permission from the Agency must be obtained. The 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 consumption of food in a particular area.

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 Tier 1 DEEM® analysis indicates that acute dietary (food only) exposure to pymetrozine from all existing and proposed uses (tuberous and corm, fruiting, and cucurbit vegetables) will be below EPA's level of concern (100% of the acute Population-Adjusted Dose (aPAD)) and will not occupy more than 7% of the aPAD for any population subgroup, including those of infants and children. For the maximum exposed subgroup, the 95th percentile of exposure (children ages 1–6 years) is

predicted to be 3.3% of the aPAD. Due to pymetrozine's lower acute endpoint for females 13–50 years (0.033 mg/kg) versus that of other population subgroups (0.14 mg/kg), the percentage of the aPAD occupied for females 13–50 years (6.5%) is slightly higher than that estimated for children 1–6 years. For a Tier 1 analysis, EPA considers exposure at the 95th percentile of exposure. Even at the 99.9th percentile of exposure, the acute risk is well below EPA's level of concern.

ii. *Chronic exposure and risk*. The Tier 1 DEEM® chronic analysis indicates that exposure to pymetrozine from tuberous and corm vegetables, cucurbits, and fruiting vegetables will occupy less than 74% of the chronic Population-Adjusted Dose (cPAD) for children ages 1–6 (the most highly exposed population subgroup). Chronic dietary risk to all other subgroups is less than that of children ages 1–6. See Table 1 below.

TABLE 1.—CHRONIC DIETARY (FOOD ONLY) TIER 1 EXPOSURE AND RISK ESTIMATES FOR PYMETROZINE USE ON CUCURBIT, FRUITING, AND TUBEROUS AND CORM VEGETABLES

Population Subgroup[1]	cPAD, mg/kg/day[2]	Exposure, mg/kg/day	%cPAD[3]
U.S. Population (total)	0.0038	0.000455	12
Hispanics	0.0038	0.000496	13
Children 1–6 yrs	0.0013	0.000958	74
Females 13–19 (not preg or nursing)	0.0013	0.48	37
Males 13–19 yrs	0.0038	0.0005	13

[1] Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age.
[2] cPAD values incorporate the different FQPA Safety Factors for the various population subgroups
[3] %cPAD = Exposure (mg/kg) ÷ cPAD (mg/kg)100.

iii. *Cancer exposure and risk*. The Agency used a Tier 3 DEEM® analysis for cancer risk estimates to the U.S. population. Based on use of pymetrozine on tuberous and corm vegetables, fruiting vegetables, and cucurbits vegetables, the food only cancer risk is 1×10^{-7}, which is below the Agency's level of concern.

3. *From drinking water*. Pymetrozine is not persistent, breaking down in the environment through a number of mechanisms and degradation pathways including hydrolysis and aqueous and soil photolysis. Laboratory studies indicate that pymetrozine is a ''low mobility'' to ''no mobility'' chemical with respect to leaching. The environmental fate profile and application rates suggest that there should not be any notable concerns in the areas of soil mobility and persistence for pymetrozine resulting from its agriculture use to control aphids and whiteflies. Based on the low application rate, the field dissipation data, and the minimal concentrations relative to the parent (less than 10%, total), pymetrozine degradates should not enter ground and surface water to any appreciable extent.

EPA used the Screening Concentration In GROund Water (SCI-GROW) model to predict the Environmental Estimated Concentrations (EEC's) for pymetrozine in ground water. SCI-GROW is a regression model based on actual groundwater monitoring data. SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites. Using the highest application rate of 0.187 lb ai/A (hops), SCI-GROW estimates the concentration of pymetrozine in groundwater to be 0.015 µg/L. As there is relatively little temporal variation in ground water, this estimate can be used for both acute and chronic exposure scenarios.

In addition, EPA used the Tier 2 GENeric Estimated Environmental Concentration (GENEEC) and Pesticide Root Zone Model-EXAMS (PRZM-EXAMS) model to obtain EEC's in surface water. The standard PRZM-EXAMS runoff modeling scenario is based on a 10 hectares (ha) field draining into a 1 ha by 2 meter deep small water body. This scenario represents a watershed drainage area: water volume ratio of 5 m^2/m^3. Each PRZM modeling scenario represents a unique combination of climatic conditions (e.g., rainfall), crop specific management practices, soil specific properties, site specific hydrology, and pesticide specific application and dissipation processes. Each PRZM simulation is conducted for multiple years to provide a probabilistic exposure characterization for a single site.

Based on the maximum use pattern for any of the requested crops (hops at 0.56 lb ai/A/season), the GENEEC-estimated 56–day surface water EEC is 2.29 µg/L. Actual chronic surface water concentrations are likely to be less than this estimated 56–day average. Because the DWLOC exceeds the chronic EEC, the Agency believes that the aggregate risk from exposure to pymetrozine due to the proposed uses on tuberous and corm, fruiting, and cucurbit vegetables is not likely to exceed our level of concern. The DWLOCs for acute, short-term, and chronic exposure have not changed from those detailed in the risk assessment; all remain greater than the Tier 1 EEC values.

The EEC's for surface water (2.29 µg/L) are higher than those for groundwater (0.015 µg/L). Therefore, surface water EEC's will be used:

(1) To estimate actual concentrations of pymetrozine in water.

(2) To compare those concentrations with the Drinking Water Levels of Comparison (DWLOCs) in µg/L.

DWLOCs are acceptable concentrations of pymetrozine in drinking water as theoretical upper limits in light of total aggregate exposure to that pesticide from food, water, and residential uses. The EPA calculates each DWLOC by subtracting the food and residential exposures (if appropriate) from the PAD or Cancer Dose and by converting this resulting dose, called the Maximum Water Exposure (in mg/kg/day), into a concentration of pymetrozine in water expressed in µg/L. Only pymetrozine was included in the drinking water assessment on the basis that the metabolites would not be found in drinking water. Table 2 shows the Drinking Water Levels of Comparison (DWLOC's) for acute, chronic, and cancer exposure.

TABLE 2.—DRINKING WATER LEVELS OF COMPARISON FOR AGGREGATED EXPOSURES

Scenario/Population Subgroup[a]	Population-Adjusted Dose, mg/kg/day	Exposure mg/kg/day[b]	Maximum Water Exposure mg/kg/day	DWLOC µg/L[c]
Acute Exposure				EEC = 4.0
U.S. Population	0.42	0.002	0.41802	15000
Hispanic	0.42	0.0023	0.417715	15000
Children (1–6 yrs)	0.14	0.0046	0.135444	1400
Females (13–19, not pregnant or nursing)	0.033	0.0021	0.030861	930
Males (13–19 yrs)	0.42	0.0021	0.417948	15000
Short-term Exposure[d]				
Toddlers	0.033	0.001	0.03203	320
Chronic Exposure				EEC = 2.29
U.S. Population	0.0038	0	0.003345	2.6
Hispanic	0.00380	0	0.003304	120
Children (1–6 yrs)	0.0013	0.001	0.000342	3.4
Females (13–19, not pregnant or nursing)	0.0013	0	0.00082	25
Males (13–19)	0.0038	0.001	0.0033	120

[a] Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age for each exposure scenario.

[b] Exposure is the sum of dietary and non-dietary exposure. For the case of pymetrozine, only the short-term and cancer DWLOC have a non-dietary component. See section 5.4 for clarification.

[c] DWLOC = Maximum Water Exposure (mg/kg/day) 1,000 µg/mg body weight (70 kg general population/males 13+ 60 kg females 13+, 10 kg infants and children) ÷ Water Consumption (2 L/day adults, 1 L/day infants and children). The acute EEC is 4.0 µg/L, the chronic and cancer EEC is 2.29 µg/L.

[d] For short-term exposure, the short-term oral NOAEL was converted to a PAD by applying the 100x and 3x safety factors. Chronic food exposure for children ages 1–6 was used to estimate background food exposure.

i. *Acute exposure and risk*. For acute aggregate exposure scenarios, the DWLOC values (930–15,000 µg/L) are all in excess of the modeled acute EEC values (4.0 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

ii. *Chronic exposure and risk*. For chronic (non-cancer) aggregate exposure scenarios, the DWLOC values (3.4–120 µg/L) are all in excess of the modeled EEC values (2.29 µg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

iii. *Cancer exposure and risk*. For cancer aggregate exposure scenarios, the DWLOC value of 2.6 µg/L is in excess of the modeled EEC values (2.29 µg/L). EPA has calculated the cancer risk resulting from 2.29 µg/L in drinking water, a dose of 0000654 mg/kg/day, to be 6.54×10^{-7}. Thus, drinking water alone does not exceed EPA's level of concern (in the range of 1×10^{-6}) and is not expected to be a significant contributor towards cancer risk.

4. *From non-dietary exposure*. As currently proposed, pymetrozine could be used on the following residential non-food sites: ornamentals (landscape, ground-covers, interiorscapes); home nurseries, non-bearing orchards, and greenhouses. The end-use product, Endeavor®, may not be applied by homeowners, but post-application exposure could occur. There are no intermediate-term exposure scenarios for which a risk assessment is required. Short-term exposures are not applicable for adults but are applicable for toddlers.

Since there was no chemical specific data to determine dislodgeable residues, the EPA used its Standard Operating Procedures (SOPs) for Residential Exposure Assessment (Draft, December 18, 1997) to estimate postapplication exposure. This Standard Operating Procedure (SOP) does not include a scenario for ornamentals, landscapes and groundcover. Therefore, this assessment used the garden plants scenarios to determine postapplication exposures.

The postapplication scenarios and associated Margins of Exposure (MOEs) included:

(1) Incidental non-dietary hand-to-mouth transfer of pesticide residues (770,000).

(2) Incidental non-dietary ingestion of pesticide-treated plants (not significant).

(3) Incidental non-dietary ingestion of soil from pesticide-treated areas (660,000).

The following assumptions were used for estimating postapplication for the three post-application scenarios.

(a) *Hand-to-mouth transfer (incidental non-dietary ingestion).*

- Maximum application rate of 0.3125 lbs ai per acre as specified on the label
- Twenty percent of the application rate are available on the foliage as dislodgeable residue
- Exposure is assessed on the same day the pesticide is applied
- Medium surface area of both hands is 350 cm^2 for a toddler (age 3 yrs old)
- Mean rate of hand-to-mouth activity is 1.56 events/hr
- Duration of exposure was assumed to be 0.18 hrs/day (10 mins) for toddlers
- A body weight of 15 kg was assumed for toddlers
- Short term NOAEL = 10 mg/kg/day (acute dietary);
- Hand-to-mouth exposure is not considered an intermediate-term exposure scenario

(b) *Accidental ingestion of plant material.*

- According to the HED SOP for Residential Exposure, exposure via this route is considered negligible.

(c) *Accidental ingestion of soil.*

- Maximum application rate of 0.3125 lbs ai per acre as specified on the label
- Twenty percnt; of the application rate are available on the foliage as dislodgeable residue
- Exposure is assessed on the same day the pesticide is applied
- The fraction of ai available in uppermost centimeter of soil is 1 cm
- The assumed soil ingestion rate for children (ages 1–6 yrs) is 100 mg/day
- A body weight of 15 kg was assumed for toddlers
- Short term NOAEL = 10 mg/kg/day (acute dietary);
- Exposure from soil ingestion is not considered an intermediate-term exposure scenario.

These exposure estimates are based on upper-percentile (i.e., maximum application rate, available residues and

duration of exposure) and some central tendency (i.e., transfer coefficient, surface area, hand-to-mouth activity, and body weight) assumptions and are considered to be representative of high-end exposures. The uncertainties associated with this assessment stem from the use of an assumed amount of pesticide available from gardens, and assumptions regarding dissipation, transfer of chemical residues, and hand-to-mouth activity. The estimated exposures are believed to be reasonable high-end estimates based on observations from chemical-specific field studies and professional judgement.

EPA determined that the FQPA Safety Factor to protect infants and children should be reduced to 3x and that the factor should apply to female (13–50 years), infant, and children population subgroups for all risk assessments. Thus, the levels of concern for these postapplication exposure scenarios are MOEs that are less than 100 for adult populations and less than 300 for female (13–50), infant, and children populations.

i. *Chronic exposure and risk*. Based on the proposed uses of pymetrozine, EPA does not believe there will be chronic non-occupational exposure to this insecticide.

ii. *Cancer exposure and risk*. The EPA has estimated the lifetime average daily dose for non-occupational exposure resulting from prining and planting treated ornamental plants is 0.0000012 mg/kg/day.

A quantitative cancer risk assessment was performed for postapplication non-occupational exposure to treated ornamentals (e.g., a home garden). Exposures were estimated using EPA's default activity scenarios, transfer coefficients and input parameters as follows: The fraction of active ingredient retained on foliage is assumed to be 20% (0.2) on day zero (= percent dislodgeable foliar residue, DFR, after initial treatment). This fraction is assumed to further dissipate at the rate of 10% (0.1) per day on following days. These are EPA's default values for exposure.

- An application rate of 0.3125 lbs ai/acre (electrostatic spray, pulsfog and low volume systems) was used to represent the worst case scenario.
- Transfer coefficient of 4,500 was used to represent heaviest day of activity (planting, transplanting, and pruning) for contact with treated ornamental plants
- Assumed homeowner worked 0.67 hours per day (Residential SOP for Gardening)
- Assumed homeowner worked a total of 2 days per year performing heaviest activities (planting, pruning) at time points shortly after pymetrozine application
- Assumed homeowner would be exposed for 50 years of their life
- Dermal absorption = 1%
- Body weight = 70 kg
- Life expectancy = 70 years
- Cancer Q^* (mg/kg/day) = 1.19×10^{-2}

The cancer risk estimate for this postapplication exposure is 1.4×10^{-8} and does not exceed EPA's level of concern (in the range of 1×10^{-6}) for the general population.

iii. *Short- and intermediate-term exposure and risk*. EPA did not calculate margins of exposure (MOEs) for adults since there are no short-term dermal exposure scenarios. However, short-term oral exposures and risks were calculated for toddlers. For toddlers, the MOEs for short-term postapplication exposure scenarios are 770,000 and 660,000 for hand-to-mouth and soil ingestion scenarios. These values are all greater than either of the threshold values; thus, short-term risks are below the Agency's level of concern.

5. *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.''

According to our information, there are no other pesticides that have a common mechanism of toxicity with pymetrozine. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pymetrozine 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 pymetrozine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk*. The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA level of concern for the following reasons. As indicated in Table 2, the Tier 1 Dietary Exposure Evaluation Model (DEEM®) analysis indicates that acute dietary (food only) exposure to pymetrozine from fruiting vegetables, cucurbits, and tuberous and corm vegetables (Subgroup 1-C) will occupy less than 1/2% (0.001980/0.42) of the aPAD for the U.S. population, which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (15,000 μg/L) for the U.S. population is greatly in excess of the modeled acute EEC value (1.9 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

2. *Chronic risk*. As indicated in Table 1, the Tier 1 DEEM analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 12% (0.000455/0.0038) of the chronic Population-Adjusted Dose (cPAD) for the U.S. population. 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. In addition, for drinking water, the DWLOC value (120 μg/L) for the U.S. Population is greatly in excess of the modeled EEC values (2.29 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure in the diet, drinking water, and from non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

3. *Aggregate cancer risk for U.S. population*. For fruiting vegetables, cucurbits, and tuberous and corm vegetables, EPA based its cancer risk assessment on a Tier 3 estimate of dietary exposure, which incorporates anticipated residues (0.0046 ppm) for pymetrozine and an estimate for percent crop treated. At this level of refinement, EPA's estimates of food exposure and cancer risk were 0.000008 mg/kg/day and 1×10^{-7}) (in the range of 1×10^{-6}. The EPA also calculated a lifetime average daily dose of 0.0000012 mg/kg/day for non-occupational exposure resulting from pruning and planting treated ornamental plants, resulting in a cancer risk from this type of exposure of 0.143×10^{-7}). For drinking water, the cancer dose was 0.0000654 mg/kg/day, and the cancer risk was 8×10^{-7}).

The aggregate cancer risk for all exposures, even including water is 0.9 $\times 10^{-6}$) , which is below the Agency's level of concern.

4. *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 pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] 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 pymetrozine, EPA considered data from developmental toxicity studies in rabbit, an acute neurotoxicity study in the rat, and a chronic feeding study in the rat. See the Toxicological Profile (Unit III.A) for a discussion of these tests.

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 pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and the additional 3-fold MOE/uncertainty factors, as described above, when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of these safety factors.

ii. *Conclusion*. EPA considered the available data and determined that the 10-fold FQPA factor could be reduced to 3.

2. *Acute risk*. The risk from aggregate acute exposure from food and drinking water from pymetrozine is below EPA level of concern for the following reasons. The Tier 1 Dietary Exposure Evaluation Model (DEEM®) analysis indicates that acute dietary (food only) exposure to pymetrozine from tuberous and corm vegetables (Subgroup 1–C), fruiting vegetables and cucurbits will occupy less than 4% (0.004556/0.14) of the aPAD for children (1 to 6 years old), which is below EPA's level of concern of 100% of the aPAD. In addition, for drinking water, the DWLOC value (1,400 μg/L) for children (1 to 6 years old) is greatly in excess of the modeled acute EEC values (1.9 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure.

3. *Chronic risk*. Using the residue concentration exposure assumptions described in this unit, the risk from aggregate chronic exposure from food and drinking water from pymetrozine is below EPA's level of concern for the following reasons. As indicated in Table 1 above, the Tier 1 DEEM analysis indicates that chronic dietary (food only) exposure to pymetrozine will utilize less than 74% (0.000958/0.0013) of the cPAD for children (1 to 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 risks to human health. In addition, for drinking water, the DWLOC value (3.4 μg/L) for children (1 to 6 years old) exceeds the modeled chronic EEC values (0.222 μg/L); thus, drinking water is not expected to be a significant contributor towards this type of exposure. Despite the potential for exposure from food, drinking water and non-dietary, non-occupational exposure, EPA does not expect the aggregate chronic exposure to exceed 100% of the cPAD.

4. *Short-term risk*. In aggregating short-term risk, EPA considered background average dietary exposure and short-term, non-dietary oral exposure. Non-dietary oral exposure may occur as hand-to-mouth transfer of residues from ornamental plants or incidental ingestion of surrounding soil. The lowest short-term MOE value is for toddlers. Combining this MOE (660,000) with that from dietary exposure (Short-term oral NOAEL/chronic dietary exposure = 10/0.00096 ≈ 10,000) results in an aggregate MOE of ≈ (approximately equal) 10,000. As this value is greater than 300, the short-term aggregate risk is below the Agency's level of concern. Aggregated short-term exposure results in a DWLOC of 320 μg/L. This value is in excess of the peak EEC for pymetrozine (1.9 μg/L; see Table 2).

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

IV. Other Considerations

A. Metabolism in Plants and Animals

Data concerning the metabolism of pymetrozine in plants and animals have been previously submitted. The nature of residues in plants and animals is adequately understood. The tolerance expression is for pymetrozine per se. The residues of concern for risk assessment are pymetrozine; the plant metabolites GS–23199 [6-methyl-1,2,4-triazin-3,5 (2H,4H)-dione], CGA–215525 [4-amino-4,5-dihydro-6-methyl-1,2,4-triazin-3(2H)-one], CGA–249257 [4,5-dihydro-6-methyl-1,2,4-triazin-3(2H)-one], CGA–294849 [4-amino-6-methyl-1,2,4-triazin-3,5(2H,4H)-dione]; and the ruminant metabolite CGA–313124 [4,5-dihydro-6-hydroxymethyl-4-[(3-pyndynyl methylene)amino]-1,2,4-triazin-3(2H)-one] (free acid conjugated).

B. Analytical Enforcement Methodology

Adequate enforcement methodology for pymetrozine (Novartis Analytical Method AG–643) is currently being validated. Following validation, it will be available to enforce the tolerance expression. At that time the method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

The crop field trial data support the proposed tolerances for residues of ''pymetrozine, per se.''

D. International Residue Limits

There are no established European (CODEX), Canadian, or Mexican Maximum Residue Limits (MRL's) for pymetrozine. There are provisional MRLs in Germany for hops (10 ppm) and potatoes (0.02 ppm). The European Union is currently evaluating a proposed tolerance of 5 ppm on hops. At this time, international harmonization of residue levels is not an issue.

E. Rotational Crop Restrictions

The Fulfill® label reads as follows: ''The rotational (plantback) restrictions for Fulfill are 30–days for all crops.''

F. Pre-harvest Intervals

The pre-harvest interval for pymetrozine on the tuberous and corm, fruiting, and cucurbit vegetables is 14 days.

V. Conclusion

Therefore, EPA is establishing tolerances for residues of pymetrozine per se in cucurbit vegetables (Crop Group 8) at 0.05 ppm and fruiting vegetables (Crop Group 9) at 0.05 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–301033 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 October 10, 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 Avenue, NW, 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 be 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., 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. Mail your copies, identified by docket number OPP–301033, 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. 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).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the

Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: August 1, 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 180.556 is revised to read as follows:

§180.556 Pymetrozine; tolerances for residues.

(a) *General*. Tolerances are established for residues of the insecticide pymetrozine 1,2,4-triazin-3(2H)-one,4,5-dihydro-6-methyl-4-[(3-pyridinylmethylene) amino] in or on the following raw agricultural commodities. The tolerance level for each commodity is expressed in terms of the parent insecticide only, which serves as an indicator or the use of pymetrozine on these raw agricultural commodities.

Commodity	Parts per million
Tuberous and Corm Vegetables (Crop Group 1-C)	0.02
Cucurbit Vegetables (Crop Group 8)	0.05
Fruiting Vegetables (Crop Group 9)	0.05

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

[FR Doc. 00–20117 Filed 8–8–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301035; FRL–6736–8]

RIN 2070–AB78

Imidacloprid; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time–limited tolerances for residues of the insecticide imidacloprid and its metabolites in or on turnip roots at 0.3 part per million (ppm), turnip tops at 3.5 ppm, beet roots at 0.3 ppm, and beet tops at 3.5 ppm for an additional 2–year period. These tolerances will expire and are revoked on June 30, 2002. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on turnip greens and garden beets. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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 FIFRA.

DATES: This regulation is effective August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301035, must be received by EPA on or before October 10, 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–301035 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e–mail address: ertman.andrew@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 '' ''Regulations and Proposed Rules,'' 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–301035. 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 November 29, 1996 (FRL–5575–1), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time–limited tolerances for the residues of imidacloprid and its metabolites in or on turnip roots at 0.3 ppm, turnip tops at 3.5 ppm, beet roots at 0.3 ppm, and beet tops at 3.5 ppm, with an expiration date of November 29, 1997. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time–limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA. Such tolerances can be established without providing notice or period for public comment. These tolerances were extended on December 12, 1997 (FRL–5760–9) for an additional 12–month period to November 29, 1998. These tolerances were further extended on October 7, 1998, (FRL–6037–2) for an additional 18–month period to June 30, 2000.

EPA received a request to extend the use of imidacloprid on turnip greens and garden beets for this year's growing season due to the continuing emergency situation in California and a new one in Arizona. According to the applicants, due to the lack of acceptable control with currently registered products, and the loss of the insecticide phosdrin, this pest has become a serious threat to the table beet and turnip green industry. Aphids can cause serious reductions due to contamination problems resulting from the large number of aphids remaining on the crop at harvest. The market will only allow 2 aphids or less per plant. After having reviewed the submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on turnip greens for control of aphids in Arizona and California and for use on garden beets for control of aphids in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on turnip greens and garden beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances 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 November 29, 1996 (FRL–5575–1). Based on that data and information considered, the Agency reaffirms that extension of the time–limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time–limited tolerances are extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on June 30, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on turnip greens and garden beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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–301035 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 October 10, 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–301035, 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 time–limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* October 4, 1993, (58 FR 51735). 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* May 19, 1998, (63 FR 27655); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* 62 FR 19885, April 23, 1997. This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601) *et seq.* do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* August 10, 1999, (64 FR 43255). 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 28, 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), (346a) and 371.

§ 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by removing the date ''June 30, 2000'' for ''turnip roots,'' ''turnip tops,'' ''beet roots,'' and ''beet tops'' and adding in its place ''June 30, 2002.''

[FR Doc. 00–20118 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301031; FRL–6599–3]

RIN 2070–AB

Sodium Chlorate; Extension of Exemption from Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited exemption from the requirement of a tolerance for residues of the desiccant sodium chlorate in or on wheat for an additional 1½ year period. This exemption from the requirement of a tolerance will expire and is revoked on December 31, 2002. This action is in connection with a crisis exemption declared by the state of Arkansas under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on wheat. 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 August 9, 2000. Objections and requests for hearings, identified by docket control number OPP–301031, must be received by EPA on or before October 10, 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–301031 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@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	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed 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,'' ''Regulations and Proposed Rules,'' 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–301031. 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 December 3, 1997 (62 FR 63858) (FRL–5754–1), 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 exemption from the requirement of a tolerance for the residues of sodium chlorate in or on wheat, with an expiration date of July 31, 1998. EPA extended the expiration date of this exemption to January 31, 2000 in a **Federal Register** notice published July 1, 1998 (63 FR 37280) (FRL–5795–8). Subsequently, the expiration date of this exemption was re-extended to July 31, 2001 in a **Federal Register** notice published

August 6, 1999 (64 FR 42849) (FRL–6091–6). EPA established the exemption from the requirement of a 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 assessed the potential risks presented by residues of sodium chlorate in or on wheat. 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 December 3, 1997 (62 FR 63858). Based on that data and information considered, the Agency reaffirms that extension of the exemption from time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited exemption from the requirement of a tolerance is extended for an additional 1½ year period. EPA will publish a document in the **Federal Register** to remove the revoked exemption from the requirement of a tolerance from the Code of Federal Regulations (CFR). Although this exemption from the requirement of a tolerance will expire and is revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide remaining in or on wheat 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 exemption from the requirement of a tolerance. EPA will take action to revoke this exemption from the requirement of a 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–301031 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 October 10, 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–301031, 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 exemption from the requirement of a 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 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).

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 28, 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.

§ 180.1020 [Amended]

2. In § 180.1020, amend the table in paragraph (b) by revising the date under the heading ''Expiration/revocation date'', ''7/31/01'' to read ''12/31/02''.

[FR Doc. 00–20119 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1445; MM Docket No. 99–116 ; RM–9536]

Radio Broadcasting Services; Angel Fire, Chama, Taos, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Alpine Broadcasting Limited Partnership, permittee of Station KLAB(FM), Taos, New Mexico, and licensee of KKIT(FM), Angel Fire, New Mexico substitutes Channel 256C for 260C at Taos and Channel 260C2 for 256C2 at Angel Fire, and Channel 240A for 255A at Chama to accommodate the other substitutions. See 64 FR 23036 (April 29, 1999). Channel 256C can be allotted to Taos in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's specified site 60.3 kilometers (37.4 miles), at coordinates 36–47–33 and 106–02–49. Channel 260C2 can be allotted to Angel Fire at Station KKIT(FM)'s licensed site at coordinates 36–22–33 and 105–14–12. Channel 240A can be allotted to Chama at Station KFLH(FM)'s specified site at coordinates 36–54–11 and 106–34–35. With this action, this proceeding is terminated.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–116, adopted June 21, 2000, and released June 30, 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.

This item also corrects the typographical error in 47 CFR 73.202 which incorrectly listed Channel 260 at

Taos, NM without a class designation from 1992 to current. 56 FR 16013 (April 1991.) That listing is hereby corrected to read Channel 260C and is further amended in this item to Channel 256C at Taos.

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.

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Channel 260 at Taos and adding Channel 256C at Taos, removing Channel 256C2 at Angel Fire and adding Channel 260C2 at Angel Fire, and by removing Channel 255A at Chama, and adding Channel 240A at Chama.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–20101 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 154
Wednesday, August 9, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ21

Prevailing Rate Systems; Miscellaneous Changes to Certain Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to add Jefferson County, Washington, as an area of application to the Kitsap, WA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. We are also renaming the Champaign-Urbana, IL, FWS wage area as the Central Illinois FWS wage area; updating the name of the White Sands Proving Grounds in the El Paso, TX, and Albuquerque, NM, wage area listings to the White Sands Missile Range; and correcting a typographic error in the wage area listing for the Southern Colorado wage area.

DATES: *Effective Date:* This regulation is effective on September 8, 2000. Comments are due September 8, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848; FAX: (202) 606–0824; or email *jdhopkin@opm.gov.*

SUPPLEMENTARY INFORMATION:

Jefferson County

The Office of Personnel Management (OPM) is defining Jefferson County, Washington, as an area of application to the Kitsap, WA, Federal Wage System (FWS) nonappropriated fund (NAF) wage area. The Naval Ordnance Center, Pacific Division, Detachment Port Hadlock, now has a small club in Jefferson County. The club employs two NAF FWS employees. Under section 532.219 of title 5, Code of Federal Regulations, each NAF wage area ''shall consist of one or more survey areas, along with nonsurvey areas, having nonappropriated fund employees.'' The Kitsap wage area now consists of one survey county, Kitsap County, and one area of application county, Clallam County, WA.

OPM considers the following regulatory criteria under 5 CFR 532.219 when defining FWS wage area boundaries:

(i) Proximity of largest activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

Jefferson County cannot be defined as a separate NAF wage area because the county does not meet the regulatory criteria to be a separate NAF wage area. However, nonsurvey counties can be combined with a survey area to form a wage area. Therefore, we are defining Jefferson County as an area of application to an existing NAF wage area.

The Naval Submarine Base, Bangor, in the Kitsap survey area, is the closest major Federal installation to Port Hadlock. It is approximately 53 km (33 miles) from Port Hadlock. Commuting patterns data for Jefferson County indicate that 6 percent of the county's resident workforce commutes to work in the Kitsap survey area. Transportation facilities consist of major interstates and highways. Residents of Jefferson County who commute into Pierce and Snohomish Counties must use a ferry or drive around Puget Sound to reach either of these counties. A review of employment and kinds and sizes of industrial establishments shows that Jefferson County is closely similar to the Kitsap survey area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and concurred by consensus with this change.

Miscellaneous Changes

FPRAC also reviewed the Champaign-Urbana, IL, FWS wage area and determined that the wage area's counties are properly defined under the regulatory criteria for defining FWS wage areas. However, the Committee agreed by consensus to recommend that OPM rename the wage area as the Central Illinois FWS wage area because this name better describes the boundaries of the wage area. FPRAC reviewed the El Paso FWS wage area and determined that the wage area's counties are also properly defined. The Committee agreed by consensus to recommend that OPM update the name of the White Sands Proving Grounds because the Department of Defense now refers to it as the White Sands Missile Range.

The White Sands Proving Grounds is listed under the El Paso and Albuquerque wage areas; therefore, the name needs to be updated in the listing for both wage areas.

On May 5, 2000, we published a final rule (65 FR 26199) that redefined certain counties in the Southern Colorado and Denver, CO, FWS wage areas. FPRAC agreed to redefine Pitkin County, CO, from the Southern Colorado wage area to the Denver wage area. Because of a typographical error, Pitkin County appears under both wage area listings in appendix C of subpart B of part 532 of title 5, Code of Federal Regulations. We should have removed Pitkin County from the Southern Colorado wage area listing in the final rule. Therefore, we are removing Pitkin County from the Southern Colorado listing to reflect FPRAC's previous recommendation for the county.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary to define Jefferson County, WA, to an NAF wage area as soon as possible to set pay for new FWS employees in the county.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B of part 532 is amended for the State of Illinois by revising the name of the ''Champaign-Urbana'' wage area to read ''Central Illinois''.

3. Appendix C to subpart B is amended for the State of Colorado by revising the wage area listing for Southern Colorado, for the State of New Mexico by revising the wage area listing for Albuquerque, and for the State of Texas by revising the wage area listing for El Paso, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

COLORADO

* * * * *

SOUTHERN COLORADO

Survey Area

Colorado:
El Paso
Pueblo
Teller

Area of Application. Survey area plus:

Colorado:
Alamosa
Archuleta
Baca
Bent
Chaffee
Cheyenne
Conejos
Costilla
Crowley
Custer
Delta
Dolores
Fremont
Gunnison
Hinsdale
Huerfano
Kiowa
Kit Carson
Las Animas
Lincoln
Mineral
Montrose
Otero
Ouray
Prowers
Rio Grande
Saguache
San Juan
San Miguel

* * * * *

NEW MEXICO

ALBUQUERQUE

Survey Area

New Mexico:
Bernalillo
Sandoval

Area of Application. Survey area plus:

New Mexico:
Catron
Cibola
Colfax
Curry
De Baca
Guadalupe
Harding
Lincoln (Does not include White Sands Missile Range portions.)
Los Alamos
Mora
Quay
Rio Arriba
Roosevelt
San Miguel
Santa Fe
Socorro (Does not include White Sands Missile Range portions.)
Taos
Torrance
Union
Valencia

* * * * *

TEXAS

* * * * *

EL PASO

Survey Area

Texas:
El Paso
New Mexico:
Dona Ana
Otero

Area of Application. Survey area plus:

New Mexico:
Chaves
Eddy
Grant
Hidalgo
Lincoln (Only White Sands Missile Range portions.)
Luna
Sierra
Socorro (Only White Sands Missile Range portions.)
Texas:
Culberson
Hudspeth

* * * * *

4. Appendix D to subpart B is amended for the State of Washington by revising the wage area listing for Kitsap to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

WASHINGTON

* * * * *

KITSAP

Survey Area

Washington:
Kitsap

Area of Application. Survey area plus:

Washington:
Clallam
Jefferson

* * * * *

[FR Doc. 00–20061 Filed 8–8–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–00–07]

RIN 0581–AA40

National Organic Program, Provision of Reasonable Security

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is publishing this advance notice of proposed rulemaking to request comments on the Organic Foods Production Act of 1990 (OFPA) requirement that private certifying agents furnish reasonable security, in an amount determined by the Secretary, to protect the rights of participants in the National Organic Program (NOP). On March 13, 2000, the Department of Agriculture (USDA) published in the **Federal Register**, a revised National Organic Program proposed rule. The proposed rule stated the amount and terms of reasonable security would be the subject of additional rulemaking.

DATES: Comments must be submitted on or before September 8, 2000.

ADDRESSES: Comments should be sent to Beth Hayden, Agricultural Marketing Specialist, National Organic Program,

USDA/AMS/TM/NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/205–7808. E-mail: beth.hayden@usda.gov.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, National Organic Program, USDA/AMS/TM/NOP, Room 2945–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: 202/720–3252. Fax: 202/690–3924. E-mail: keith.jones@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

AMS is responsible for implementing 7 U.S.C. 6515 (e)(2). This section of the OFPA requires private certifying agents to furnish reasonable security, in an amount determined by the Secretary, for the purpose of protecting the rights of participants (customers) in an organic certification program established under the NOP. Historically, the National Organic Standards Board (NOSB) recommends regulations that will benefit the organic industry. When the NOSB considered the issue of reasonable security as proposed in the March 13, 2000, proposed rule, 65 FR 13512–13658, (2000), they recommended that the criteria used to determine the amount and type of security required should be affordable and explicitly defined with particular regard for the diverse size and economics of various regional certifiers and operations being certified. Additionally, the Senate Committee Report on the OFPA (Senate Committee Report, Food, Agriculture, Conservation and Trade Act of 1990, Title XVI, pg. 294–295) states, ''It is not the Committee's intention that the Department establish security deposits that are so high as to cause the elimination of private certifying agents.''

AMS reviewed many financial instruments to determine the type and value of security a certifying agent might need based on its business structure and customer base. For example, an agent operating a small, not-for-profit operation for clients who primarily sell directly to consumers may have fewer and smaller liability requirements than an agent with numerous clients who sell to large food processors or who export product.

AMS also interviewed current certifying agents and concluded that many of the 36 known private certifying agents carry liability insurance to protect themselves against claims from the public or their employees in the course of their business activities. For example, some certifying agents must provide evidence of liability coverage in order to sell their products to food processors. However, under certain state laws, not-for-profit certifying agents may be exempt from legal actions that would normally require a prudent businessperson to carry liability insurance. In some cases, certifying agents request that their clients sign a liability waiver and therefore do not carry liability insurance.

After reviewing the options for assessing reasonable security and the current industry information on this issue, however, the NOP decided to seek additional public input on what amount and type of reasonable security is best for protecting the rights of NOP participants.

This action has been determined not significant and not subject to review by the Office of Management and Budget under Executive Order 12866.

Issues for Public Comment

AMS is soliciting comments on all aspects of reasonable security and protection of the rights of program participants. We request comments from any interested parties, including producers and handlers of organic agricultural products, certifying agents, importers and exporters, the international community and any other person or group. The following questions are provided to facilitate public comment on this advanced notice of proposed rulemaking. Comments addressing other relevant issues also may be submitted.

1. From what risks or events might a customer of a private certifying agent require reasonable security?
2. What are the financial instrument(s) that could provide the reasonable security to protect customers from these events?
3. What dollar amounts of security would give reasonable protection to a customer of a private certifying agent?
4. What are the financial costs to private certifiers, especially small certifiers, of providing reasonable security?
5. Do the risk or events provided in response to Question #1 necessarily require financial compensation?
6. Are there situations where reasonable security is not needed?

A thirty day comment period is provided for interested persons to comment on this advance notice of proposed rulemaking. This time period is deemed appropriate given the need to publish a final NOP rule by the end of the calendar year.

After comments to this notice are received and analyzed, AMS intends to publish a proposed rule in the **Federal Register**. The public will once again be invited to submit comments. The proposed rule will include the proposed regulation, an explanation of our decision making process, an analysis of the costs and benefits, the effects on small businesses, and an estimate of the paperwork burden imposed by the rule.

Authority: 7 U.S.C. 6501–6522.

Dated: August 3, 2000.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–20062 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–11–AD]

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This proposal would require calibration of the fuel quantity indicating system. This proposal is prompted by an operator report of an inaccurate fuel quantity indicating system. The actions specified by the proposed AD are intended to prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800

Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5125, fax (817) 222–5961

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be mailed in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–11–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–11–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises of the potential for an error in the fuel quantity indicating system.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB), which introduces a new fuel quantity indicating system calibration procedure to provide increased accuracy for the fuel quantity indicating system. Transport Canada classified this ASB as mandatory and issued AD No. CF–2000–04, dated February 8, 2000, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States. The proposed AD would require calibrating the fuel quantity indicating system installed in helicopters with a serial number (S/N) 49001 through 49059. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 50 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 2000–SW–11–AD.

Applicability: Model 430 helicopters, serial numbers 49001 through 49059, certificated in any category.

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

Compliance: Required at the next scheduled fuel system calibration or at the next annual inspection, whichever occurs first, unless accomplished previously.

To prevent an inaccurate fuel quantity indicating system reading, engine flameout due to fuel starvation, and a subsequent forced landing, accomplish the following:

(a) Calibrate the fuel quantity indicating system in accordance with steps 1 through 21 of the Accomplishment Instructions, Bell Helicopter Textron Alert Service Bulletin No. 430–99–13, dated December 13, 1999 (ASB).

(b) Insert BHT–430-MM–10, Chapter 95, Revision 2, dated December 10, 1999, into the Maintenance Manual.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2000–04, dated February 8, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–20184 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–22–AD]

Airworthiness Directives; Bell Helicopter Textron Canada Model 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 430 helicopters. This proposal would require modifying the electrical system. This proposal is prompted by the loss of electrical power due to design deficiencies discovered during single-pilot Instrument Flight Rules (IFR) flight testing. The actions specified by the proposed AD are intended to prevent loss of electrical power and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–22–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–22–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that an evaluation during the single-pilot IFR evaluation of the electrical system revealed several areas that did not comply with the Canadian Aviation Regulations.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 430–99–10, dated December 16, 1999 (ASB), which specifies implementing electrical power distribution system improvements at the next annual (600-hour) inspection but not later than December 31, 2000. Transport Canada classified this ASB as mandatory and issued AD No. CF–2000–08, dated March 21, 2000, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

We have identified an unsafe condition that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design registered in the United States. The proposed AD would require implementing the following electrical system changes in accordance with the ASB:

- Modify the electrical bus distribution system to include emergency, essential and nonessential busses. Relocate electrical system circuit breakers accordingly.
- Add a second redundant aircraft DC power supply with associated circuit breaker for each full authority digital engine control electronic control unit.
- Modify AC inverter switching logic to prevent inadvertent loss of AC power.
- Modify electrical bonding of the DC generator ground circuits by increasing the size of the hardware securing the ground shunt bus bar to the airframe structure.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 140 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The manufacturer states in the ASB that they will provide the 100 percent warranty credit for the parts and will allow a maximum

warranty credit of $7700 for labor costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2100 assuming the stated credit for parts and labor.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 2000–SW–22–AD.

Applicability: Model 430 helicopters, serial numbers 49002, 49004 through 49006, 49008 through 49016, 49018 through 49025, and 49027 through 49036, certificated in any category.

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

Compliance: Required at the next 600-hour inspection or before further flight after December 31, 2000, whichever occurs first, unless accomplished previously.

To prevent loss of electrical power and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify the electrical system in accordance with the Accomplishment Instructions, paragraphs 1 through 6, of Bell Helicopter Textron Alert Service Bulletin No. 430–99–10, dated December 16, 1999.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

Note 3: The subject of this AD is addressed in Transport Canada, Canada, AD CF–2000–08, dated March 21, 2000.

Issued in Fort Worth, Texas, on August 1, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–20182 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Aerotechnik s.r.o. Model L 13 SEH VIVAT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Aerotechnik s.r.o. (Aerotechnik) Model L 13 SEH VIVAT sailplanes. The proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge with damage or inadequate material characteristics could fail and result in loss of controlled flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 6, 2000.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This AD?

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

How Can We Communicate More Clearly With You?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–01–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all Aerotechnik Model L 13 SEH VIVAT sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

What Are the Consequences if the Condition Is Not Corrected?

The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

Is There Service Information That Applies to This Subject?

Aerotechnik has issued Mandatory Bulletin SEH 13–005a, dated November 18, 1999.

What Are the Provisions of This Service Bulletin?

The service bulletin describes procedures for testing the tail-fuselage attachment fittings, part number (P/N) A 102 021N.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This sailplane model is manufactured in the Czech Republic and the FAA type certificated the model for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the CAA informed the FAA of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that—

—The unsafe condition referenced in this document exists or could develop on other Aerotechnik Model L 13 SEH VIVAT sailplanes of the same type design;

—These sailplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action to correct this unsafe condition.

What Does This Proposed AD Require?

This proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

What Are the Differences Between the CAA AD and the Proposed AD?

The Czech CAA requires the fitting test before the next flight. We propose a requirement that you test the hinge part within 60 days after the effective date of the proposed AD. The FAA does not have justification to ground all sailplanes until this fitting test is accomplished. We believe that 60 days will give the owners/operators of the affected sailplanes enough time to have the proposed actions accomplished without compromising the safety of the sailplanes.

Cost Impact

This Proposed AD Impacts How Many Sailplanes?

We estimate that the proposed AD would affect 20 sailplanes in the U.S. registry.

What Is the Cost Impact of the Proposed Inspection for the Affected Sailplanes on the U.S. Register?

We estimate that it would take approximately 4 workhours per sailplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be $4,800, or $240 per sailplane.

What Is the Cost Impact of the Proposed Replacement for the Affected Sailplanes on the U.S. Register?

We estimate that it would take approximately 16 workhours per sailplane to accomplish the proposed replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the proposed replacement on U.S. operators to be $960 per sailplane.

Regulatory Impact

How Does This AD Impact Relations Between Federal and State Governments?

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

How Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of

Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aerotechnik S.R.O.: Docket No. 2000–CE–01–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model L 13 SEH VIVAT sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness.	Within 60 days after the effective date of the AD.	Follow the procedures in the Aerotechnik Service Bulletin SEH 13–005a, dated November 18, 1999.
(2) If the tail-fuselage attachment fitting is damaged for the material does not meet the hardness requirements specified in the service bulletin, you must replace the tail-fuselage attachment fitting.	Before further flight after the inspection.	You must notify Aerotechnik and request they send the replacement part with installation instructions.
(3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD.	As of the effective date of this AD.	Inspect any attachment fitting in accordance with the previously referenced service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and (2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on August 1, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20176 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–91–AD]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L–13 ''Blanik'' Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all LET Aeronautical Works (LET) Model L–13 ''Blanik'' sailplanes. The proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by the proposed AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge

with damage or inadequate material characteristics could fail and result in loss of controlled flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 6, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–91–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This AD?

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before taking action on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

How Can We Communicate More Clearly With You?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 99–CE–91–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Has Happened so Far?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all LET Model L–13 ''Blanik'' sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

What Are the Consequences if the Condition Is Not Corrected?

The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

Relevant Service Information

Is There Service Information That Applies to This Subject?

LET has issued Mandatory Bulletin No. L13/085a, dated November 17, 1999.

What Are the Provisions of This Service Bulletin?

The service bulletin describes procedures for testing the tail-fuselage attachment fittings, part number (P/N) A 102 021N.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999, in order to assure the continued airworthiness of these sailplanes in the Czech Republic.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This sailplane model is manufactured in the Czech Republic and the FAA type certificated it for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other LET Model L–13 ''Blanik'' sailplanes of the same type design;

—These sailplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action in order to correct this unsafe condition.

What Does This Proposed AD Require?

This proposed AD would require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

What Are the Differences Between the CAA AD and the Proposed AD?

The Czech CAA requires the fitting test before the next flight. We propose a requirement that you test the hinge part within 60 days after the effective date of the proposed AD. The FAA does not have justification to ground all sailplanes until this fitting test is accomplished. We believe that 60 days will give the owners/operators of the affected sailplanes enough time to have the proposed actions accomplished without compromising the safety of the sailplanes.

Cost Impact

How Many Sailplanes Does This Proposed AD Impact?

We estimate that the proposed AD would affect 140 sailplanes in the U.S. registry.

What Is the Cost Impact of the Proposed Inspection for the Affected Sailplanes on the U.S. Register?

We estimate that it would take approximately 4 workhours per sailplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the cost factors

presented above, we estimate the total cost impact of the proposed inspection on U.S. operators to be $33,600, or $240 per sailplane.

What Is the Cost Impact of the Proposed Replacement for the Affected Sailplanes on the U.S. Register?

We estimate that it would take approximately 16 workhours per sailplane to accomplish the proposed replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the proposed replacement on U.S. operators to be $960 per sailplane.

Regulatory Impact

How Does This AD Impact Relations Between Federal and State Governments?

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

How Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

LET Aeronautical Works: Docket No. 99–CE–91–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model L–13 ''Blanik'' sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness..	Within 60 days after the effective date of the AD..	Follow the procedures in Mandatory Bulletin No. L13/085a, dated November 17, 1999.
(2) If the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin you must replace the tail-fuselage attachment fitting..	Before further flight after the inspection.	You must notify LET Aeronautical Works and request they send the replacement part with installation instructions.
(3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD..	As of the effective date of this AD.	Inspect any attachment fitting in accordance with the previously referenced service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in CAA AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on August 1, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–20175 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–25]

Establishment of Class D and Class E Airspace, and Amendment to Class E Airspace; Garden City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace area, a Class E surface area extension and amend the Class E surface area from full time to part time status at Garden City Regional Airport, Garden City, KS. An Air Traffic Control Tower (ATCT) is being established at Garden City Regional Airport and surface areas are necessary to provide controlled airspace for the safe and efficient operation of aircraft operating into and out of the Garden City Regional Airport. This proposal would create controlled surface areas at Garden City Regional Airport. The intended effect of this rule is to provide Class D airspace area, a Class E surface area extension, and amend Class E surface area from full time to part time status.

DATES: Comments must be received on or before September 29, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–25, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ACE–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace area, a Class E surface area extension and amend the Class E surface area from full time to part time status at Garden City Regional Airport, Garden City, KS. An ATCT is being established at Garden City Regional Airport and Class D and Class E surface areas are necessary for the safe and efficient operation of aircraft in the vicinity of the airport. The areas will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class D airspace areas designated for an airport that contain at least one primary airport around which the airspace is designated are published in paragraph 5000, Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace areas designated as an extension to Class D airspace areas are published in paragraph 6004 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace area designated for an airport that contains at least one primary airport around which the airspace is designated.

* * * * *

ACE KS D Garden City, KS [New]

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace extending upward from the surface to and including 5400 feet MSL within a 4.3-mile radius of the Garden City Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace area designated as a surface area for an airport.

* * * * *

ACE KS E2 Garden City, KS [Revised]

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace within a 4.3-mile radius of the Garden City Regional Airport and within 2.2 miles each side of the Garden City VORTAC 004° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 7 miles north of the VORTAC and within 2.2 miles each side of the Garden City VORTAC 171° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 5 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace area designated as an extension to a Class D airspace area.

* * * * *

ACE KS E2 Garden City, KS [New]

Garden City Regional Airport, KS
(Lat. 37°55′39″N., long. 100°43′28″W.)
Garden City VORTAC
(Lat. 37°55′09″N., long. 100°43′30″W.)

That airspace extending upward within 2.2 miles each side of the Garden City VORTAC 004° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 7 miles north of the VORTAC and within 2.2 miles each side of the Garden City VORTAC 171° radial extending from the 4.3-mile radius of the Garden City Regional Airport to 5 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on July 27, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–20166 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0253; FRL–6848–5]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Ventura County Air Pollution Control District's (VCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from surface cleaning and degreasing. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 8, 2000.

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

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

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

Ventura County Air Pollution Control District, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

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

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I. The State's Submittal

A. What Rule Did the State Submit?

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

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
VCAPCD	74.6	Surface Cleaning and Degreasing	11/10/98	02/16/99

On April 23, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 74.6 into the SIP on December 13, 1994. The VCAPCD adopted a revision to the SIP-approved version on July 9, 1996 and CARB submitted it to us on October 18, 1996. While we can act on only the most recently submitted version, we have reviewed materials provided with the previous submittal.

C. What Is the Purpose of the Submitted Rule?

Rule 74.6 limits surface cleaning and degreasing activities performed with solvents containing VOCs. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 74.6 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

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

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

3. The Control Technique Guideline (CTG) entitled, *Control of Volatile Organic Emissions from Solvent Metal Cleaning* (November 1977; EPA–450/2–77–022),

4. The CARB document entitled, *Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing Operations* (July 18, 1991)

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing more stringent emission limits and specifying appropriate cleaning devices and methods. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 74.6 contains two director's discretion clauses. Under Section C, a person is allowed to petition the Board for a variance from specific provisions of the rule. Under Section C2a the APCO is given authority to approve alternative cleaning devices. These two sections of Rule 74.6 are unapprovable because they allow the APCO to change SIP requirements.

2. Section C1f contains a reference to Rule 74.32, Electronic Manufacturing Operations. Rule 74.32 has never been submitted for approval into the SIP. The reference creates confusion over the rule's applicability.

3. Section D requires that records of a solvent's intended uses, content, mix ratio be recorded. Although the types of records that must be maintained are specified, the frequency of records is not but should be specified.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the VCAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

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

TABLE 2.—OZONE NONATTAINMENT MILESTONES

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

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

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

F. Unfunded Mandates

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

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

G. National Technology Transfer and Advancement Act

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

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: July 28, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–20123 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–11, 102–193, 102–194, and 102–195

[FPMR Amendment B–]

RIN 3090–AG02

Federal Records Management Program, Interagency Reports Management Program, and Standard and Optional Forms Management Program

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on creation, maintenance, and use of records into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Comments must be submitted October 10, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Written comments should be sent to: Ms. Shari Kiser, Regulatory Secretariat (MVR), General Services Administration, 1800 F Street, NW., Washington, DC 20405. E-mail comments may be sent to *RIN.3090–AG02@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Emerging IT Policy Division (MKE), telephone 202–501–4469.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule encourages Federal agencies to conduct business electronically. Part 102–193, Creation, Maintenance, and Use of Records, is being added to the FMR to provide a foundation for GSA programs that helps address problems in the management of contemporary records. Both the General Services Administration (GSA) and the National Archives Records Administration (NARA) have responsibilities for records management. This proposed rule references appropriate NARA regulations.

This proposed rule also makes changes in the operation of the Standard and Optional Forms Program. The Federal Government is moving toward greater use of information technology to allow improved customer service and Governmental efficiency. The Government Paperwork Elimination Act requires agencies to adopt electronic transactions of information by October, 2003, when practicable. This vision contemplates widespread use of the Internet, with Federal agencies transacting business electronically as commercial enterprises are doing. Members of the public who want to do business this way can avoid traveling to Government offices, waiting in line, or mailing paper forms. The Federal Government can also save significant time and money by transacting business electronically.

Therefore, this proposed rule is intended to facilitate the movement of the Federal Government toward greater automation of the information exchanged using standard and optional forms. This proposed rule also addresses management of standard and optional forms (in either paper or electronic form) and defines standard and optional automated formats. Normally, the most efficient exchange of information is done using automated forms. Thus, this proposed rule encourages agencies, where appropriate, to use automated formats.

Often, an important intermediate step in the Federal Government's evolution to transacting business electronically is the development and use of electronic standard and optional forms. Such forms, while not fully electronic business transactions, can make paper-based information exchanges substantially easier and introduce significant efficiencies for the Federal Government. The proposed part on standard and optional forms encourages the use of electronic forms by Federal agencies to facilitate paper-based transactions, pending their automation. To do that, this proposed rule establishes the policy that agencies should promote the use of electronic standard forms whenever practicable. To assist agencies assessing practicability, GSA is proposing that paper transactions continue when standard forms are for specialized use (*e.g.,* labels), when there are special security or integrity concerns (*e.g.,* classification cover sheets), and when there are unusual production costs (*e.g.,* special envelopes). The ''Standard and Optional Forms Procedural Handbook'' includes a list of those forms that have been exempted from the policy in accordance with these criteria.

This proposed rule also makes changes to the Interagency Reports Management Program to shorten the time between when an agency determines a need for interagency information and when the agency can initiate an interagency report to obtain that information. Agencies will no longer have to get GSA's approval before initiating an interagency report. This change lets agencies take advantage of information technology to get the information they need to accomplish their missions.

When authorized by law and regulation, agencies are encouraged to share information, particularly as an alternative to collecting additional information from the public. This change is intended to facilitate agencies sharing needed information.

As a general rule, it is more efficient for agencies to share information in electronic form. While paper-based reporting, including electronic forms, may still be used, it is preferable that interagency reports be provided electronically between agencies. Agencies, however, are asked to give GSA information such as the name and the cost of each of their interagency reporting requirements. This information will be placed on our web site at *www.itpolicy.gsa.gov* and made available to Federal agencies.

B. Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this proposed rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 101–11, 102–193, 102–194, and 102–195

Archives and records, Computer technology, Government property management.

For the reasons set forth in the preamble, it is proposed that 41 CFR Chapters 101 and 102 be amended as follows:

CHAPTER 101—[AMENDED]

1. Part 101–11 is revised to read as follows:

PART 101–11—FEDERAL RECORDS, INTERAGENCY REPORTS, AND STANDARD AND OPTIONAL FORMS

Authority: 40 U.S.C. 486(c).

§ 101–11.0 Cross-reference to the Federal Management Regulation (FMR) (41 CFR Chapter 102, parts 1 through 220).

For information on records, interagency reports, and standard and optional forms, see FMR parts 102–193, 102–194, and 102–195 (41 CFR parts 102–193, 102–194, and 102–195).

CHAPTER 102—[AMENDED]

2. Parts 102–193, 102–194, and 102–195 are added to Subchapter G to read as follows:

PART 102–193—CREATION, MAINTENANCE, AND USE OF RECORDS

Sec.

102–193.5 What does this part cover?
102–193.10 What are the goals of the Federal Records Management Program?
102–193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the heads of Federal agencies?
102–193.20 What are the specific agency responsibilities for records management?
102–193.25 What type of records management business process improvements should my agency strive to achieve?

Authority: 40 U.S.C. 486(c).

§ 102–193.5 What does this part cover?

This part prescribes policies and procedures related to the General Service Administration's (GSA) role to provide guidance on economic and effective records management for creation, maintenance and use of Federal agencies' records. The National Archives and Records Administration Act of 1984 (the Act)(44 U.S.C. chapter 29) amended the records management statutes to divide records management responsibilities between GSA and the National Archives and Records Administration (NARA). Under the Act, GSA is responsible for the economy and efficiency in records management and NARA is responsible for adequate documentation and records disposition. GSA regulations are codified in this part and NARA regulations are codified in 36 CFR Chapter XII. The policies and procedures of this part apply to all records, regardless of medium (*e.g.,* paper or electronic), unless otherwise noted.

§ 102–193.10 What are the goals of the Federal Records Management Program?

The statutory goals of the Federal Records Management Program are:

(a) Accurate and complete documentation of the policies and transactions of the Federal Government.

(b) Control of the quantity and quality of records produced by the Federal Government.

(c) Establishment and maintenance of management controls that prevent the creation of unnecessary records and will promote effective and economical agency operations.

(d) Simplification of the activities, systems, and processes of records creation, maintenance, and use.

(e) Judicious preservation and disposal of records.

(f) Direction of continuing attention on records from initial creation to final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork.

§ 102–193.15 What are the records management responsibilities of the Administrator of General Services (the Administrator), the Archivist of the United States (the Archivist), and the Heads of Federal agencies?

(a) The Administrator provides guidance and assistance to Federal agencies to ensure economical and effective records management. Records management policies and guidance established by GSA are contained in this part and in parts 102–194 and 102–195 of this title, records management handbooks, and other publications issued by GSA.

(b) The Archivist provides guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and to ensure proper records disposition. Records management policies and guidance established by the Archivist are contained in 36 CFR Chapter XII and in bulletins and handbooks issued by the National Archives and Records Administration (NARA).

(c) The Heads of Federal agencies must comply with the policies and guidance provided by the Administrator and the Archivist.

§ 102–193.20 What are the specific agency responsibilities for records management?

You must follow both GSA regulations in this part and NARA regulations in 36 CFR Chapter XII to carry out your records management responsibilities. To meet the requirements of this part, you must take the following actions to establish and maintain the agency's records management program:

(a) Assign specific responsibility to develop and implement agencywide records management programs to an office of the agency and to a qualified records manager.

(b) Follow the guidance contained in GSA handbooks and bulletins and comply with NARA regulations in 36 CFR Chapter XII when establishing and implementing agency records management programs.

(c) Issue a directive establishing program objectives, responsibilities, authorities, standards, guidelines, and instructions for a records management program.

(d) Apply appropriate records management practices to all records, irrespective of the medium (*e.g.,* paper, electronic, or other).

(e) Control the creation, maintenance, and use of agency records and the collection and dissemination of information to ensure that the agency:

(1) Does not accumulate unnecessary records while ensuring compliance with NARA regulations for adequate and proper documentation and records disposition in 36 CFR parts 1220 and 1228.

(2) Does not create forms and reports that collect information inefficiently or unnecessarily.

(3) Reviews all existing forms and reports (both those originated by the agency and those responded to by the agency but originated by another agency or branch of Government) periodically to determine if they can be improved or canceled.

(4) Maintains records economically and in a way that allows them to be retrieved quickly and reliably.

(5) Keeps mailing and copying costs to a minimum.

(f) Establish standard stationery formats and styles.

(g) Establish standards for correspondence to use in official agency communications, and necessary copies

required, and their distribution and purpose.

§ 102–193.25 What type of records management business process improvements should my agency strive to achieve?

Your agency should strive to:

(a) Improve the quality, tone, clarity, and responsiveness of correspondence;

(b) Design forms that are easy to fill-in, read, transmit, process, and retrieve, and reduce forms reproduction costs;

(c) Provide agency managers with the means to convey written instructions to users and document agency policies and procedures through effective directives management;

(d) Provide agency personnel with the information needed in the right place, at the right time, and in a useful format;

(e) Eliminate unnecessary reports and design necessary reports for ease of use;

(f) Provide rapid handling and accurate delivery of mail at minimum cost; and

(g) Organize agency files in a logical order so that needed records can be found rapidly to conduct agency business, to ensure that records are complete, and to facilitate the identification and retention of permanent records and the prompt disposal of temporary records. Retention and disposal of records is governed by NARA regulations in 36 CFR Chapter XII.

PART 102–194—STANDARD AND OPTIONAL FORMS MANAGEMENT PROGRAM

Sec.

102–194.5 What is the Standard and Optional Forms Management Program?
102–194.10 What is a Standard form?
102–194.15 What is an Optional form?
102–194.20 What is an electronic Standard or Optional form?
102–194.21 What is an automated Standard or Optional format?
102–194.25 What role does my agency play in the Standard and Optional Forms Management Program?
102–194.30 Should I create electronic Standard or Optional forms?
102–194.35 For what Standard or Optional forms should an electronic version not be made available?
102–194.40 Who should I contact about Standard and Optional forms?

Authority: 40 U.S.C. 486 (c).

§ 102–194.5 What is the Standard and Optional Forms Management Program?

The Standard and Optional Forms Management Program is a Governmentwide program that promotes economies and efficiencies through the development, maintenance and use of common forms. The General Services Administration (GSA) provides additional guidance on the Standard and Optional Forms Management Program through an external handbook called Standard and Optional Forms Procedural Handbook. You may obtain a copy of the handbook from:

Standard and Optional Forms Management Office, General Services Administration (Forms-XR), 1800 F Street, NW; Room 7126, Washington, DC 20405–0002, (202) 501–0581

§ 102–194.10 What is a Standard form?

A Standard form is a fixed or sequential order of data elements, prescribed by a Federal agency through regulation, approved by GSA for mandatory use, and assigned a Standard form number. This criteria is the same whether the form resides on paper or purely electronic.

§ 102–194.15 What is an Optional form?

An Optional form is approved by GSA for nonmandatory Governmentwide use and is used by two or more agencies. This criteria is the same whether the form resides on paper or purely electronic.

§ 102–194.20 What is an electronic Standard or Optional form?

An electronic Standard or Optional form is an officially prescribed set of data residing in an electronic medium that is used to produce a mirror-like image or as near to a mirror-like image as the creation software will allow of the officially prescribed form.

§ 102–194.21 What is an automated Standard or Optional format?

An automated Standard or Optional format is an electronic version of the officially prescribed form containing the same data elements and used for the electronic transaction of information in lieu of using a Standard or Optional form.

§ 102–194.25 What role does my agency play in the Standard and Optional Forms Management Program?

Your agency head or designee's role is to:

(a) Designate an agency-level Standard and Optional Forms Liaison representative and alternate, and notify GSA, in writing, of their names, titles, mailing addresses, telephone numbers, fax numbers, and e-mail addresses within 30 days of the designation or redesignation.

(b) Promulgate Governmentwide Standard forms under the agency's statutory or regulatory authority in the **Federal Register**, and issue procedures on the mandatory use, revision, or cancellation of these forms.

(c) Ensure that the agency complies with the provisions of the Government Paperwork Elimination Act (GPEA) (Public Law 105–277, 112 Stat. 2681) and OMB implementing guidance. In particular, agencies should allow the submission of Standard and Optional forms in an electronic/automated version unless the form is specifically exempted by § 102–194.35.

(d) Issue Governmentwide Optional forms when needed by two or more agencies and announce the availability, revision, or cancellation of these forms. Forms prescribed through a regulation for use by the Federal Government must be issued as a Standard form.

(e) Obtain GSA approval for each new, revised or canceled Standard and Optional form, 60 days prior to planned implementation. Certify that the forms comply with all applicable laws and regulations. Provide an electronic form unless exempted by § 102–194.35. Revised forms not approved by GSA will result in cancellation of the form.

(f) Provide GSA with both an electronic (unless exempted by § 102–194.35) and paper version of the official image of the Standard or Optional form prior to implementation.

(g) Obtain the prescribing agency's approval for exceptions to Standard and Optional forms, including electronic forms or automated formats prior to implementation.

(h) Review annually agency prescribed Standard and Optional forms, including exceptions, for improvement, consolidation, cancellation, or possible automation. The review must include approved electronic versions of the forms.

(i) Coordinate all health-care related Standard and Optional forms through GSA for the approval of the Interagency Committee on Medical Records (ICMR).

(j) Promote the use of electronic forms within the agency by following what the Government Paperwork Elimination Act (GPEA) prescribes and all guidance issued by the Office of Management and Budget and other responsible agencies. This guidance will promote the use of electronic transactions and electronic signatures.

(k) Notify GSA of the replacement of any Standard or Optional form by an automated format or electronic form, and its impact on the need to stock the paper form. GSA's approval is not necessary for this change, but a one-time notification should be made.

(l) Follow the specific instructions in the Standard and Optional Forms Procedural Handbook.

§ 102–194.30 Should I create electronic Standard or Optional forms?

Yes you should create electronic Standard or Optional forms, especially

when forms are used to collect information from the public. GSA will not approve a new or revision to a Standard or Optional form unless an electronic form is being made available. Only forms covered by § 102–194.35 are exempt from this requirement.

§ 102–194.35 For what Standard or Optional forms should an electronic version not be made available?

All forms should include an electronic version unless it is not practicable to do so. Areas where it may not be practicable include where the form has construction features for specialized use (*e.g.,* labels), to prevent unauthorized use or could otherwise risk a security violation, (*e.g.,* classification cover sheets), or require unusual production costs (*e.g.,* specialized paper or envelopes). Such forms can be made available as an electronic form only if the originating agency approves an exception to do so. (See the Standard and Optional Forms Procedural Handbook for procedures and a list of these forms).

§ 102–194.40 Who should I contact about Standard and Optional forms?

For Standard and Optional forms, you should contact the:

Standard and Optional Forms Management Office, General Services Administration (Forms-XR), 1800 F Street, NW; Room 7126,Washington, DC 20405–0002, (202) 501–0581

PART 102–195—INTERAGENCY REPORTS MANAGEMENT PROGRAM

Sec.

102–195.5 What is the Interagency Reports Management Program and what is its purpose?
102–195.10 What is an interagency report?
102–195.15 What must an agency do to implement the Interagency Reports Management Program?
102–195.20 Are any interagency reports exempt from this program?

Authority: 40 U.S.C. 486(c).

§ 102–195.5 What is the Interagency Reports Management Program and what is its purpose?

The Interagency Reports Management Program managed by GSA ensures that interagency reports and recordkeeping requirements are necessary, cost-effective, and comply with applicable laws and regulations.

§ 102–195.10 What is an interagency report?

An interagency report is a repetitive reporting requirement imposed by an agency on one or more other agencies.

§ 102–195.15 What must an agency do to implement the Interagency Reports Management Program?

To implement the Interagency Reports Management Program an agency must:

(a) Annually review all interagency reporting requirements imposed on other agencies to assure that they remain necessary.

(b) Consistent with law and regulation, seek information that other agencies have already obtained from the public rather than asking the public to provide the information again.

(c) Every three years beginning February 1, 2001, provide the following information to GSA for each interagency report that will require responding agencies more than 100 hours complying with it:

(1) Title.

(2) Purpose.

(3) Estimate of the reporting costs for the life of the report or for three years, whichever is sooner.

(4) An estimate of the time you will need to collect this information; *e.g.,* six months or six years.

(5) The name, telephone number, and e-mail address for the point of contact for each interagency report.

(6) Whether the report can be provided electronically, and if not, when such submissions will be allowed.

(d) Provide supporting documentation for cost estimates for review by GSA and responding agencies, if requested.

(e) Notify GSA and responding agencies when an interagency report is no longer needed.

(f) Provide responding agencies an opportunity to comment on any new or proposed revision to an interagency reporting requirement.

(g) Send information asked for in paragraphs (c), (d) and (e) of this section, along with any unresolved comments from responding agencies concerning an interagency reporting requirement in accordance with paragraph (d) of this section to:

General Services Administration, Strategic IT Issues Division (MKB),18th & F Streets, NW., Washington, DC 20405

§ 102–195.20 Are any interagency reports exempt from this program?

Yes, the following interagency reports are exempt from the Interagency Reports Management Program:

(a) Legislative branch reports;

(b) Office of Management and Budget (OMB) and other Executive Office of the President reports;

(c) Judicial branch reports required by court order or decree; and

(d) Reporting requirements for security classified information. However, interagency reporting requirements for nonsensitive or unclassified sensitive information are not exempt, even if the information is later given a security classification by the requesting agency.

Dated: August 1, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 00–19923 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 99–384]

Communication Between Applicants in Commission Spectrum Auctions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published in the **Federal Register** of February 8, 2000, a document concerning communications between applicants in Commission spectrum auctions. This document contains a correction to that proposed rule by adding the Initial Regulatory Flexibility Analysis (IRFA) that was inadvertently omitted. This document also sets forth the deadlines for submitting comments and reply comments on this IRFA. It does not extend the deadlines previously established for submitting comments and reply comments on the rule amendments proposed.

DATES: Comments in response to the IRFA are due on or before August 30, 2000; reply comments are due on or before September 6, 2000.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. *See* ''Filing Instructions.''

FOR FURTHER INFORMATION CONTACT: David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2000 (65 FR 6113), the Commission published a summary of its Third Further Notice of Proposed Rulemaking (NPRM) in WT Docket No. 97–82. That document sought comment on proposed amendments that would: (1) Require any auction applicant that makes or receives a prohibited communication regarding bids or bidding strategies to

report such communication promptly to the Commission, and (2) reflect the clarification that an auction applicant is prohibited from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. In that document the Commission also certified that the proposed amendments would not have a significant impact on small business entities. The IRFA set forth here supersedes that certification. The publication of this IRFA does not, however, extend the deadlines previously established for submitting comments and reply comments on the rule amendments proposed in the NPRM.

In rule FR Doc. 00–2766 published on February 8, 2000, on page 6114, column 3 and after line 7 add the following text.

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Third Further Notice of Proposed Rulemaking (NPRM). Written and electronically filed public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by August 30, 2000; reply comments must be filed by September 6, 2000. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

5. This rulemaking proceeding is initiated to obtain comments concerning a proposal to amend 47 CFR 1.2105(c) to require any auction applicant that makes or receives a communication of bids or bidding strategies prohibited by 47 CFR 1.2105(c)(1) to disclose such communication to the Commission. The proposed amendment is intended to deter anticompetitive behavior during Commission spectrum auctions and foster competitive post-auction markets. We also seek comment on amending § 1.2105(c)(1) to reflect our clarification that the rule prohibits an auction applicant from discussing another applicant's bids or bidding strategies, even if it does not discuss or disclose its own bids or bidding strategies. The proposed amendment is intended to facilitate compliance with the rule by ensuring that its text is unambiguous.

B. Legal Basis

6. Authority for issuance of this NPRM is contained in sections 4(i), 4(j), 303(r), 309(j) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(j) and 403.

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

7. 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, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (''SBA''). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. 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 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

8. The proposed amendments to § 1.2105(c) will only apply to applicants in Commission spectrum auctions. The number of entities that may apply to participate in future Commission spectrum auctions is unknown. In the past, the number of small businesses that have participated in auctions has varied.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

9. As a result of the actions proposed in this rulemaking proceeding, disseminators and recipients of communications prohibited by § 1.2105(c) would be required to report such communications to the Commission. No other new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rule making proceeding.

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

10. 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: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities. In the NPRM, we seek comment on our proposal to require auction applicants that make or receive a communication of bids or bidding strategies prohibited by § 1.2105(c)(1) of the Commission's rules to report promptly such a communication to the Commission. We also propose to amend § 1.2105(c)(1) to reflect our recent clarification of the rule that it prohibits an auction applicant from discussing another applicant's bids or bidding strategies even if the first applicant does not discuss its own bids or bidding strategies. We anticipate no significant impact on affected entities, including small businesses. We have nonetheless prepared this analysis in order to achieve a fuller record for the public. The proposed amendments to § 1.2105(c) will have several public interest benefits. First, we believe that the proposed amendments will enhance the competitiveness of our auction process to the benefit of small auction applicants. Second, under the proposed amendments, general confidence in the integrity of our auctions should increase. Alternatively, public confidence could be undermined if all entities were not subject to the proposed disclosure requirements. Therefore, the public policy benefits of the proposed

amendments are great and we anticipate no significant impact on small businesses. We seek comment on these tentative conclusions.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

11. None.

Filing Instructions

12. Comments on the IRFA 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 (May 1, 1998). Comments filed through ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* When 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 an electronic comment 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.

13. Parties who choose to file by paper must file an original and four copies of each filing. If parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, D.C. 20554. A courtesy copy should be delivered to David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–B511, Washington, D.C. 20554. Parties should reference WT Docket No. 97–82 in their comments. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word for Windows or compatible software. Diskettes should be submitted to: David Hu, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4–B511, Washington, DC 20554. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case—WT Docket No. 97–82), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–20240 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–99–6266]

RIN 2126–AA46

Brake Performance Requirements for Commercial Motor Vehicles Inspected by Performance-Based Brake Testers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to establish pass/fail criteria for use with performance based brake testers (PBBTs), which measure the braking performance of commercial motor vehicles (CMVs). A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The specific types of PBBTs addressed in this notice are the roller dynamometer, breakaway torque tester, and flat-plate tester. Only those PBBTs which meet certain functional specifications developed by FMCSA, and published elsewhere in today's **Federal Register**, could be used to enforce the FMCSRs. The proposal would allow State and local enforcement officials to issue citations based on PBBT braking force measurements.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Submit written, signed comments, referencing the docket number that appears in the heading of this document, to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those persons desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, Office of Bus and Truck Standards and Operations, FMCSA, (202) 366–4009, or Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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Background

Assessment of large truck and bus braking capability in the United States has traditionally been done using visual- and sensory-based inspection methods. These include visual examination of components, measurement of push-rod travel on air braked vehicles, and listening for air brake system leaks. Truck and bus fleets, repair and maintenance facilities, and the enforcement community all generally use this method to look for defective brakes. With regard to roadside inspections conducted by Federal and State officials, guidelines developed by the Commercial Vehicle Safety Alliance (CVSA) are used, under which an unsafe vehicle can be placed out of service (OOS). These guidelines are the North American Uniform Vehicle Out-of-Service Criteria, used by officials in the United States, Canada, and Mexico. While this method has been successful, it does have limitations. These include (1) falsely identifying adequately braked vehicles as unsafe and placing them OOS, (2) brake force-related deficiencies but no visually apparent defects, and (3) the inability to inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved.

In the early 1990s, the Federal Highway Administration (FHWA) [1] initiated research to evaluate various types of performance-based brake testing technologies for application to commercial motor vehicle inspections. The purpose of the research was to determine, through laboratory investigation, if performance-based brake testers (PBBTs) could be used to evaluate commercial vehicle braking capability. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The PBBTs cannot replace an inspector in finding brake defects unrelated to immediate brake performance, such as air leaks, chafed brake hose, or thin brake pads. However, they can provide an objective and consistent measure of vehicle braking performance, irrespective of brake type, energy supply, or actuation method, and without having to crawl underneath the vehicle as with the current inspection method. The PBBTs are widely used for brake inspection in Europe and Australia, and are beginning to emerge as both an enforcement tool and diagnostic aid for private sector maintenance and repair shops.

Field Test Evaluations

After analyzing various PBBT technologies during the above referenced research, the FHWA selected several types for further evaluation in roadside field-test inspections. The types selected were the: (1) Roller dynamometer, (2) flat-plate tester, (3) breakaway torque tester, (4) infrared system, and (5) decelerometer. During the field testing, joint roadside inspections with State officials were conducted on almost 3,000 commercial vehicles. The joint inspections consisted of a CVSA Level 4 inspection [2] and a PBBT test. Ten States and several commercial fleets participated in the program with each evaluating a specific type of PBBT. The ten States which volunteered to participate in the evaluation were Colorado, Connecticut, Indiana, Maryland, Minnesota, Nevada, Ohio, Oregon, West Virginia, and Wisconsin. The roller dynamometer, flat-plate, and breakaway torque testers were evaluated for at least one year by CVSA Certified State Inspectors. The infrared system and decelerometer were also investigated in the field, though less extensively than the three other types of PBBTs. The PBBTs used in this program were first- and second-generation prototype machines to which improvements have since been made by their PBBT manufacturers.

During the field evaluation testing, data were collected from both the CVSA Level 4 inspections and the PBBT measurements. The degree of correlation between the two methods was identified. Data on the operational characteristics of each PBBT were also collected and evaluated, including set-up and tear down times, maintenance requirements, calibration, operator skill level needed, user interface, and vehicle inspection times. These data on operational characteristics were gathered to help in the development of PBBT functional specifications, which are discussed below in more detail.

Agreement on individual weak or defective brakes identified by the CVSA inspection method versus those identified by a PBBT ranged from 53 to 88 percent, depending on the type of PBBT. This was considered reasonable since the two methodologies assess different brake system characteristics. The PBBTs used in the field tests were not necessarily faster than the brake-only portion of the CVSA inspection, considering time for data entry, driver instruction, and printing of test results. However, the times were generally considered comparable. It was apparent that 30 to 80 five-axle vehicles per eight-hour workday could be screened for further CVSA inspection using one of the PBBT technologies. Accurate screening is important since only approximately 8–12 vehicles per eight-hour workday per inspector can be checked using a CVSA Level 1 inspection.[3]

The overall results of the field test evaluations indicated there were no insurmountable performance or operational limitations with the roller dynamometer, flat-plate, or breakaway torque testers that would prevent them from being used for screening purposes or enforcement. However, the infrared and decelerometer technologies did present some difficulties. In the case of the onboard decelerometer, which measures deceleration rate during a vehicle stop, finding a convenient and large enough space to perform a panic stop with a commercial motor vehicle was at times difficult. Moreover, it is likely that few commercial vehicle drivers would be willing to perform a panic stop in other than an emergency situation because of the potential damage to onboard cargo. Results using the decelerometer were also found to be strongly dependent on driver skill. In the case of the infrared system, applicability of this technology was found to be limited to the detection of inoperative brakes or brakes with push rod stroke measurements in excess of 12.7 mm (0.5 inch) beyond the recommended adjustment limit. Although the decelerometer and infrared system technologies will not be addressed further in this notice, the FMCSA is continuing its research into use of the infrared technology as a possible brake screening device for vehicles.

[1] On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748), which established the FMCSA in the Department of Transportation. Prior to that time, the functions that are now carried out by the FMCSA were carried out within the FHWA.

[2] Level 4 inspection is the CVSA designation for a Special Inspection, which typically includes a one time examination of a particular item in support of a study or to verify or refute a suspected trend. In this study the CVSA Level 4 inspection comprised the brake and tire portions of a full Level 1 inspection. Level 1 is the most thorough inspection, including the tires, brake system, driver documents, and a variety of other vehicle safety systems.

[3] A Level 1 inspection usually takes approximately 20 to 30 minutes if there are no violations of applicable regulations, and includes both the driver and the vehicle. The inspector reviews the driver's license, medical certificate, record of duty status (or log book) and any readily available supporting documents. The inspection of the vehicle includes an examination of the brake system; coupling devices; exhaust system; frame; fuel system; cargo securement; steering system; suspension system; tires; trailer body; wheels, rims and hub assemblies; and windshield wipers.

A final report describing in greater detail the results of these field test evaluations has been placed in the docket. The report is titled, ''Development, Evaluation, and Application of Performance-Based Brake Testing Technologies,'' February 1999, Report No. FHWA–MC–98–048. Copies of the report may be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone (703) 605–6000. The NTIS accession number for this publication is PB99–134454.

MCSAP Funding Eligibility

During the period 1996–98, the FHWA issued four policy memoranda advising that specific PBBTs are eligible for funding under the Motor Carrier Safety Assistance Program (MCSAP). Copies of the memoranda are available in the docket referenced above and are dated April 1, 1996, October 8, 1996, March 13, 1997, and November 3, 1998. The MCSAP is a Federal program, administered by FMCSA, providing funds to States and U.S. territories in support of commercial motor vehicle safety. This means that States or territories may use MCSAP funding to purchase one of the approved PBBTs for use in commercial motor vehicle brake inspections. To date, however, these prototype devices have only been used for screening or sorting purposes, and not enforcement, since PBBT pass/fail criteria have not yet been established within the Federal Motor Carrier Safety Regulations (FMCSRs). Specific pass/fail criteria for PBBTs are being proposed today, under Discussion of Proposal presented below.

The PBBTs which have been approved to date for MCSAP funding are:

- Hunter B400T Flat Plate Tester (in-ground)
- Nepean [4] Mark III Roller Dynamometer (portable)
- Nepean Mark IV Roller Dynamometer (portable)
- Hicklin RBD Roller Dynamometer (portable)
- Radlinski RAI 12200 Roller Dynamometer (in-ground)
- Radlinski RAI 20200 Roller Dynamometer (portable)

The above referenced policy memoranda set forth requirements and suggested procedures for States to follow in using the PBBTs to help in gathering field evaluation data and information relative to the functional specifications of PBBTs. As the memoranda were issued, they reflected the evolving progress made in the development of functional specifications for PBBTs.

PBBT Basic Principles of Operation

The most common and major feature of PBBTs—the roller dynamometer, flat-plate tester, and breakaway torque tester—is that each can measure vehicle braking force [5] so that vehicle total brake force-to-gross vehicle weight (BF_{Total}/GVW) can be determined. Gross vehicle weight can be measured separately and the data entered into the PBBT, or, on some, the PBBTs can determine GVW by summing individual axle loads.

In the case of the roller dynamometer the vehicle is driven onto the device so that the wheels on the axle being tested are supported by a pair of powered rollers, fore and aft of the wheels. During the test, the rollers impose rotational motion (up to five mph) to the wheels. As the vehicle brakes are applied and resist the wheel rotation imposed by the powered rollers, the brake force imparted through the tires to the rollers is measured. As the driver applies the brake pedal, braking force increases until the friction between the rollers and tires is exceeded, at which point wheel lockup and tire slippage occur, and the test is terminated. If insufficient brake force is available to achieve wheel lockup, the test is terminated after a fixed period of time. The procedure is repeated for each axle on the vehicle.

With the breakaway torque tester (BTT) the tires are gripped by opposing curved pads. Instead of the PBBT driving the wheels and then having the brakes applied, as with the roller dynamometer, full brake force is first applied. The breakaway torque tester then attempts to rotate the wheels through an instrumented torque arm to determine whether the brakes can resist this force up to a predetermined target value. The test is terminated when the target value is reached, or maximum available brake force is exceeded and the wheel begins to rotate. Because of the gripping action of the breakaway torque tester on opposing sides of the tire, maximum measured brake force is not limited by having simple tire contact friction only, as with the roller dynamometer. The procedure is repeated for each axle on the vehicle.

For the flat-plate tester the vehicle is driven at two to ten mph (depending on tester) onto pairs (left and right) of in-line plates mounted through load cells to a fixed ''ground'' system. As the vehicle is driven over the plates, the brakes are applied and force measurements—both braking and wheel load—are obtained as the vehicle comes to a stop. More than one stop may be required depending upon the number of axles involved and the flat plate configuration.

PBBT Functional Specifications

On December 8, 1997, the FHWA held a public meeting at the National Highway Traffic Safety Administration (NHTSA) Vehicle Research and Test Center to discuss the development of functional specifications for PBBTs. A notice announcing the meeting was published in the **Federal Register** on November 13, 1997 (62 FR 60817). Data gathered during the PBBT field evaluation tests, referenced above, served as background information for draft functional specifications, which were discussed at the meeting. In addition to the NHTSA and the FHWA, the following companies were represented at the meeting: Battelle, B&B Automotive, B&G Technologies, Inc., Dennis National Lease, Hicklin Engineering, Hunter Engineering Company, Gooch Brake, MGM Brakes, Motion Control Industries, Inc., Nepean Engineering Pty. Ltd., Radlinski & Associates, Inc., and Truckalyser Canada, Inc. Most of the participants were either manufacturers of PBBTs or distributors of such devices.

On June 5, 1998, the FHWA published a **Federal Register** notice (63 FR 30678) requesting public comments on the proposed functional specifications, which incorporated comments received during the public meeting. The agency requested further public comment through this notice to ensure that all interested persons who were unable to attend the meeting would have an opportunity to comment on this subject. The functional specifications are intended to be generic and, therefore, applicable to a range of PBBT technologies. They include requirements for (1) functional performance, such as measurement accuracy with tolerances, calibration, and operator interface, (2) physical characteristics including portability, (3) environmental resistance, (4) operator safety, (5) documentation, including operator and maintenance manuals, and (5) the skill level and number of operator personnel required. The specifications also include quality assurance provisions or methodologies for verifying PBBT compliance with each of the functional specification requirements.

The intent is for the functional specifications to serve as a guideline for

[4] Nepean is now called Vehicle Inspection Systems (VIS).

[5] Braking force is the force that the outer diameter of the tire imparts on the road surface as a result of the brakes being applied.

States in determining whether a particular PBBT would be eligible for funding under MCSAP, and to ensure a certain level of PBBT accuracy and performance. The final functional specifications are published elsewhere in today's **Federal Register**.

Round Robin Tests

In July 1998, the FHWA conducted a series of round robin tests to assess the suitability of PBBTs for use in enforcement. These were conducted at the National Highway Traffic Safety Administration's Vehicle Research and Test Center. The purpose of the tests was to evaluate the ability of current generation PBBTs to accurately and consistently (1) measure the brake forces and wheel loads of commercial motor vehicles, and (2) then predict the vehicle's deceleration capability from a 32.2 km/hr (20 mph) on-road stop.

The test program involved PBBT tests and 32.2 km/hr (20 mph) stops using two different vehicles, which were tested fully laden and unladen, with weak brakes on selected wheels. The vehicles were (1) a two-axle flatbed straight truck, and (2) a three-axle tractor, two-axle flatbed semi-trailer combination. These were selected for the tests since they were considered representative of a majority of the commercial vehicle axle configurations on the road. There were eight PBBTs used in the testing: five roller dynamometers (two in-ground and three portable), two flat-plate testers, and one breakaway torque tester.

Results indicated that, under most test conditions, the accuracy and repeatability of most of the PBBT results, regardless of the principle of operation, were acceptable for meeting the functional specifications referenced above, and therefore for use in law enforcement. Nearly all of the PBBTs were able to accurately measure the vehicle brake forces. In contrast, several of the PBBTs had difficulty reporting accurate vehicle weights. For the most part, however, this was related to test procedures. Calibration checks of the PBBT weighing mechanisms indicated that all of the PBBTs could meet the functional specifications. In those instances where PBBT accuracy did not achieve acceptable performance, the problems were identified and conveyed to the PBBT manufacturers as recommendations for improvement. Most of the recommendations were consistent with the requirements of the PBBT functional specifications.

Copies of the report, further describing the round robin tests, are available in the docket referenced above. The report is titled, ''PBBT Round-Robin Testing,'' February 2000.

Public Meeting on PBBT Pass/Fail Criteria

On October 2, 1998, the FHWA held a public meeting in Rochester, New York, to discuss recommendations for PBBT pass/fail criteria, based upon the field evaluation and round robin tests referenced above. The meeting gave interested persons an opportunity to discuss with FHWA representatives and researchers specific recommendations for vehicle braking force requirements based on PBBT measurements. A notice announcing the meeting was published in the **Federal Register** on August 27, 1998 (63 FR 45792). In addition to FHWA representatives, and those from Battelle Memorial Institute which conducted the research, the following organizations were represented at the meeting: Abex Friction Products, American Trucking Associations, Carlisle Motion Control Industries, Inc., Gooch Brake and Equipment Co., Gunite Corporation, Heavy Duty Brake Manufacturers Council, Hunter Engineering Co., Meritor Heavy Vehicle Systems, Nevada Automotive Test Center, New York State Department of Transportation, Oregon State Department of Transportation, Radlinski & Associates, Inc., Signal Processing Systems, Vehicle Inspection Systems (Sydney, Australia), and Veridian Calspan Operations. For the most part, these consisted of PBBT and brake component manufacturers, vehicle testing laboratories, State departments of transportation, and industry associations.

In addition to specific recommendations for PBBT pass/fail criteria, the meeting addressed other issues including the capabilities of currently available PBBTs, and whether the pass/fail criteria should apply to all vehicles or only those with a GVWR of 4,537 kg (10,001 pounds) or more. All of the meeting comments and recommendations have been taken into consideration by the FMCSA in the development of today's proposal.

Discussion of Proposal

Current FMCSR Braking Requirements

Currently, the requirements for commercial motor vehicle (CMV) braking performance are specified in § 393.52. Section 393.52(d) specifies minimum braking force as a percentage of actual gross vehicle weight (GVW), minimum deceleration, and maximum stopping distance requirements for the service brakes,[6] and maximum stopping distance requirements for the emergency brake system, all from a vehicle speed of 32.2 km/hr (20 mph). For service brake systems all three requirements must be met to achieve compliance with the regulation. Conformity to the stopping distance requirements is determined with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material. During the stop, the vehicle must not deviate from a 3.7-meter (12-foot) wide lane. The requirements apply to all CMVs or combinations of CMVs subject to the FMCSRs under any loading condition. Criteria are specified for vehicles having a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (10,000 pounds), as well as those with a GVWR of 4,536 kilograms (10,000 pounds) or less. For example, a passenger-carrying vehicle with GVWR greater than 4,536 kilograms (10,000 pounds), and traveling at 32.2 km/hr (20 mph), must achieve a braking force equal to 43.5 percent of GVW, which produces 4.3 m/sec^2 (14 ft/sec^2) deceleration, and a 10.7-meter (35-foot) maximum stopping distance. For emergency brake systems on such vehicles, the maximum specified stopping distance is 25.9 m (85 ft). As noted in an earlier **Federal Register** document (37 FR 5250, March 11, 1972), the stopping distances are based on data derived from actual braking tests conducted in 1963.

There is a definite mathematical relationship between the braking forces as percentages of GVW and the corresponding decelerations specified in § 393.52(d). Dividing the deceleration by 9.8 m/sec^2 (32.2 ft/sec^2), which is the acceleration of gravity, yields the corresponding braking force as a percentage of GVW. In the above example, dividing 4.3 m/sec^2 (14 ft/sec^2) by 9.8 m/sec^2 (32.2 ft/sec^2) yields the 43.5 percent braking force as a percentage of GVW. Values for braking force as a percentage of GVW were included in the current regulation because there were some brake testing devices which utilized this measure. The Tapley decelerometer, for example, measured maximum deceleration during an actual vehicle stop, but was calibrated to read equivalent braking force as a percentage of GVW.

As referenced earlier, there are practical difficulties in performing these tests at roadside inspection facilities, because of space limitations and the issue of CMVs with deceleration-

[6] Section 393.5, Definitions, specifies service brake system as a primary brake system used for slowing and stopping a vehicle.

sensitive cargo. Thus, the above performance requirements are rarely enforced by Federal and State officials. Instead, current inspections involve visual, ''hands-on'' examination of brake system components to identify unsafe vehicles, based on the guidelines developed by the CVSA. While successful and productive, this method does have limitations, such as the number of vehicles that can be inspected on a given day. This factor alone is significant, given that the number of interstate motor carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS) [7] has more than doubled since 1990, and is expected to increase even more. The PBBTs, on the other hand, have the advantage of being able to measure actual vehicle braking performance for enforcement purposes, as well as increase CMV volume in roadside inspections.

Service Brake System—Proposed Out-of-Compliance Criteria

In light of the above information, the FMCSA is today proposing alternative brake performance criteria for use with PBBTs in determining CMV service brake system compliance with § 393.52(a)(1) and (a)(2). These specify CMV requirements for minimum braking force as a percentage of GVW and minimum deceleration from 32.2 km/hr (20 mph). The new PBBT criteria would not replace existing requirements, but would serve as an alternative whenever PBBTs are used for determining compliance with § 393.52(a)(1) and (a)(2). Because part 393 does not yet provide for the use of PBBTs, this technology is currently used by State and local officials enforcing the FMCSRs, or compatiblie State laws or regulations, only for screening purposes. The proposed amendments would enable enforcement officials to issue citations for inadequate brakes based upon PBBT test results.

The proposed criteria are based on braking force and actual GVW, since all PBBTs which meet these functional specifications must be capable of measuring braking force. Determining compliance based on braking force as a percentage of GVW allows use of the PBBTs. In developing the proposal, the FMCSA considered several options based on all of the research and other information referenced above. The specific performance criteria which the agency is proposing for use with PBBTs, after considering all available information, are the minimum requirements for braking force as a percentage of GVW already specified in the current regulation. These values are presented in table 1, along with the corresponding decelerations and stopping distances, specified in § 393.52(d), as follows:

TABLE 1.—SERVICE BRAKE SYSTEM—PROPOSED OUT-OF-COMPLIANCE CRITERIA

Type of motor vehicle	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second	Application and braking distance in feet from initial speed of 20 mph
A. Passenger-carrying vehicles:			
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25
(3) All other passenger-carrying vehicles	43.5	14	35
B. Property-carrying vehicles:			
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation	43.5	14	35
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40

Section 393.52(d) currently specifies 43.4 for the braking force value of vehicle types listed in item B.(3) of table 1. However, in this notice 43.5 is shown and being proposed, since the corresponding deceleration of 14 ft/sec^2 divided by the acceleration of gravity, 32.2 ft/sec^2, is 43.5 when rounded off.

In addition, the current regulation at § 393.52(a) requires CMVs to meet all three of the specified performance measures shown above. Under today's proposal this would not change. However, enforcement officials and motor carriers could use PBBTs to determine compliance with the minimum requirements for braking force as a percentage of GVW (BF_{Total}/GVW), [8] specified in § 393.52(a)(1); compliance with that requirement would also satisfy the minimum deceleration requirement specified in § 393.52(a)(2). It would be redundant to require the measurement of deceleration along with braking force as a percentage of GVW, because of the simple mathematical relationship that exists between the two parameters (braking force as a percentage of GVW = deceleration/acceleration of gravity). As indicated earlier, braking force as a percentage of GVW was specified along with deceleration in the current regulation, because certain brake testing devices measured maximum deceleration during an actual vehicle stop, but were calibrated to read in equivalent braking force as a percentage of GVW. This is not the case with the PBBTs being addressed in this notice.

Therefore, those CMVs which achieve a maximum PBBT-measured braking force, as a percentage of GVW, that is equal to or greater than the braking force levels specified above in table 1 would be considered in compliance with both the braking force and deceleration requirements specified in § 393.52(a)(1) and (a)(2), respectively. Those CMVs which do not meet the braking force levels specified in table 1 would be

[7] MCMIS is a central repository of comprehensive motor carrier and safety data maintained by the FMCSA.

[8] BF_{Total} represents the sum of the braking forces for the service brakes at each wheel of the vehicle or vehicle combination.

considered in non-compliance with both the braking force and deceleration requirements, thereby enabling enforcement officials to issue citations.

The FMCSA is proposing today the same requirements for PBBT-measured braking force as a percentage of GVW that are in the current regulation, to assure a continuing and adequate level of CMV safety performance on our nation's highways. The agency has no information to indicate that these levels are too low for achieving this purpose, or that they are too high and therefore a burden for motor carriers to achieve. At the same time, however, the agency recognizes that the latest amendments to these requirements were published 28 years ago (37 FR 5250, March 11, 1972; 37 FR 10727, May 27, 1972; and 37 FR 11336, June 7, 1972), and that they are rarely enforced. The FMCSA requests comments on whether these requirements are still appropriate in light of more recent vehicle brake system and testing technologies, or whether they should be increased or decreased and to what level. Persons providing comments are requested to include supporting research and test data or other documentation.

The agency would retain the stopping distance requirements in today's proposal because it believes that a satisfactory PBBT-measured braking force as a percentage of GVW does not necessarily guarantee compliance with the corresponding stopping distance specified in § 393.52(a)(3). The proposed braking forces as percentages of GVW represent the maximum braking forces achieved during actual vehicle stops, and the PBBT functional specifications also require PBBTs to measure maximum braking forces. However, this maximum braking force cannot be used to compute corresponding stopping distance, because maximum braking force may not be sustained over the entire stop. Other factors, such as brake system imbalance, can cause the braking force, and therefore deceleration, to decrease significantly after reaching a maximum. In addition, the distance traveled during brake application and brake force buildup varies with vehicle type, being negligible for many light vehicles and greatest for combinations of commercial vehicles. Thus, a vehicle with some brake system imbalance, for example, or slower than normal brake application time, could comply with the specified braking force but still not achieve the specified stopping distance. For these reasons the FMCSA is retaining the current stopping distance requirements in today's proposal. However, the agency requests comments from PBBT manufacturers and users. How closely from a safety standpoint do PBBT-measured braking forces correlate to CMV stopping distances during actual stops from 32.2 km/hr (20 mph)? Is the correlation close enough to use PBBTs to satisfy all three current requirements in § 393.52(a), i.e., minimum braking force as a percentage of GVW, minimum deceleration, and maximum stopping distance? Please discuss. Persons providing comments are requested to include supporting rationale and test results or other documentation.

As referenced above, those CMVs which do not meet the PBBT-measured braking forces specified in today's proposal would be considered out-of-compliance with both the braking force and deceleration requirements of § 393.52(a), thereby enabling State and local enforcement officials to issue citations relative to the service brake system.

If today's proposal is adopted, the FMCSA intends to work with the CVSA, and others as appropriate, to develop a list of likely brake system components or causes responsible for low PBBT measurements on CMVs. The agency believes that this guidance would be helpful to motor carriers and enforcement officials in identifying and correcting the inadequate braking conditions. Upon correction, the motor carrier would then certify correction on the roadside inspection report as outlined above. Under this approach, the FMCSA would not require a post-inspection PBBT measurement, as long as the involved motor carrier certifies correction of the deficiency consistent with existing FMCSRs. The agency requests comments on this approach. Should a post-inspection PBBT measurement be required and under what conditions?

Vehicle Applicability

As shown in table 1 in this preamble, the FMCSA would propose that the above PBBT pass/fail criteria be applicable to all CMVs or CMV combinations subject to the FMCRs. The term CMV is defined by statute (49 U.S.C. 31132) to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle: (1) Has a GVWR or GVW of at least 10,001 pounds, whichever is greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103. With the exception of vehicles designed or used to transport 9 to 15 passengers (including the driver) for compensation, virtually all of the CMVs covered by the statutory definition are currently subject to part 393 and would, therefore, be covered by this rulemaking. The agency does not intend to subject these smaller passenger vehicles to the braking requirements at this time.

The agency believes it is appropriate to provide PBBT pass/fail criteria for both light CMVs (GVWR or GVW of 4,536 kg (10,000 pounds) or less) and heavy CMVs (GVWR or GVW greater than 4,536 kg (10,000 pounds)). Because PBBTs have the capacity to measure braking force on both light and heavy vehicles, the FMCSA believes that the benefits associated with PBBTs should be made available to a wide range of CMVs. These include the benefit of increased numbers of roadside inspections, and the safety benefit of measuring actual vehicle braking performance. However, the agency requests comments on whether it is appropriate or necessary to provide PBBT pass/fail criteria for light CMVs, since they represent a relatively small proportion of all CMVs and are, therefore, less likely to undergo roadside brake inspections than are heavy CMVs. As an alternative, PBBT pass/fail criteria could be limited to those CMVs with GVWR or GVW greater than 4,536 kg (10,000 pounds). Persons submitting comments are requested to provide supporting data.

Braking Stability

The FMCSA has tentatively decided not to propose PBBT pass/fail criteria for determining CMV braking stability performance at this time, because the agency has conducted only preliminary research in this area. Further research is planned.

Current requirements for CMV braking stability during a 32.2-km/hr (20-mph) stop are specified in § 393.52(c). The vehicle must be in the center of a 3.7-meter (12-foot) wide lane when the braking test begins and must not deviate from that lane during the test. The stop must be made with the vehicle on a hard surface that is substantially level, dry, smooth, and free of loose material.

The FMCSA believes that PBBTs could be used to determine CMV braking stability by comparing PBBT

measured braking forces (BF/WL)[9] from one side of the vehicle to the other for a given axle. Side-to-side brake force imbalance of sufficient magnitude can cause vehicle yaw[10] or lane deviation while braking. This could result from worn brake linings or misadjusted brakes on one side of the vehicle. By comparing PBBT measured braking forces (BF/WL) on a given axle, braking stability performance could be assessed. When the difference between braking forces (BF/WL) on a given axle exceeded a certain value, vehicles could be determined to be out of compliance or placed out of service, depending on the criteria.

There are other factors which can also contribute to vehicle lane deviation while braking, including low or inconsistent areas of road surface friction, uneven CMV load distribution, and driver skill. Apart from these other factors, the agency's planned research would seek to quantify the maximum allowable difference in braking forces (BF/WL) for a particular axle, necessary to stay within a 3.7-meter (12-foot) lane during a 32.2 km/hr (20 mph) stop. Depending on the results of this research, the FMCSA may propose pass/fail criteria for use with PBBTs in determining CMV braking stability performance. The agency requests comments on the feasibility of this approach. Since steering capability is critical during any yaw motion of the vehicle, should the PBBT pass/fail criteria be confined to steering axles only? The agency is particularly interested in receiving comments from those who have conducted research or testing in this area. Persons submitting comments are requested to provide supporting documentation.

Emergency Brake System

Section 393.5 of the FMCSRs defines emergency brake system as ''[a] mechanism designed to stop a vehicle after a single failure occurs in the service brake system of a part designed to contain compressed air or brake fluid or vacuum (except failure of a common valve, manifold brake fluid housing, or brake chamber housing).'' Thus, if there is leakage of the medium which actuates the brakes, *i.e.*, air, fluid, or vacuum, the emergency brake system feature is designed to ensure that the vehicle can still be stopped, albeit in a longer distance. CMVs manufactured on or after July 1, 1973, must have an emergency brake system that conforms to the stopping distance requirements specified in § 393.52(b). For example, a passenger-carrying vehicle with GVWR greater than 4,536 kilograms (10,000 pounds), and traveling at 32.2 km/hr (20 mph), has an emergency brake system stopping distance requirement of 25.9 meters (85 feet). For full functioning of the service brakes without such failure, the stopping distance requirement is 10.7 meters (35 feet).

The FMCSA has tentatively decided not to propose PBBT pass/fail criteria for emergency brake system performance at this time. The agency tentatively believes that it would not be practical to have such requirements for enforcement purposes at roadside inspection facilities. This is because a brake system leak, *i.e.*, compressed air, brake fluid, or vacuum, would first have to be created to simulate a single failure in the service brake system. The FMCSA believes that this is not an appropriate or practical approach for the use of PBBTs during roadside inspection, because of the time involved and necessary modifications to an otherwise normally functioning brake system. However, the agency requests comments on whether it should explore ways to test emergency brake system performance in conjunction with PBBTs.

Parking Brake System

Similarly, the agency has tentatively decided not to propose PBBT pass/fail criteria for determining CMV parking brake system[11] performance at this time. The FMCSA believes that more research is needed before proposing specific criteria. The PBBT parking brake measurements which were obtained during the field evaluation tests referenced above could not be correlated to parking brake results from CVSA inspections.

Section 393.41, Parking brake system, requires that CMVs manufactured on and after March 7, 1990,[12] be equipped with a parking brake system that can hold the vehicle or combination, under any loading condition, as required by Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems. FMVSS No. 121 includes requirements for each vehicle to meet a static drawbar pull test, or grade holding test, at the option of the new vehicle manufacturer. Generally, the drawbar pull test requires that the static retardation force, produced by application of the parking brake, meet minimum levels depending on vehicle type. For truck tractors with more than two axles, this force when divided by GVWR (static retardation force/GVWR), must be not less than 0.14. For other vehicles, this force when divided by GAWR[13] (static retardation force/GAWR), must be not less than 0.28 for any axle (other than a steerable front axle). In the case of the grade holding test, the vehicle must remain stationary on a 20 percent grade with all parking brakes applied. For either option, the vehicles must meet the requirements when loaded to GVWR, and at unloaded weight plus 226.8 kg (500 pounds).

Although the FMCSA has tentatively decided not to propose parking brake system PBBT criteria at this time, the agency is considering one approach which it may propose in the future. This approach is tied to the 20 percent grade holding test discussed above. Under this approach, the FMCSA would require a PBBT measured braking force (PBF_{Total}/GVW)[14] for the parking system at least equal to that which is necessary for the vehicle to remain stationary on a 20 percent grade. It can be shown through analytic calculation[15] that this braking force would be 0.196 (PBF_{Total}/GVW = 0.196). Therefore, using this criterion for parking brake systems, those CMVs which could not achieve a PBBT measured braking force (PBF_{Total}/GVW) equal to or higher than 0.196 would be found out of compliance with the FMCSR, or placed out of service, depending on the criteria. By contrast, current CVSA guidelines, ''2000 North American Uniform Out of Service Criteria,'' require only that the parking brake function properly upon actuation, and that there be no ''non-manufactured'' holes or cracks in the spring brake housing. The FMCSA would like to obtain comments from interested persons on the new approach being considered, and on whether the agency should propose PBBT pass/fail criteria for determining CMV parking brake performance.

Additionally, the agency is interested in obtaining comments on the level of braking force (PBF_{Total}/GVW = 0.196) discussed above. As indicated, this level would be equivalent to the 20 percent grade holding requirement, which is now specified for new air braked vehicles in FMVSS No. 121 and CMVs by reference in § 393.41, Parking brake system. Given the wear which vehicle

[9] BF represents braking force for one wheel, and WL represents vehicle load at that wheel (wheel load).

[10] Yaw motion is vehicle rotation about its vertical axis.

[11] Section 393.5, defines parking brake system as ''A brake system used to hold a vehicle stationary.''

[12] Exceptions are an agricultural commodity trailer, converter dolly, heavy hauler, or pulpwood trailer, which must instead carry chocking blocks to prevent movement when parked.

[13] Gross Axle Weight Rating.

[14] PBF_{Total} represents the sum of the braking forces for the parking brakes at each wheel of the vehicle or vehicle combination.

[15] The calculations and methodology for determining this are contained in the docket referenced above.

components and linkages experience through normal usage, should the same requirement that is specified for new vehicle parking brake systems also be specified for CMVs in use? Could CMVs in use meet this requirement? In contrast to the 20 percent grade, or $PBF_{Total}/GVW = 0.196$, discussed above, comparable requirements for the parking brake systems of new heavy vehicles in Europe [16] are an 18 percent grade for single unit CMVs and a 12 percent grade for CMV combinations. The FMCSA is particularly interested in receiving comments from users and manufacturers of CMVs. Persons submitting comments are requested to provide supporting documentation.

Test Procedures and Training

As part of this proposal, the FMCSA is interested in receiving comments which address two other areas involving PBBTs.

The first is development of standardized test procedures for each type of PBBT: roller dynamometer, breakaway torque tester, and flat plate tester. The procedures may also vary depending on the vehicle configuration being tested. The FMCSA believes that a uniform set of test procedures is needed to help assure consistent test results for a given vehicle from one PBBT to another. The goal would be to minimize or eliminate any influence that a particular PBBT operator or procedure might have on the test results. The agency anticipates working with PBBT manufacturers in the development of these procedures, so that they can be used by State and local enforcement officials and help assure uniform PBBT test results. The FMCSA requests comments on whether there are entities other than PBBT manufacturers which it should work with in developing standardized test procedures, and what issues should be addressed.

The second area involves PBBT operator training. Again, the agency believes this is necessary to help assure consistent and valid test results for enforcement purposes. The FMCSA anticipates working with CVSA and PBBT manufacturers in developing this training. Issues to be addressed include principles of PBBT operation, interpretation of test results, test duration, and test approach for different vehicle configurations. After the training is developed, the FMCSA anticipates that each State would take responsibility for training its enforcement officials through use of these training materials. The FMCSA requests comments on whether there are entities other than CVSA and PBBT manufacturers, which it should work with in developing PBBT training for enforcement officials. The agency is especially interested in receiving comments from PBBT manufacturers and users concerning the various training issues that need to be addressed, and from State enforcement officials concerning the issue of training responsibility.

Effective Date

The FMCSA would make the proposed regulatory changes effective 30 days after issuance of a final rule. Since the use of PBBTs would be an option under this proposal, and not a requirement, the agency believes that a longer period of time is not warranted. Further, having the proposed requirements become effective soon after publication of a final rule would permit those States which have PBBTs to begin using them for enforcement purposes. The FMCSA also believes that having the proposed requirements in place would serve as an incentive for other States and localities to acquire this new technology and realize its benefits. However, the agency requests comments on whether a longer time period is warranted, and if so, what it should be. Commenters are requested to provide supporting rationale.

Rulemaking Analyses 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 room at the above address, using the docket number appearing at the top of this document. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. The agency may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file, in the docket, relevant information as it becomes available after the comment period closing date, and interested persons should continue to examine the public docket for new material.

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This proposal, if adopted, would establish PBBT pass/fail criteria for use in determining the braking performance of CMVs. State and local enforcement officials could issue vehicle citations based on PBBT test results. Without these enforcement criteria, PBBTs would continue to be used only for screening of CMVs at roadside inspection facilities. PBBTs enable inspectors to screen large numbers of CMVs for brake performance deficiencies. States and localities which choose to use PBBTs for enforcement purposes would have to purchase the devices. This action would not mandate such expenditures, however, since the proposal does not eliminate the current ''hands-on'' method for determining compliance with the braking regulations. Further, the FMCSA anticipates that MCSAP funding will continue to be available to States for purchasing PBBTs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. The proposal, if adopted, would establish PBBT pass/fail criteria for use in determining the braking performance of CMVs. However, the proposal would not impose any new requirements beyond those of the existing rule, 49 CFR 393.52. It would simply allow States and motor carriers to use PBBTs to determine compliance with certain provisions of 49 CFR 393.52. Actual performance criteria remain the same. State and local enforcement officials could issue vehicle citations based on PBBT test results. PBBTs enable inspectors to screen large numbers of CMVs for brake performance deficiencies. States and localities which choose to use PBBTs as an optional method for enforcement of the braking regulations would have to purchase the devices. The FMCSA anticipates that MCSAP funding will continue to be available to States which desire to purchase PBBTs. In addition, the agency believes that States will realize increased safety benefits from PBBTs, through increased numbers of roadside inspections and measurement of actual vehicle braking performance. Accordingly, the FMCSA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

[16] Economic Commission for Europe, ECE Regulation No. 13, ''Uniform Provisions Concerning the Approval of Vehicles of Categories M, N and O with Regard to Braking,'' October 1996.

13132, dated August 4, 1999, and it has been determined that this proposed rule would not have a substantial direct effect on, or sufficient federalism implications for, States. The proposed rule would not limit the policymaking discretion of States, nor would it preempt any State law or regulation. States that choose to use PBBTs would have to buy them, but such equipment would be an eligible expense under MCSAP.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will 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.

Paperwork Reduction Act

The FMCSA has determined that this proposal is exempt from the requirements of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. There is a certification requirement that is imposed on six PBBT manufacturers, as discussed in the final functional specifications notice published elsewhere in today's **Federal Register**. However, OMB clearance is not required because there are less than 10 public entities affected by this certification requirement. See 5 CFR 1320.(3)(c). In addition, there is no new paperwork requirement on the part of the States, because they would only be required to complete the same paperwork they currently prepare, when requesting funds for the purchase of PBBTs from the FMCSA. Accordingly, the agency has determined that the certification requirement does not constitute a ''collection of information'' covered by the PRA.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

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 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Motor carriers, Motor vehicle equipment.

Issued on: July 24, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. Revise the authority citation for part 393 to read as follows:

Authority: 49 U.S.C. 322, 31136, and 31502; Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

2. Amend § 393.52 by revising paragraph (a)(3), by adding paragraph (a)(4), and by revising paragraph (d) to read as follows:

§ 393.52 Brake performance.

(a) * * *

(3) Stopping from 20 miles per hour in a distance, measured from the point at which movement of the service brake pedal or control begins, that is not greater than the distance specified in the table in paragraph (d) of this section; or

(4) Developing only the braking force specified in paragraph (a)(1) of this section and the stopping distance specified in paragraph (a)(3) of this section, if braking force is measured by a performance-based brake tester which meets the requirements of functional specifications for performance-based brake testers for commercial motor vehicles, where braking force is the sum of the braking forces at each wheel of the vehicle or vehicle combination as a percentage of gross vehicle or combination weight.

* * * * *

(d) Vehicle brake performance table:

Type of motor vehicle	Service Brake Systems			Emergency brake systems: application and braking distance in feet from initial speed of 20 mph
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed of 20 mph	
A. Passenger-carrying vehicles:				
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20	54
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(3) All other passenger-carrying vehicles	43.5	14	35	85

Type of motor vehicle	Service Brake Systems			Emergency brake systems: application and braking distance in feet from initial speed of 20 mph
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed of 20 mph	
B. Property-carrying vehicles:				
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation	43.5	14	35	85
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40	90

Note: (a) There is a definite mathematical relationship between the figures in columns 2 and 3. If the decelerations set forth in column 3 are divided by 32.2 feet per second per second, the figures in column 2 will be obtained. (For example, 21 divided by 32.2 equals 65.2 percent.) Column 2 is included in the tabulation because certain brake testing devices utilize this factor.

(b) The decelerations specified in column 3 are an indication of the effectiveness of the basic brakes, and as measured in practical brake testing are the maximum decelerations attained at some time during the stop. These decelerations as measured in brake tests cannot be used to compute the values in column 4 because the deceleration is not sustained at the same rate over the entire period of the stop. The deceleration increases from zero to a maximum during a period of brake system application and brake-force buildup. Also, other factors may cause the deceleration to decrease after reaching a maximum. The added distance which results because maximum deceleration is not sustained is included in the figures in column 4 but is not indicated by the usual brake-testing devices for checking deceleration.

(c) The distances in column 4 and the decelerations in column 3 are not directly related. ''Brake-system application and braking distance in feet'' (column 4) is a definite measure of the overall effectiveness of the braking system, being the distance traveled between the point at which the driver starts to move the braking controls and the point at which the vehicle comes to rest. It includes distance traveled while the brakes are being applied and distance traveled while the brakes are retarding the vehicle.

(d) The distance traveled during the period of brake-system application and brake-force buildup varies with vehicle type, being negligible for many passenger cars and greatest for combinations of commercial vehicles. This fact accounts for the variation from 20 to 40 feet in the values in column 4 for the various classes of vehicles.

(e) The terms ''GVWR'' and ''GVW'' refer to the manufacturer's gross vehicle weight rating and the actual gross vehicle weight, respectively.

[FR Doc. 00–19917 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000720213–0213–01; I.D. 062000C]

RIN 0648–AO40

Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates

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

ACTION: Proposed estimates of annual fur seal subsistence needs; request for comments.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, this action proposes annual estimates of fur seal subsistence needs for 2000 through 2002 on the Pribilof Islands, Alaska, and summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 1997 through 1999. NMFS solicits public comments on the proposed estimates.

DATES: Written comments must be received at the appropriate address or fax number (See **ADDRESSES**) no later than 5 p.m., eastern daylight time, on September 8, 2000.

ADDRESSES: Comments or requests for a copy of the draft Environmental Assessment should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301) 713–4060. Comments will not be accepted if submitted via email or Internet.

FOR FURTHER INFORMATION CONTACT: Dave Cormany, (907) 271–3024, fax (907) 271–3030, email *Dave.Cormany@noaa.gov*; Michael Payne, (907) 586–7235, fax (907) 586–7012, email *Michael.Payne@noaa.gov*; or Thomas Eagle, (301) 713–2322, ext. 105, fax (301) 713–4060, email *Tom.Eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION: The subsistence harvest from the depleted stock of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 216, subpart F. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151, *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents, while restricting taking by sex, age, and season for herd management purposes. To further minimize negative effects on the Pribilof Islands' fur seal population, the harvest has been limited to a 47-day season (June 23—August 8).

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous 3-year period and an estimate of the number of seals expected to be taken in the subsequent 3-year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands.

Summary of Harvest Operations and Monitoring 1997–1999

The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel monitored each daily harvest and worked closely with the tribal governments of each island to further improve the efficiency of the annual harvest and full utilization of the animals taken. NMFS personnel also monitored the disposal of by-products of the subsistence harvest in an effort to ensure that certain parts, such as bacula, of harvested seals were

not taken illegally and that waste of edible portions was not occurring.

The number of northern fur seals harvested on St. Paul Island from 1986 to 1999 ranged from 1,000 to 1,710, and the number harvested on St. George Island from 1986 to 1999 ranged from 92 to 319 seals. The actual number of animals harvested has never reached the upper end of the estimated take range for either island and has reached the lower limit only once on St. Paul (1991) and twice on St. George (1991, 1993) in the past 10 years. The average number of seals harvested during the past 10 years on St. Paul and St. George Islands has been 1,524 seals (range: 1,000 to 1,645) and 247 seals (range: 193 to 319), respectively (Table 1).

Beginning with the 1995 harvest, the tribal government of St. Paul voluntarily eliminated the ''butterfly cut'' as a standard method of field dressing harvested seals and resolved to utilize more of the carcass from each animal. Only whole carcasses were removed from the harvesting field. The following exceptions, as permitted by the tribal government, are: (a) Those animals taken to accommodate some of the elder residents who are physically unable to butcher whole animals supplied to them by the tribal government, and; (b) those carcasses in which the gall bladder was inadvertently ruptured, thus contaminating some of the meat with bile. A total of 12 butterfly cuts (0.29 percent of the combined Pribilof total take of 4,126 seals for the 3 years 1997–1999), were taken from the field under these exceptions.

As a result of the elimination of the butterfly cut as a standard field dressing method and because the removal of whole carcasses constitutes full utilization of the edible portions of harvested seals, NMFS determined that continuing the percent-use calculations previously applied to the harvest was no longer necessary. The butterfly cut was never a standard field dressing method on St. George Island; therefore, removal of only whole carcasses from the harvesting field is now a uniform practice in the Pribilofs.

Regarding the utilization of the inedible portions of harvested seals, the tribal governments of both islands have implemented a program that promotes full utilization of inedible seal parts for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents and increased fulfillment of the non-wasteful harvest requirements.

From 1997 through 1999, NMFS and the tribal governments of both islands worked closely and successfully to improve the conduct of the subsistence harvest and to promote full utilization of all the products thereof. Through the emerging co-management process, NMFS and tribal authorities have developed a cooperative and collaborative working relationship, which increases local participation and responsibility regarding subsistence uses of fur seals and other marine mammals on and around the Pribilofs. Among the improvements realized through this process from 1997 to 1999 were a lower incidence of heat stroke and fewer females or bulls being accidentally struck. NMFS anticipates that this effort and process will continue to progress and significant harvest improvements are planned or being implemented for the annual harvests 2000—2002.

TABLE 1. SUBSISTENCE HARVEST LEVELS FOR NORTHERN FUR SEALS ON THE PRIBILOF ISLANDS, 1985–1999

	Subsistence Take Ranges		Actual Harvest Levels	
Year	*St.Paul*	*St.George*	*St.Paul*	*St.George*
1985			3,384	329
1986	2,400–8,000	800–1,800	1,299	124
1987	1,600–2,400	533–1,800	1,710	92
1988	1,800–2,200	600–740	1,145	113
1989	1,600–1,800	533–600	1,340	181
1990	1,145–1,800	181–500	1,077	164
1991	1,145–1,800	181–500	1,645	281
1992	1,645–2,000	281–500	1,482	194
1993	1,645–2,000	281–500	1,518	319
1994	1,645–2,000	281–500	1,616	161
1995	1,645–2,000	281–500	1,525	260
1996	1,645–2,000	281–500	1,591	232
1997	1,645–2,000	300–500	1,153	227
1998	1,645–2,000	300–500	1,297	256
1999	1,645–2,000	300–500	1,000	193

Estimate of Subsistence Need for the Period 2000—2002

The projected subsistence harvest estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA, determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower end of the range is reached if the annual subsistence needs of the Pribilof residents are determined to have been met or the harvest has been conducted in a wasteful manner.

In September 1996, NMFS requested that the tribal government of each island determine the number of fur seals that would be needed by their communities each year for the 3-year period 1997 through 1999. The response from the St. Paul Island tribal government was to maintain the current range of 1,645–2,000 seals. The St. George Island tribal government requested that the lower end range be increased from 281 to 300 seals and that the upper bound remain at 500 seals. NMFS determined that the continuing decline of the island's economy had resulted in an increased rate of unemployment and, thus, a greater reliance on subsistence harvesting of food resources by the Aleut residents of St. George Island to meet their needs for the 1997–1999 period. In response to the information provided by the tribal governments of St. Paul and St. George Islands, the estimated range on St. Paul Island for each of the years 1997 to 1999 remained the same as was established for the years 1994 through 1996 (1,645 to 2,000), and that the annual range on St.

George Island for the years 1997 through 1999, was 300–500 seals.

In 1999, NMFS and the Tribal Government of St. Paul (TGSNP) initiated discussions under Section 119 of the MMPA regarding co-management of the subsistence uses of marine mammals in Alaska. These discussions produced a final draft agreement between the NMFS and TGSNP which has been submitted for approval and signature by the respective parties. Discussions have also been initiated with the Tribal Community of St. George regarding a section 119 agreement under the MMPA which is expected to be negotiated within this year.

For the 3 year period, 2000–2002, NMFS proposes no change to the past and current ranges of 1,645–2,000 for St. Paul Island and 300–500 for St. George Island. Retaining these levels will provide adequate flexibility for further refinement of annual harvest levels through the co-management process.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 216.72(e)(1) and (3) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest level is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs. NMFS seeks public comments on the proposed estimates (see **ADDRESSES**).

The harvest of fur seals is anticipated to be non-wasteful and in compliance with the regulations specified at 50 CFR 216.72. NMFS will continue to monitor the harvest on St. Paul Island and St. George Islands during 2000–2002.

Electronic Access

The draft Environmental Assessment for this action is accessible via the Internet at the following address:

http://www.nmfs.noaa.gov/prot__res/depleted/furseal.html.

Classification

National Environmental Policy Act

A draft Environmental Assessment is available for this action (see **ADDRESSES**).

Executive Order 12866 and Regulatory Flexibility Act

The Assistant Administrator for Fisheries, NOAA, has determined that this is not a significant rule under Executive Order 12866. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The General Counsel, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

This proposed action does not require the collection of information.

Executive Order 13132—Federalism

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence needs were prepared by the local governments in St. Paul and St. George, with assistance from NMFS officials.

Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This action does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Nonetheless, NMFS took several steps to work with affected tribal governments to prepare and implement the proposed action. These steps included discussions on subsistence needs and mechanisms to ensure that the harvest is conducted in a non-wasteful manner. NMFS and the Tribal Government of St. Paul are negotiating a cooperative agreement pursuant to section 119 of the MMPA to govern future harvests.

Dated: August 3, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–20163 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.000629197-0197-01; I.D. 032900A]

RIN 0648–AN06

Atlantic Highly Migratory Species; Billfish Size Limits; Monitoring of Recreational Landings; Post-Release Mortality

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is requesting comments on options for rulemaking to reduce United States recreational landings of Atlantic blue marlin (BUM) to comply with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS also requests comments on options to improve the monitoring of recreationally landed billfish and swordfish. In addition, NMFS is seeking comments on prohibiting retention of Atlantic billfish onboard any U.S.-flagged vessels that have been issued a commercial fishing permit for any Atlantic Highly Migratory Species

(HMS). Finally, NMFS requests comment on the use of circle hooks or other gear modifications to reduce mortality of released fish, and on the allowance of exemptions to the minimum size for those anglers seeking fly rod/light tackle records from certifying organizations.

DATES: Written comments on this ANPR must be received on or before September 25, 2000.

ADDRESSES: Comments on this ANPR should be mailed to, and copies of documents supporting this action may be obtained from, the Highly Migratory Species Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Buck Sutter or Jill Stevenson, 727–570–5447, fax: 727–570–5656; or Christopher Rogers, 301–713–2347, fax: 301–713–1917 or visit our website at www.nmfs.gov/sfa/hmspg.html.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS are managed under the Fishery Management Plan for Atlantic Billfish (Atlantic Billfish FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). The FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at 50 CFR part 635. In addition, billfish, swordfish (SWO), and tunas are managed throughout the Atlantic Ocean by ICCAT, to which the United States is a contracting party. The Secretary of Commerce has the responsibility, under the Atlantic Tunas Convention Act (ATCA), to implement ICCAT recommendations.

Stock assessments for BUM and Atlantic white marlin (WHM) indicate that biomass of these species has been below a level associated with maximum sustainable yield (MSY) for about three decades under both total Atlantic and north Atlantic stock scenarios. Consequently, the Standing Committee for Research and Statistics (SCRS) for ICCAT consider both BUM and WHM in the Atlantic Ocean as over-exploited. The SCRS similarly consider North Atlantic SWO as over-exploited. The September 1997 NMFS report to Congress on the status of U.S. fisheries listed BUM, WHM, and North Atlantic SWO as overfished.

In 1997, ICCAT recommended a reduction of Atlantic BUM and WHM landings by at least 25 percent from 1996 levels, starting in 1998, to be accomplished by 1999, thereby reducing mortality levels of billfish stocks in the Atlantic Ocean. A 1998 ICCAT recommendation continued the requirement for a reduced level of marlin landings through 2000. Also, a 1999 ICCAT recommendation requires the United States to reduce landings (recreational and commercial) of north Atlantic swordfish consistent with a 10-year stock rebuilding program. A history of the past actions that NMFS has taken to address ICCAT recommendations and to satisfy the objectives of the Atlantic Billfish FMP and the HMS FMP follows:

Billfish Minimum Sizes

During the 1998 recreational billfish fishing season, NMFS issued an interim rule (63 FR 14030, March 24, 1998) to increase the size limit for BUM from 86 inches (218 cm) to 96 inches (244 cm) lower jaw-fork length (LJFL), and for WHM from 63 inches (160 cm) to 66 inches (168 cm) LJFL. The intent of the interim rule was to reduce U.S. landings by the required 25 percent within the 2-year time frame required. Size limits established in the interim rule were based on the best available information at the time. Subsequent data indicated that the minimum size limit for WHM was sufficient; however, the minimum size for BUM may not have been adequate to achieve the required 25–percent reduction. Therefore, the size limit for BUM was further increased to 99 inches (251 cm) LJFL through a September 29, 1998, interim rule (63 FR 51859).

In April 1999, NMFS published Amendment 1 to the Atlantic Billfish FMP (Amendment 1). In that document, NMFS indicated that minimum size limits would be the primary fishery management strategy to control recreational billfish landings in compliance with the 1997 and 1998 ICCAT marlin recommendations. The final rule implementing Amendment 1 (64 FR 29090, May 28, 1999) included minimum sizes of 99 inches (251 cm) LJFL for BUM and 66 inches (168 cm) LJFL for WHM. It was projected that the increased minimum sizes would reduce recreational landings, by weight, by over 32 percent for BUM and by 42 percent for WHM. However, Amendment 1 noted that NMFS would implement further changes in minimum size limits through proposed and final rules if monitoring of landings indicated that current minimum size limits were insufficient to avoid exceeding BUM and/or WHM landing targets, as outlined in the framework provisions of the FMP amendment.

Compilation of preliminary 1999 recreational landings of BUM and WHM has recently been completed by the NMFS Southeast Fishery Science Center (SEC). While the compliance with the reduction in landings should be based on fishing year landings for 1999 (June 1 to May 31), as outlined in Amendment 1, these data are not yet available. NMFS is proceeding with a cross-year comparison based on calendar year 1999 pending availability of complete data for the 1999 fishing year. This will ensure that necessary measures are implemented in a timely fashion to demonstrate NMFS' efforts to comply with the international management recommendations.

A total of 157 billfish tournaments submitted reports to NMFS for fishing activities during 1999 (Table 1). Although numbers of BUM landed during 1999 (N=173) were reduced 20 percent from 1996 levels (N=217), compliance with ICCAT recommendations requires a 25–percent reduction in weight of marlin landed, not the number of fish. Despite the increased minimum size and the reduced number of BUM landed, harvest declined only 3.6 percent by weight due to increased average weights of landed fish. Conversely, WHM landings were reduced by nearly 58 percent, by weight, from 1996 levels.

TABLE 1. REPORTED TOURNAMENT LANDINGS OF BUM AND WHM FOR 1996 (116 TOURNAMENTS) AND 1999 (157 TOURNAMENTS)

Species	Year	Number Landed	Estimated Landings (mt)	Target Landings (mt)	Actual Reduction from 1996
Blue Marlin	1996	217	33.2		
	1999	173	32.0	24.9	3.6 percent
White Marlin	1996	72	1.95		
	1999	36	0.82	1.5	57.9 percent

Reducing Post-Release Mortality

Preliminary evidence from the NMFS SEC indicates that the use of circle hooks reduces bleeding and injury in catch-and-release recreational billfish fisheries when used with live and dead bait. Reducing physical damage from the recreational hooking event would likely increase post-release survival rates. NMFS' SEC staff have been engaged in outreach programs to encourage the voluntary use of circle hooks. Further, reducing incidental mortalities associated with capture and release will enhance other management actions directed toward rebuilding of overfished stocks.

Landings Monitoring

Amendment 1 and the HMS FMP established new requirements for registration of, and reporting by, tournaments scoring billfish, swordfish, tunas and sharks. Consequently, the number of billfish tournaments that reported in 1999 (N=157) was greater than those that reported in 1996 (N=116). Registration of shark and tuna tournaments is also improving in response to the new regulations. While landings reporting for HMS tournaments is becoming more comprehensive, a significant amount of recreational fishing effort for Atlantic HMS occurs outside the tournament context. Also, after a lengthy period of relatively low activity, the recreational SWO fishery has re-emerged as a nighttime fishery over the last few years along the East Coast. In 1999, NMFS committed to counting recreationally caught north Atlantic SWO against the incidental catch quota in the HMS FMP.

Monitoring HMS recreational fisheries outside tournaments can be a challenge due to the nature of these fisheries (i.e., fewer boats fishing offshore than inshore and success rates may be lower for large pelagics than for inshore species), the timing of landings (e.g., late-day returns from offshore trips), and the wide geographic range of landings (i.e., Texas to Maine and the Caribbean). Trips landing large pelagic fish, such as SWO, BUM, WHM, and sailfish are intercepted relatively infrequently within the scope of NMFS' current recreational statistical programs (Marine Recreational Fisheries Statistics Survey and Large Pelagics Survey), thus the precision of recreational landings estimates is a matter of concern.

Billfish Retention by Commercial Vessels

Since the Atlantic Billfish FMP and implementing regulations were issued in 1988, retention of billfish in the U.S. Exclusive Economic Zone has been limited to persons in the recreational fishery, and sale of billfish from the management unit has been prohibited. This significant element of the Atlantic Billfish FMP (i.e., no commercial fishery) was preserved in Amendment 1 upon consideration of input from the Billfish Advisory Panel. The original FMP regulations were drafted under the presumption that no gear other than rod and reel would be used in the recreational fishery and that rod-and-reel gear would not be used in a commercial fishery that would take billfish.

Since that time, NMFS has consolidated billfish regulations with those issued for other Atlantic HMS, and NMFS has received comment that vessels issued permits in the commercial tuna, swordfish, or shark fisheries, even though using rod-and-reel gear, should be prohibited from retaining billfish. Although billfish taken by persons aboard these vessels cannot be lawfully sold, there is a concern that billfish are targeted from such commercial vessels or that incidental catch, if retained, could illegally enter into commerce.

Potential Management Alternatives

If additional management measures are deemed necessary to reduce landings, enhance survival of recreational releases, and improve monitoring of landings BUM, WHM, and SWO associated with U.S. fishing activities in order to meet the ICCAT recommendations and to satisfy the objectives of the HMS FMP and Amendment 1, the following alternatives and others may be considered:

(1) Increase the minimum size limit for BUM from the current 99 inch (251 cm) LJFL minimum size. Projected reductions in landings associated with a range of increased minimum size limits are provided in Table 2.

TABLE 2. PROJECTED BUM LANDINGS REDUCTIONS FOR A GIVEN INCREASE IN MINIMUM SIZE

Minimum Size (LJFL)	Projected Reduction from 1996 Landings
102 inches (259 cm)	43 percent by weight.
104 inches (264 cm)	51 percent by weight.
106 inches (269 cm)	62 percent by weight.
108 inches (274 cm)	72 percent by weight.
110 inches (279 cm)	79 percent by weight.

(2) Establish a mandatory catch-and-release format for all Atlantic billfish tournaments. The 1988 Atlantic Billfish FMP included a ''no-kill'' tournament alternative in the management options considered. Although it was ultimately rejected as being overly restrictive at the time, the South Atlantic Fishery Management Council strongly recommended that all tournaments adopt the no-kill format. Many tournaments have adopted strategies to reduce or eliminate landings, including offering prizes for released fish; of the 157 billfish tournaments that registered during 1999, 76 (48 percent) reported that they were ''release-only'' events. However, the remaining tournaments are responsible for blue marlin landings during 1999 (Table 1) that are in excess of the levels necessary for compliance with the ICCAT recommendation.

(3) Require the use of circle hooks for recreational fisheries targeting billfish and swordfish with live or dead bait to reduce post-release mortality, thereby enhancing rebuilding efforts of overfished billfish stocks in the Atlantic Ocean.

(4) Require that a landing tag be affixed to all recreationally landed billfish and SWO. Information supplied by a landing tag program could provide NMFS with improved catch data for HMS landings outside the tournament context and could help monitor recreational landings against U.S. catch quota levels.

(5) Prohibit retention of billfish aboard all vessels issued a commercial HMS permit to facilitate enforcement of the no-sale regulation and, to the extent incidental catch can be released alive, to reduce billfish mortality. However, such an expanded prohibition could restrict certain vessels from occasionally landing billfish as part of the recreational fishery due to part-time status as commercial vessels.

Request for Comments

NMFS requests comments on whether additional measures are needed to meet the ICCAT recommendations and to satisfy the objectives of the HMS FMP and Amendment 1. If additional measures are needed, NMFS also solicits comments on the potential management alternatives discussed earlier, or other management alternatives.

Implementation of Amendment 1 and the HMS FMP resulted in increased minimum sizes for BUM, WHM, and sailfish and the first-time implementation of minimum sizes in the recreational fishery for sharks. NMFS has received comments from a recreational fishing organization as well

as individual anglers regarding their desire to allow exceptions to the minimum size regulations when anglers are using fly gear or light tackle, or when a line class record for a species is currently below the minimum size. Therefore, NMFS also solicits comments on the feasibility of implementing these exceptions, including the impact on ICCAT compliance, and the various options for implementation. The latter could include issuance of an Exempted Fishing Permit (EFP) to anglers who wish to fish with a fly rod or light tackle. The authorization by the EFP could be subject to the angler obtaining recognition from a certifying organization (e.g., International Game Fish Association) that the landed fish established a record. Other options include limiting such exemptions to fishing tournaments or issuing anglers a notice of violation, which could be dismissed if the record certification is issued by a recognized association.

Comments received on this ANPR will assist NMFS in determining the options for rulemaking to implement the requirements of international agreements and other relevant laws.

Classification

This advance notice of proposed rulemaking has been determined to be significant for purposes of Executive Order 12866.

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

Dated: August 2, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–20162 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 154
Wednesday, August 9, 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

Opal Creek Scenic Recreation Area (SRA) Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, August 21, 2000. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center, 400 West Virginia Street, Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (P.L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The Council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes: (1) Overview of the Federal Advisory Committee Act (FACA); (2) presentation on area mine closures; and (3) begin developing issue statements.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 17 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

DISCLAIMER: This meeting notice is being published less than 15 days prior to the meeting due to a lack of time to adequately plan the meeting between the council's last meeting on Saturday, July 29 and this upcoming meeting on Monday, August 21. This late notice is authorized under 41 CFR 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: August 2, 2000.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 00–20085 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Action of Meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, August 17, 2000. The August meeting is a field trip that will originate from the Estacada Ranger District Office, Mt. Hood National Forest; 595 NW Industrial Way; Estacada, Oregon 97023; (503) 630–6861. The field trip will begin at about 9:30 a.m. and will end at about 3 p.m.

The morning will be spent visiting watershed restoration projects on private lands near Estacada. In the afternoon the Committee will visit a project site on the Estacada Ranger District.

Due to the informal nature of this meeting, no Public Forum is scheduled; however, the public is welcome to attend. The public will be responsible for their own transportation. Written comments may be submitted prior to the August 17 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: August 3, 2000.

Suzanne Olson,

Acting Forest Supervisor.

[FR Doc. 00–20084 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Request for Nominations for the Task Force on Agricultural Air Quality

SUMMARY: The Secretary of Agriculture intends to renew the Task Force on Agricultural Air Quality and requests nominations for qualified persons to serve as members.

DATES: Nominations must be received in writing or reaffirmed (see **SUPPLEMENTARY INFORMATION** section) by September 29, 2000.

ADDRESSES: Send written nominations to: Chief, USDA/Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: George Bluhm, Designated Federal Official, telephone (530) 752–1018, fax (530) 752–1552, e-mail bluhm@crocker.ucdavis.edu.

SUPPLEMENTARY INFORMATION:

Task Force Purpose

As required by section 391 of the Federal Agriculture Improvement and Reform Act of 1996, the Chief of the Natural Resources Conservation Service (NRCS) shall establish a task force to review research results by any Federal agency that addresses air quality issues related to agriculture or agriculture infrastructure. The task force will provide recommendations to the Secretary of Agriculture for guidance on development and implementation of air quality policy. The requirements of the Federal Advisory Committee Act (FACA) apply to this task force.

The task force will:

1. Review research, on agricultural air quality, supported by Federal agencies;
2. Provide recommendations to the Secretary of Agriculture, regarding air quality and its relation to agriculture, based upon sound scientific findings;
3. Work to ensure intergovernmental (Federal, state and local) coordination in establishing policy for agriculture air quality and to avoid duplication of efforts;
4. Assist, to the extent practical, Federal agencies in correcting their erroneous data with respect to agricultural air quality; and
5. Ensure that air quality research related to agriculture receives adequate peer review and considers economic feasibility.

Task Force Membership

The task force will be made up of United States citizens and be composed of:
1. Individuals with expertise in agricultural air quality and/or agricultural production;
2. Representatives of institutions with expertise in the impacts of air quality on human health;
3. Representatives from agriculture interest groups having expertise in production agriculture;
4. Representatives from state or local agencies having expertise in agriculture and air quality; and
5. An atmospheric scientist.

Task force nominations must be in writing and provide the appropriate background documents required by the Department of Agriculture (USDA) policy, including Form AD–755. Previous nominees and current task force members who wish to be reappointed should update their nominations and provide a new background disclosure form (AD–755) to reaffirm their candidacy. Service as a task force member shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

A task force member shall serve for a term of 2 years. No individual may serve more than three 2-year terms as a member of the task force. Task force members shall receive no compensation from the NRCS for their service as task force members except as described below.

While away from home or regular place of business as a member of the task force, the member will be eligible for travel expenses paid by NRCS, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service under section 5703 of Title 5, United States Code.

Additional information about the Task Force on Agricultural Air Quality may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.

Submitting Nominations

Nominations should be typed and should include the following:
1. A brief summary of no more than two pages explaining the nominee's qualifications to serve on the Task Force on Agricultural Air Quality.
2. Resume.
3. A completed copy of form AD–755.

Nominations should be sent to the Chief of NRCS at the address listed above, and postmarked no later than September 29, 2000.

Equal Opportunity Statement

To ensure that recommendations of the task force take into account the needs of under served and diverse communities served by USDA, membership shall include, to the extent practicable, individuals representing minorities, women, and person with disabilities.

Signed in Washington, DC on August 1, 2000.

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 00–20159 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue a revised conservation practice standard in section IV of the FOTG. The revised standard is Wetland Restoration (Code 657). This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before September 8, 2000.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 27, 2000.

Jane E. Hardisty,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. 00–20158 Filed 8–8–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: Economics and Statistics Administration (ESA), the Department of Commerce.

Title: Customer Satisfaction Surveys.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 800.

Number of Respondents: 4,000.

Average Hours Per Response: 12 minutes.

Needs and Uses: This information collection is necessary to help STAT–USA fulfill its mission of disseminating economic and statistical information to the business community and individual users. STAT–USA plans to survey its current customer base annually with a 25-question Customer Satisfaction Survey. STAT–USA plans to use a number of survey formats including mail, fax, on-line, and paper in order to

ensure a high response rate. STAT–USA believes that regular communication with its customers, specifically feedback from the survey, will enable it to deliver its goods and services in the most user-friendly, economical and efficient manner. Only by knowing its customer base and its needs can STAT–USA continue to deliver the highest quality of collected economic and statistical information.

Affected Public: Business and individual data users.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Office: Paul Bugg

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to must be submitted on or before September 8, 2000.

Dated: August 3, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–20059 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau, the Department of Commerce.

Title: Current Population Survey—November Voting and Registration Supplement.

Form Number(s): None (automated survey instrument).

Agency Approval Number: 0607–0466.

Type of Request: Reinstatement, without change, of an expired collection.

Burden: 1,200 hours.

Number of Respondents: 48,000.

Avg Hours Per Response: 1.5 minutes.

Needs and Uses: The Census Bureau requests Office of Management and Budget (OMB) approval to continue the biennial collection of data concerning voting and registration. We will collect the data as part of the November Current Population Survey (CPS), through a series of supplemental items. The supplement questions will be identical to those asked in the November 1998 supplement. Voting and registration data have been collected since 1964 on the CPS, yielding statistics on voter (and nonvoter) characteristics, and current voter trends in each Presidential or Congressional election.

Federal, state, and local election officials; college institutions; political party committees; research groups; and other private organizations use the voting and registration data collected in the November supplement. These data enable policymakers to keep issues up-to-date such as changes in participation in the election process by demographic characteristics, age, sex, race, ethnicity, and educational attainment. Election officials use these data to formulate policies relating to the voting and registration process. Data obtained on duration of residence will allow policymakers and researchers to better determine the relationships between other demographic characteristics and voting behavior.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 3, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–20060 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072700D]

Availability of an Environmental Assessment and Receipt of an Application for Incidental Take Permits for the Roseton and Danskammer Point Generating Stations Conservation Plan, Hudson River, New York

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

ACTION: Notice of application and availability for public comments.

SUMMARY: This notice advises the public that Central Hudson Gas & Electric Corporation (CHGE) has submitted an application to the National Marine Fisheries Service (NMFS) for an incidental take permit (Permit) pursuant to the Endangered Species Act of 1973, as amended (Act). As required by the Act, the applicant has also prepared a Conservation Plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The proposed permit would authorize the take of one endangered species: shortnose sturgeon (*Acipenser brevirostrum*). The duration of the proposed Permit and Plan is 15 years.

NMFS also announces the availability of a draft Environmental Assessment (EA) and Implementing Agreement for this Permit application. The NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents.

DATES: Written comments on the Conservation Plan, EA, and Implementing Agreement must be received from interested parties no later than September 8, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to Mary Colligan, Endangered Species Coordinator, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax. Comments will not be accepted if submitted via e-mail or the Internet.

Comments and materials received will also be available for public inspection, by appointment, during regular business hours by calling 978–281–9116. The documents are also available electronically on the World Wide Web at [http://www.nmfs.noaa.gov/prot__res/permits/ESApermit.html].

FOR FURTHER INFORMATION CONTACT: Mary Colligan; telephone 978–281–9116; 978–281–9394; e-mail: Mary.A.Colligan@noaa.gov

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. ''Harm'' has been defined by NMFS as an act that actually kills or injures fish or wildlife, and includes any significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife, including breeding, spawning, rearing, feeding, or sheltering (64 FR 60727, November 8, 1999).

The NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

The Permit application is related to the continued operation of two power plants on the Hudson River, the Roseton and Danskammer Point power plants, both of which are operated by CHGE. The Permit application includes the following: (1) the proposed Conservation Plan; and (2) the proposed Implementing Agreement. This notice is provided pursuant to the ESA, and National Environmental Policy Act (NEPA) regulations.

Details of a separate request by CHGE for a scientific research permit pursuant to section 10 (a)(1)(A) are also provided in the Conservation Plan. All comments received will become part of the official administrative record and will be available for review pursuant to section 10(c) of the Act.

Background

Central Hudson Gas & Electric Company (CHGE) operates the Roseton and Danskammer Point power plants which are located along the Hudson River estuary approximately 65 miles upriver from the southern tip of Manhattan, NY. Shortnose sturgeon have been previously collected in the cooling water withdrawal systems of these power plants. In addition, shortnose sturgeon have been occasionally collected in the biological monitoring program which has been required by the New York State Department of Environmental Conservation as part of the State Pollution Discharge Elimination System permit for the operation of power plants on the Hudson River, including the Roseton project. The collection of shortnose sturgeon under this biological monitoring program is covered under a separate application for an ESA Scientific Research Permit under section 10(a)(1)(A).

Section 10 of the ESA contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare and submit to the NMFS for approval a Conservation Plan containing a strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Conservation Plan will be provided.

The Roseton Generating Station is located on the west shore of the Hudson River Estuary at river mile (RM) 66 and approximately four miles north of the Newburgh-Beacon Bridge. The plant consists of two fossil-fueled, steam electric units, having a combined net generating capacity of 1,248 megawatts (MW). Roseton has a shoreline intake structure with 12 openings on the front face. Trash racks and traveling screens have been installed at the plant.

The Danskammer Point Generating Station is located on the west shore of the Hudson River Estuary at RM 66, approximately 0.5 miles north of the Roseton Generating Station. Danskammer consists of four fossil-fueled, steam electric units, having a net generating capacity rating per unit ranging from 480 to 491 MW. Cooling water is transported to the plant through an intake canal located along the Estuary shoreline north of the plant.

The operation of the Roseton and Danskammer power plants requires withdrawal of large quantities of water for cooling purposes, and the subsequent discharge of this cooling water, at an increased temperature, back to the source waterbody. The use of cooling water could cause mortality of shortnose sturgeon from entrainment and impingement at the cooling water intake or from effects of the discharge.

A total of four, or possibly eight if unidentified sturgeon larvae are included, shortnose sturgeon larvae were collected in entrainment monitoring conducted at six power plants (including Roseton and Danskammer Point) over a 16-year study period (1972–1987). Intensive monitoring, conducted from 1981–1987, entailed sampling nearly 24–hours per day, 4 to 7 days per week, during the spring. The low number of larvae entrained is likely primarily due to the fact that spawning and larval nursery areas occur many miles upstream (RM 118–148) from the plants.

The estimated average number of shortnose sturgeon impinged at Roseton and Danskammer Point is seven individuals per year. A total of 29 shortnose sturgeon were collected at Roseton and Danskammer Point power plants over the 27-year sampling period (1972–1998). In general, weekly 24–hour sampling was conducted to examine the abundance and species composition of impinged organisms.

Alternatives to the proposed action that were considered in the Conservation Plan included alternative means of utilizing the existing once-through cooling water systems, replacement of the once-through cooling water systems with closed-cycle technologies, and alternative screening technologies. The alternative of targeting reductions in water withdrawal rates in an effort to reduce the entrainment or impingement of shortnose sturgeon was determined to not be feasible as the rare entrainment and impingement events cannot be predicted. Closed-cycle cooling systems, including cooling ponds, spray ponds or cooling towers were considered. Sufficient lands are not available for cooling ponds or spray ponds. Cooling towers were rejected due to the concerns over potential impacts from fogging or icing from the cooling tower plume drift, visual impacts, evaporation, drift, blowdown, sludge formation and noise, costs, and lack of significant benefit to shortnose sturgeon. Screening alternatives were considered, but fine-mesh screens were rejected due to engineering difficulties, potential high costs, and the lack of any apparent benefit to shortnose sturgeon. Barrier nets were considered impractical due to the proximal position of water intakes to strong tidal currents, the water depth, proximity to main river channels, seasonally high debris and sediment loading, and presence of structures located offshore of the intake at some of the facilities. Cylindrical wedge-wire screens were eliminated from consideration due to concerns over reliability, maintenance issues, costs, and uncertainty of the benefits to shortnose sturgeon. Under the no action alternative, no permit would be issued, however take could not be completely avoided by these plants and mitigative measures would not be implemented. Minimization programs for the Roseton and Danskammer Point plants include days of outage, minimizing volumes of

cooling water needed, and continued operation of intake screens and fish return systems when associated water pumps are in operation. CHGE proposed to provide an annual count of the number of shortnose sturgeon impinged at each facility based on sampling during one 24–hour period each week of operation. CHGE will conduct a mark-recapture study designed to estimate the size of the adult shortnose sturgeon population in the Hudson River twice during the 15-year term of the permit (permit years 7 and 14).

On May 19, 2000, NMFS' Office of Protected Resources received a complete application from CHGC requesting an ESA section 10(a)(1)(A) scientific research permit for the conduct of monitoring associated with the operation of the Roseton and Danskammer power plants. As required by 50 CFR 222.24 (a), NMFS published a notice of receipt in the **Federal Register** on June 19, 2000 (65 FR 39869). CHGC has requested approval for the collection of larvae, juvenile, and adult shortnose sturgeon in various location in the Hudson River. The comment period for this research permit application closed on July 23, 2000, and NMFS is currently compiling comments that were received on the application. Details of the research permit application are provided in the Conservation Plan prepared for CHGE's application for an ESA section 10(a)(1)(B) incidental take permit which is announced by this notice.

This notice is provided pursuant to section 10(a) of the ESA and NEPA regulations. The NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of the Act and NEPA. If it is determined that the requirements are met, permits will be issued for the incidental take of shortnose sturgeon. The final permit decision will be made no sooner than 30 days from the date of this notice.

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Dated: August 3, 2000.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–20160 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072600C]

Marine Mammals; Photography Permit (File No. 986–1592)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Bruce Reitherman Pandion Enterprises, P.O. Box 545, Summerland, California 93067, has applied in due form for a permit to take elephant seals (*Mirounga angustirostris*) for purposes of commercial photography.

DATES: Written comments must be received on or before September 8, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802, (562/980–4021).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes.

The applicant seeks authorization to inadvertently harass up to 50 elephant seals (*Mirounga angustirostris*) during the course of filming activities in Piedras Blancas and Ano Nuevo, California over a 1-year period.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 4, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–20161 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

August 4, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port,

call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 434 and 443 are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71115, published on December 20, 1999.

Richard B. Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on August 9, 2000, you are directed to adjust the current limits for the following categories, as provided for in the agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia dated November 7, 1997:

Category	Adjusted twelve-month limit [1]
434	11,764 dozen.
443	185,811 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–20141 Filed 8–8–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0011]

In the Matter of Royal Sovereign Corp., a Corporation; Settlement Agreement and Order

1. This Settlement Agreement and Order between Royal Sovereign Corporation (''Royal Sovereign''), a New Jersey corporation, and the staff of the United States Consumer Product Safety Commission (''the CPSC''), pursuant to 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), reflects a compromise resolution of the matter described herein, entered without a hearing or determination of issues of law and fact.

I. The Parties

2. The staff is the staff of the United States Consumer Product Safety Commission, an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act. 15 U.S.C. 2051–2084.

3. Royal Sovereign is a corporation organized and existing under the laws of the State of New Jersey. Its principal corporate offices are located at 100 West Sheffield Ave., Englewood, NJ 07631. Royal Sovereign is an importer and distributor of small electronic appliances, including portable ceramic heaters.

II. Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between 1992 and 1996, Royal Sovereign imported and distributed within the United States approximately 39,300 model RST1200 oscillating ceramic portable heaters (''RST 1200 heaters''). The portable heaters are ''consumer products'' and Royal Sovereign is a ''distributor'' of ''consumer products'' that are ''distributed in commerce'' as those terms are defined in sections 3(a)(1), (4), (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11).

6. The RST 1200 heaters are defective because the mechanism that rotates the heater side-to-side can wear through the insulation of electrical wiring inside the heater's base. In addition, some of the connections between the electrical wires and other components inside the heater are faulty. Either of these conditions can cause a fire.

7. Between 1994 and 1997, Royal Sovereign received at least thirteen reports of fires involving RST 1200 heaters. The fires resulted in property damage claims in excess of $70,000.

8. On October 24, 1995, CPSC field investigator William Robinson inspected the facilities of Royal Sovereign, and interviewed firm officials, seeking information about a fire involving an RST 1200 heater that had been reported to the Commission by the consumer. Mr. Robinson shared the staff's engineering evaluation of the unit involved in the fire, which concluded that faulty crimp connections may have led to arcing and overheating within the unit that caused ignition of the plastic housing. Firm officials informed Mr. Robinson at that time that they believed the RST 1200 heater involved in the fire had been tampered with, and that the faulty crimps were not of Royal Sovereign's manufacture.

9. Royal Sovereign also informed Mr. Robinson on October 24, 1995, that Royal Sovereign had received reports of two additional fires involving RST 1200 heaters. Firm officials stated that one of those fires resulted from the heater being placed too close to combustibles, and that they believed the other fire had been deliberately set. Mr. Robinson was told that the other complaints the firm had received concerning the RST 1200 related to mechanical failures or product dissatisfaction.

10. At the conclusion of his inspection, Mr. Robinson left with Royal Sovereign copies of the CPSC statutes and regulations setting forth a distributor's obligations to report potential safety hazards to the Commission.

11. In 1996, Royal Sovereign undertook an ''upgrade'' program, pursuant to which it contacted those consumers of RST 1200 heaters from whom the firm had received warranty cards and informed them that they could return their heaters for ''reconfiguration to 1996 standards.'' The ''upgrade'' involved opening the units to evaluate the crimp connections and the installation of a sleeve over the power cord, which entered the unit in

such a way as to rub up against an internal metal disc that provided the oscillating motion for the unit. The addition of the protective sleeve guarded against abrasion of the cord. Abrasion of the cord could result in the exposure of current-carrying wires, which, in turn, could result in arcing and fire. Royal Sovereign did not notify the staff to ifs upgrade program.

12. Between October 1995 and April 1997, Royal Sovereign became aware of ten additional fires involving RST 1200 heaters.

13. Royal Sovereign did not report the additional incidents of fire involving RST 1200 heaters to the Commission.

14. In October 1997, the staff executed an administrative search warrant on the facilities of Royal Sovereign and recovered several burned units of RST 1200 heaters, as well as a number of additional returned units exhibiting indicia of fire. The staff also collected new samples of RST 1200 heaters for evaluation. In addition, the staff collected documentation of fire incidents involving RST 1200 heaters, including insurance claim documentation, internal tracking records, and correspondence with consumers. Finally, the staff collected over 100 consumer complaints noting incidents of sparking, smoking, or flaming RST 1200 heaters.

15. The staff's evaluation of the returned units, as well as the new samples, indicated that the units utilized crimp connections similar to those identified as potentially hazardous by the staff in 1995. The staff also noted evidence of abrasion of the power cords in the burned units.

16. Although Royal Sovereign had obtained sufficient information to reasonably support the conclusion that the RST 1200 heaters contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

17. Royal Sovereign's failure to report to the Commission, as required by section 15(b) of the CSA, was committed ''knowingly,'' as that term is defined in section 20(d) of the CPSA, and Respondent is subject to civil penalties under section 20 of the CPSA.

III. Response of Royal Sovereign

18. Royal Sovereign denies it violated the CPSA. Royal Sovereign also denies that the RST 1200 heaters contain a defect which could create a substantial product hazard, or create an unreasonable risk of injury or death. Royal Sovereign also denies that the RST 1200 heaters caused any of the fires referred to in this document, or could cause a fire. Royal Sovereign also denies that it violated the reporting requirements of the CPSA.

IV. Agreement of the Parties

19. The Commission has jurisdiction over this matter under the CPSA, 15 U.S.C. 2051–2084.

20. Royal Sovereign agrees to pay to the Commission a civil penalty in the amount of $20,000, to be paid in four equal installments of $5000. The first payment shall become due immediately upon the CPSC's final acceptance of the attached Order. Subsequent payments shall be made thirty (30), sixty (60), and ninety (90) days after that date.

21. Respondent knowingly, voluntarily and completely waives any rights it my have (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's Order, (3) to a determination by the Commission as to whether Respondent failed to comply with section 15(b) of the CPSA, as alleged, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. This Settlement Agreement and Order shall not be deemed or construed as an admission of liability or wrongdoing by Royal Sovereign or as evidence: (a) Of any violation of law or regulation by Royal Sovereign; (b) of other wrongdoing by Royal Sovereign; (c) that RST 1200 heaters are defective, create a substantial product hazard, or are unreasonably dangerous; or (d) of the truth of any claims or other matters alleged or otherwise stated by the CPSC or any other person either against Royal Sovereign or with respect to RST 1200 heaters.

23. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

24. This Settlement Agreement and Order becomes effective upon its final acceptance by the Commission and service upon Respondent.

25. The Commission may publicize the terms of the Settlement Agreement and Order.

26. The provisions of this Settlement Agreement and Order shall apply to Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality.

27. Royal Sovereign agrees to immediately inform the Commission if it learns of any additional incidents involving the RST 1200 heaters, or any additional information regarding the alleged defect and hazard identified in paragraph six, herein.

28. Nothing in this Settlement Agreement and Order shall be construed to preclude the Commission from taking such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: May 16, 2000.

Ta K. Lin,

Royal Sovereign Corporation.

Dated: May 10, 2000.

Alan Schoem,

Assistant Executive Director, Office of Compliance.

Eric Stone,

Director, Legal Division, Office of Compliance.

Margaret H. Plank,

Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Royal Sovereign Corporation, a corporation, and the staff of the U.S. Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Royal Sovereign Corporation, and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, Royal Sovereign Corporation shall pay the Commission a civil penalty in the amount of TWENTY THOUSAND AND 00/100 dollars ($20,000). The penalty shall be paid in four equal installments of FIVE

THOUSAND AND 00/100 dollars ($5000). The first payment shall be due within ten (10) days after service of this Final Order upon Royal Sovereign Corporation. Subsequent payments shall be due thirty (30), sixty (60), and ninety (90) days thereafter.

In the event that Royal Sovereign Corporation fails to make a payment in accordance with the terms of this Order, or makes a payment that is at least five days late, the outstanding balance of the civil penalty shall become due and payable within five days, and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 3rd day of August, 2000.

By Order of the Commission.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 00–20008 Filed 8–8–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0002]

Submission for OMB Review; Comment Request Entitled Solicitation Mailing List Application (SF 129)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). A request for public comments was published at 65 FR 35617, June 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

Respondents: 200,000.

Responses Per Respondent: 4.

Total Responses: 800,000.

Hours Per Response: .58.

Total Burden Hours: 464,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: August 4, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–20179 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Submission for OMB Review; Comment Request Entitled Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). A request for public comments was published at 65 FR 35617, June 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 8, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

Respondents: 12,000.

Responses Per Respondent: .5.

Total Responses: 6,000.

Hours Per Response: 24.

Total Burden Hours: 144,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: August 4, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–20180 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF ENERGY

Record of Decision on Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Record of Decision (ROD) for the treatment of transuranic (TRU)/alpha low-level waste at the Oak Ridge National Laboratory (ORNL), located on the Oak Ridge Reservation in Oak Ridge, Tennessee. DOE has selected the Low-Temperature Drying Alternative [the Preferred Alternative in the Final Environmental Impact Statement for Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Oak Ridge, Tennessee (DOE/EIS–0305–F, June 2000)] and will proceed with a contract with the Foster Wheeler Environmental Corporation (Foster Wheeler) to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility. The facility will use low-temperature drying to treat TRU mixed waste sludge and associated low-level waste supernate, and will treat TRU solid waste by sorting and compacting. Any solid waste containing hazardous constituents regulated under the Resource Conservation and Recovery Act (RCRA) will be macroencapsulated.

The waste to be treated is legacy waste, i.e., waste generated from past isotope production and research and development that supported national defense and energy initiatives. The legacy tank waste is currently being stored or consolidated in the Melton Valley Storage Tanks (MVSTs), and legacy solid waste is stored in bunkers, subsurface trenches, and metal storage buildings. Waste that would be generated from ongoing operations at ORNL during the operation of the TRU Waste Treatment Facility (expected to operate for about 5 years) will also be treated in the facility. DOE will dispose of the treated TRU waste at DOE's Waste Isolation Pilot Plant (WIPP), located near Carlsbad, New Mexico, and treated low-level waste at DOE's Nevada Test Site (NTS).

In making its decision, DOE considered the analysis in the Final EIS and public comments on it. In addition, DOE considered consistency with previous Departmental programmatic decisions and agreements and the costs associated with the treatment technologies.

FOR FURTHER INFORMATION CONTACT: For further information on the TRU Waste Treatment Project or the Final EIS, or to receive a copy of the Final EIS, contact: John O. Moore, Waste Operations Integration Team Leader, U.S. Department of Energy, Oak Ridge Operations, 55 Jefferson Avenue, P.O. Box 2001, Oak Ridge, Tennessee 37831; Telephone: (865) 576–3536. Facsimile: (865) 576–5333. E-mail: moorejo@oro.doe.gov. For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585; Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

Since the mid-1940s, DOE and its predecessor agencies have generated TRU waste,[1] alpha low-level waste,[2] mixed waste,[3] and low-level waste[4] at ORNL during isotope production and research and development activities. ORNL currently manages the largest inventory of remote-handled TRU/alpha low-level waste[5] in the DOE complex, and also manages a smaller portion of the contact-handled TRU/alpha low-level waste.[6] DOE is storing legacy waste at ORNL, which consists of about 550 cubic meters of solid remote-handled TRU/alpha low-level waste stored in concrete bunkers and subsurface trenches and 1,000 cubic meters of contact-handled TRU/alpha low-level waste stored in metal buildings. Some of the solid TRU/alpha low-level waste containers may also contain mixed waste. DOE also is consolidating 900 cubic meters of TRU mixed waste sludge and 1,600 cubic meters of associated remote-handled

[1] TRU waste is waste containing alpha-emitting radionuclides with an atomic number greater than 92 and half-lives greater than 20 years, at concentrations greater than 100 nanocuries per gram of waste.

[2] Alpha low-level waste is low-level waste that contains alpha-emitting isotopes.

[3] Mixed waste contains radioactive waste regulated under the Atomic Energy Act of 1954, as amended, and a hazardous component subject to RCRA regulation.

[4] Low-level waste is any radioactive waste that is not classified as high-level waste, spent nuclear fuel, TRU waste, byproduct material, or mixed waste.

[5] Remote-handled TRU/alpha low-level waste contains alpha-, beta-, and gamma-emitting isotopes with a surface dose rate greater than 200 millirem per hour.

[6] Contact-handled TRU/alpha low-level waste contains alpha-, beta-, and gamma-emitting isotopes with surface dose rates of 200 millirem per hour or less.

low-level waste supernate in the MVSTs at ORNL.

In September 1995, the Tennessee Department of Environment and Conservation (TDEC) Commissioner issued an order to implement the ORNL Site Treatment Plan (under the Federal Facility Compliance Act) that mandates specific requirements for the treatment and disposal of ORNL TRU/alpha low-level waste and sets out specific milestones. Two primary milestones are: (1) The submittal of a Project Management Plan by September 30, 2001, which includes schedules for treatment and shipment off-site of the ORNL legacy TRU waste; and (2) the completion of the first shipment of treated TRU waste sludge to WIPP by January 2003.

Accordingly, DOE needs to treat a total of about 4,050 cubic meters of legacy TRU/alpha low-level wastes in preparation for disposal of TRU waste at the WIPP and of low-level waste at NTS. These disposal sites were designated in RODs for TRU waste, for the WIPP Supplemental EIS and the Waste Management Programmatic Environmental Impact Statement (WM PEIS) (DOE–EIS–0200–F) (63 FR 3624, January 23, 1998 and 63 FR 3629, January 23, 1998, respectively), and the ROD for low-level and low-level mixed waste for the WM PEIS and the amended ROD for the NTS Site-wide EIS (65 FR 10061, February 25, 2000).

In accordance with the provisions of Section 216 of DOE's NEPA regulations (10 CFR part 1021), the Department awarded a contingent contract to Foster Wheeler in August of 1998 for the construction, operation, and decontamination and decommissioning of a TRU Waste Treatment Facility. Proceeding with construction, operation, and decontamination and decommissioning of the treatment facility under the contract was contingent upon DOE's completion of the NEPA review process and issuance of a ROD that selected the low-temperature drying waste treatment process proposed by Foster Wheeler. Based on the provisions of the contingent contract, construction of the TRU Waste Treatment Facility would begin in December 2000 and be completed by December 2002, with operation of the facility by January 2003. After DOE certification that the waste has been treated to meet the waste acceptance criteria (WAC), shipments would begin to the appropriate disposal facility before the end of January 2003.

II. Alternatives Analyzed in the EIS

DOE analyzed five alternatives in the EIS, which are summarized below: the No Action Alternative; the Low-Temperature Drying Alternative (Preferred Alternative); the Vitrification Alternative; the Cementation Alternative; and the Treatment and Waste Storage at ORNL Alternative. For all the action alternatives, TRU sludge and liquid alpha low-level waste would be transported through an above-ground pipeline from the MVSTs to an onsite treatment facility. DOE would deliver the solid waste (casks of solid remote-handled TRU/alpha low-level waste and drums and boxes of solid contact-handled TRU/alpha low-level waste) to the treatment facility by truck. The treatment facility would be constructed, operated, and decontaminated and decommissioned by a contractor. Any waste not conforming to the treatment facility's WAC would be returned to DOE for management. TRU waste from ongoing operations at ORNL, generated during the operation of the TRU Waste Treatment Facility, would also be treated at the facility.

DOE would require that all activities associated with the proposed action be performed safely and in compliance with applicable Federal and State regulatory requirements. The selected contractor would be responsible for achieving compliance with all applicable environmental, safety, and health laws and regulations. Regulatory agencies would be responsible for monitoring compliance by the contractor. The State of Tennessee would regulate the selected contractor according to permits under the State's purview (the RCRA Part B permit and the Aquatic Resource Alteration Permit to be issued by the State of Tennessee). DOE would regulate occupational safety and health and nuclear safety according to specific environment, safety and health requirements.

The No Action Alternative

No treatment facility would be constructed under the No Action Alternative. DOE would continue to store legacy solid remote-handled and contract-handled TRU/alpha low-level in concrete bunkers, subsurface trenches, and metal buildings, and would continue to store legacy TRU mixed waste sludge and the associated low-level waste supernate in the MVSTs. For purposes of analysis, institutional control was assumed for 100 years, after which DOE assumed there would be a loss of institutional control.

The No Action Alternative would violate RCRA regulations that prohibit indefinite storage of hazardous waste without treatment, milestones contained in the ORNL Site Treatment Plan under the Federal Facility Compliance Act, and the Order issued by the State of Tennessee regarding the treatment and shipment of TRU waste. The No Action Alternative would also result in the continued release of contaminants to the soil, ground water, and surface waters from the solid TRU/alpha low-level waste stored in subsurface trenches in the Solid Waste Storage Area (SWSA) 5 North.

The Low-Temperature Drying Alternative (Preferred Alternative in the Final EIS)

Under the Low-Temperature Drying Alternative, a waste treatment facility would be constructed on about 5 acres of land adjoining the MVSTs. Supernate would be pumped from the MVSTs through an above-ground pipeline to tanks in the facility. A low-temperature dryer would receive the supernate from the facility tanks for concentration and drying. TRU mixed waste sludge would be retrieved from the MVSTs by sluicing and transferred through an above-ground pipeline to tanks in the facility. Gravity settling would concentrate the sludge, which would be transferred to the low-temperature dryer for treatment.

All solid waste would be characterized by nondestructive examination and assay methods. Containers of only alpha low-level waste would be compacted for a 50% volume reduction. Solid TRU/alpha low-level waste would be remotely sorted to segregate any RCRA waste. Once segregated, solid TRU waste would be compacted. All waste containing RCRA constituents would be treated by macroencapsulation to meet RCRA land disposal restrictions (LDR) standards.

The duration of the Low-Temperature Drying Alternative would be about 11.5 years: with 2.5 years for licensing, permitting and design reviews; 2 years for facility construction; less than 5 years for waste treatment, during which treated waste would be transported to the appropriate disposal facility; and less than 2 years for decontamination and decommissioning of the treatment facility. The licensing, permitting, and preliminary design review process is currently underway. As a result of waste treatment and decontamination and decommissioning of the facility, about 600 cubic meters of TRU waste would be shipped to WIPP, and about 2,800 cubic meters of low-level waste would be shipped to NTS.

Vitrification Alternative

Under the Vitrification Alternative, a waste treatment facility would be constructed on 5 to 7 acres of land

adjoining the MVSTs. The waste in the MVSTs would be retrieved by pulsed jet mixing and transported through an above-ground pipeline to the treatment facility, where the waste would be mixed with additives and heated to form a stable glass product (vitrified). Contact-handled solid waste would be treated before any remote-handled solid waste was received at the treatment facility. All solid waste would be characterized by nondestructive examination and assay methods and then sorted in a hotcell. All RCRA wastes would be segregated and macroencapsulated to meet RCRA LDR standards. Special waste material, such as batteries, aerosols, and gas bottles, would be segregated for treatment or sent to some other applicable treatment facility, as directed by DOE. The remaining contact-handled or remote-handled solid waste would be compacted. Compacted solid waste would be placed in 55-gallon drums, and the drums would be filled with grout.

The total duration of the Vitrification Alternative would be about 10 years: with 2.5 years for licensing, permitting, and design reviews; 2 years for facility construction; 3.5 years for waste treatment, during which treated waste would be transported to the appropriate disposal facility; and 2 years for decontamination and decommissioning of the treatment facility. As a result of waste treatment and decontamination and decommissioning of the facility, about 1,100 cubic meters of TRU waste would be shipped to WIPP, and about 5,000 cubic meters of low-level waste would be shipped to NTS.

Cementation Alternative

Under the Cementation Alternative, a waste treatment facility would be constructed on about 5 acres of land adjoining the MVSTs. Waste would be retrieved from the MVSTs by sluicing and transported through an above-ground pipeline to the treatment facility. The TRU waste sludge and low-level liquid waste would be separated with a hydrocyclone followed in series with a centrifuge. Supernate would be recycled back to the MVSTs for sluicing operations. Additives would be mixed with the separated sludge and liquid waste streams to form a stable grout mixture. A grout pump would transfer the waste and grout mixture into 50-gallon drum liners, and the mixture would be allowed to harden. The liners would be placed inside 55-gallon carbon steel overpack drums before for shipment. All contact-handled and remote-handled TRU/alpha low-level solid waste would be characterized by nondestructive examination and assay methods, sorted and compacted (as appropriate), and grouted before packaging for shipment similar to the methods described for the Vitrification Alternative.

The total duration of the Cementation Alternative would be about 12.5 years: with 2.5 years for licensing, permitting, and design reviews; 2 years for construction of the treatment facility; 6 years for waste treatment operations during which waste would be transported to the appropriate disposal facility; and 2 years for the decontamination and decommissioning of the treatment facility. As a result of waste treatment and decontamination and decommissioning of the facility, about 1,800 cubic meters of TRU waste would be shipped to WIPP, and about 5,400 cubic meters of low-level waste, including remote-handled low-level waste, would be shipped to NTS.

Treatment and Waste Storage at ORNL Alternative

Under the Treatment and Waste Storage at ORNL Alternative, a waste treatment facility would be constructed using any one of the treatment processes described previously. About 5 to 7 acres of land would be used for the treatment facility, depending on the treatment technology used (described above). In addition, 0.75 to 2 acres of land (depending the treatment technology used) would be required for the construction of waste storage facilities at ORNL. DOE plans to ship treated waste offsite for disposal as soon as it is treated, but if off-site waste disposal facilities were not available, treated waste would require storage at ORNL. For purposes of analysis, institutional control of the treated waste in storage was assumed for 100 years, after which DOE assumed there would be a loss of institutional control. This alternative, if implemented, would not meet the milestones set in the ORNL Site Treatment Plan regarding the treatment and shipment of regulated TRU waste and would violate the TDEC Commissioner's order that requires implementation of the ORNL Site Treatment Plan.

The schedule for waste treatment under this alternative and the volume of waste resulting from treatment and decontamination and decommissioning of the treatment facility depend on the treatment process used, as described above.

III. Potential Environmental and Human Health Impacts

In the Final EIS, DOE analyzed the potential environmental impacts associated with each alternative. The potential environmental impacts for all the alternatives would be small and are summarized below.

None of the alternatives analyzed would result in a change in land use classification (currently industrial) or scenic resources. The action alternatives would result in further development of 5 to 7 acres of land for the treatment facility, and the Treatment and Waste Storage at ORNL Alternative would require an additional 0.75 to 2 acres of land for buildings to store the treated waste. For both the No Action and the Treatment and Waste Storage at ORNL Alternatives, the Final EIS analysis assumed loss of institutional control after 100 years. Assuming loss of institutional control, the land where the waste was stored would be permanently committed to waste storage, which, if implemented, would result in an irreversible and irretrievable commitment of land.

All of the action alternatives would result in a temporary loss of a small amount of forested habitat (5 to 7 acres) for the treatment facility. The No Action Alternative would not result in loss of the forested habitat.

All action alternatives would reduce soil and water contamination because a source of contaminants in SWSA 5 North would be removed. Under the No Action Alternative, contaminants from the SWSA 5 North waste trenches would continue to be released to the soils, groundwater, and surface water, resulting in a small impact to aquatic biota. Under the No Action Alternative, assuming loss of institutional control after 100 years, the TRU waste in the MVSTs, bunkers, and buildings also would eventually be released into the soils and groundwater. Under the Treatment and Waste Storage at ORNL Alternative, assuming loss of institutional control after 100 years, the treated waste eventually would be released from storage buildings. However, because the wastes would have been treated under the Treatment and Waste Storage at ORNL Alternative, the impacts would be less than under No Action.

Implementation of any of the action alternatives would result in the elimination of a small wetland (0.03 acres) when the treatment facility was constructed. The No Action Alternative would have no impact on the wetland as long as institutional control is maintained.

Under the action alternatives, construction of the proposed treatment facility, although not located in a floodplain, and therefore not subject to the provisions of 10 CFR part 1022

regarding floodplains, would have a small impact in the 100- and 500-year floodplain of White Oak Creek due to increased surface runoff. The increased sediment in the White Oak Creek floodplain would provide additional shielding from existing radioactive contamination (a small beneficial impact). Under the No Action Alternative the contaminants in SWSA 5 North trenches would continue to be released to the soil and groundwater, which would subsequently enter surface water and the White Oak Creek floodplain.

Under the action alternatives, all legacy TRU-alpha low-level waste would be treated and some secondary waste would be produced. The total volume of waste that would be produced under the different treatment alternatives were estimated to be about 10,500 cubic meters for Low-Temperature Drying, 34,000 cubic meters for Vitrification, and 29,000 cubic meters for Cementation. The volume of contact- and remote-handled TRU waste [7] that would be produced ranges from about 600 cubic meters for the Low-Temperature Drying Alternative, to about 1,000 and 1,800 cubic meters for the Vitrification and Cementation Alternatives, respectively. The volume of low-level waste [8] that would be produced ranges from about 2,800 cubic meters for both the Low-Temperature Drying and Cementation Alternatives, to about 5,000 cubic meters for the Vitrification Alternative. Only the Cementation Alternative would produce remote-handled low-level waste (about 2,500 cubic meters). All the treatment alternatives would produce small quantities, i.e., less than 25 cubic meters, of mixed low-level waste.[9] The volume of sanitary wastewater [10] that would be produced ranges from about 1,600 cubic meters for the Low-Temperature Drying Alternative, about 7,000 cubic meters for the Vitrification Alternative, and about 7,500 cubic meters for the Cementation Alternative. The volume of non-radioactive construction debris that would be produced ranges from about 5,500 cubic meters for the Low-Temperature Drying Alternative to about 20,800 cubic meters for the Vitrification Alternative and 14,000 cubic meters for the Cementation Alternative. Under the No Action Alternative the legacy TRU/alpha low-level waste would continue to be stored, along with the 60 cubic meter of liquid low-level waste and 20 cubic meters of TRU waste that would be produced annually from research and environmental remediation activities at ORNL.

The action alternatives would result in minor emissions of air pollutants during normal operations. The Low-Temperature Drying Alternative would result in slightly higher volatile organic emissions than the other treatment technologies. The Vitrification Alternative would result in slightly higher nitrogen dioxide emissions than the other treatment technologies. The Cementation Alternative would result in slightly higher particulate emissions than the other treatment technologies. The No Action Alternative would not result in air emissions. All alternatives would comply with applicable air quality regulations.

The probability of a cancer fatality from radiological releases to involved workers, non-involved workers and the offsite maximally exposed individual (MEI) were estimated to be small for the Low-Temperature Drying, Vitrification, and Cementation Alternatives. The highest collective offsite dose to the public, estimated to be 6.8E–01 person-rem and would potentially result in 3.0E–04 latent cancer fatalities (LCFs), was from the Vitrification Alternative. Under both the No Action and Treatment and Waste Storage at ORNL Alternatives, an estimated 2.2E–02 LCFs would occur in the involved worker population, and impacts to non-involved workers and the public would be small.

The accident scenario estimated to have the greatest impact would occur under the No Action Alternative if the MVSTs were breached during an earthquake, releasing 50,000-gallons of TRU waste into the environment. (This accident was not evaluated for the action alternatives since waste treatment would occur in less than 10 years and the probability of this type of earthquake occurring during so brief a time would be small.) The consequence of this accident, were it to happen, was estimated to be 108 LCFs for the affected population. The frequency for this kind of accident happening was estimated to be 1E–04 per year. The calculated risk for this accident (evaluated by multiplying the accident consequence, frequency, and time period) would be 1.1 LCFs to the population during a 100 year time period and proportionately higher for longer periods. The MEI and non-involved worker were estimated to have a 1.1E–05 and 9.2E–04 probability of a cancer fatality, respectively.

Under the action alternatives, the accidental breach of the waste transfer line during a transfer between the MVSTs and the proposed facility was the accident with the greatest impact. The consequence of this accident, were it to happen, was estimated to be 52 LCFs for the population (for all action alternatives). The frequency of this kind of accident happening ranged from 1E–02 to 1E–04 per year. The EIS estimated the risks from this accident scenario as ranges from 0.16 LCFs for Low-Temperature Drying Alternative to 0.31 LCFs for the Cementation Alternative. The probability of a cancer fatality for the MEI was estimated to range from 3.2 E–06 for the Low-Temperature Drying and Vitrification Alternatives, to 6.3E–06 for the Cementation Alternative. The probability of a cancer fatality for the non-involved worker was estimated to range from 2.8E–04 for Low-Temperature Drying and Vitrification Alternatives, to 5.5E–04 for the Cementation Alternative.

Routine exposures from waste retrieval activities were estimated to result in 8.0E–03 LCFs in the involved worker population under all action alternatives. Radiological emissions from waste retrieval accidents were estimated to result in 6.3E–05 LCFs to the public. Industrial-type accidents from retrieval activities were estimated to result in 7.5E–04 fatalities in the involved worker population.

All the action alternatives would result in 300 truck shipments of remote-handled solid waste and 245 shipments of contact-handled solid waste from the ORNL storage locations to the treatment facility. Radiological emissions from onsite transportation accidents between the current storage locations and the treatment facility were estimated to result in 2.9 E–05 LCFs to the public. The probability of a cancer fatality for a non-involved worker and public MEI were estimated to be 5.3E–07 and 6.2E–09, respectively, from waste retrieval and transportation accidents. In addition, 3.3E–05 non-radiological fatalities from onsite transportation accidents were estimated for the worker population.

The Treatment and Storage at ORNL Alternative would involve about 3,340 shipments of treated waste from the treatment facility to storage buildings at ORNL, using the waste volumes produced by the Cementation Alternative as the bounding case. These shipments are estimated to result in 2.3E–04 transportation related fatalities to involved workers. In addition, construction of the onsite storage

[7] TRU waste would be disposed of at WIPP.

[8] Low-level and remote-handled low-level waste would be disposed of at NTS.

[9] Mixed low-level waste would be disposed of at a DOE site or at an off-site commercial disposal facility.

[10] Sanitary wastewater and non-radioactive construction debris would be disposed of at offsite commercial disposal facilities.

facilities and the loading and unloading of the treated waste were estimated to result in 3.4E–04 and 2.5E–03 non-radiological accident fatalities, respectively, to the involved worker population.

The No Action and Treatment and Storage at ORNL Alternatives would not result in off-site shipments of treated waste. The number of off-site truck shipments of treated TRU waste were estimated for the Low-Temperature Drying Alternative (400), the Vitrification Alternative (1,000), and the Cementation Alternative (2,400). The estimated number of non-radiological LCFs related to routine transportation of contact-handled TRU waste ranged from 5.3E–03 for both the Vitrification and Cementation Alternatives, to 8.7E–03 for the Low-Temperature Drying Alternative. LCFs from routine transportation of remote-handled TRU waste ranged from 3.1E–02 for the Low Temperature Drying Alternative to 2.7E–01 for the Cementation Alternative. The number of fatalities estimated from transportation accidents ranged from 4.4E–02 for the Low-Temperature Drying Alternative to 3.0E–01 for the Cementation Alternative.

The number of offsite shipments of treated low-level waste were estimated to be about 300 for the Low-Temperature Drying and Vitrification Alternatives, and more than 900 for the Cementation Alternative. The LCFs related to routine offsite transportation of treated low-level waste were estimated to be small for all the action alternatives, with the largest being 7.5E–09 for the Cementation Alternative. The number of transportation accident fatalities was estimated to range from 3.6E–02 for both the Low-Temperature Drying and Vitrification Alternatives, to 1.2E–01 for the Cementation Alternative.

The estimated electricity requirements ranged from 2,200 megawatts (MW) (No Action Alternative) to 47,200 MW (Treatment and Waste Storage at ORNL, using vitrification as the treatment technology). The Cementation Alternative would have the lowest electricity requirements (11,250 MW) of the action alternatives. Because adequate electricity is available from utility lines in the vicinity of the proposed TRU Waste Treatment Facility, impacts would be minimal.

The estimated total water usage varied from 5 million gallons (No Action and Low-Temperature Drying) to 20 million gallons (Treatment and Waste Storage at ORNL, using cementation as the treatment technology). Water for the TRU Waste Treatment Facility would be supplied from a City of Oak Ridge Water Treatment Facility via a local main. The impacts on the Water Treatment Facility would be small because the daily water usage under any of the alternatives would be small and the Oak Ridge Water Treatment Facility is currently operating at only 50% capacity (28 million gallons per day).

There are no special circumstances that would result in any greater impacts on minority or low-income populations than on the population as a whole, and no disproportionately high and adverse impacts on minority or low-income populations would be expected.

Environmentally Preferred Alternative

As described above, all impacts from the proposed action would be small, and the greatest potential human health and environmental impacts would occur under the No Action Alternative. Under the No Action Alternative, waste contaminants would continue to be released to the environment from the unlined, subsurface trenches in SWSA 5 North and the potential impacts from a breach of the MVSTs would be high should institutional control be lost. In addition, although the long-term impacts of the Treatment and Waste Storage at ORNL Alternative would be less than No Action because the waste would have been treated, the Treatment and Waste Storage at ORNL Alternative would not provide a permanent solution for controlling the waste contaminants.

The Low-Temperature Drying Alternative, and the other action alternatives involving off-site shipment of treated waste, would result in small, short-term potential impacts to public and worker health, air quality, utility usage, and transportation; however, treatment would prepare the waste for disposal at WIPP or NTS, as appropriate. The Low-Temperature Drying Alternative would result in lower impacts than the other action alternatives because it would generate the least amount of treated and other waste, would require the lowest water usage (but not electricity) of the action alternatives, and would require the least number of offsite shipments for disposal.

In conclusion, while the potential impacts for all of the action alternatives are small, the Low-Temperature Drying Alternative results in the lowest potential impacts of any of the action alternatives. DOE therefore believes that the Low-Temperature Drying Alternative is environmentally preferable.

IV. Public Comments on the Final EIS

DOE distributed approximately 80 copies of the Final EIS to appropriate Congressional members and committees; the States of Kentucky, Nevada, New Mexico, and Tennessee; various American Indian Tribal governments and organizations; local governments; other Federal agencies; and other interested stakeholders. DOE received comments on the Final EIS from the U.S. Department of Interior's Fish and Wildlife Service and the U.S. Environmental Protection Agency (EPA), which are addressed below.

In a letter dated July 13, 2000, the Fish and Wildlife Service stated that the Biological Assessment contained in the Final EIS was ''adequate and supports the conclusion of not likely to adversely affect.'' The Service concurred with this conclusion, and that the requirements of Section 7 of the Endangered Species Act had been fulfilled. As the Fish and Wildlife letter indicates, DOE will reconsider its obligations under the Endangered Species Act if new information reveals that the TRU Waste Treatment Facility may affect listed species in a manner or to an extent not considered, the proposed action is modified to include activities not addressed in the Biological Assessment, or new species are listed or critical habitat is designated that might be affected by the proposed action.

The Fish and Wildlife Service also indicated that DOE's response to Fish and Wildlife Service comments on the Draft EIS (Volume 2 of the Final EIS) is not consistent with the Biological Assessment (Appendix E of the Final EIS), with regard to the presence of habitat for the gray bat. In DOE's response to comments from the Fish and Wildlife Service on the Draft EIS, DOE indicated that ''[Q]ualified biologists did a site walkover * * * and [n]o habitat for the gray bat was identified. * * *'' In this statement, DOE was referring to the 5–7 acre ''site'' for the proposed treatment facility (not the Oak Ridge Reservation). The discussion of gray bat habitat in the Biological Assessment (and in section 4.3 of the Final EIS) indicates that the nearest potential habitat for the gray bat is at least 1 mile away from the proposed TRU Waste Treatment Facility boundary and activities at the proposed site are not expected to impact the gray bat habitat. While DOE's response to comments made by the Fish and Wildlife Service on the Draft EIS could have been clearer, the wording in the comment response document does not conflict with the Biological Assessment

or other sections of the Final EIS addressing ecological resources.

The Fish and Wildlife Service also stated in its comments on the Final EIS that the Migratory Bird Treaty Act (Title 16 United States Code, Chapter 701) should have been included in Chapter 8 (Applicable Laws and Regulations) of the Final EIS. DOE did consider the requirements of Migratory Bird Treaty Act, but because the proposed site for the TRU Waste Treatment Facility will be small (5–7 acres) in comparison to other nearby suitable habitat, and there were no known unique or special features associated with the proposed site that would be important to migratory bird species, DOE did not provide a reference to or a discussion of the Migratory Bird Treaty Act in Chapter 8 of the Final EIS.

In a letter to DOE dated July 20, 2000, regarding the Final EIS, EPA acknowledged that, in general, its comments on the Draft EIS were addressed satisfactorily. However, EPA indicated continuing concern about potential process releases and project impacts. DOE notes, however, that the estimated impact EPA is addressing—3E–04 LCFs from the project's releases—is small, and the EIS shows that the releases would not contribute significantly to cumulative impacts in the exposed population. Moreover, the methods used to estimate these releases and their impact are conservative—i.e., likely to overstate the impacts. Finally, the alternative DOE has decided to implement (see below) is the environmentally preferred alternative.

V. Consistency With DOE Programmatic Decisions and Agreements

The selection of any of the action alternatives, except Treatment and Waste Storage at ORNL, would be consistent with DOE's programmatic decisions for the treatment, storage, and disposal of TRU and low-level wastes. As stated in the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste, DOE decided to ''develop and operate mobile and fixed facilities to characterize and prepare TRU waste for disposal at WIPP'' and ''[E]ach of the DOE's sites that has, or will generate, TRU waste will, as needed, prepare and store its TRU waste on-site * * * prior to disposal.'' In the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Disposal of Low-Level Waste and Mixed Low-Level Waste; Amendment of the Record of Decision for the Nevada Test Site, DOE decided to establish regional low-level waste disposal capabilities at DOE's Hanford Site and NTS, which are to receive low-level waste from other DOE sites when the waste meets the WAC for the site.

The Low-Temperature Drying, Vitrification, and Cementation Alternatives would all be consistent with previous negotiated agreements and commitments, and allow DOE to comply with the primary milestones of the ORNL Site Treatment Plan. The No Action and Treatment and Waste Storage at ORNL Alternatives would not be consistent with previous agreements and commitments. The No Action Alternative would not comply with the two primary milestones identified in the ORNL Site Treatment Plan. The Treatment and Waste Storage at ORNL Alternative would not comply with the ORNL Site Treatment Plan milestone requiring shipment of treated TRU waste sludge to the WIPP to be initiated by January 2003.

VI. Costs Associated With the Technologies

Analyses of the Low-Temperature Drying Alternative showed that it is cost effective based on previous cost studies conducted by DOE and comparison of the submitted private sector proposals for the treatment of TRU/alpha low-level waste at ORNL. The cost for implementing the Low-Temperature Drying Alternative was estimated to be about $193 million, compared with about $700 million estimated for both the Vitrification and Cementation Alternatives. Implementing the Treatment and Waste Storage at ORNL Alternative would entail costs of constructing and maintaining onsite waste storage facilities in addition to the costs associated with the each action alternative without storage on site.

VII. Decision

DOE has selected the Low-Temperature Drying Alternative (Preferred Alternative) in the Final EIS for treating TRU/alpha low-level waste at ORNL. DOE will proceed with the Foster Wheeler contract to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility to treat a total of about 4,050 cubic meters of legacy waste [11] in preparation for offsite disposal at the WIPP and the NTS. This decision is based on the following factors: the analysis in the Final EIS indicates the impacts of all action alternatives would be small; the choice of the Low-Temperature Drying Alternative is consistent with previous DOE programmatic decisions and agreements on the treatment, storage and disposal of TRU, low-level, and mixed low-level wastes; and costs associated with the Low-Temperature Drying Alternative are the lowest of the action alternatives and the other action alternatives do not have compensating advantages for higher cost.

[11] In the future, DOE may treat small quantities of TRU waste from other DOE sites at the TRU Waste Treatment Facility (e.g., 15 cubic meters of TRU waste from the Paducah Gaseous Diffusion Plant). DOE would need to conduct further NEPA review, as appropriate, for any proposal to ship TRU waste to ORNL for treatment from the Paducah Site or any other site in the DOE complex.

VIII. Mitigation of Impacts

The DOE is committed to operating a TRU Waste Treatment Facility in compliance with all applicable laws, regulations, executive orders, DOE orders, permits, and compliance agreements. DOE is consulting with the State of Tennessee on State mitigation measures related to wetlands (an Aquatic Resource Alteration Permit has been filed with TDEC), and a Mitigation Action Plan required by 10 CFR 1021.331 will be prepared. Volume 1, Chapter 6, of the Final EIS described the mitigation measures that will be taken to minimize the potential impacts associated with the construction, operation, and decontamination and decommissioning of the proposed TRU Waste Treatment Facility (e.g., use of dust control measures during facility construction; use of efficient emission controls and erosion control measures; and protocol to be followed in the event that cultural resources are found).

IX. Conclusion

DOE has selected the Low-Temperature Drying Alternative (Preferred Alternative) in the Final EIS for treating TRU/alpha low-level waste at ORNL. DOE will proceed with the Foster Wheeler contract to construct, operate, and decontaminate and decommission a TRU Waste Treatment Facility to treat a total of about 4,050 cubic meters of legacy waste in preparation for offsite disposal at the WIPP and the NTS.

Issued in Washington, D.C. this 3rd day of August 2000.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 00–20093 Filed 8–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 00–46–NG, et al.]

Office of Fossil Energy; Avista Corporation, etc.; Orders Granting Authority to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during July 2000, it issued Orders granting authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on August 3, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Attachment

APPENDIX—Orders Granting Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1608	07/03/00	Avista Corporation—00–46–NG.	100 Bcf		Import from Canada, beginning on June 26, 2000, and extending through June 25, 2002.
1609	07/07/00	Power City Partners, L.P.—00–47–NG.	500,000 Mcf		Import from Canada, beginning on July 1, 2000, and extending through June 30, 2002.
1610	07/13/00	CCGM, L.P.—00–48–NG	146 Bcf		Import and export a combined total from and to Canada, and import and export a combined total from and to Mexico, beginning on July 1, 2000, and extending through June 30, 2002.
1611	07/14/00	Sacramento Municipal Utility District—00–49–NG.	25 Bcf		Import from Canada, over a two-year term beginning on the date of first delivery.
1612	07/17/00	Union Gas Limited 00–44–NG.	216 Bcf		Import and export a combined total from and to Canada, beginning on August 15, 2000, and extending through August 14, 2002.
1613	07/20/00	CoEnergy Trading Company—00–50–NG.		100 Bcf	Export to Canada, over a two-year term beginning on the date of first delivery.
1614	07/25/00	Intalco Aluminum Corporation—00–52–NG.	2.3 Bcf		Import from Canada, beginning on September 29, 2000, and extending through September 28, 2002.
1615	07/25/00	Xeno, Inc.—00–53–NG		10.95 Bcf	Export to Canada, beginning on August 1, 2000, and extending through July 31, 2002.
1616	07/31/00	Texaco Natural Gas Inc.—00–51–NG.	120 Bcf		Import from Canada, beginning on August 1, 2000, and extending through July 31, 2002.

[FR Doc. 00–20091 Filed 8–8–00; 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 on the proposed three-year extension of approval for Form NWPA–830C, ''Delivery Commitment Schedule.''

DATES: Written comments must be submitted on or before October 10, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Jim Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels (EI–52), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0650. Alternatively, Mr. Finucane may be reached by phone at 202–426–1960, by e-mail jim.finucane@eia.doe.gov, or by FAX 202–426–1280.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Mr. Finucane 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) of the Paperwork Reduction Act of 1995.

Form NWPA–830C, ''Delivery Commitment Schedule,'' is designed to allow companies purchasing nuclear waste disposal services from the Department of Energy (DOE) to identify the number of assemblies, including their initial uranium loading, and the range of discharge dates along with the year that the purchaser proposes that the DOE take delivery. This is information is required at a point in time 63 months before expected transfer to the DOE.

II. Current Actions

This is a request for comments on EIA's proposal to request a three-year extension of approval to continue collecting information with Form NWPA–830C, ''Delivery Commitment Schedule,'' with no change to the existing collection.

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 information be submitted by the due date?

C. The estimated burden on each respondent to complete Form NWPA–830C is an average of 1 hour. 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 cost to a respondent is for the time it will take to complete the collection. Will a respondent incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with this 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 Data 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: Sections 3506(c)(2)(A) and 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C., August 3, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–20092 Filed 8–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3061–000]

Alrus Consulting, L.L.C.; Notice of Issuance of Order

August 3, 2000.

Alrus Consulting, L.L.C. (Alrus) submitted for filing a market-based rate schedule which will allow Alrus to purchase energy and/or capacity from eligible independent power procedures (IPPS) at market-based rates for resale. Alrus also requested waiver of various Commission regulations. In particular, Alrus requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alrus.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requested for blanket approval under part 24, subject to the following.

Within thrity days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alrus should file a motion to intervene or protest with the Federal Energy Regualtory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Alrus is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provide that such issuance or assumption if for some lawful object within the corporate purposes of Alrus, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alrus's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20138 Filed 8–08–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2945–000]

Candela Energy Corporation; Notice of Issuance of Order

August 3, 2000.

Candela Energy Corporation (Candela Energy) submitted for filing a rate schedule under which Candela Energy will engage in wholesale electric power and energy transactions at market-based rates. Candela Energy also requested waiver of various Commission regulations. In particular, Candela Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Candela Energy.

On July 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Candela Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Candela Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Candela Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance)

David P. Boergers,

Secretary.

[FR Doc. 00–20135 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3211–000]

Citizens Communications Company; Notice of Filing

August 3, 2000.

Take notice that on July 19, 2000, Citizens Utilities Company tendered for filing notice that effective May 18, 2000, the company has changed its name to Citizens Communication Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20133 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2805–000]

Deepwater Power LLC, et al.; Notice of Issuance of Order

August 3, 2000.

Deepwater Power LLC, *et al.* (Deepwater Power) submitted for filing a rate schedule under which Deepwater Power will engage in wholesale electric power and energy transactions at market-based rates. Deepwater Power also requested waiver of various Commission regulations. In particular, Deepwater Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Deepwater Power.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Deepwater Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Deepwater Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Deepwater Power, and compatible with the pubic interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Deepwater Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20136 Filed 8–08–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3039–000]

Exeter Energy Limited Partnership, Notice of Issuance of Order

August 3, 2000.

Exeter Energy Limited Partnership (Exeter Energy) submitted for filing a rate schedule under which Exeter Energy will engage in wholesale electric power and energy transactions at market-based rates. Exeter Energy also requested waiver of various Commission regulations. In particular, Exeter Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Exeter Energy.

On July 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Exeter Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Exeter Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Exeter Energy, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Exeter Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20137 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–014]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 3, 2000.

Take notice that on July 31, 2000 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 13, with a proposed effective date of August 1, 2000.

National Fuel states that the filing is made to implement firm storage agreements between National Fuel and Engage Energy US, L.P. National Fuel states that these agreements provide for negotiated rates pursuant to GT&C section 17.2 of National Fuel's tariff and the Commission's policy regarding negotiated rates.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20071 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services into the California Power Exchange and California Independent System Operator Markets, Respondents; Notice of Complaint

August 3, 2000.

Take notice that on August 2, 2000, San Diego Gas & Electric Company (SDG&E), tendered for filing a complaint alleging that the markets for energy and ancillary services operated by the California Power Exchange Corporation (the PX) and the California Independent System Operator Corporation (the SIO) are not workably competitive and that the prices in those markets are unjust and unreasonable. SDG&E alleges that prices in California bulk power markets for exceed prior levels and that, even allowing for higher fuel costs, those prices do not reflect legitimate forces of supply and demand. SDG&E states that market institutions in California require fundamental reform. In the interim, however, SDG&E requests that the Commission limit bids to sell energy or ancillary services into the markets operated by the PX and ISO to $250 per MWh. SDG&E further requests, in light of the severe impact of current prices on consumers in San Diego, that the Commission act as quickly as possible.

Copies of the filing were served upon the ISO, the PX, and other interested parties, and are available on SDG&E's website at htt://www.sdge.com/aboutus/newsroom/index.html.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before August 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20132 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–420–000]

Southern Natural Gas Company; Notice of Tariff Filing

August 3, 2000.

Take notice that on July 31, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of September 1, 2000.

First Revised Sheet No. 159
First Revised Sheet No. 161
Fourth Revised Sheet No. 169
Fourth Revised Sheet No. 177
Third Revised Sheet No. 192
Second Revised Sheet No. 193
Second Revised Sheet No. 254
Second Revised Sheet No. 257
Third Revised Sheet No. 258
Third Revised Sheet No. 260

On February 9, 2000, the Commission issued its final rule regarding the regulation of short-term and long-term interstate natural gas transportation services in Docket Nos. RM98–10–000 and RM98–12–000 (Order No. 637). Southern is filing in the instant filing tariff provisions to implement the directives in Order No. 637 regarding the lifting of the rate ceiling for short-term capacity release transactions, the implementation of limitations on the prospective availability of the right of first refusal (ROFR) and the activation of an internet web site containing accessible electronic data as specified by the Gas Industry Standards Board (GISB).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Wahsington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20070 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–355–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

August 3, 2000.

Take notice that on July 31, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), certain tariff sheets to be effective March 27, 2000.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's letter order issued July 14, 2000.

Trailblazer states that copies of the filing have been mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP00–355.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20067 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–421–000]

Trunkline Gas Company; Notice of Report

August 3, 2000.

Take notice that on July 31, 2000, Trunkline Gas Company (Trunkline) tendered for filing its Annual Miscellaneous Revenue Flowthrough Surcharge Adjustment filed in accordance with section 23, of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with section 23 of the GT&C of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rate to reflect the result of the Miscellaneous Revenue Flowthrough Surcharge Adjustment. Trunkline states that no adjustment is required to the Base Transportation Rates.

Trunkline further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20069 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2815–000]

Wheelabrator Shasta Energy Company, Inc.; Notice of Issuance of Order

August 3, 2000.

Wheelabrator Shasta Energy Company, Inc. (Wheelabrator Energy) submitted for filing a rate schedule under which Wheelabrator Energy will engage in wholesale electric power and energy transactions at market-based rates. Wheelabrator Energy also requested waiver of various Commission regulations. In particular, Wheelabrator Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Wheelabrator Energy.

On July 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Wheelabrator Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Wheelabrator Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption if for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Wheelabrator Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20134 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–191–003]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

August 3, 2000.

Take notice that on July 31, 2000, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing with the Commission certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff and a Refund Report in compliance with the Commission's Orders issued October 21, 1998 and December 17, 1997, which were upheld by the United States Court of Appeals for the Eighth Circuit in an opinion issued June 27, 2000 in Case Nos. 98–4079 and 99–3554.

Williston Basin states that it has revised its Rate Schedule X–13 rate to reflect the final depreciation rates and return on equity pursuant to the Commission's Orders issued July 25, 1995 and October 13, 2000, respectively, in Docket Nos. RP92–236–000, *et al.*

Williston Basin also states that on this same day, a refund of the amount owed is being sent to Northern States Power Company for the locked in period March 1, 1995 through February 28, 1997 with interest through August 1, 2000, in accordance with section 154.501 of the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20068 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–116–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

August 2, 2000.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company; Commonwealth Edison Company

[Docket No. EC00–116–000]

Take notice that on July 24, 2000, PECO Energy and Commonwealth Edison Company filed an application for authorization under Section 203 of the Federal Power Act to implement a revised holding company structure.

Comment date: August 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Celerity Energy of New Mexico, LLC

[Docket No. EG00–238–000]

Take notice that on July 28, 2000, Celerity Energy of New Mexico, LLC, having its principal place of business at 500 Fourth Street, NW, Suite 1000, Albuquerque, New Mexico 87102, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a New Mexico limited liability company, seeks exempt wholesale generator status for its Networked Distributed Resource (NDR) facilities. NDR facilities aggregate commercial and industrial standby generators to provide electric energy for sale at wholesale.

Comment date: August 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. AmerGen Energy Company, L.L.C.

[Docket No. EG00–239–000]

Take notice that on August 1, 2000, AmerGen Energy Company, L.L.C., submitted an application for Exempt

Wholesale Generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935.

Comment date: August 23, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Niagara Mohawk Power Corp.

[Docket No. OA96–194–006]

Take notice that on July 27, 2000 Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing its compliance refund report pursuant to the Commission's order issued June 15, 2000.

Copies of the tendered filing have been served by Niagara Mohawk upon the other parties to the above-captioned proceeding.

Comment date: August 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket Nos. OA97–237–000, OA97–608–000, ER97–1079–000, ER97–4421–000, ER97–3574–000 and ER98–499–000]

Take notice that on July 31, 2000, an informational filing was made by the New England Power Pool (NEPOOL) Participants Committee relating to rate surcharges determined in accordance with formula rates of the NEPOOL Open Access Transmission Tariff. These materials describe the transmission charges that are in effect for the twelve month period commencing June 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions, and the NEPOOL Participants.

Comment date: August 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. British Columbia Power Exchange Corporation

[Docket No. ER97–4024–012]

Take notice that on July 28, 2000, British Columbia Power Exchange Corporation tendered for filing an updated generation market power study in support of sales of electric energy at market based prices, pursuant to the Commission's order in British Columbia Power Exchange Corporation, 80 FERC ¶ 61,343 (1997).

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER00–2413–002]

Take notice that on July 28, 2000, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP), tendered for filing proposed amendments to its Open Access Transmission Tariff in compliance with the Commission's July 28, 2000, Order in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendments.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER00–2814–001]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing an Dynamic Scheduling Agreement between ComEd and ComEd in its Wholesale Merchant Function (WEG) so as to amend the Dynamic Scheduling Agreement that ComEd filed with the Commission on June 13, 2000 in Docket No. ER00–2814–000.

ComEd requests the same effective date of January 1, 2000 for the Agreement that ComEd requested and was granted in the proceeding where it submitted the unexecuted agreement to the Commission in Docket No. ER00–940–000.

Copies of this filing were served on WEG.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corporation

[Docket No. ER00–3284–000]

Take notice that on July 28, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed service agreement with Public Service Company of Colorado under its Market-Based Rate Tariff, FERC Electric Tariff Volume No. 10.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Indiana Gas and Electric Company

[Docket No. ER00–3285–000]

Take notice that on July 28, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing a Notice of Cancellation of service to one customer, Boonville, Indiana, pursuant to 18 CFR 35.15, under its Rate Schedule, RS and Tariff No. 39, with SIGECO service to all other customers under that Rate Schedule and tariff to continue.

SIGECO requests that its Notice of Cancellation of service to Boonville, Indiana, take effect on October 1, 2000.

In accordance with 18 CFR 35.15 SIGECO has mailed a copy of this filing to Boonville, Indiana.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–3286–000]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing Amendment No. 1 (Amendment), to the Network Service Agreement dated December 27, 1999 (NSA) between ComEd and Peoples Energy Services Company (PESC). The Amendment extends the termination date of the NSA previously filed on January 17, 2000 in Docket No. ER00–1125–000 between ComEd and PESC. The NSA governs ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of June 30, 2000 for Amendment No. 1 to the NSA, and therefore seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PESC.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER00–3287–000]

Take notice that on July 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing a revised Firm Point-to-Point Transmission Service Agreement with Alliant Energy Corporate Services, Inc. (Alliant) under the terms of ComEd's Open Access Transmission Tariff (OATT).

Copies of this filing were served on Alliant.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER00–3288–000]

Take notice that on July 28, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and The Legacy Energy Group, LLC (Legacy).

Cinergy and Legacy are requesting an effective date of June 29, 2000.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER00–3289–000]

Take notice that on July 28, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-to-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (OATT) entered into between Cinergy and The Legacy Energy Group, LLC (Legacy).

Cinergy and Legacy are requesting an effective date of June 29, 2000.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER00–3290–000]

Take notice that on July 28, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Consumers Energy Company.

Wisconsin Electric respectfully requests an effective date of July 28, 2000 to allow for economic transactions.

Copies of the filing have been served on Consumers Energy Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Calcasieu Power, LLC

[Docket No. ER00–3292–000]

Take notice that on July 28, 2000, Calcasieu Power, LLC (Calcasieu), tendered for filing a proposed tariff for Emergency Redispatch Service. The tariff sets forth the compensation for the dispatch of the Calcasieu generating facility by Entergy Services, Inc., during emergencies.

Calcasieu requests that the notice requirements set forth in Rule 35.3(a) be waived to the extent required to allow the tariff to become effective as of July 29, 2000.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Company

[Docket No. ER00–3294–000]

Take notice that on July 28, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Generator Special Facilities Agreement (GSFA), a Generator Interconnection Agreement, and a Supplemental Letter Agreement between PG&E and Geysers Power Company, LLC (Geysers Power).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge Geysers Power a monthly Cost of Ownership Charge equal to the rate for Transmission-level, Utility-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the Public Utilities Commission of the State of California (CPUC). PG&E's currently effective rate of 1.14% for Transmission-level, Utility-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 4 of this filing.

Copies of this filing have been served upon Geysers Power, the Sacramento Municipal Utility District and the CPUC.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. International Transmission Company

[Docket No. ER00–3295–000]

Take notice that on July 28, 2000, International Transmission Company tendered for filing a proposal for innovative rate treatment pursuant to Section 205 of Federal Power Act and Section 35.34 of the Federal Energy Regulatory Commission's Regulations.

International Transmission Company also proposes certain modifications to its open access transmission tariff and its joint open access transmission tariff with Consumers Energy Company.

In accordance with 18 CFR 35.2(d), International Transmission Company has served a copy of this filing on the Michigan Public Service Commission and all affected purchasers under these tariffs. International Transmission Company has also served a copy of this filing on Consumers Energy Company.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Baltimore Gas and Electric Company

[Docket No. ER00–3296–000]

Take notice that on July 28, 2000, Baltimore Gas and Electric Company (BGE) tendered for filing in compliance with Section 205 of the Federal Power Act and its market-based rate authorization a Power Purchase and Sale Agreement between BGE and Constellation Power Source, Inc.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Calvert Cliffs Nuclear Power Plant, Inc.

[Docket No. ER00–3297–000]

Take notice that on July 28, 2000, Calvert Cliffs Nuclear Power Plant, Inc. (CCNPP), tendered for filing in compliance with section 205 of the Federal Power Act and its market-based rate authorization a Power Sales Agreement between CCNPP and Constellation Power Source, Inc.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Constellation Power Source Generation, Inc.

[Docket No. ER00–3298–000]

Take notice that on July 28, 2000, Constellation Power Source Generation, Inc. (CPSGI), tendered for filing in compliance with Section 205 of the Federal Power Act and its market-based rate authorization a Power Sales Agreement between CPSGI and Constellation Power Source, Inc.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. PJM Interconnection, L.L.C.

[Docket No. ER00–3299–000]

Take notice that on July 28, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an amended Service Agreement for Network Integration Transmission Service for PP&L Inc. (now PPL Electric Utilities Corporation) (PPL) and a Service Agreement for Network Integration Transmission Service with PPL EnergyPlus, L.L.C. (PPL EnergyPlus). These agreements are necessary because as of July 1, 2000, PPL transferred the loads of the Easton Utilities Commission (Easton) and the Boroughs of Lewisberry and Goldsboro to PPL EnergyPlus.

Copies of this filing were served upon PPL, PPL EnergyPlus, Easton, the Boroughs of Lewisberry and Goldsboro, and the state utility commissions within the PJM control area.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an effective date of July 1, 2000, for the service agreements.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Power Coordinating Council

[Docket No. ER00–3300–000]

Take notice that on July 28, 2000, the Northeast Power Coordinating Council (NPCC), on behalf of the member Systems of the New York ISO and joined by Allegheny Energy, Inc., Consumers Energy Co., The Detroit Edison Company, American Electric Power Company, Inc., FirstEnergy Corporation, and with the support of the Independent Electricity Market Operator (IMO) tendered for filing an Agreement entailing the description and procedures for a revised Lake Erie Emergency Re-dispatch Procedure (LEER).

NPCC states that copies of the filing were mailed to the commissions in the states of Delaware, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

The LEER Participants seek a waiver in order to proceed with control room adoption of the revised procedures effective July 31, 2000, and that the LEER Agreement described in this filing be made effective retroactively to that date upon Commission approval.

Comment date: August 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20139 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–001 Idaho]

Atlanta Power Company; Notice of Availability of Draft Environmental Assessment

August 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Atlanta Power Station Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The operating project is located on the Middle Fork Boise River near the town of Atlanta (75 miles from the nearest populated area), in Elmore County, Idaho. Water to operate the run-of-river project is diverted at Kirby dam which is owned and operated by the U.S. Forest Service (FS). The project occupies about 3.3 acres of land within the Boise National Forest, administered by the FS. The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Any comments should be filed within *30* days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

David P. Boergers,

Secretary.

[FR Doc. 00–20065 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Project No. 2177–039]

Georgia Power Company; Availability of Draft Environmental Assessment

August 3, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental effects of a request to amend the license to authorize Georgia Power Company to withdraw up to 32 million gallons of water per day from the Goat Rock Development impoundment, part of the Middle Chattahoochee Project. The water would be used for cooling tower maker-up, non-contact cooling water, and other plant uses for a proposed natural gas-fired combustion turbine combined-cycle power plant in Lee County, Alabama, outside the project boundary.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. The proposal non-project use of project lands and waters would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the EA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 30 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the docket number P–2177–039 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please contact R. Feller at telephone (202) 219–2796 or e-mail: rainer.feller@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–20072 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2866–008]

Metropolitan Water Reclamation District of Greater Chicago; Notice of Availability of Final Environmental Assessment

August 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Lockport Hydroelectric Project. The project is located on the Chicago Sanitary and Ship Canal, in Will County, Illinois.

On May 30, 2000, the commission staff issued and distributed to all parties a draft environmental assessment on the project, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the final environmental assessment (FEA).

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426 and may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–20066 Filed 8–8–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–6]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference or Equivalent Method Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of receipt of application.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that it has received an application for a reference or equivalent method determination from Grimm Technologies, Incorporated (Douglasville, Georgia) for Grimm Technologies' ENVIROcheck Model 107 PM_{10} air monitoring method.

FOR FURTHER INFORMATION CONTACT: David B. Gemmill, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–1516, email: gemmill.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Upon application and in accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. As required by part 53, this notice is to announce that EPA has received an application to determine if a new monitoring method for PM_{10} should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR part 53.

An application from Grimm Technologies, Incorporated, 9110 Charlton Place, Douglasville, Georgia was received on April 10, 2000, for a reference or equivalent method determination for Grimm Technologies' ENVIROcheck Model 107 PM^{10} air monitoring analyzer.

If, after appropriate technical study, the Administrator determines that this method should be designated as a reference or equivalent method, as appropriate, notice thereof will be published in a subsequent issue of the **Federal Register**.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 00–20124 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6848–2]

Petition for Secondary National Ambient Air Quality Standards for Nitrogen Dioxide, Sulfur Dioxide, and Fine Particulate Matter and Related Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is announcing receipt of a petition for rulemaking under section 109 of the Clean Air Act (CAA), to promulgate revised secondary national ambient air quality standards (NAAQS) for pollutants associated with the formation of acid rain, including nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and fine particulate matter ($PM_{2.5}$). The petition was submitted by representatives of the States of New York, Massachusetts, Maine, New Hampshire, Connecticut, Rhode Island, and Vermont in a letter to the EPA Administrator, dated October 26, 1999. In that letter, the States request EPA to address what they assert to be a wide range of adverse environmental effects associated with these pollutants through the mechanism of revised secondary NAAQS. In addition, EPA has received a related request from the U.S. Department of the Interior (DOI) in a letter to the EPA Administrator, dated July 19, 2000, to address many of the same adverse environmental effects associated with the same types of air pollutants, and with ozone (O_3) that DOI asserts are occurring in national parks and wilderness areas.

To consider and respond to this petition and related request properly, EPA plans to review relevant scientific information, and to consult with the public and potentially affected stakeholders to ensure that decisions in response to these requests are based on the best available information.

DATES: Comments and associated information and analyses should be submitted on or before December 7, 2000.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention Docket No. A–2000–36, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

Electronically. Send electronic comments to EPA at: *A-and-R-Docket@epa.gov.* We accept comments

as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1, 6.0, Corel 8, or ASCII file format. Avoid the use of special characters and any form of encryption. Be sure to identify all comments by Docket No. A–2000–36.

Public Inspection. Docket No. A–2000–36 containing the letters and related information is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays at the Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Room M–1500, Washington, DC 20460, phone 202–260–7548, fax 202–260–4400. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Vicki Sandiford, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2629, e-mail: *sandiford.vicki@epa.gov;* or Geoffrey L. Wilcox, Mail Code 2344A, Office of General Counsel, U.S. Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 564–5601, e-mail: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Related Information

Two of the documents specifically cited in the States' petition can be obtained by ordering them from the following organizations:

(1) *Nitrogen Oxides: Impacts on Public Health and the Environment.* 1997. (EPA452/R–97–002). Order by contacting U.S. EPA Region 3 Chesapeake Bay Program Office, 410 Severn Avenue, Suite 109, Annapolis, MD 21403; phone (800) 968–7229 or (800) 553–6847; fax (410) 267–5777. This document can also be ordered online by going to *http://www.epa.gov/ncepihom/orderpub.html* and filling out the order form online.

(2) *Introduction to Visibility.* 1999. W. Malm (CSU, ISSN 0737–5352–40).

Contact the Cooperative Institute for Resources in the Atmosphere (CIRA) at (970) 491–8292.

Electronic Availability

In addition to accessing the States' petition and the DOI request through the EPA docket as indicated above, these letters are available online through the Agency's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) under the technical area of ''Office of Air and Radiation Policy and Guidance'' (OAR P&G), and under the heading of ''General Documents'' (see the following e-mail address: *http://www.epa.gov/ttn/oarpg/gener.html).* To access the document from the World Wide Web, click on *www.epa.gov/ttn/* which connects you to the ''TTNWeb,'' then proceed to the ''TTN Technical Areas,'' as described above. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

Other documents cited in the States' petition can also be accessed and downloaded from the following web addresses:

(1) *The 1998 Acid Rain Action Plan of the Northeastern Governors and Eastern Canadian Premiers.* http://www.cmp.ca/neg/reports/acid-e.htm

(2) *National Acid Precipitation Assessment Program (NAPAP) Biennial Report To Congress: An Integrated Assessment.* May, 1998. (Requires Adobe Acrobat to view individual chapters) http://www.nnic.noaa.gov/CENR/NAPAP/NAPAP__96.htm

(3) *Clean Water Action Plan: Restoring and Protecting America's Waters.* 1998. http://www.cleanwater.gov/action/toc.html

(4) **Federal Register** Proposal and Final Notices for NO_2, SO_2, PM, and O_3 National Ambient Air Quality Standards. http://www.epa.gov/ttn/oarpg/t1pfpr.html

(5) *Acid Rain: Current and Projected Status of Coldwater Fish Communities in the U.S. in the Context of Continued Acid Deposition.* 1998. (After accessing the following site, scroll down the list of headings until you see Acid Rain Report. Click on it and Adobe Acrobat will automatically begin to open, which you will need to read this document). http://www.tu.org/library/conservation.html.

Additional general information on acid rain and visibility is available at the following EPA web addresses: http://www.epa.gov/acidrain/ardhome.html and http://www.epa.gov/oar/vis/. Relevant reports available at these web addresses include, for example, the EPA's 1998 *Acid Deposition Standard Feasibility Report to Congress,* and *Acid Deposition: the Ecological Response* (Ecological Society of America, Workshop Report of 1999).

Background

The establishment, review, and revision of NAAQS are governed by two sections of the CAA. Section 108 (42 U.S.C. 7408) directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue ''air quality criteria'' for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.''

Section 109 of the CAA (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants identified under section 108 of the CAA. Section 109(b)(2) of the CAA defines a secondary NAAQS as one, ''the attainment and maintenance of which, in the judgment of the Administrator, based on [the section 108] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.'' Welfare effects as defined in section 302(h) of the CAA (42 U.S.C. 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion or combination with other pollutants.''

Section 109(d)(1) of the CAA requires periodic review and, as appropriate, revision of existing air quality criteria and NAAQS. The EPA's most recent decisions following the review of air quality criteria and the existing secondary standards for NO_2, SO_2, PM, and O_3 were published in the **Federal Register** on October 8, 1996 (61 FR 52852), April 21, 1993 (58 FR 21351), and July 18, 1997 (62 FR 38652 and 62 FR 38856), respectively. Information concerning the welfare effects of these pollutants and the rationales for EPA's decisions as to revision of the existing secondary standards at those times can be found in those notices, as well as in the notices of proposed rulemaking which preceded EPA's final decisions.

Summary of Northeast States' Petition

Representatives of the States of New York, Massachusetts, Maine, New Hampshire, Connecticut, Rhode Island, and Vermont submitted a petition to the EPA Administrator, dated October 26, 1999, pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e), requesting that EPA commence rulemaking to promulgate revised secondary NAAQS. The petitioners suggest that the acid rain provisions in title IV of the CAA do not go far enough to ensure full recovery of sensitive ecosystems. The petitioners cite several recent Federal studies in support of

their assertions that effects are occurring which are adverse to the public welfare, and that these effects result from pollutants associated with acid rain, including NO_2, SO_2, and $PM_{2.5}$. More specifically, the petitioners assert that reports such as the National Acid Precipitation Assessment Program's (NAPAP) Biennial Report to Congress: An Integrated Assessment and Nitrogen Oxides: Impacts on Public Health and the Environment (EPA452/R–97–002) document continued and increasing damage caused by acid deposition to the lakes and forests in the Northeastern States and other parts of the nation, as well as other environmental effects (*e.g.*, visibility impairment, eutrophication of coastal estuaries, damage to vegetation from tropospheric ozone and the depletion of stratospheric ozone) associated with these pollutants and their transformation products. Moreover, the petitioners assert that damage is sufficiently serious and widespread to be considered national in scope, such that revised secondary NAAQS are an appropriate approach for addressing such effects.

Related Request From DOI

The DOI has requested in a letter to the EPA Administrator, dated July 19, 2000, that EPA initiate rulemaking within its various authorities under the CAA that would provide appropriate regulatory mechanisms by which states could require protection of air quality related values (AQRVs) in Federal Class I areas (*i.e.*, national parks and wilderness areas) from both new and existing sources of air pollution. More specifically, the DOI asks that EPA consider the use of the provisions of the CAA dealing with prevention of significant deterioration (PSD) to promulgate a general rule that would require affected States to revise their State implementation plans (SIPs) to remedy existing, and prevent future, adverse AQRV impacts. The DOI letter asserts that AQRVs are being adversely affected by air pollution at numerous national parks and wilderness areas, with effects at various locations including acidification of streams, surface waters, and/or soils; eutrophication of coastal water; visibility impairment; and foliar injury to vegetation. The DOI acknowledged that revised secondary NAAQS might be one approach to help mitigate the effects of concern to Federal land managers responsible for protection of AQRVs in Class I areas, but proposes that EPA also consider using the PSD provisions, as well as other approaches identified in its letter that could provide some protection in the short-term, before more general rulemaking can be promulgated, to address localized impacts specific to Class I areas.

Solicitation of Comments and Information

The Administrative Procedure Act (APA) does not require EPA to provide notice and solicit public comment before deciding upon its response to petitions or other requests for rulemaking. Nonetheless, EPA has decided in this instance to solicit public comment and additional information and analyses relevant to the issues raised by these requests. The EPA is particularly interested in receiving comments and information regarding: (1) Any ongoing or planned research that will become available in the peer-reviewed literature in the near future on the welfare effects of the pollutants noted in the letters and their atmospheric transformation products, or on environmental responses to existing emission control programs; (2) the scope and magnitude of the impact on the environment of welfare effects associated with these pollutants and their atmospheric transformation products; (3) the variability in geographic impacts, frequency, timing, seasonal implications, severity, and extent of the effects and differences in site characteristics where those effects occur; and (4) various alternative approaches and mechanisms that may be suitable for addressing these effects consistent with EPA's authority under the CAA. The EPA will consider any relevant comments and information submitted in response to this notice, together with information provided by the petitioners and the DOI and information in the existing records cited in today's notice, before making any decision concerning a response to these requests for rulemaking. If EPA decides to respond to the States' petition or DOI's request by commencing rulemaking under the CAA, we will publish a notice of proposed rulemaking in the **Federal Register**, providing further opportunity for public review and comment before adopting any final rules.

Dated: July 24, 2000.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–20121 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30010; FRL–6598–5]

Time Extension for B.t. Corn and B.t. Cotton Plant-Pesticides Expiring Registrations; Registration Process and Public Participation Opportunity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is currently engaged in a comprehensive reassessment of the time-limited registrations for all existing *Bacillus thuringiensis* (*B.t.*) corn and cotton plant-pesticides. This reassessment has been designed to assure that the decisions on the renewal of these registrations are based on the most current health and ecological data (including recently reviewed non-target impact data), and incorporates recommendations made by the FIFRA Scientific Advisory Panel (SAP). The reassessment process has also been designed to assure maximum transparency of the decision making process. In addition to consideration of recommendations made by the SAP, this reassessment will be guided by the findings of the 1999 National Academy of Sciences (NAS) report on Genetically Modified Pest-Protected Plants and the findings of the recently announced Administration-wide biotechnology review led jointly by the Council on Environmental Quality (CEQ) and the Office of Science and Technology Policy (OSTP). This CEQ/OSTP review is focused on the existing federal regulatory review structures to assess and regulate the environmental impacts of products of biotechnology. It is EPA's intention to extend the existing *B.t.* corn and cotton registrations until September 30, 2001. If not extended, these registrations will expire in April and January of 2001, respectively. EPA believes that in order to bring the results of all of the aforementioned activities to bear on our final assessment and renewal decisions, the additional time gained by extending the current registrations is necessary. EPA has strengthened resistance management requirements for both corn and cotton in the past year and believes these strengthened requirements, along with the original registration conditions, are more than adequate to be protective during the extension period. This notice sets forth the process that EPA intends to follow to reach regulatory decisions on the *B.t.* corn and *B.t.* cotton expiring registrations and extension of the existing *B.t.* product registrations. It also provides information on EPA's plans for

finalizing core components of the Plant-Pesticides Rule, that was proposed on November 23, 1994.

FOR FURTHER INFORMATION CONTACT: Phil Hutton, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8260; fax number: (703) 308–7026; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to manufacturers/producers, distributors, users, and other persons interested in the registrations listed below. This action may also be of interest to other persons who have an interest in the registration and/or the use of *B.t.* corn and *B.t.* cotton plant-pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and under the Federal Food, Drug and Cosmetic Act (FFDCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Affected EPA Plant-Pesticides and Registrations

EPA plant-pesticides and registrations affected by the time extensions and reassessments are listed below.

Plant-Pesticide	EPA Registration	EPA Product Chemistry Code
Bacillus thuringiensis CryIA(b) Delta-endotoxin and the genetic material necessary for its production (Plasmid Vector pCIB4431) in corn	Novartis Seeds 66736–1 Mycogen Corp. 68467–1	006458
Bacillus thuringiensis CryIA(b) Delta-endotoxin and the genetic material necessary for its production (Plasmid Vector pZ01502) in corn	Novartis Seeds 67979–1 Novartis Seeds 65268–1	006444
Bacillus thuringiensis CryIA(b) Delta-endotoxin and the genetic material necessary for its production in corn	Monsanto Crop. 524–489	006430
Bacillus thuringiensis subspecies tolworthi Cry9C protein and the genetic material necessary for its production in corn	Aventis 264–669	006466
Bacillus thuringiensis kurstaki Delta-endotoxin as produced by the CryIA(c) gene and its controlling sequences as expressed in cotton	Monsanto Corp. 524–478	006445

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

You may obtain electronic copies of this document, and certain other related documents (including copies of EPA's fact sheets on each registered *B.t.* plant-pesticide, workshop proceedings on resistance management, EPA technical papers on regulation of agricultural biotechnology including resistance management for *B.t.* plant-pesticides, ecological effects data requirements for protein plant-pesticides, allergenicity and health effects for protein plant-pesticides, and Scientific Advisory Panel reports from the EPA's Biopesticide Internet Home Page at http://www.epa.gov/pesticides/biopesticides and from the EPA's Scientific Advisory Panel Home Page at http://www.epa.gov/scipoly/sap). 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/.

D. Opportunities for Public Comment

The process that EPA will follow for the comprehensive reassessment of *B.t.* plant-pesticides is set forth below in Unit III.D. EPA encourages public comments for the Agency's consideration during the comprehensive reassessment of the existing *B.t.* corn and *B.t.* cotton registrations. Throughout the reassessment process, there will be opportunities for public comment.

II. Actions Being Taken and Authority

A. What Action is the Agency Taking?

EPA is announcing its process for conducting a comprehensive reassessment of the *B.t.* corn and *B.t.* cotton expiring registrations in order to reach regulatory decisions related to registration renewal. This process has been designed to allow for appropriate consideration of all relevant information and to assure a robust public participation process. EPA is announcing its intent to extend existing (*B.t.*) corn and cotton plant-pesticide registrations to remain in effect until September 30, 2001, providing time for the Agency to consider the recommendations of the SAP, the CEQ/OSTP Biotechnology review and public input. EPA is also announcing its plans for finalizing core components of the Plant-Pesticides Rule, that was proposed on November 23, 1994 (59 FR 60495) (FRL–4755–2).

B. What is the Agency's Authority for Taking This Action?

EPA's comprehensive reassessments of the expiring *B.t.* corn and cotton plant-pesticides will be conducted pursuant to its authority at section 3 of FIFRA. Extension of the period of registration for the expiring *B.t.* plant-pesticide registrations will be granted pursuant to section 3 of FIFRA.

III. Background and Explanation of Actions Being Taken

A. What is the History of B.t. Plant-Pesticide Registrations?

Prior to registering *B.t.* plant-pesticides and starting in the mid 1980's, EPA held a series of scientific and public meetings. Specifically, the Agency organized public meetings of the FIFRA Scientific Advisory Panel (SAP) and the Biotechnology Scientific Advisory Committee (BSAC) to consider technical issues related to biotechnology products that act as pesticides. The focus of these meetings was to discuss potential risks associated with this technology, and to identify the appropriate data requirements that would allow EPA to assess any risks associated with plant-pesticides. These collaborative efforts resulted in the development of a rigorous scientific review process and appropriate data requirements. Beginning in 1995, EPA has registered 11 plant-pesticide products. *B.t.* plant-pesticides are registered in corn, cotton, and potato. Two of the 11 original registrations have been or are in the process of being voluntarily canceled. Seven of the original 11 plant-pesticide registrations are for field corn, sweet corn, popcorn, and cotton. The remaining two existing registrations are for potatoes. These seven *B.t.* corn and cotton plant-pesticide registrations are time-limited registrations, currently scheduled to expire in April and January of 2001, respectively. Data required by EPA includes characterization of the active ingredient (to date, all pesticidal substances have been proteins) and the genetic material including promoters, etc. used to make the pesticidal substance in the plant, information on the donor organism and the host plant, and extensive data on the protein itself. In addition, studies are required on toxicity to mammals, non-target organisms and beneficial species, and the fate of the substance in the environment.

EPA has continued to hold SAP meetings to periodically reevaluate the data requirements applied to plant-pesticides to ensure that all appropriate health and safety aspects are covered in light of any new data. Development of insect resistance to *B.t.* microbial pesticide products from the wide-spread use of *B.t.* crops was one of the major concerns that was expressed in these early and subsequent public meetings. In registering *B.t.* plant-pesticides, EPA has taken extensive and unprecedented measures to significantly reduce the likelihood that insects exposed to *B.t.* plant-pesticides will develop resistance. Well before registration of the first *B.t.* plant-pesticide in 1995, EPA engaged in consultations regarding resistance management for *B.t.* plant-pesticides with the U.S. Department of Agriculture (USDA), potential registrants, academics, farmers, and public interest groups. In addition, potential registration applicants had been conducting or sponsoring research on the biology and ecology of the insect pests, biology of resistance, and many other aspects of effective resistance management. As a condition of the registrations, EPA required that all applicants for *B.t.* plant-pesticide registrations provide EPA with insect resistance management (IRM) plans, including monitoring and submission of monitoring data. Subsequent to the registration of the first *B.t.* crops in 1995, substantial information has been developed that has enhanced EPA's understanding of the requirements of IRM plans. Since 1995, EPA has modified the structured refuge requirements for *B.t.* crops as indicated by the evolving science. Moreover, EPA has mandated certain risk mitigation measures to ensure that selection pressure is effectively managed and the risk of insect resistance development to *B.t.* plant-pesticides is minimized. The Agency has required or recommended generation of specific research data, development and implementation of structured refuges, annual resistance monitoring, remedial action plans, grower education, and sales and research reporting for certain *B.t.* crops as part of the development and implementation of long-term IRM strategies.

EPA is working closely with academia, other federal agencies, public interest groups, industry, and growers to continue to refine and implement effective insect resistance plans, based on the most current science, that provide consistency, effectiveness, and flexibility.

B. What is EPA's Approach to Plant-Pesticides?

EPA has been and remains fully committed to assuring that the review, assessment and registration of biotechnology products meet the stringent standards required by FIFRA and the FFDCA, and are fully protective of public health and the environment. Prior to the 2000 growing season, EPA worked with U.S. farmers and the manufacturers of *B.t.* corn products, via the Agricultural Biotechnology Stewardship Working group, to put strengthened resistance management plans in place. This collaborative effort was undertaken in response to the availability of new information regarding insect resistance and potential non-target species impacts. EPA has worked similarly with the *B.t.* cotton registrant and cotton growers to put strengthened resistance management plans in place for the 2001 growing season.

It is EPA's goal to assure that we continue to make our regulatory process and decisions within a sound and transparent process framework and that we are fully informed by the most recent and scientifically sound information. The Agency will assure a transparent and interactive review process for its decisions and will make every effort to involve all of our stakeholders—the manufacturers, the growers, and the public—to provide the public with confidence in EPA's regulatory decisions and provide U.S. farmers with the tools they need to continue to produce a safe and healthy food supply.

C. What is the Rationale for the Action the Agency is Taking?

EPA is conducting a comprehensive reassessment of expiring *B.t.* corn and cotton plant-pesticide registrations, including pest management resistance requirements, to ensure public health and environmental protection. This process will be scientifically based and provide increased opportunities for public comment and participation on both EPA's comprehensive risk assessment and risk management proposals. EPA intends to extend the existing *B.t.* corn and cotton plant-pesticide registrations to remain in effect until September 30, 2001. Absent extension, these registrations will expire in April and January of 2001, respectively. EPA will extend these registrations to ensure that the comprehensive reassessment can be completed and subsequent regulatory decisions made, prior to expiration of the *B.t.* corn and cotton registrations. EPA believes that such extensions are appropriate and necessary to ensure that farmers are provided with adequate time to evaluate their options for the 2002 growing season. EPA plans to complete risk assessment recommendations in the late spring or early summer of 2001. Without the extensions, farmers will have inadequate information to make their seed buying decisions for the 2002 growing season. The Agency also believes that such extensions are necessary to assure that there is no confusion regarding the legal status of these plant-pesticide products during their normal use period. Moreover, by extending these registrations, EPA may more fully engage the public in the comprehensive reassessment in a

manner that will ensure that adequate time and data are available to support a thorough reassessment of original data; ensure that newly submitted ecological data are factored into the assessment; provide ample time for scientific peer review of EPA's assessment by the SAP; provide ample time for public review and comment; allow consideration of recommendations coming from the recent NAS study of genetically-modified pest-protected plants and the recently announced Administration-wide review of the adequacy of existing regulatory structures to assess and regulate potential environmental impacts of biotechnology products. Pursuant to its statutory obligations under FIFRA, EPA has determined that the extension of these registrations will not cause unreasonable adverse effects on the environment.

D. What Future Actions Will the Agency be Taking?

EPA worked with U. S. farmers and the manufacturers of *B.t.* corn products to put in place strengthened insect resistance management plans for the 2000 growing season. The Agency believes these strengthened measures are necessary and will continue for the 2001 growing season. EPA has also worked with farmers and the *B.t.* cotton registrant. The *B.t.* cotton product has been recently amended to increase both the size and proximity requirements of the required refuge, along with strengthening the educational program for users. These measures provide for increased protection from the potential onset of resistance. In addition, the Agency reserves the right to ensure that any additional potential protections are implemented for the 2001 season if additional information is received that would warrant such action.

Over the coming months, EPA will be developing a comprehensive updated risk assessment that will be used to assess whether existing *B.t.* plant-pesticide registrations should be renewed, and if renewals are appropriate whether they should be with or without modification. That assessment will include not only data and information that was reviewed for the original assessments, but will also incorporate new data, including recently submitted monarch butterfly data, guidance from SAP meetings, recommendations from the National Academy of Sciences and the CEQ/OSTP biotechnology review, and all public comments. The NAS report focused on investigating the risks and benefits of genetically modified pest-protected plants and the coordinated federal framework for regulation of biotechnology. The Administration-wide review is a more focused effort, assessing the present regulatory framework for all federal agencies involved with biotechnology. This inter-agency review calls for the creation of case studies that reflect the regulatory processes of each of the federal agencies involved in the registration and sale and distribution of *B.t.* plant-pesticides and other biotechnology products and will be used to examine and possibly make recommendations to strengthen existing regulatory structures.

EPA expects to complete that preliminary assessment by late summer and have a rigorous public review of the assessment. EPA will include in this process an opportunity for the manufacturers to provide EPA with technical corrections to the preliminary risk assessment. The registrants error correction comments and corrective actions taken by the Agency will be placed in the docket established for *B.t.* crops. After any corrections have been made, EPA will invite public comment on the risk assessment through the **Federal Register** and the EPA website. At that time the Agency will also announce a date and place for an SAP meeting. All public comments received before the SAP meeting will be given to the SAP for their consideration. The public is encouraged to provide comments at the SAP meeting. The reassessment process has been designed to assure maximum transparency of the decision making process and the data and information that underlie final Agency decisions, and to assure that all stakeholders have ample time for review and participation in the process.

EPA's final assessment, renewal decisions and risk mitigation plans will be completed after careful consideration of all comments and after any recommendations coming from the Administration-wide review have been evaluated. EPA intends to provide appropriate opportunities for public input on the risk management plans before final decisions are announced.

It is EPA's goal to adhere to a transparent and interactive review process. The Agency is committed to working with all stakeholders to provide the public with confidence in EPA's regulatory decisions and provides U.S. farmers with the tools they need to continue to produce a safe and healthy food supply.

Up-to-date fact sheets for all affected *B.t.* corn and *B.t.* cotton plant-pesticides can be found on the Biopesticides web page at http://www.epa.gov/pesticides/biopesticides/ai/plant—pesticides.htm.

E. What are the Process and Schedule for EPA's Reassessment of Existing B.t. Corn and B.t. Cotton Plant-Pesticides?

It is EPA's goal to provide for an open and transparent public process that incorporates sound and current science, public involvement, and balanced decision making. As currently envisioned, the major components of this process and time frames for action are as follows:

1. *Comprehensive risk assessments.* EPA is currently in the process of evaluating its scientific risk assessments for *B.t.* products. This review will incorporate all available scientific information on *B.t.* products, including results of recent scientific studies and recommendations from various individuals and organizations. (Summer/Fall 2000)

2. *Scientific Peer Review and public comment.* After completing our scientific risk assessment, the Agency will provide the registrants of the products an opportunity to review the risk assessment and suggest technical corrections to the Agency. After any corrections are made, EPA will release the risk assessments and invite public comment and scientific peer review. That release will include EPA's regulatory assessment and the underlying data, along with any registrants error correction comments and the corrective actions taken by the Agency. All of these materials will be placed in the docket established for *B.t.* crops. (Fall 2000)

3. *Recommendations from the Scientific Advisory Panel, National Academy of Sciences, public comments, and the Administration-wide review.* Since there are many organizations providing regulatory and scientific recommendations to EPA, this period will be used to consider and incorporate as appropriate recommendations into our revised risk assessment. This will include recommendations from the Scientific Advisory Panel on insect resistance management, ecological and public health aspects of our regulatory program, along with consideration of issues identified in the report released by the National Academy of Sciences titled: ''Genetically Modified Pest-Protected Plants, Science and Regulation'' and the Administration-wide review. Any available recommendation from the Administration-wide review will also be addressed at this time. (Fall 2000, Winter 2000/1)

4. *Revised risk assessments and propose registration requirements.* After incorporating the appropriate recommendations, the Agency will

revise its risk assessments, and develop registration decision documents for future growing seasons. This will include any strengthening measures for issues including insect resistance management, the protection of non-target organisms, and other measures necessary to ensure full public and environmental safety. The Agency will ask for public comment on the revised risk assessment and any proposed regulatory actions. (Winter 2000/1 to Early Spring 2001)

5. *Final decisions on B.t.* registrations. This will complete the scientific and public process with EPA providing decisions on the *B.t.* registrations for the 2002 growing season. At this time, EPA will announce final regulatory conclusions regarding these registrations. (Late Spring to Summer 2001)

IV. Status of Plant-Pesticide Rule

In concert with the Agency's commitment to keeping interested parties informed, EPA is taking this opportunity to provide an update on the plant-pesticide rules proposed on November 23, 1994 (59 FR 60495). While EPA continues to believe that specific registration decisions can be made while the generic process is being developed, EPA is using this notice as a vehicle for providing information on the generic rules because many readers of this notice are also interested in EPA's other plant-pesticide plans.

EPA plans to publish a final rule later this year establishing the core components of the Agency's oversight of certain plant-pesticides under FIFRA. This final rule would amend EPA's regulations at 40 CFR 152.20 pertaining to oversight of biological control agents. Generally, this rule will clarify how EPA will regulate genetically engineered plant-pesticides while exempting traditional plant breeding from EPA oversight under FIFRA and FFDCA.

EPA also plans in that notice to solicit public comment on the recommendations in the National Academy of Sciences report titled ''Genetically Modified Pest-Protected Plants: Science and Regulation'' as they relate to the parts of the rule that will not be made final. In its report, the NAS recommended that EPA reconsider its proposed exemptions for: modifications to sexually-compatible plants accomplished using rDNA techniques; viral coat proteins, and plant pesticides that act primarily through non-toxic modes of action (e.g., by affecting the physical properties of plants).

List of Subjects

Environmental protection, Plant-pesticides.

Dated: August 3, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–20174 Filed 8–8–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50870; FRL–6738–8]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 241, Crystal Mall #2, Arlington, VA; (703) 305–6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

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

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,'' ''Regulations and Proposed Rules,'' 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/.

II. EUP

EPA has issued the following EUP:

264–EUP–129. Issuance. Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 280 pounds of the herbicide isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl)isoxazole] on 2,000 acres of field corn to evaluate the control of broadleaf and grass weeds under a range of environmental conditions. The program is authorized only in the States of Michigan and Pennsylvania. The experimental use permit is effective from April 6, 2000, to April 6, 2001. A tolerance has been established for residues of the active ingredient in or on field corn. (Joanne I. Miller; Rm. 241, Crystal Mall #2; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov).

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 2, 2000.

James J. Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–20026 Filed 8–8–00]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

July 31, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB)

approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0748.

Expiration Date: 07/31/2003.

Title: Disclosure Requirements for Information Services Provided Through Toll-Free Numbers, 47 CFR Section 64.1504.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3,750 respondents; 2.66 hours per response (avg.).; 10,500 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carriers' transmission of and billing and collection for interstate pay-per-call and other information services. 47 CFR Section 64.1504 imposes disclosure requirements on entities that use toll-free numbers to provide information services. Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided or (2) pays for the information by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The requirements are intended to ensure that callers to toll-free numbers are: (1) Informed if charges will be levied and (2) receive the information necessary to make an informed decision whether to purchase an information service. Obligation to respond: Mandatory.

OMB Control No.: 3060–0749.

Expiration Date: 07/31/2003.

Title: 47 CFR Section 64.1509—Disclosure and Dissemination of Pay-Per Call Information.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 25 respondents; 410 hours per response (avg.).; 10,250 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carriers' transmission and billing and collection of interstate pay-per-call and other information services. 47 CFR Section 64.1509 imposes requirements on common carriers that assign telephone numbers to pay-per-call services. Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call service; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. Carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. The Commission requires carriers to provide statements of pay-per call rights and responsibilities to new telephone subscribers at the time service is established and to all subscribers annually. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services. Obligation to respond: Mandatory.

OMB Control No.: 3060–0752.

Expiration Date: 07/31/2003.

Title: Billing Disclosure Requirements for Pay-Per-Call and Other Information Services, 47 CFR Section 64.1510.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1,350 respondents; 40 hours per response (avg.).; 54,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually; Third Party Disclosure.

Description: Section 228 of the Communications Act of 1934, as amended, establishes federal requirements governing common carrier's transmission and billing and collection of interstate pay-per-call and other information services. Under 47 CFR Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay-per-call charges; (3) pay-per-call (900 number) blocking is available upon request and (4) access to pay-per-call services may be involuntarily blocked for failure to pay-per-call services. In addition, each call billed must show the type of service, the amount of the charges, and the date, time and duration of the call. The bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services are able to understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges. Obligation to respond: Mandatory.

OMB Control No.: 3060–0810.

Expiration Date: 01/31/2001.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 120 respondents; 51.66 hours per response (avg.); 6,200 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Description: 47 U.S.C. Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether telecommunications carriers requesting such designation pursuant to the Commission's procedures meet the eligibility criteria set forth in the Act.

Carriers seeking designation from the Commission pursuant to section 214(e)(6) must demonstrate that they fulfill the requirements of section 214(e)(1). To do so, carriers seeking designation from the Commission must provide a petition containing the information specified in the Commission's ''Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6).'' In addition, under the Commission's recent Unserved Areas Order, CC Docket No. 96–45, released June 30, 2000, carriers seeking designation for service provided on non-tribal lands must provide an affirmative statement from a court of competent jurisdiction or the state commission that the state lacks jurisdiction over the carrier. A carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on tribal lands may petition the Commission for designation under section 214(e)(6), without first seeking designation from the appropriate state commission. The petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission's jurisdiction, and bears the burden of proving that assertion. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. Carriers seeking an eligibility designation from this Commission for the provision of service on tribal lands should provide fact-specific support demonstrating that the carrier is not subject to the state commission's jurisdiction for the provision of service on tribal lands. Such support should include any relevant case law, statutes, and treaties. Petitioners seeking an eligibility designation under section 214(e)(6) for service provided on tribal lands must accurately describe the specific geographic areas they wish to service, and must demonstrate that such areas satisfy the definition of tribal lands. The Commission will use the information collected to determine whether the telecommunications carriers providing the data are eligible to receive universal service support. Obligation to respond: Mandatory.

OMB Control No.: 3060–0774.

Expiration Date: 01/31/2001.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR 54).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5,735,638 respondents; .34 hours per response (avg.); 1,984,119 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly; Annually; Recordkeeping; Third Party Disclosure.

Description: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in 47 U.S.C. Section 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. Part 54 promulgates the rules and requirements to preserve and advance universal service. In the Unserved Areas Order, CC Docket No. 96–45, released June 30, 2000, the Commission amended its universal service rules and provided additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities, in areas that previously may have been regarded as high risk and unprofitable. (a) Projected Requirements for Low-Income Universal Service to be Filed No Later Than September 1, 2000 and Certifications Required by 47 CFR 54.403—The Commission has decided to give carriers the option of providing additional information about their projected requirements for low-income universal service support prior to the deadline for implementation of the Commission's enhancements to low-income support for tribal lands. Such additional information would supplement the information carriers already provided periodically about the amount of revenues they have foregone in the provision of service to qualifying low-income consumers, under 47 CFR sections 54.407(c) and 54.413(b). Prior to the rules adopted in the Unserved Areas Order, carriers could only obtain second-tier Lifeline support if they first obtained state approval of a corresponding rate reduction. Carriers could also only obtain third-tier support if state matching funds were provided. These requirements protected the ability of states to monitor and regulate the intrastate rates of Lifeline customers, and the incentive for states and carriers to provide local funds towards the advancement and preservation of universal service. In order to reduce burdensome administrative requirements on carriers not subject to state rate regulation while preserving the goals served by the current requirements of state approval for second-tier support and state matching funds for third-tier support, the Commission has removed the existing requirements for the receipt of second and third-tier Lifeline support, and substituted a certification by carriers that they pass through the full amount of any second, third, or fourth tier support they receive to qualifying low income subscribers, and that they have secured any non-federal regulatory approvals necessary to implement the required rate reduction. (No. of respondents: 2,414; hours per response: 8 hours; total annual burden: 19,312). (b) Certifications and Notifications of Low-Income Consumers Living on Tribal Lands, 47 CFR Sections 54.409(c) and 54.415. In order to allow low-income support to reach low-income consumers living on tribal lands in states that do not provide state universal service support for low-income consumers, carriers must now obtain certifications from low-income consumers of their receipt of benefits from a broader list of federal assistance programs, including assistance programs in which members of trial communities are more likely to be participants. (No. of respondents: 170,187; hours per response: 20 minutes; total annual burden: 56,729 hours). (c) Lifeline Plans to Carriers Not Subject to State Jurisdiction, 47 CFR 54.401(d)—In order to enable carriers not subject to state jurisdiction, including carriers serving tribal communities, to file lifeline plans with the Administrator, under the rule changes adopted in the Unserved Areas Order, eligible telecommunications carriers not subject to state commission jurisdiction are also required to submit Lifeline plans to the Administrator. This will enhance the Administrator's abilities to oversee the receipt of Lifeline support by low-income consumers served by carriers not subject to state commission jurisdiction. (No. of respondents: 100; hours per response: 1 hour; total annual burden: 100 hours). (d) Carrier Publicizing of Lifeline and Link Up Services, 47 CFR Sections 54.405 and 54.411—The Unserved Areas Order implements the requirement in section 214(e)(1)(B) that eligible telecommunications carriers advertise the availability of supported services by requiring carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. (No. of respondents: 2,414; hours per response: 50 hours; total annual burden:

120,700 hours). Obligation to respond: Mandatory.

OMB Control No.: 3060–0233.

Expiration Date: 07/31/2003.

Title: Part 36—Separations.

Form No.: N/A.

Respondents: Business or other for-profit; State, Local or Tribal Government.

Estimated Annual Burden: 5,600 respondents; 28.05 hours per response (avg.); 157,125 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Quarterly; Annually; Third Party Disclosure.

Description: In the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications services. Specifically, in section 254 of the Act, Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. Based on the recommendations from the Joint Board in the Second Recommended Decision, and building on the framework the Commission set forth in the First Report and Order and the Seventh Report and Order, the Commission established in an Order adopted on October 21, 1999, a new federal high cost support mechanism that will be sufficient to enable non-rural carriers' rates for service supported by universal service to remain affordable and reasonably comparable in all regions of the nation. (a) 47 CFR Sections 36.611 and 36.612—In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support pursuant to 47 CFR Part 54, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) with the information required by Section 36.611 for each of its study areas, with the exception of the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center as that term is defined in 47 CFR Part 54. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to section 36.612. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. An incumbent LEC is defined as a carrier that meets the definition of an ''incumbent local exchange carrier'' in section 51.5. See 47 Sections 36.611 and 36.612. In the Ninth Report and Order and Eighteenth Order on Reconsideration issued in CC Docket 96–45, the Commission adopted several amendments to the data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under Part 36 will conform with loop count data submitted under our Part 54 rules for forwarding looking support. To ensure that forward-looking support provided under Part 54 and interim hold-harmless support provided under Part 36 are based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers, the Commission requires mandatory quarterly reporting for non-rural carriers under both Part 54 and Part 36 of its rules. See 47 CFR 36.612. (Quarterly filing remains voluntary for rural carriers). By allowing incumbent LECs and competitive eligible telecommunications carriers to obtain support for high-cost lines on a regular quarterly basis, our rules will facilitate portability of support among carriers. In addition, the quarterly filing requirement is consistent with USAC's quarterly submission of program demand projections, and should allow more accurate projections based on regular quarterly loop counts. Because the interim hold-harmless provision provides support based on the existing Part 36 support mechanism, which relies on book costs, non-rural incumbent LECS will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. (No. of respondents: 1,431; hours per response: 22 hours; total annual burden: 125,928). (b) 47 CFR Sections 36.701–36.741—The Commission adopted the Joint Board's recommendations to implement federal lifeline programs designed to preserve universal telephone service. See 47 CFR Sections 36.701–36.741. State or local carriers must submit copies of their lifeline plans to demonstrate that their plans meet certain minimum federal guidelines to qualify for federal assistance. Section 36.721 requires state or local telephone companies who want to participate in the ''Link-Up America'' program to file data with the Commission demonstrating eligibility pursuant to the criteria contained in Section 36.721(a)(1)–(4) of the Commission's rules. Federal assistance will be provided to supplement the benefits provided under state or local telephone companies lifeline plans for qualified low income households to help defray the one time charges for commencement of telephone service. This program would offset one-half of the charges for commencing telephone service, up to $30 for qualifying households. This program also encourages local exchange carriers to offer deferred payment schedules for charges for commencement of telephone service by paying an LECs interest costs. (No. of respondents: 50; hours per response: 20 hours; total annual burden: 1,000 hours). (c) 47 CFR Section 36.731—This section requires local telephone companies participating in the lifeline programs to file information with NECA for each of their study areas, on a yearly basis, on June 30th. Information to be filed with NECA includes: estimate of the number of eligible households which will receive assistance under both parts of the ''Link-Up America'' programs; estimate of the average discount on service commencement to be provided to each subscriber; and estimate of the average deferred interest cost for each subscriber. Carriers must submit the foregoing information to the Commission, as well as to NECA for those study areas in which the additional interstate expense allocation is to be in effect for less than a full calendar year. See also 47 CFR Section 36.741. (No. of respondents: 1500; hours per response: 20 hours; total annual burden: 30,000 hours). (d) *Proposal*—In a NPRM issued in CC Docket No. 80–286, released 10/7/97, the Commission sought comment on a proposed rule allowing incumbent LECs to separate joint and common costs on an individual basis should be contingent on an ILECs showing that competition exists in the local markets for which they seek relaxed separations rules. (The Commission has not issued an order in this proceeding). (No. of respondents: 100; hours per response: 2; total annual burden: 200 hours). The requirements are necessary to implement the congressional mandate for universal service. The reporting requirements are necessary to verify that non-rural local exchange carriers are eligible to receive universal service support. Information filed with NECA pursuant to Section 36.611 is used in the jurisdictional allocations underlying the cost support data for the access charge tariffs every April. Without this information, NECA would not be able to prepare and file the

necessary tariffs. Information submitted to the Commission pursuant to Section 36.721 is required to maintain the integrity of the Federal Lifeline Assistance Programs. Certification is necessary to ensure that the targeted group is the beneficiary of the program. The authorities for imposing the collections of information are found at: 47 U.S.C. 151, 154(i) and (j), 221(c) and 410(c). Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–20103 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1360]

Freeze Lifted on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450–460 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission lifts the freeze on the filing of high power applications. We established a Wireless Telemetry Service and allocated spectrum for medical telemetry operations. Channels that were removed from regularly-assignable channels and reserved for low power operation were reclassified as regularly-assignable channels available for high power operation. In doing so, we are promoting more efficient use of private land mobile radio.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilhelm, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Public Notice was released on June 29, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

Summary of the Public Notice

1. The *Report and Order* in ET Docket No. 99–255, noted that the Commission would lift the freeze on high power use of the 12.5 kHz offset channels in the 450–460 MHz band. This *Public Notice* lifts the freeze on filing applications requesting power in excess of that previously permitted on the 12.5 kHz offset channels in the 450–460 MHz band effective 7 months from the date of this *Public Notice.* Thus, WTB will start accepting applications for 12.5 kHz offset channels in the 450–460 MHz band requesting high power on January 29, 2001. Further, the *Public Notice* established January 2, 2001, as the earliest date on which requests for coordination of high-powered operation may be submitted to a certified frequency coordinator. As noted in the *Report and Order* in ET Docket 99–255, WTB will address lifting the freeze for high power use in the 460–470 MHz band at a later date. In a companion *Public Notice* released the same day, WTB announced acceptance of the LMCC low power plan.

2. According to the *Public Notice*, after the freeze is lifted existing low power users may remain on the channel they are currently authorized to operate. Users that do so, however, are reminded that if the channel is available for high power operation they will not be afforded interference protection from high power stations. Incumbent low power users on the 12.5 kHz offset channels where high power operations will be permitted may nonetheless obtain primary status by increasing power, specifying coordinates (or operating area) and employing narrowband (12.5 kHz) equipment. The *Public Notice* noted, however, that obtaining such primary status does not guarantee that low power licensees will not receive interference from high power operations. Also, existing low power users may move to one of the designated low power channels as specified in the companion Public Notice. Further, they may move to a low power offset channel even if they are using wideband (greater than 12.5 kHz) equipment. However, if wideband equipment is utilized, the low power stations will be secondary to adjacent channel operations.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–20104 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–1359]

Land Mobile Communications Council (LMCC) Low Power Plan in the 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission adopts a plan for low power operations in two pools—a Public Safety Pool and an Industrial/Business Pool. We will license only low power operations on specified frequencies pursuant to the Commission's rules. Channels that were removed from regularly-assignable channels and reserved for low power operation were reclassified as regularly-assignable channels available for high power operation. In so doing, we are promoting more efficient use of private land mobile radio.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilhelm, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Public Notice was released on June 29, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202)857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

Summary of the Public Notice

1. Implementing the Consensus Plan submitted by LMCC would require changes to the Commission's Rules. The

plan did not appear to constitute the type of Consensus Plan originally envisioned by the Commission. The LMCC subsequently modified its plan. The ''modified'' Consensus Plan, submitted August 21, 1997, reserves 104 of the current 12.5 kHz offset channel pairs (and channel pairs 6.25 kHz directly above and below these channel pairs) specifically for low power operation—ninety (90) channel pairs in the Industrial/Business Pool and fourteen (14) channel pairs in the Public Safety Pool.

2. In the *Second Memorandum Opinion and Order,* 64 FR 36258 April 6, 1999, in the *Refarming proceeding,* the Commission stated that once it was satisfied that the LMCC plan is viable and consistent with the rules, the Wireless Telecommunication Bureau (WTB) would issue a Public Notice stating that the plan has been accepted. The Commission noted, however, that it would defer its acceptance of the LMCC low power plan until the matter concerning interference to medical telemetry is resolved.

3. On June 8, 2000, the Commission adopted a *Report and Order,* 65 FR 43995 July 17, 2000, ET Docket No. 99–255. This proceeding established a Wireless Medical Telemetry Service under part 95, of the Commission's rules, and allocated spectrum for medical telemetry operations. In addition, the *Report and Order* in this proceeding stated that the Commission would lift the freeze on high power use of the 12.5 kHz offset channels in the 450–460 MHz segment of the 450–470 MHz PLMR band based on the limited usage of this segment for medical telemetry. The Report and Order in this proceeding noted that WTB would issue a Public Notice concerning the details of lifting the freeze.

4. The *Public Notice* announces acceptance of LMCC's modified low power Consensus Plan. We will license only low power operations on the specified frequencies pursuant to § 90.267 of the Commission's Rules. A list of the 12.5 kHz offset frequencies in the 450–470 MHz band designated for low power use is attached to this document as Appendix A. Each frequency coordinator must maintain a current listing of frequencies designated for low power and make it available to the public upon request. As noted in the Refarming proceeding, the coordinators, by consensus, may change this list in the future.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Appendix A—Channels Designated for Low Power Use

14 CHANNELS, LOW POWER PUBLIC SAFETY POOL

453/458.0375	453/458.0625	453/458.0875	453/458.1125
453/458.1375	453/458.8875	453/458.9125	453/458.9375
453/458.9625	453/458.9875	460/465.4875	460/465.5125
460/465.5375	460/465.5625		

90 CHANNELS, LOW POWER INDUSTRIAL/BUSINESS POOL

451/456.1875	451/456.2375	451/456.2875	451/456.3125
451/456.3375	451/456.3625	451/456.3875	451/456.4125
451/456.4375	451/456.4625	451/456.4875	451/456.5125
451/456.5375	451/456.5625	451/456.5875	451/456.6125
451/456.6375	451/456.6625	451/456.6875	451/456.7125
451/456.7375	451/456.7625	452/457.0375	452/457.0625
452/457.0875	452/457.1125	452/457.1375	452/457.1625
452/457.1875	452/457.2875	452/457.3125	452/457.4125
452/457.4875	452/457.5125	452/457.5375	452/457.6375
452/457.6625	452/457.6875	452/457.7125	452/457.7625
452/457.7875	452/457.8125	452/457.8375	452/457.8625
452/457.8875	452/457.9875	460/465.9125	460/465.9375
460/465.9625	460/465.9875	461/466.0125	461/466.0375
461/466.0625	461/466.0875	461/466.1125	461/466.1375
461/466.1625	461/466.1875	461/466.2125	461/466.2375
461/466.2625	461/466.2875	461/466.3125	461/466.3375
461/466.3625	462/467.1875	462/467.4625	462/467.4875
462/467.5125	462/467.2125	462/467.2375	462.467.2625
462.467.2875	462/467.3125	462/467.3375	462/467.3625
462/467.3875	462/467.4125	462/467.4375	462/467.7625
462/467.7875	462/467.8125	462/467.8375	462/467.8625
462/467.8875	462/467.9125	464/469.4875	464/469.5125
464/469.5375	464/469.5625		

[FR Doc. 00–20105 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL ELECTION COMMISSION

[Notice 2000–16]

Filing Dates for the Georgia Senate Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Georgia has scheduled a special election on November 7, 2000, to fill the U.S. Senate seat of the late Senator Paul Coverdell. Under Georgia law, a majority winner in a non-partisan special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on November 28, 2000, between the top two vote-getters.

Committees participating in the Georgia special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Zarin, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Georgia Special General and Special Runoff Elections and all other political committees which support candidates in these elections shall file a 12-day Pre-General Report on October 26, 2000, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through October 18, 2000; a Pre-Runoff Report on November 16, 2000, with coverage dates from October 19 through November 8, 2000; and a Post-Runoff Report on December 28, 2000, with coverage dates from November 9 through December 18, 2000.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees which support candidates in the Special General Election shall file a 12-day Pre-General Report on October 26, 2000, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 18, 2000, and a Post General Report on December 7, 2000, with coverage dates from October 19 through November 27, 2000.

All political committees which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on November 16, 2000, with coverage dates from the last report filed through November 8, 2000, and a Post-Runoff Report on December 28, 2000, with coverage dates from November 9 through December 18, 2000.

Committees filing monthly which support candidates in the Georgia Special General or Special Runoff Elections should continue to file according to the election year monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR GEORGIA SPECIAL ELECTIONS [1]

Report	Close of books [2]	Reg./Cert. mailing date [3]	Filing date
If Only the Special General Is Held (11/07/00), Committees Must File:			
Pre-General	10/18/00	10/23/00	10/26/00
Post-General	11/27/00	12/07/00	12/07/00
Year-End	12/31/00	01/31/01	01/31/01
If Two Elections Are Held, a Committee Involved in Only the Special General (11/07/00) Must File:			
Pre-General	10/18/00	10/23/00	10/26/00
Year-End	12/31/00	01/31/01	01/31/01
Committees Involved in the Special General (11/07/00) and the Special Runoff (11/28/00) Must File:			
Pre-General	10/18/00	10/23/00	10/26/00
Pre-Runoff	11/08/00	11/13/00	11/16/00
Post-Runoff	12/18/00	12/28/00	12/28/00
Year-End	12/31/00	01/31/01	01/31/01
Committees Involved in Only the Special Runoff (11/28/00) Must File:			
Pre-Runoff	11/08/00	11/13/00	11/16/00
Post-Runoff	12/18/00	12/28/00	12/28/00
Year-End	12/31/00	01/31/01	01/31/01

[1] PACs and party committees must also adhere to their reporting requirements for the regularly scheduled November 7 general election. The addition of these reports may affect the coverage dates of some of the special election reports. See the January issue of the Record or the FEC's website at www.FEC.GOV for more information.

[2] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[3] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: August 4, 2000.

Karl J. Sandstrom,

Commissioner, Federal Election Commission.

[FR Doc. 00–20115 Filed 8–8–00; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011719.

Title: The Maersk Sealand/APL Slot Transfer Agreement.

Parties: Maersk Sealand, American President Lines, Ltd. (''APL''), APL Co. Pte Ltd. (''APL'').

Synopsis: The proposed agreement would permit Maersk Sealand to sell space to APL aboard its vessels operating in the trade between United States Atlantic and Gulf ports, and inland U.S. points via such ports, and ports in the United Kingdom, the Netherlands, and Germany, and inland points in Europe via such ports. The parties have requested expedited review.

Agreement No.: 011720.

Title: APL/CCNI Slot Transfer Agreement, FMC Agreement No. 011720.

Parties: American President Lines, Ltd. (''APL''), APL Co. PTE Ltd. (''APL''), Compania Chilena De Navegacion Interoeceanica (''CCNI'').

Synopsis: The proposed agreement, authorizes APL to sell slots on vessels operated by APL, or operated by non-parties on which APL has chartered slots in the trades between ports on the U.S. Gulf Coast and in Puerto Rico and ports in the Dominican Republic, Mexico, Costa Rica, Panama, the Caribbean Coast of Columbia and Venezuela, up to an annualized average of 300 TEUs per week.

Agreement No.: 201106.

Title: Terminal Agreement between The Port Authority of New York and New Jersey and Maersk Container Service Company, Inc.

Parties: The Port Authority of New York and New Jersey, Maersk Container Service Company, Inc.

Synopsis: The agreement provides for the lease of certain areas within the Elizabeth Port Authority Marine Terminal. The agreement runs through December 31, 2029.

By Order of the Federal Maritime Commission.

Dated: August 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–20146 Filed 8–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

AAA Nordstar Line Inc., 1571 Irving Street, Rahway, NJ 07065, Officers: Anil V. Rane, President (Qualifying Individual), Maria E. Fabros, Vice President

Leeo Shipping, Inc., 17420 S. Avalon Blvd., Suite 207, Carson, CA 90720, Officer: Tae Ho Oh, President (Qualifying Individual)

Uniwell Shipping, Inc., 2029 E. Cashdan Street, Rancho Dominguez, CA 90220, Officer: Sang Min Kim, President (Qualifying Individual)

SESCO Group Inc., 4453 Durfee Avenue, El Monte, CA 91732, Officer: Xiaoying Dong, President (Qualifying Individual)

Cargo Network Express Inc., 2801 NW 74th Avenue, Suite 216, Miami, FL 33122, Officer: Alfredo W. Valle, President (Qualifying Individual)

Sunice Cargo Logistics, Inc., Cargo Bldg. #80, Suite 238, JFK Int'l. Airport, Jamaica, NY 11430, Officer: Derek Yu, Director, (Qualifying Individual)

All America Forwarding Inc., 440 S. Hindry Avenue, #H, Inglewood, CA 90301, Officer: Davis Hsin Ku, CEO (Qualifying Individual)

Everpole Shipping Incorporated, 19191 South Vermont Avenue, Suite 510, Torrance, CA 90502, Officers: Colin Tsai (Chang-Yeh, Tsai), Vice President, Thomas Chan, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Logistic Consultants Incorporated, 3730 S. Barrington Avenue, Los Angeles, CA 90066, Officers: Tarek Hassim, Executive Vice President (Qualifying Individual), Shaffe Khan, CEO

Somerset Marine Lines, L.L.C. d/b/a Somerset Marine or SML Forwarding Division, 4 Pond Court, Belle Mead, NJ 08502, Officers: Abed Medawar, Managing Partner (Qualifying Individual), John Merrihew, Managing Partner

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Servicios Hondurenos, 6601 Hillcroft, Suite 207, Houston, TX 77081, Francis A. Mendez, Sole Proprietor

Dated: August 4, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–20147 Filed 8–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 4103F
Name: America Worldwide, Inc.
Address: P.O. Box 51180, Phoenix, AZ, 85076–1180
Date Revoked: June 16, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3865F
Name: Basic Supply Lines, Inc.
Address: 16303 Larch Way, Lynnwood, WA 98037
Date Revoked: June 22, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13173N
Name: Bestway International, Inc.
Address: 182–30 150th Road, Ste. 105, Jamaica, NY 11413
Date Revoked: July 8, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16363N
Name: Capitol Transportation, Inc.
Address: P.O. Box 363008, San Juan, P.R. 00936–1361
Date Revoked: May 14, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16153F
Name: Cosmo Ocean Freight, Ltd.
Address: 146–22 Guy Brewer Blvd., Jamaica, NY 11434
Date Revoked: May 19, 2000.
Reason: Failed to maintain a valid bond.

License Number: 9941N
Name: CTM International, Inc.
Address: 14523 226th Street, Springfield Gardens, NY 11413–3535
Date Revoked: June 14, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15019N
Name: Delta Cargo Corporation
Address: 2047 NW 79th Avenue, Miami, FL 33122
Date Revoked: June 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 15879N
Name: Dexin International Forwarding, Inc.
Address: 100 N Citrus Street, Ste. 506, W. Covina, CA 91791
Date Revoked: June 19, 2000.
Reason: Failed to maintain a valid bond.

License Number: 11992N
Name: DMUSA Inc. d/b/a Damco Maritime
Address: Two Hudson Place, Third Floor, Hoboken, NJ 07030
Date Revoked: June 11, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3223F
Name: F.S.L. Transport, Inc.
Address: 326 Smith Street, Keasbey, NJ 08832
Date Revoked: April 22, 2000
Reason: Failed to maintain a valid bond.

License Number: 16148F
Name: Four Winds International Group, Inc.
Address: 1500 S.W. First Avenue, Ste. 850, Portland, OR 97201
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 2181
Name: Forwarding Systems International, Division of Albert Rebel & Associates, Inc. d/b/a FSI Container Line
Address: 166 University Parkway, Pomona, CA 91768
Date Revoked: January 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16115N
Name: Golden Gate Shipping, Inc. d/b/a The Love Box Company

Address: 405 North Oak Street, Inglewood, CA 90302
Date Revoked: April 20, 2000.
Reason: Failed to maintain a valid bond.

License Number: 9F
Name: Heemsoth-Kerner Corporation
Address: 700 Rockaway Turnpike, Ste. 203, Lawrence, NY 11559
Date Revoked: May 10, 2000.
Reason: Failed to maintain a valid bond.

License Number: 0435F
Name: Hirshbach & Smith, Inc.
Address: One World Trade Center, Ste. 1407, New York, NY 10048
Date Revoked: July 4, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3622NF
Name: Horizon Shipping, Inc.
Address: 9830–C East Freeway, Houston, TX 77029
Date Revoked: April 29, 2000
Reason: Failed to maintain a valid bond.

License Number: 3200
Name: International Freight Transport Inc.
Address: 147 Richmond Street, El Segundo, CA 90245
Date Revoked: June 28, 2000.
Reason: Failed to maintain a valid bond.

License Number: 12562N
Name: International Shipping Services Corp., Address: 9505 Hull Street Road, Suite C, Richmond, VA 23236
Date Revoked: June 14, 2000.
Reason: Failed to maintain a valid bond.

License Number: 14011N
Name: Inverfreight, Inc.
Address: 5901 NW 151st Street, Suite 102, Miami Lakes, FL 33014
Date Revoked: June 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4499F
Name: Linda Lee Lambert d/b/a Sterling International Freight Forwarders
Address: 2351 Jay Street, New Orleans, LA 70122
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 12669N
Name: Oceanic Cargo Services, Inc.
Address: 167–21 Porter Road, Jamaica, NY 11434
Date Revoked: June 21, 2000.
Reason: Failed to maintain a valid bond.

License Number: 1379F
Name: Phil Patterson, Inc.
Address: 1209 Harney Street, Suite 250, Omaha, NE 68102
Date Revoked: June 7, 2000.
Reason: Failed to maintain a valid bond.

License Number: 13903N
Name: Quantum International Forwarding Ltd.
Address: 150–15 183rd Street, Jamaica, NY 11413
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.

License Number: 12134N
Name: Sea Express Lines, Inc. d/b/a Sea Express Agencies (SEA)
Address: 2605 Cabover Drive, Suite 11, Hanover, MD 21076
Date Revoked: April 19, 2000.
Reason: Failed to maintain a valid bond.

License Number: 3718
Name: Sunship International Inc.
Address: 6815 West 95th Street, Suite 1NE, Oak Lawn, IL 60453
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.

License Number: 16075N
Name: Trans-Group International Corporation
Address: 155–06 South Conduit Avenue, #203, Jamaica, NY 11434
Date Revoked: June 30, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4119F
Name: Trex Corporation
Address: 8353 NW 68th Street, Miami, FL 33166
Date Revoked: May 17, 2000.
Reason: Failed to maintain a valid bond.

License Number: 4302F
Name: United Shipping Inc.
Address: 28 E Jackson Blvd., Suite 1103, Chicago, IL 60604
Date Revoked: June 1, 2000.
Reason: Failed to maintain a valid bond.

License Number: 12895N
Name: United Trans-Trade, Inc.
Address: 8 Hartland Commons Road, North Brunswick, NJ 08902
Date Revoked: June 3, 2000.
Reason: Failed to maintain a valid bond.

Dated: August 4, 2000.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–20145 Filed 8–8–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Scot Wall, Cashton, Wisconsin; to acquire voting shares of Cashton Bancshares, Inc., Cashton, Wisconsin, and thereby indirectly acquire voting shares of Bank of Cashton, Cashton, Wisconsin.

Board of Governors of the Federal Reserve System, August 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–20143 Filed 8–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq. (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 5, 2000.

A. Federal Reserve Bank of New York (Betsey Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. M&T Bank Corporation, Buffalo, New York, and Olympia Financial Corp., Buffalo, New York; to acquire and thereby merge with Premier National Bancorp, Inc., Lagrangeville, New York, and thereby indirectly acquire Premier National Bank, Poughkeepsie, New York. In connection with the acquisition, M&T Bank Corporation has applied to acquire an option to purchase up to 19.9 percent of the voting shares of Premier National Bancorp, Inc.

Board of Governors of the Federal Reserve System, August 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–20142 Filed 8–8–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting:

Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 14, 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: August 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–20221 Filed 8–7–00; 11:08 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Fastener Quality Act Amendments Act of 1999; Statutorily Required Study

AGENCY: General Accounting Office.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The General Accounting Office is requesting interested parties to provide information for a report to Congress on any changes that manufacturers, importers, distributors, or retailers of fasteners have made as a result of the ''small lot'' exemption clause of the Fastener Quality Act Amendments Act of 1999 (FQAAA). Fasteners include metallic screws, nuts, bolts, studs, or load-indicating washers; and manufacturers, importers, distributors and retailers make up the fastener industry. The FQAAA exempts those fasteners that are ''a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a package containing more than 75 of any such part at the time of sale, or a part that is contained in an assembly kit.'' We refer to both exemptions as the ''small lot'' exemption. The FQAAA requires GAO to submit a report to Congress ''describing any changes in industry practice resulting from or apparently resulting from'' the enactment of the small lot exemption; we expect to use information from your comments in this report.

DATES: Comments must be received by November 30, 2000.

ADDRESSES: Send a copy of any comments or examples of changes in industry practice to the U.S. General Accounting Office, General Government Division, Room 2908, 441 G St., NW., Washington, DC 20548, Attention: Ms. Theresa Roberson. Submit electronic comments and other data to fasteners@gao.gov. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Theresa Roberson, 202–512–3431, e-mail: robersont.ggd@gao.gov, or Al Stapleton, 202–512–3418, e-mail: stapletona.ggd@gao.gov.

SUPPLEMENTARY INFORMATION: Metallic screws, nuts, bolts, studs or load-indicating washers are collectively known as fasteners. Sec. 3(6)(B) of the Fastener Quality Act Amendments Act of 1999 (FQAAA), Pub. L. 106–34, amended the Fastener Quality Act (FQA), Pub. L. 101–592, by adding the small lot exemption quoted above. Congress was concerned that the small lot exemption created a potential loophole for members of the fastener industry to circumvent the law's requirements and sell unsafe fasteners either in packages of 75 or fewer or in assembly kits. This concern led Congress to include sec. 12 in the FQAAA requiring GAO to prepare a report to Congress describing any changes in fastener industry practice ''resulting from or apparently resulting from'' the small lot exemption. The report is to be issued not later than 2 years after enactment of the FQAAA, June 8, 2001. This notice asks interested parties to provide information on any changes in fastener industry practice resulting from or apparently resulting from the small lot exemption. We expect to use information from your comments in our report.

Background

In the late 1980s, congressional hearings showed that poor quality or mislabeled fasteners might have posed a threat to public safety. The Defense Supply Center (DSC), which supplies fasteners to the armed services, found its inventory contained over 30 million ''bogus'' fasteners and Army depots contained another 2.6 million counterfeit fasteners. Similarly, the National Aeronautics and Space Administration (NASA) found substandard fasteners in space shuttle equipment and six of its fastener vendors were found to have inadequate quality control systems.

As a result of the evidence presented at these hearings, Congress enacted the FQA in 1990. This law imposes a number of requirements on manufacturers, distributors, importers, and others that make and sell fasteners. To prevent unsafe fasteners from entering the U.S. market, the law requires persons who manufacture and sell fasteners covered by the Act to, among other things, assure that they meet applicable standards and specifications through laboratory testing. The Secretary of Commerce has overall responsibility for the law. Within Commerce, the National Institute of Standards and Technology (NIST) is responsible for implementing regulations and for accrediting testing laboratories, and the Bureau of Export Administration (BXA) is responsible for enforcing the law. Major concerns over

this law's potential burden on the fastener industry delayed the Department of Commerce's implementation of final regulations for nearly a decade.

A manufacturer's costs for laboratory testing—on a per fastener basis—increase as the quantity of fasteners sold decreases. For example, fasteners sold or imported in lots of 100 will have a higher per-fastener cost for testing than lots of 1,000 or 10,000. Concerns over high testing costs for small lots led Congress to amend the FQA in 1999 to exempt from testing those fasteners that are ordered for use as spare, substitute, service, or replacement parts in packages containing 75 or fewer items, or parts contained in assembly kits. We refer to both exemptions as the ''small lot'' exemption.

The small lot exemption was included in the 1999 amendments to FQA in response to concerns from industries that use fasteners, particularly foreign automobile manufacturers. These users were concerned that fastener manufacturers' compliance costs for laboratory testing and recordkeeping could make fasteners purchased in small lots for service repairs and assembly kits prohibitively expensive if they were subject to the testing requirements of the FQA. In turn, these higher testing costs could lead fastener manufacturers either to stop selling fasteners in small lots or to continue offering them for sale but at a price so high that users might stop buying them and instead substitute lower quality, lower cost, ''hardware store'' fasteners. Such substitutes could result in fastener failures in the end-users' products and weakening public safety rather than improving public safety as the law intended.

Congress was concerned that the small lot exemption created a potential loophole for fastener manufacturers to circumvent the FQA's requirements. This concern led Congress to include sec. 12 in the FQAAA requiring GAO to prepare a report to Congress describing ''any changes in industry practice resulting from or apparently resulting from'' the small lot exemption.

Changes in Treatment of Small Lots Sought

Two potential types of changes in industry practice as a result of the small lot exemption are: (1) Increased marketing, distribution, and sale of safe, properly labeled fasteners manufactured after December 6, 1999, in packages of 75 or fewer or in an assembly kit to avoid the costs of complying with the Act as required of larger lots; and (2) increased marketing, distribution, and sale of poor quality, unsafe, or mislabeled fasteners manufactured after December 6, 1999, in packages of 75 or fewer or in an assembly kit to circumvent the testing requirements in the Act that would expose the mislabeling. For example, a manufacturer could use less expensive raw materials or perform tests less frequently for fasteners meeting the small lot exemption.

For example, if a farm equipment company routinely bought fasteners from a particular manufacturer in packages of 500 but after December 6, 1999, could only buy those fasteners in packages of 75 or fewer, then we would like the farm equipment company to report this change in fastener industry practice to us. As another example, if a railroad company routinely bought assembly kits from a particular manufacturer that contained safe, properly labeled fasteners but after December 6, 1999, those assembly kits contained unsafe or mislabeled fasteners, then we would like the railroad company to report this change in fastener industry practice to us.

For these and other examples in which an interested party believes that fastener industry practice has changed due to the small lot exemption, we would like: (1) As complete a description as possible of the practice before and after December 6, 1999; (2) why the change in practice appears to be related to the small lot exemption as opposed to other factors; (3) whether the fasteners involved were manufactured before or after December 6, 1999; (4) any data or references to sources of data that would provide evidence of how widespread such changes in industry practice may be; and (5) the name and phone number of a person we can contact for additional information or clarification. We are seeking to obtain broad input from any interested party, including those in the government procurement community, the fastener industry (manufacturers, importers, distributors, retailers), companies large and small that purchase fasteners to assemble various products, and private individuals.

Our report is to be issued not later than 2 years after the enactment of the 1999 amendments to the FQA, June 8, 2001.

Types of Fasteners Covered by the Act

The following questions will help interested parties identify only those changes in industry practice that involve fasteners that fall within the small lot exemption. Some of the information may be found on the fasteners themselves or on their packaging.

1. Is the fastener a screw, bolt, nut, stud, or load-indicating washer?
2. Is the fastener made of metal?
3. Does the fastener have external or internal threads?
4. Is the nominal diameter of the fastener 6mm or ¼ inch, or greater?
5. Was the fastener through-hardened or represented as meeting a consensus standard that calls for through-hardening?
6. Was the fastener grade identification marked or represented as meeting a consensus standard that calls for grade identification marking?

If you answered ''YES'' to ALL of questions 1 through 6, continue to questions 7 through 11. Otherwise STOP, because any changes in fastener industry practice related to these fasteners is not to be included in the GAO report.

7. Is the fastener sold as part of an already assembled product, subassembly, or component?
8. Is the fastener grade marked 307A or manufactured in accordance with ASTM standard F432?
9. Is the fastener Federal Aeronautics Administration approved for use on an aircraft or by a foreign airworthiness authority under parts 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations?
10. Is the fastener manufactured under a fastener quality assurance system (such as ISO 9000) in accordance with the FQA?
11. Is the fastener manufactured only to a proprietary standard?

If you answered ''NO'' to ALL of questions 7 through 11, continue to questions 12 and 13. Otherwise STOP, because any changes in fastener industry practice related to these fasteners are not to be included in the GAO report.

12. Is the fastener for use as a spare, substitute, service, or replacement part and in a package of 75 or fewer at the time of sale? (Continue to question 13.)
13. Is the fastener part of an assembly kit for another product? (Continue to question 14.)

If you answered ''YES'' to EITHER question 12 or 13, any changes in industry practice related to these fasteners ARE to be included in the GAO report.

For all fasteners that met ONE OR MORE of the requirements in questions 12 or 13, answer questions 14 and 15 because any changes in industry practice related to these fasteners fall within the small lot exemption.

14. Can you determine the date the fastener was manufactured? (If yes, notify GAO of the date.)

15. Have there been any changes in fastener industry practice resulting from or apparently resulting from the small lot exemption? (Report all such changes in industry practice to the GAO address above.)

Document Submission

Do not send original documents, including photographs or graphics, in the mail because they cannot be returned.

Electronic Access and Filing

This notice is available on GAO's website at http://www.gao.gov under the Fastener Quality Act Amendments Act of 1999.

You may submit comments and data by sending electronic mail (email) to: fasteners@gao.gov. Please include the name and phone number of the person we should contact for clarification or additional information.

Email messages are encouraged but attachments to email messages are discouraged because of the possibility of transmitting computer viruses. If you believe such attached files are necessary to provide the requested information, please send them in ASCII or Microsoft Word format. No graphics should be sent through email, but copies of graphics may be sent to the address in the **ADDRESSES** section at the beginning of this document.

Authority: 15 U.S.C.A. 5402 note.

Dated: August 3, 2000.

Michael Brostek,

Associate Director, General Government Division.

[FR Doc. 00–20073 Filed 8–8–00; 8:45 am]

BILLING CODE 1610–02–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement

The United States General Services Administration intends to prepare an Environmental Impact Statement (EIS) on the following project:

U.S. Courthouse

Los Angeles, California

Proposed Action: The United States General Services Administration is planning the construction of a new U.S. Courthouse in downtown Los Angeles, California. The building will house the U.S. Courts and other Court related agencies currently located in various facilities.

Alternatives to the proposed action include:

A. Construction of new facility on the site located within downtown Los Angeles and comprised of the southwest half of the city block bounded by West Temple Street, North Spring Street, West First Street, and North Broadway.

B. Construction of a new facility on the site located within downtown Los Angeles and comprised of a full city block bounded by West First Street, South Broadway, West Second Street, and South Hill Street. This action may entail demolition of existing structures.

C. Construction of a new facility on the site located within downtown Los Angeles and comprised of a full city block bounded by West First Street, South Olive Street, West Second Street, and South Grand Avenue. This action may entail demolition of existing structures.

D. No action: Space for the U.S. Courts' functions will continue to be provided in the current facilities. The impact to the community of maintaining the status quo will be analyzed.

The public is cordially invited to participate in the scoping process, review of the draft Environmental Impact Statement, and the public meeting. The scoping meeting will be held at the Los Angeles Downtown Marriott Hotel, located at 333 South Figueroa Street, Los Angeles, California, on Thursday, August 31, 2000 from 4:30 p.m. to 7:30 p.m.

At the scoping meeting, the public will be asked to identify any significant issues that they believe should be analyzed in the Environmental Impact Statement.

Release of the draft EIS for public comment and the public meeting will be announced in the local newspaper, as these dates are established.

FOR FURTHER INFORMATION CONTACT: Javad Soltani, General Services Administration, Portfolio Management Division (9PT), 450 Golden Gate Avenue, San Francisco, California 94102, (415) 522–3493, Fax: (415) 522–3215. Email: *javad.soltani@gsa.gov.*

Dated: July 31, 2000.

Javad Soltani,

Asset Planner.

[FR Doc. 00–20063 Filed 8–8–00; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting consumer representatives and nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2001.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by September 8, 2000, for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for consumer representatives should be submitted in writing to Mary C. Wallace (address below). All nominations and curricula vitae (which includes nominee's office address, telephone number, and e-mail address) for industry representatives should be submitted in writing to Kathleen L. Walker (address below).

FOR FURTHER INFORMATION CONTACT: *Regarding consumer representatives:* Mary C. Wallace, Office of Consumer Affairs (HFE–3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4406, e-mail: MWALLACE@OC.FDA.GOV.

Regarding industry representatives: Kathleen L. Walker, Office of Systems and Management (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114, e-mail: KLW@CDRH.FDA.GOV.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting

members representing consumer and industry interests for the vacancies listed below:

Medical Devices Panels	Approximate Date Representative is Needed	
	Consumer	Industry
Circulatory System Devices Panel	NV[1]	July 1, 2001
Dental Products Panel	November 1, 2000	NV[1]
Ear, Nose & Throat Devices Panel	NV[1]	November 1, 2000
Immunology Devices Panel	NV[1]	March 1, 2001
Neurological Devices Panel	December 1, 2000	December 1, 2000
Obstetrics & Gynecology Devices Panel	February 1, 2001	February 2, 2001
Orthopaedic & Rehabilitation Devices Panel	NV[1]	September 1, 2000

[1] NV = No vacancy

I. Function

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Consumer and Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

III. Nomination Procedures

A. Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

B. Industry Representatives

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedures

A. Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

B. Industry Representatives

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 4, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–20173 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95G–0009]

The American Dairy Products Institute; Withdrawal of GRAS Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 1G0371) proposing to affirm that the use of whey protein isolate and dairy product solids is generally recognized as safe (GRAS) as direct human food ingredients. Those food ingredients were redefined from the original submission containing specifications for reduced lactose whey, reduced minerals whey, and whey protein concentrate.

FOR FURTHER INFORMATION CONTACT: Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3082.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1995 (60 FR 6713), FDA announced that a petition (GRASP IG0371) had been filed by The American Dairy Products Institute, 130 North Franklin St., Chicago, IL (c/o Keller and Heckman), Washington, DC. This petition proposed that the use of whey protein isolate and dairy product solids as direct ingredients in food be affirmed as GRAS.

The American Dairy Products Institute has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 21, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–20086 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1165]

Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi: Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi.'' This guidance describes the types of information that should be submitted in a premarket notification to support a decision of substantial equivalence for an extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi. Elsewhere in this issue of the **Federal Register**, FDA is reclassifying renal and ureteral extracorporeal shock wave lithotripters from class III (premarket approval) to class II (special controls).

DATES: Submit written comments at anytime.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi'' 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 ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi'' to the contact person listed below. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (CDRH) (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, FDA initiated proceedings to reclassify the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi from class III (premarket approval) to class II (special controls). To facilitate this reclassification, FDA prepared the document entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi.'' This document is the special control that has been established to support reclassification to class II, and also provides general guidance to industry on the content of premarket notifications for these devices.

On July 30, 1998, a meeting of the Gastroenterology and Urology Devices Advisory Panel (the Panel) was held to seek its recommendations on this proposed reclassification, including advice on special controls and the content of premarket notifications. The Panel unanimously voted to reclassify the extracorporeal shock wave lithotripter for the fragmentation of kidney and ureteral stones into class II. Comments from the Panel have been incorporated into this guidance document.

In the **Federal Register** of February 8, 1999 (64 FR 5987 to 5996), FDA published its proposal to reclassify the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi to class II, as well as its announcement of the availability of the draft document entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi'' (64 FR 6100 to 6101). Both the proposed reclassification and the notice of availability provided an opportunity for public comment, which closed May 10, 1999.

Based on the comments received on the draft guidance document, the following substantive changes have been incorporated into the revised version being made available at this time:

1. Section 8.D (Clinical Performance Testing) was revised to more clearly state the recommended sample size. The guidance document now states that the study should enroll a total of 20 patients

with urinary stone disease at 2 investigational sites.

2. Section 8.D (Clinical Performance Testing) was revised to state a post-procedure followup time range of 48 hours to 2 weeks (previously recommended as 1 week).

3. Section 9 (Labeling) was revised to: (1) Correctly cite the agency's authority under the Federal Food, Drug, and Cosmetic Act, and (2) reword the precaution statement.

Elsewhere in this issue of the **Federal Register**, FDA is publishing the final regulation reclassifying the extracorporeal shock wave lithotripter for fragmentation of kidney and ureteral calculi to class II (special controls).

II. Significance of Guidance

This guidance document represents the agency's current thinking on extracorporeal shock wave lithotripters indicated for the fragmentation of kidney and ureteral calculi. 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 Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the document entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi'' via your fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number 1226 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by 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 document entitled ''Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi,'' 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.

IV. Comments

Interested persons may, at any time, submit to the contact person (address above) written comments regarding this guidance. 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 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 12, 2000.

Linda S. Kahan,

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

[FR Doc. 00–20087 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1274]

Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997.'' This document provides guidance for industry on FDA's interpretation of the FDA Modernization Act of 1997 (FDAMA). The document describes how the Center for Devices and Radiological Health (CDRH) will apply the new provision and explains why FDA, through CDRH, has adopted this approach.

DATES: Submit written comments by November 7, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration 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. 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, by November 7, 2000. Submit written comments to the contact person listed below after November 7, 2000. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Robert R. Gatling, Jr., Center for Devices and Radiological Health (HFZ–401), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

Section 216 of FDAMA amended section 520(h)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(h)(4)). Under the new provision, FDA can use certain information, contained in approved premarket approval applications (PMA's), 6 years after the application has been approved to:

1. Approve another PMA;
2. Determine whether a Product Development Protocol (PDP) has been completed;
3. Establish a performance standard or a special control; or
4. Classify or reclassify another device.

Information available for the agency to use would include clinical and nonclinical tests or studies in the application that were used to demonstrate safety and effectiveness. However, it would exclude trade secret information such as manufacturing methods or device composition.

This provision replaced the previous section 520(h)(4) of the act, which was added by the Safe Medical Devices Act of 1990 (SMDA) and established the

four-of-a-kind rule for use of data in PMA's. Under the four-of-a-kind rule, the agency could use data contained in any filed PMA 1 year after FDA had approved the fourth device of a kind. The four-of-a-kind provision also contained detailed rules for its application to data in applications approved before the SMDA's effective date. The SMDA provision replaced section 520(h)(3) of the act, which was enacted with the Medical Device Amendments of 1976 (MDA). Under the MDA, the agency could not use data in one PMA to establish the safety or effectiveness of any device other than the one for which the data was submitted.

FDA is issuing this guidance in response to conflicting interpretations of section 216 of FDAMA advanced by regulated industry. FDA has concluded that it will apply section 216 to free data only in PMA's approved after November 28, 1990, the date of enactment of the SMDA. The agency does not intend to use data in PMA's approved before that date other than data that would be available to FDA without the authority granted by section 216 of FDAMA, such as published studies. The guidance also sets forth procedures for identifying and using data available under section 216 of FDAMA.

II. Significance of Guidance

This guidance document represents the agency's current thinking on section 216 of FDAMA. 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 being issued as a Level 1 guidance consistent with GGP's. This guidance document is effective immediately because it interprets a new statutory requirement that has been in effect since February 19, 1998.

III. Electronic Access

In order to receive ''Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997,'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number (1135) followed by the pound sign (#). 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, ''Guidance for Industry and for FDA Reviewers: Guidance on Section 216 of the Food and Drug Administration Modernization Act of 1997,'' 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.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this immediately-in-effect guidance by November 7, 2000. Submit to the contact person (address above) written comments regarding this guidance after November 7, 2000. 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 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 27, 2000.

Linda S. Kahan,

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

[FR Doc. 00–20088 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1408]

International Conference on Harmonisation; Draft Guidance on Principles for Clinical Evaluation of New Antihypertensive Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''E12A Principles for Clinical Evaluation of New Antihypertensive Drugs.'' The draft guidance, prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), was designated an ICH principle document. The draft guidance is intended to provide general principles for the clinical evaluation of new antihypertensive drugs. It describes the core principles accepted in the three ICH regions for the evaluation of new antihypertensive drugs, including assessments of efficacy and safety and choice of study population.

DATES: Submit written comments on the draft guidance by November 7, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance:* Robert Temple, Center for Drug Evaluation and Research (HFD–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of

regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug and biological product development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedures for publishing ICH guidances. Beginning April 2000, we will follow the same procedures we follow with other agency guidances. Rather than including the text of ICH guidances in the **Federal Register**, we will publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance will be left in the original ICH format. The final guidance will be reformatted to conform to GGP style before publication.

In March 2000, the ICH Steering Committee agreed that a draft guidance entitled ''E12A Principles for Clinical Evaluation of New Antihypertensive Drugs'' should be made available for public comment. The draft guidance, which is the product of the Efficacy Expert Working Group of the ICH, was designated an ICH principle document. Because requirements of the three ICH regions differ in some specifics, this ICH principle document will not be subject to the usual ICH step procedures leading to a fully harmonized document. Comments about this draft will be forwarded to the three regulatory parties for consideration.

In accordance with FDA's good guidance practices (GGP's)(62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a principle document.

The draft guidance is intended to provide general principles for the clinical evaluation of new antihypertensive drugs. It describes core principles that are accepted in the three ICH regions for the evaluation of antihypertensives, including assessments of efficacy and safety and choice of study population. The draft guidance is meant to be used together with other ICH clinical guidances.

This draft guidance represents the agency's current thinking on the clinical evaluation of new antihypertensive drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by November 7, 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. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–20172 Filed 8–8–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Reducing Tumor Growth and Metastasis by Inhibiting MCP–1 Activity

WJ Murphy, JJ Oppenheim, and R Salcedo (all of NCI)
Serial No. 60/205,757 filed 19 May 2000
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

This application relates to methods for the inhibition of tumor growth and metastasis. The inhibition of tumor growth and metastasis is based on the demonstration that certain inhibitors of the chemokine MCP–1 (monocyte chemotactic protein 1 also known as JE) inhibit angiogenesis in *in vitro* and *in vivo* model systems. In addition, methods for identifying other inhibitors are described. In addition to this application the NIH has other intellectual property related to MCP–1 which is available for license, including U.S. Patents 5,714,578, 5,532,144, 5,179,078, 5,212,073 and 5,278,287.

This work has been published, in part in Blood 96(1): July 1, 2000.

The Use of an Inducible Plasmid Vector Encoding for Active TGF–β for the Treatment of Autoimmune Diseases

A Kitani, I Fuss, K Nakamura and W Strober(NIAID)
DHHS Reference No. E–096–00/0 filed 20 Apr 2000
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

This application describes a composition and method for treating inflammatory bowel disease or other autoimmune diseases. The composition utilizes a vector which contains a first

promoter which controls the expression of a regulatory transcription factor and a second inducible promoter which controls the expression of the gene of interest. The preferred gene of interest encodes an isoform of TGF–β such as TGF–β_1 or TGF–β_3. The isoform of TGF–β does not have to be hTGF–β and can be a latent or active isoform of TGF–β. The preferred inducible promoter is TRE–CMV which can be induced using doxycycline. The usefulness of the composition for treating autoimmune diseases is demonstrated in the application in a murine model of inflammatory bowel disease in which intestinal inflammation was abrogated by the administration of a plasmid vector encoding active TGF–β. The composition may be administered by a variety of delivery systems and intranasal delivery is exemplified.

Serum Free Medium

F Luyten, L Erhlacher (NIDCR)

Serial No. 09/468,562 filed 21 Dec 1999

Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: ruckers@od.nih.gov

The technology described and claimed in this application relates to the development of a serum-free medium which is particularly useful for the culture, both growth and expansion, of chondrocytes. More particularly, the medium allows chondrocytes to maintain their cartilaginous phenotype. Chondrocytes cultured in this medium may be used to repair joints having cartilage damage from diseases such as rheumatoid arthritis.

This work has been published, in part, at L Erhlacher, et al. ''Presence of cartilage-derived morphogenetic proteins in articular cartilage and enhancement of matrix replacement in vitro'' Arthritis Rheum. 1998 Feb;41(2):263–73. The material found in the patent application has been published as WO 98/59035 (Dec 30, 1998).

PHS also owns additional intellectual property, related to cartilage derived morphogenetic proteins 1 and 2 (CDMP–1/GDF5 and CDMP–2/GDF6) which may be used in conjunction with this technology. The work related to CDMP–1 and CDMP–2 has been published as WO 96/14335 (May 17, 1996) and at originally at Chang, *et al.*, ''Cartilage-derived morphogenetic proteins. New members of the transforming growth factor-beta superfamily predominantly expressed in long bones during human embryonic development'' J Biol Chem. 1994 Nov 11;269(45):28227–34.

Mutant of RAD51 Gene and Its Use in the Diagnosis of Predisposition to Breast Cancer

Jeffery P. Struewing, Weiching Wang (NCI)

DHHS Reference No. E–231–99/0 filed 10 Sep 1999

Licensing Contact: Vasant Gandhi; 301/496–7056 ext. 224; e-mail: gandhiv@od.nih.gov

This invention relates to a mutant of the RAD51 gene and its use in diagnosing individuals predisposed to breast cancer involving BRCA1 and/or BRCA2. The mutant contains a guanine-to-cytosine transversion at nucleotide position 135 in the 5′ untranslated region of the RAD51 gene. The invention relates to the nucleotide sequence of the mutant RAD51 gene, associated vector constructs and host cells, and diagnostic methods. Epidemiological and in vitro biochemical characterization studies are in progress.

Dated: July 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–20036 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Strain Deficient for the Protein MT1–MMP (MMP14)

Kenn Holmbeck *et al.* (NIDCR)

DHHS Reference No. E–191–00/0

Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail:shinnm@od.nih.gov

Matrix metalloproteinases (MMPs) constitute a family of zinc endopeptidases that are capable of degrading most of the structural components of the extracellular matrix. The NIH announces a new mouse model deficient in MT1–MMP activity. This mouse model demonstrates the necessity of MT1–MMP for normal development of cranial bones, long bones and general housekeeping of connective tissues throughout the body. Since studies in the pharmaceutical industry are currently aiming at inhibiting the MMP family at large for purposes of cancer and arthritis treatment, this mouse model provides a valuable demonstration of the possible side effects that such treatment may lead to. As such this mouse model may also provide a test bed for the substances that can alleviate the unwanted side effects of MMP inhibitor treatments.

HIV Protease Inhibitors, Ritonavir and Saquinavir Are Potent Inhibitors of Calcium Activated Neutral Peptidases, Calpains

Paolo DePetrillo, Wenshuai Wan (NIAAA)

DHHS Reference Number E–041–00/0 filed 04 May 2000

Licensing Contact: John Rambosek, Ph.D.; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

This invention discloses a novel use for compounds that are inhibitors of the HIV Protease: specifically, the invention shows that HIV protease inhibitors are also potent inhibitors of Calcium Activated Neutral Proteases (Calpain). Activation of calpain plays a central role in tissue destructive processes following tissue trauma caused by, for example, stroke, heart attack, brain trauma, and spinal cord injury. Thus specific inhibition of calpain is an important therapeutic target in these disease processes. The estimated total market for these classes of therapeutic agents is on the order $500 million to 1 billion annually. The inventor has specifically demonstrated that *in vitro* the HIV protease inhibitors ritonavir and saquinavir are also potent inhibitors of calpain. This technology has a variety of practical applications: (1) Existing HIV

proteases may be used as calpain inhibitors; (2) Existing HIV protease inhibitors which are FDA approved drugs will require less studies to develop as therapeutics; (3) HIV proteases inhibitors are small molecules with oral availability; (4) Other lead compounds developed as HIV protease inhibitors, but not commercialized, may be reevaluated as calpain inhibitors; (5) HIV protease inhibitors used as calpain inhibitors will not require chronic administration; and (6) calpain inhibitors may address therapeutic areas where there are not current effective therapies.

A Provisional Patent Application Serial Number 60/202,378 has been filed for this technology. It is available for licensing through a DHHS Patent license.

Synthesis of Soluble Magnetodendrimer

Jeff W. Bulte (CC), Trevor Douglas
Serial No. 60/193,360 filed 31 Mar 2000
Licensing Contact: Norbert Pontzer; 301/496–7735, ext. 284; e-mail: pontzern@od.nih.gov

The invention provides a soluble composite material comprising an organic polymer and nanoparticles of a magnetic iron oxide. Poly(amidoamine) (PAMAM)dendrimers aggregate with magnetic particles in an oligocrystalline structure which makes them extremely magnetic and soluble in solution. These superparamagnetic nanoparticles are readily taken up by cells. Because the preparation is superparamagnetic rather than ferromagnetic there is a very large relaxation effect and hysteresis is not shown. The combination of solubility, cellular uptake and strong paramagnetic properties give these novel magnetodendrimers a number of potential uses.

Magnetodendrimers have a high non-specific affinity for cellular membranes and will label cells by simple *in vitro* incubation regardless of the cells origin or surface proteins. After uptake of magnetodendrimer, cells can be readily separated by simple permanent magnets within seconds. When used as a magnetic resonance imaging (MRI) contrast agent, the magnetically labeled cells allow non-invasive monitoring of the temporal spatial dynamics of a wide variety of cell transplants. After incubation with magnetodendrimer, cellular relaxation enhancement is 3–5 times higher than earlier approaches. For example, the magnetically labeled cells can be injected into a patient undergoing stem cell therapy to follow the migration, distribution and integration of new tissue. Magnetic dendrimers could also be injected into tumors and other areas to directly label cells and tissues *in vivo*. Such uses include cancer hyperthermia therapy, ultrasound imaging-microwave radiation, and nuclear isotope imaging using ^{59}Fe preparations. The magnetodendrimer could be attached to therapeutic compounds or other clinically relevant molecules for research, diagnostic or therapeutic purposes.

Fluorescent Magnesium Indicators

Robert London, Pieter Otten, Louis A. Levy (NIEHS)
DHHS Reference Number E–067–00/0 filed 24 March 2000
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

Links between magnesium status and diseases such as ischaemic heart disease, hypertension, atherosclerosis, osteoporosis, migraine headaches, and other chronic diseases have been reported. These correlations have been difficult to confirm, however, mainly because of poor methods for determining free magnesium levels. This invention discloses new compounds that are fluorescent indicators for free (ionized) magnesium—the physiologically important form of magnesium. These compounds are analogs of fluoroquinolone antibiotics. Unlike other methods and indicators, they show a particularly high degree of specificity for Mg^{2+} versus Ca^{2+}. They represent an exciting improvement over other methods and indicators used to measure Mg^{2+} because they significantly increase the ability to accurately measure intra and extracellular Mg^{2+} levels in a wide variety of cells, tissues, and fluids under conditions where calcium is elevated. These compounds will be important research reagents, and have the potential to be very useful as diagnostic reagents in a variety of therapeutic areas.

Methods for Wound Treatment

Sharon M. Wahl *et al.* (NIDCR)
DHHS Reference No. E–131–99/0 filed 01 Mar 2000
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

Impaired wound healing states in the elderly have lead to major problems in terms of morbidity and mortality, affecting over four million U.S. citizens per annum and costing over 9 billion dollars. NIH investigators have recently found that Secretory Leukocyte Protease Inhibitor (SLPI) plays an important and specific role in cutaneous wound healing. SLPI is an inhibitor of serine proteases, and evidence demonstrates a requirement for SLPI as an anti-proteolytic defense against elastase and possibly additional tissue degradative enzymes and is consistent with excess elastolytic activity in pathologic, nonhealing wounds and venous ulcers. Our researchers have found that the absence of SLPI causes delayed or aberrant wound healing, an increased and prolonged inflammatory response, enhanced elastase activity, and delayed matrix accumulation in mice.

This new technology provides an improved method for treating diseases or disorders involving tissue destruction. The use of SLPI in such treatment provides a combination of advantages, including improved anti-bacterial, anti-viral, anti-fungal, and anti-inflammatory functions. SLPI also provides a number of relevant functions that accelerate the wound healing process of a variety of tissues, including skin, mucosal surfaces, and joints. Additionally, our investigators have developed a SLPI gene knock out mouse which is a useful animal model to study the functions of SLPI in the host innate immune response.

Inhibition of Cell-Mediated Immunity by Inhibition of fMLP Receptor Function by Bile Acids

Joost J. Oppenheim *et al.* (NCI)
DHHS Reference No. E–044–00/0 filed 03 Dec 1999
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: shinnm@od.nih.gov

It is well known that patients with bilary cholestatic diseases are susceptible to complications of systemic infection and endotoxemia, which may be attributable to impaired host immunity. Extensive studies in the past have shown that some bile acids, particularly chenodeoxycholic acid (CDCA), one of two major human primary bile acids, possessed immunosuppressive properties including inhibiting the production of Interleukin 1 (IL–1), IL–6 and tumor necrosis factor-α (TNF-α) by monocytes. The precise mechanistic basis for the immune suppression was unclear.

The NIH announces the discovery that deoxycholic acid and many of its naturally occurring variants block the function of formyl peptide receptors by reversibly blocking the ligand-binding site on the receptors. The formyl peptide receptors are responsible for inducing many cell types to migrate to sites of inflammation and infection and have been shown to participate in host defense against microbial agents, the formation of atherosclerosis plaques,

granulomas, autoimmune disease and possibly Alzheimer's disease. In particular, our researchers have shown that co-incubation of the bacterially derived N-formyl peptide (fMLP) with major components of human bile, namely dexocholic acid or chenodeoxycholic acid, inhibited chemotaxis and binding by monocytes that act as phagocytic leukocytes in cell-mediated immunity. Deoxycholic acid and its variants therefore have potential usefulness as anti-inflammatory agents with a broad range of potential applications.

Dated: July 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–20037 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

[Docket No.

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 11–12, 2000.

Open: September 11, 2000, 8:30 am. to 12:15 p.m.

Agenda: Discussions of the activities of the National Human Genome Research Institute.

Place: National Institutes of Health, Natcher Building, Conference Room, E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: September 11, 2000, 12:15 pm. to 2:15 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 11, 2000, 2:15 pm. to Recess.

Agenda: Discussions of the activities of the National Human Genome Research Institute.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: September 12, 2000, 8:30 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elke Jordan, PHD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20041 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 14–15, 2000.

Open: September 14, 2000, 8:30 a.m. to 3:30 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: September 14, 2000, 3:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: September 15, 2000, 8:00 a.m. to 10:00 a.m.

Agenda: Meeting with NIMH Council to discuss collaborative research.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: September 15, 2000, 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PHD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20038 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Pharmacokinetic and Pharmacodynamic Studies for Medication Development.''

Date: August 9, 2000.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9457, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20039 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 14, 2000.

Open: 8:30 am. to 12:00 pm.

Agenda: The meeting will be open to the public to discuss administrative duties relating to Council business and special reports.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 pm. to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, PhD., Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr., MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HSS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20040 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 12–13, 2000.

Open: September 12, 2000, 1:00 pm to 5:00 pm.

Agenda: For discussion of program policies and issues.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: September 13, 2000, 9:00 am to 9:30 am.

Agenda: Science Presentation.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: September 13, 2000, 9:30 am. to 1:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20044 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 13–14, 2000.

Closed: September 13, 2000, 7:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: September 14, 2000, 8:30 a.m. to 4:00 p.m.

Agenda: Program documents.

Place: Neuroscience Building, Conference Rooms C & D, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20045 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 30, 2000.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700–B Rockledge Drive, Room 2148, Bethesda, MD 20892–7616 (Telephone Conference Call).

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Divisions of Extramural Activities, NIAID, NIH, Room 2217, 67–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550. rg159w@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantion Research; 93.856, Microbiology and Infectious Diseases Reseach, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20047 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Large-Scale Collaborative Project Awards.

Date: August 15, 2000.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Room 1AS–13, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, NIH, Natcher Building, Room 1AS–13, Bethesda, MD 20892, 301–594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20048 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 8, 2000.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institute of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of

Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20049 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol and Alcoholism Special Emphasis Panel.

Date: August 18, 2000.

Time: 3:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892, 301–443–2860, mgreen@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 01, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20051 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (01) S.

Date: August 28–29, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Francisco O. Calvo, PhD, Deputy Chief, Review Branch, DEA, NIDDK, Room 655, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–B(02).

Date: August 29, 2000.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd, RM 645, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1(02).

Date: August 29–31, 2000.

Time: 6:00 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Empire Hotel, 63rd & Broadway, New York, NY.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 641, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20053 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings;

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7(03)S.

Date: August 24, 2000.

Time: 2:00 pm. to 3:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 6707 Democracy Blvd, Rm 659 MSC 5452, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakeshmanan Sankaran, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(05).

Date: August 24, 2000.
Time: 3:00 pm to 4:00 pm.
Agenda: To review and evaluate grant applications.
Place: 2 Democracy Plaza, 6707 Democracy Boulevard, 6th Floor, Room 647, Bethesda, Maryland 20892 (Telephone Conference Call).
Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–8895.
Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(06).
Date: August 25, 2000.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: 2 Democracy Plaza, 6707 Democracy Boulevard, 6th Floor, Room 647, Bethesda, Maryland 20892 (Telephone Conference Call).
Contact Person: William E. Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.
(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20054 Filed 8–08–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: August 7, 2000.
Time: 1:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anna L Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ar15o@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 31, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20055 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.
Date: September 26, 2000.
Open: 7:30 am to 8:45 am.
Agenda: Outreach and Public Information Items.
Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.
Date: September 26–27, 2000.
Open: September 26, 2000, 9 am to 2:50 pm.
Agenda: Administrative Reports and Programs Discussion.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Closed: September 26, 2000, 2:50 pm to 3:15 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Open: September 27, 2000, 9 am to 12 pm.
Agenda: Administrative Reports and Programs Discussion.
Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.
Date: September 26, 2000.
Open: 12:30 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.
(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20046 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2000.
Time: 10:30 am to 11:30 am.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 2000.
Time: 3:00 pm to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 21, 2000.
Time: 1:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20042 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 10, 2000, 2:00 PM to August 10, 2000, 4:00 PM, NIH Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on July 28, 2000, 65 FR 46485–46487.

The meeting times have been changed to 11:00 AM to 1:00 PM. the meeting dates and location remain the same.

The meeting is closed to the public.

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20043 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 3, 2000.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2000.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2000.
Time: 2:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ellen K. Schwartz, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 2000.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20052 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee; Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: September 11, 2000.

Time: 9:00 am to 12:00 pm.

Agenda: For discussion of planning and operational issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: August 1, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–20050 Filed 8–8–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4497–N–08]

Public Housing Assessment System (PHAS): Notice of Extended Submission Period for PHAS Management Operations Certification and Audited Financial Statement for Certain PHAs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This document announces that those public housing agencies (PHAs) with fiscal year ending September 30, 1999, and December 31, 1999, that did not fully meet the submission requirements for their PHAS Management Operations certification may submit or resubmit the certification during the time periods specified in this notice. Additionally, this document announces that PHAs with fiscal years ending September 30, 1999, have additional time to submit audited financial statements, as provided in this notice.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888)–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Public Housing Assessment System (PHAS) provides for the assessment of the physical condition, financial condition, management operations and resident services and satisfaction of public housing. HUD's regulations implementing the PHAS and codified in 24 CFR part 902 provide for this assessment to be made through physical inspection of public housing properties, survey of public housing residents, and a PHA's submission of audited financial statements and its certification to certain management data as required by the regulations. HUD's PHAS regulations were recently amended by a final rule published on January 11, 2000 (65 FR 1712) and a technical correction was published on June 6, 2000 (65 FR 36042).

II. This Notice

Management Assessment Data Resubmission Period for Certain PHAs

Due to errors or difficulties in submission of their management operations certifications, certain PHAs with fiscal years ending September 30, 1999, and December 31, 1999, did not fully meet the requirements under the PHAS Management Operations Indicator. As a result, HUD has advised these PHAs that they may submit or resubmit the management operations certification, as applicable, without penalty during the time periods outlined in Table 1. Additionally, HUD is conducting outreach to those PHAs to try and determine the exact nature of the problem that occurred and to assist these PHAs with the submission process.

TABLE 1.—MANAGEMENT OPERATIONS CERTIFICATION RESUBMISSION PERIOD DATES

PHA fiscal year end date	Certification resubmission period
September 30, 1999.	August 1, 2000–August 31, 2000.
December 31, 1999.	August 15, 2000–September 14, 2000.

HUD's Office of Public and Indian Housing (PIH) and its Real Estate Assessment Center (REAC) already have contacted the affected PHAs about submission or resubmission of their management operations certifications. For these PHAs, this document also confirms that technical assistance is available to any PHA that may need assistance in resubmission of its certification.

PHAS Audited Financial Statement Submission Extension for Certain PHAs

Due also to submission with audited financial statements, the audited financial statements of PHAs with fiscal years ending September 30, 1999, were not all properly received and processed. Accordingly, this notice announces that PHAs with fiscal years ending September 30, 1999, may submit audited financial statements within 15 calendar days from the date of publication of this notice. PHAs will not receive a deduction in the advisory Financial Indicator score, if the audited financial statement data is transmitted to REAC within 15 calendar days from the date of publication of this notice. PIH and REAC also have contacted PHAs with fiscal years ending

September 30, 1999, about the extended submission period for audited financial statements.

In both cases (the management certification resubmission, and the audited financial statement submission extension), the covered PHAs have already received notification of the information provided in this notice, and no formal request for resubmission or extension need to be submitted to HUD.

Dated: August 2, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–20081 Filed 8–8–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee called the ''Glen Canyon Dam Adaptive Management Work Group,'' a technical work group, a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES AND LOCATION:

August 31, 2000—At 1 p.m. (MST), the AMWG will conduct a special Member Phone Polling Conference Call for the express purpose of recommending revisions to the AMWG Charter prior to its renewal, which is due by the end of the calendar year.

There will also be a motion to support the U.S. Geological Survey's request for appropriated funds in support of the GCMRC.

The Glen Canyon Adaptive Management Work Group will conduct a public meeting:

Phoenix, Arizona—January 11–12, 2001. The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the following: management objectives, basin hydrology and experimental flows, FY 2002 budget, development of the AMP Strategic Plan, environmental compliance issues, as well as other administrative and resource management issues.

The Glen Canyon Technical Work Group will conduct a public meeting as follows:

Phoenix, Arizona—September 20–21, 2000. The meeting will begin at 9:30 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Rooms A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the following: management objectives and information needs, basin hydrology and expected releases, low steady summer flow test results, FY 2002 budget, PEP reviews, election of a new TWG Chairperson, and administrative and resource management issues.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found at the following Internet site: *http://www.uc.usbr.gov/amp.* Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the AMWG and TWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138–1147; telephone (801) 524–3758; faxogram (801) 524–3858: E-mail at: *rpeterson@uc.usbr.gov* at least (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members at the meetings.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their name and/or home addresses from public disclosure. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: *rpeterson@uc.usbr.gov*

Dated: August 4, 2000.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 00–20181 Filed 8–8–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–861–862 (Final)]

Certain Expandable Polystyrene Resins from Indonesia and Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–861–862 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Indonesia and Korea of certain expandable polystyrene resins, provided for in subheading 3903.11.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of these investigations, Commerce has defined the subject merchandise as ''certain expandable polystyrene resins in primary forms; namely, raw materials or resins manufactured in the form of polystyrene beads, whether of regular (shape) type or modified (block) type, regardless of specification, having a weighted-average molecular weight of between 160,000 and 260,000, containing from 3 to 7 percent blowing agents, and having bead sizes ranging from 0.4 mm to 3 mm.

Continued

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or e-mail at fruggles@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations are being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain expandable polystyrene resins from Indonesia and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on November 22, 1999, by BASF Corp., Mount Olive, NJ; Huntsman Expandable Polymers Co. LC, Salt Lake City, UT; NOVA Chemicals, Inc., Moon Township, PA; and StyroChem U.S., Ltd., Radnor, PA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 24, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on November 7, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 31. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 2, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 31. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 14; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before November 14. On December 5, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 7, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.
Issued: August 4, 2000.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–20114 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

Specifically excluded from the scope of these investigations are off-grade, off-specification expandable polystyrene resins.''

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–722 (Review)]

Honey From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in July 2000 to determine whether termination of the suspended

antidumping duty investigation on honey from China would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 28, 2000, the Department of Commerce published notice that it was revoking the order ''[b]ecause no domestic party responded to the sunset review notice of initiation * * * by the applicable deadline'' (65 FR 46426). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 31, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–20109 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela [1]

Determinations

On the basis of the record [2] developed in the subject five-year reviews, the United States International Trade Commission determines,[3] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on circular welded carbon steel pipe and tube from Turkey and revocation of the antidumping duty orders on circular welded carbon steel pipe and tube from Brazil, India, Korea, Mexico, Taiwan, Thailand, and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [4] that revocation of the antidumping duty order on circular welded carbon steel pipe and tube from Venezuela would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission also determines [5] that revocation of the antidumping duty orders on light-walled rectangular carbon steel pipes and tubes from Argentina and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines [6] that revocation of the antidumping duty order on light-walled rectangular carbon steel pipe and tube from Singapore would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission additionally determines [7] that revocation of the antidumping duty orders on oil country tubular goods (OCTG) other than drill pipe and drill pipe from Canada and Taiwan would not be likely to lead to continuation or recurrence of material injury to the respective domestic industries in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on May 3, 1999 (64 FR 23679) and determined on August 5, 1999, that it would conduct full reviews (64 FR 45276, August 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 6, 1999 (64 FR 54354). The hearing was held in Washington, DC, on March 9, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 26, 2000. The views of the Commission are contained in USITC Publication 3316 (July 2000), entitled Certain Pipe and Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela: Investigations Nos. 701–TA–253 (Review) and 731–TA–132, 252, 271, 273, 276, 277, 296, 409, 410, 532–534, 536, and 537 (Review)).

By order of the Commission.

Issued: August 1, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–20110 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The products and investigation numbers for the various countries are: Argentina: light-walled rectangular tube (731–TA–409); Brazil: circular welded nonalloy steel pipe (731–TA–532); Canada: oil country tubular goods (731–TA–276); India: welded carbon steel pipe and tube (731–TA–271); Korea: circular welded nonalloy steel pipe (731–TA–533); Mexico: circular welded nonalloy steel pipe (731–TA–534); Singapore: small diameter standard and rectangular pipe and tube (731–TA–296); Taiwan: small diameter carbon steel pipe and tube (731–TA–132), oil country tubular goods (731–TA–277), light-walled rectangular tube (731–TA–410), and circular welded nonalloy steel pipe (731–TA–536); Turkey: welded carbon steel pipe and tube (701–TA–253 and 731–TA–273); Thailand: welded carbon steel pipe and tube (731–TA–252); and Venezuela: circular welded nonalloy steel pipe (731–TA–537).

[2] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[3] Vice Chairman Deanna Tanner Okun and Commissioner Jennifer A. Hillman dissenting with respect to Mexico; Commissioner Thelma J. Askey dissenting with respect to India, Mexico, and Turkey.

[4] Commissioner Lynn M. Bragg dissenting.

[5] Commissioner Thelma J. Askey dissenting.

[6] Commissioner Lynn M. Bragg dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–846, 848 and 849 (Final)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Mexico, and Romania; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from the Czech Republic and Romania of certain small diameter seamless carbon and alloy steel standard, line, and pressure pipe (''small diameter pipe''), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[2]

The Commission made a negative determination concerning critical circumstances relating to imports from the Czech Republic. The Commission also determines that an industry in the United States is materially injured by reason of imports from Mexico of certain large diameter seamless carbon and alloy steel standard, line, and pressure pipe (''large diameter pipe''), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at LTFV.[3]

Background

The Commission instituted these investigations effective June 30, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of small diameter pipe from the Czech Republic and Romania and large diameter pipe from Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC and by publishing the notice in the **Federal Register** of February 25, 2000 (65 FR 10107). The hearing was held in Washington, DC on May 4, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[2] Commissioners Jennifer A. Hillman and Thelma J. Askey dissenting with respect to small diameter pipe of alloy steel. They determine that imports of such pipe from the Czech Republic and Romania are negligible.

[3] Commissioner Thelma J. Askey dissenting with respect to large diameter pipe of alloy steel. She determines that imports of such pipe from Mexico are negligible.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 2, 2000. The views of the Commission are contained in USITC Publication 3325 (August 2000), entitled Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Mexico, and Romania: Investigations Nos. 731–TA–846, 848 and 849 (Final).

By order of the Commission.
Issued: August 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–20113 Filed 8–8–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–539–C, E and F (Review)]

Uranium From Russia, Ukraine and Uzbekistan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that: (1) Termination of the suspended investigation on uranium from Russia would be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time; (2) revocation of the antidumping duty order on uranium from Ukraine would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time; and (3) termination of the suspended investigation on uranium from Uzbekistan would not be likely to lead to continuation or recurrence of material injury in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 2, 1999 (64 FR 41965) and determined on November 4, 1999, that it would conduct full reviews (64 FR 62691, November 17, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 24, 2000 (65 FR 3737). The hearing was held in Washington, DC, on June 13, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on August 7, 2000. The views of the Commission are contained in USITC Publication 3334 (August 2000), entitled *Uranium from Russia, Ukraine and Uzbekistan: Investigations Nos. 731–TA–539–C, E and F (Review).*

Issued: August 2, 2000.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–20111 Filed 8–8–00; 8:45 am]

BILLING CODE 6712–01–U

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 14, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–872–883 (Preliminary) (Certain Steel Concrete Reinforcing Bars from Austria, Belarus, China, Indonesia, Japan, Korea, Latvia, Moldova, Poland, Russia, Ukraine, and Venezuela)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 14, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on August 21, 2000.)
5. Outstanding action jackets:

1. Document No. EC–00–013: Approval of final report in Inv. No. 332–409 (The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Agreement with the United States, Canada, and Mexico).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 2, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–20112 Filed 8–7–00; 11:08 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree for Payment of Civil Penalty and Surrender of Sulfur Dioxide Allowances Under the Clean Air Act

Under 28 C.F.R. 50.7, notice is hereby given that on July 31, 2000, a proposed Consent Decree in *United States* v. *Interstate Power Company,* Civil Action No. C00–1022MJM, was lodged with the United States District Court for the Northern District of Iowa.

In this action, the United States seeks injunctive relief and civil penalties for Interstate Power Company's (''IPC'') violations of the Clean Air Act, 42 U.S.C. 7413(b)(2), and regulations promulgated pursuant to this Act at 40 CFR 72, 75, and 76. The allegations concern IPC's failure to outfit specified boilers at its power plants in Lansing and Dubuque, Iowa, with continuous emission monitoring systems and to apply for Acid Rain permits. IPC has come into compliance with the Clean Air Act by installing the monitoring systems and obtaining the Acid Rain permits.

Under the Consent Decree, IPC will pay a civil penalty of $200,000 and surrender to the EPA Enforcement Surrender Account 1474 sulfur dioxide (''SO_2'') allowances as defined under the Acid Deposition Control provisions of Title IV of the Clean Air Act. Under the provisions of Title IV, each allowance permits a unit to emit, during or after a specified calendar year, one ton of ''SO_2''. The United States and IPC agree that the cost of the surrender of allowances to IPC is $135.00 per SO_2 allowance, based on recent market value combined with a historical five year average. Therefore, the total cost to IPC for its surrender of 1474 SO_2 allowances is $198,990. United States and IPC agree that the surrender of the SO_2 allowances will secure significant environmental and public health benefits by preventing the emission of 1474 tons of sulfur dioxide.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v *Interstate Power Company,* DOJ #90–5–2–1–06716.

The Consent Decree may be examined at the Office of the United States Attorney, 401 1st St. SE, Cedar Rapids, Iowa 52401; at EPA Region VII, 901 N. 5th Street, Kansas City, KS 66101; or can be obtained by mail from the Consent Decree Library, P.O. Box 7611, United States Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Stephen J. Rapp,

United States Attorney, Northern District Iowa.

[FR Doc. 00–20077 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–07–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 29, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AIST, Amphing, *Germany;* EMC Corporation, Boston, MA; Enterprise Systems Group, Boulder, CO; Omneon Video Networks, San Francisco, CA; Fox News Corporation, Los Angeles, CA; Leitch Incorporated, Burbank, CA; NOB, Hilversum, *Netherlands;* Panasonic Corporation, Los Angeles, CA; Philips Corporation, Andover, *Netherlands;* Post Impressions, Newbury, *United Kingdom;* Sonic Solutions, Novato, CA; Tecmath AG, Keiserslautern, *Germany;* and Warner Brothers, Los Angeles, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20156 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation (''BRDC'')

Notice is hereby given that, on February 11, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Biotechnology Research and Development Corporation (''BRDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Monsanto Company, St. Louis, MO; and PIC International Group plc, San Francisco, CA have been added as parties to this venture. Also, Dalgety plc, Franklin, KY; and McDonald's Corporation, Oakbrook, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Biotechnology Research and Development Corporation (''BRDC'') intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, Biotechnology Research and Development Corporation (''BRDC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on August 2, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on December 14, 1999 (64 FR 69798).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20153 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Co_2 Capture Project

Notice is hereby given that, on June 22, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BP Amoco Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are BP Amoco Corporation, Anchorage, AK; Chevron Petroleum Technology Company, Houston, TX; Den Norske Stats Oljeselskap As, Trondheim, NORWAY; Norsk Hydro Asa, Oslo, NORWAY; Shell International Exploration & Production Inc., Houston, TX; Suncor Energy (Cyprus) Limited, Nicosia, CYPRUS and Texaco Inc., White Plains, NY. The nature and objectives of the venture are to: (1) Develop low cost next generation technology which achieves the ability to capture and geologically sequester CO_2 from industrial turbines, boilers, heaters, and power generation systems which emit CO_2; (2) determine the key principles and practices to maximize the volume of CO_2 which can be safely sequestered in geologic formations; (3) develop procedures and guidelines to monitor and verify storage of CO_2 in geologic formations and (4) identify and recommend policies and incentives which may enhance economic viability of CO_2 capture and sequestration schemes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20151 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on March 22, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 5401 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mediacom LLC, Middletown, NY; and Rural Route Video, a division of Microwave Distribution Services, Inc., Ignacio, CO have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on August 28, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 2000 (65 FR 17535).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20152 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium, Inc.

Notice is hereby given that, on June 1, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CommerceNet Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CommerceQuest, Tampa, FL has joined the Consortium as a corporate sponsor member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on March 31, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40128).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20157 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on April 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Frame Relay Forum (FRF) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Expand Networks, Langhorne, PA has joined FRF as a worldwide member. Cable & Wireless Jamaica, Kingston, JAMAICA has joined FRF as an affiliate member. Krawutschke Consulting & Management, Durmersheim, GERMANY has joined FRF as an auditing member. Digital Link Corporation, Sunnyvale, CA has

changed its name to Quick Eagle Networks, Sunnyvale, CA. Also, Accesslan Communications, San Jose, CA; Agilent Technologies, Colorado Springs, CO; Ameritech Services, Hoffman Estates, IL; Assured Access Technology, Milpitas, CA; BellSouth Telecommunications, Birmingham, AL; CSELT, Torino, ITALY; e.spire Communications, Annapolis Junction, MD; Hi/fm, Carlsbad, CA; Hughes Network Systems, Germantown, MD; Make Systems, Cary, NC; Maker Communications, Framingham, MA; Netcom Systems, Chatsworth, CA; Nokia Telecommunications, Burlington, MA; Nortel DASA, Friedrichshafen, GERMANY; Nuera Communications, San Diego, CA; o.tel.o, Koeln, GERMANY, Seabridge, Hod Hasharon, ISRAEL; Scitec Communications Systems, Sydney, AUSTRALIA; Telcordia Technologies, Morristown, NJ; Teldat, Madrid, SPAIN; and TimePlex Group, Woodcliff Lake, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on December 8, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 28, 2000 (54 FR 24985).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20150 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—High-Performance Composite Molecular Sieving Membranes

Notice is hereby given that, on June 26, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Membrane Separation Systems DuPont Air Liquide (''MEDAL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are MEDAL L.P., Newport, DE; and Chevron Research and Technology Company, Richmond, CA. The nature and objectives of the venture are to conduct research on ''High-Performance Composite Molecular Sieving Membranes'' for the separation of gases and liquids.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20149 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on March 21, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delphi Automotive Systems Corporation, Troy, MI; IntelliSeek, Inc., Cincinnati, OH; and Solida, Inc., Ann Arbor, MI have been approved as active members in the National Center for Manufacturing Sciences, Inc. (''NCMS''). The Minority Sub-Contractors Center, Inc., Pittsburgh, PA and Southern Technology Council, Research Triangle Park, NC have been approved for affiliate membership in the National Center for Manufacturing Sciences, Inc. (''NCMS'').

Also, Bellcore, Morristown, NJ; Cisco Systems, Inc., San Jose, CA; Control Gaging, Inc., Ann Arbor, MI; D. H. Brown Associates, Inc., Port Chester, NY; DASCOM, Inc., Santa Cruz, CA; Dresser Instrument Division, Milford, CT; Hansford Manufacturing Corporation, Rochester, NY; International Business Machines Corporation, Endicott, NY; Manufacturing Resources, Inc., Cleveland, OH; McSpadden Associates, Inc., North Billerica, MA; Micromet Instruments, Inc., Bedford, MA; Nonlinear Dynamics, Inc., Ann Arbor, MI; RoboDisk Corporation, Burbank, CA; SoftSelect Systems, LLC, Vancouver, WA; and Westinghouse Electric Corporation, Pittsburgh, PA have resigned or have been terminated from active membership in the National Center for Manufacturing Sciences, Inc. (''NCMS''). MERRA, Ann Arbor, MI; Michigan Manufacturing Technology Center, Ann Arbor, MI; National Security Agency, Fort Meade, MD; South Carolina Research Authority, Columbia, SC; U.S. General Services Administration, Washington, DC; and Vanderbilt University School of Engineering, Nashville, TN have recently resigned from affiliate membership in the National Center for Manufacturing Sciences, Inc.

Chrome Applications, Inc., Oakton, VA has changed its name to CAI Resources, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the National Center for Manufacturing Sciences, Inc. intends to file additional written notifications disclosing all changes in membership.

On February 20, 1987, the National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 5, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1999 (64 FR 69800).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20155 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Low Cost, High Performance and Highly Reliable Polymer Electrolyte Membrane for Fuel Cell Applications

Notice is hereby given that, on June 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Plug Power Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Plug Power Inc., Latham, NY; General Electric Company, acting through GE Corporate R&D, Niskayuna, NY; and Albany International Research Company, Mansfield, MA. The nature and objectives of the venture are to conduct research on low cost, high performance and highly reliable polymer electrolyte membranes for fuel cell applications.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20148 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Portland Cement Association (''PCA'')

Notice is hereby given that, on February 14, 2000, pursuant to Section 6(a) of the National Cooperation Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Florida Rock Industries, Inc., Jacksonville, FL; Continental Florida Materials, Inc., Fort Lauderdale, FL; Norval, Inc., Brooklyn, NY; and River Consulting, Inc., Columbus, OH have been added as parties to this venture. Also, Lone Star Northwest, Seattle, WA has changed its name to Glacier Northwest, Inc., Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association (''PCA'') intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association (''PCA'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of February 5, 1985 (50 FR 67591).

The last notification was filed with the Department on October 25, 1999. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–20154 Filed 8–8–00; 8:45 am]

BILLING CODE 4410–11–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Cost Accounting Standards Board; Comprehensive Review

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby invites public comments on how the Board should proceed with its comprehensive review of the Cost Accounting Standards (CAS) and attendant requirements. The CASB's objective in issuing this Notice is to consider public comments in developing the Board's plan for performing a comprehensive review.

DATES: Comments must be submitted in writing, by letter, and must be received no later than September 25, 2000.

ADDRESSES: Comments should be addressed to Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket No. 00–02. The submission of public comments in written form, by letter, is requested. Receipt of a readable data file via Internet E-mail cannot be assured. To facilitate the CASB's review of your submitted comments, please include with your written comments a three point five inch (3.5″) computer diskette copy of your comments and denote the word processing format used.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION: Established pursuant to section 5 of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, as amended, the Cost Accounting Standards Board (CASB) has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing the measurement, assignment and allocation of costs to CAS-covered contracts and subcontracts. Under its statutory authority, the Board is also required to promulgate rules and regulations for the implementation of CAS. The referenced statutory provisions provide that such regulations shall require contractors and subcontractors to disclose their cost accounting practices, including the methods of distinguishing direct costs from indirect costs and the basis for allocating indirect costs; and to agree to a contract price adjustment, with interest, for any increased costs paid to such contractor or subcontractor due to a change in cost accounting practices or failure to comply with applicable CAS. Any contract price adjustment undertaken, on relevant contracts, shall be made so as to protect the Government from payment, in the aggregate, of increased costs (as defined by the Board).

The Board's rules and regulations are codified at 48 CFR Chapter 99.

The Board has placed on its agenda a comprehensive review of CAS and its attendant requirements. The Board is requesting the views of interested parties with respect to the particular CAS items they believe may require modification, issuance of an interpretation, or recission. The Board requests that commenters prioritize the items recommended for review by the CASB.

Individuals and organizations desiring to submit specific items they believe should be included in the Board's comprehensive review are

requested to provide such items in the following format:

—Name of Cost Accounting Standard, cost accounting issue, or regulatory provision in question;
—Reasons for concern;
—Potential solution(s) (Identify the proposed change being suggested, e.g., modification, interpretation, or recission of all or part of an existing Standard, issuance of a new Standard, etc.; and the rationale therefor.);
—Possible burdens and benefits from any proposed approaches; and
—Priority of issues (If more than one item is proposed, please prioritize your issues.).

Items submitted by the public, as well as those submitted by Federal agencies, will be considered in the development of a detailed plan for the conduct of the comprehensive review.

Open Public Meeting: After it reviews the public comments received in response to this Notice, the Board will schedule an open public meeting to discuss its detailed plan for accomplishing the comprehensive review. The date, time and location of the meeting will be the subject of a separate **Federal Register** notice.

Nelson F. Gibbs,

Executive Director, Cost Accounting Standards Board.

[FR Doc. 00–20064 Filed 8–8–00; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before September 25, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December

27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service (N9–462–00–02, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with correspondence, reports, speeches, publications, grant of inspection applications and approvals for meat and poultry establishments, and the activities of agency inspectors at meat and poultry plants. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–462–95–2, N1–462–94–1, N1–462–93–3, NI–462–91–1, NC1–462–80–1 and NC1–462–80–3.

Dated: August 3, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–20131 Filed 8–8–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–24 and DPR–27 issued to Wisconsin Electric Power Company (the licensee) for operation of the Point Beach Nuclear Power Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

The proposed amendment would implement a Core Operating Limits Report concurrent with the implementation of Improved Technical Specifications for Point Beach, Units 1 and 2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes relocate certain cycle specific parameters from the Technical Specifications to a Core Operating Limits Report (COLR). Appropriate design and safety limits are retained or added to the Specifications thereby meeting the requirements of 10 CFR 50.36. Specific, approved methodologies used to determine and evaluate the parameter requirements are added to the Specifications and a reporting requirement is added to ensure the NRC is apprised [sic] of all changes. As approved methodologies are required to be used to evaluate and change parameters, and appropriate safety and design limits maintained in the Technical Changes, operation of PBNP will continue to meet all design and safety analysis requirements. Therefore, neither the probability nor consequences of an accident previously evaluated can be increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

Operation of PBNP, in accordance with the proposed changes, will continue to meet all design and safety limits. Appropriate design and safety limits continue to be controlled within the Technical Specifications as they are presently. These changes will not result in a change to the design and safety limits under which PBNP operation has been determined to be acceptable, these changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment does not result in a significant reduction in a margin of safety.

Appropriate safety limits continue to be controlled by the Specifications. Changes to cycle specific parameters related to these limits will be accomplished using NRC approved methodologies, thereby ensuring operation will continue within the bounds of the existing safety analyses including all applicable margins of safety. Therefore, operation in accordance with the proposed changes cannot result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 2, 2000, which is 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 3rd day of August 2000.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–20107 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

GPU Nuclear Corporation; Three Mile Island Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Possession Only License No. DPR–73, issued to GPU Nuclear Corporation (GPU Nuclear or the licensee), for the Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Possession Only License No. DPR–73 and the Technical Specifications (TS) appended to Possession Only License No. DPR–73 for TMI–2. Specifically, the proposed action would amend the license to reflect the change in the licensee's name from GPU Nuclear Corporation to GPU Nuclear, Inc. The amendment would also make an editorial change to better describe TMI–2's use of site physical security, guard training and qualification, and safeguards contingency plans that are maintained by Three Mile Island, Unit 1, licensee AmerGen Energy Company, LLC. In addition, the amendment would make minor changes to Section 6.0 of the TSs to reflect TMI–2 organizational and administrative controls that will exist following the sale of the Oyster Creek Nuclear Generating Station (Oyster Creek) to AmerGen Energy Company, LLC.

The proposed action is in accordance with the licensee's application dated April 6, 2000, as supplemented by letters dated May 25 and July 18, 2000.

Need for the Proposed Action:

The proposed action is needed to revise the company name in the license to reflect the corporate name change that occurred on January 14, 1999, and to make administrative changes to reflect changes that will occur in the TMI–2 organization and administrative controls following the sale of Oyster Creek.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license and TS. According to the licensee, the name change will not impact the existing ownership of TMI–2. GPU Nuclear will maintain final decision making authority for TMI–2 licensed activities.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Programmatic Final Environmental Statement Related to Decontamination and Disposal of Radioactive Wastes Resulting from the March 28, 1979, Accident—Three Mile Island Nuclear Station, Unit 2, Supplement No. 3, issued in August 1989.

Agencies and Persons Contacted

In accordance with its stated policy, on July 27, 2000, the NRC staff consulted with the Pennsylvania State official, Stan Miangi of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 6, 2000, as supplemented by letters dated May 25 and July 18, 2000, which are available for public inspection at the U.S. Nuclear Regulatory Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington DC. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–20106 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 29–September 1, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Tuesday, August 29, 2000

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions

with representatives of the NRC staff regarding a revised draft report of a technical study of spent fuel pool accident risk at Decommissioning Nuclear Power Plants. The Committee will also hear a presentation by and hold discussions with a representative of the Institute for Resource and Security Studies regarding the potential for release of radioactive material from spent fuel pools.

10:30 a.m.–12:00 Noon: Proposed Risk-Informed Revisions to 10 CFR Part 50 (Open)—The Committee will hear presentations by andhold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding proposed NRC framework document for risk-informing the technical requirements of 10 CFR Part 50, proposed revisions to 10 CFR 50.44 concerning combustible gas control systems, and advance notice of proposed rulemaking (10 CFR 50.69 and Appendix T).

1:00 p.m.–2:00 p.m.: Causes and Significance of Design Basis Issues (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a study of design basis issues and trends.

2:00 p.m.–2:45 P.M.: Proposed Final Regulatory Guide (DG–1093) Endorsing NEI 97–04 Document on Design Bases (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final version of the Regulatory Guide.

3:00 p.m.–3:45 p.m.: AP1000 Standard Plant Design (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Westinghouse Electric Company regarding issues identified during AP1000 pre-application review (Phase 1).

3:45 p.m.–5:15 p.m.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

5:15 p.m.–7:00 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on Assessment of the Quality of PRAs.

Wednesday, August 30, 2000

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Performance-Based Regulatory Initiatives (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a Commission paper associated with performance-based regulatory initiatives.

9:30 a.m.–10:15 a.m.: License Renewal Guidance Documents (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the contents of the proposed Standard Review Plan, Generic Aging Lessons Learned Report, and a Regulatory Guide and associated NEI guidance documents.

10:30 a.m.–12:00 Noon: Operating Events at Indian Point Nuclear Power Plant Unit 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the licensee regarding the events, noted below, that occurred at the Indian Point Unit 2 Nuclear Power Plant and the associated staff findings, conclusions, and recommendations resulting from the evaluations of these events: (1) February 15, 2000 steam generator tube rupture event and (2) August 31, 1999 event involving reactor trip and loss of all off-site power.

1:00 p.m.–2:30 p.m.: Siemens SRELAP–5 Best-Estimate Small-Break LOCA Code (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Siemens Corporation regarding the Siemens SRELAP–5 best-estimate code for application to analysis of transients and small-break loss of coolant accident (LOCA). [

Note: A portion of this session may be closed to discuss Siemens Corporation's proprietary information pursuant to 5 U.S.C. 552b(c)(4)].

2:45 p.m.–3:45 p.m.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports, as needed, for consideration by the full Committee.

3:45 p.m.–7:00 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Thursday, August 31, 2000

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–8:45 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

8:45 a.m.–9:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

9:45 a.m.–10:45 a.m.: Annual Report to the Commission on the NRC Safety Research Program (Open)—The Committee will discuss the format and content of the annual ACRS report to the Commission on the NRC Safety Research Program.

11:00 a.m.–12:00 Noon: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

1:00 p.m.–4:00 p.m.: Meeting with the NRC Commissioners on October 6, 2000 (Open)—The Committee will discuss and prepare topics for meeting with the Commissioners scheduled for October 6, 2000.

4:00 p.m.–6:00 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Friday, September 1, 2000

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–1:00 p.m.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Howard J. Larson prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Howard J. Larson if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Mr. Howard J. Larson (telephone 301/415–6805), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–20108 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 15, 2000, through July 28, 2000. The last biweekly notice was published on July 26, 2000.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law

or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 5, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.8 to change the Required Actions and Completion Times for the Ultimate Heat Sink (UHS) in the event the service water (SW) temperature exceeds the 97°F surveillance acceptance limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The CP&L conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides Required Actions for the plant condition where SW temperature exceeds the TS limit. The SW system temperature is not assumed to be an initiating condition of any accident analysis evaluated in the safety analysis report (SAR). Therefore, the revised limitations for SW temperature to be in excess of the design limit does not involve an increase in the probability of an accident previously evaluated in the safety analysis report. The SW system supports operability of safety-related systems used to mitigate the consequences of an accident. Plant equipment has been analyzed and determined able to perform its safety-related function at [an] SW temperature of 99°F. Performance of the containment has been analyzed in support of Amendment No. 187 to Technical Specifications assuming 100°F service water temperature and the results were acceptable. The magnitude of any increase in SW temperature in excess of the TS limit is expected to be small based on historical data and experience for the UHS. An evaluation would be performed to assure required cooling capability. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the SW when near or slightly above the design temperature does not introduce new failure mechanisms for systems, structures or components not already considered in the SAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not allow continued operation with the SW temperature above the design basis limit. The proposed change will allow continued operation provided the required cooling capacity is verified and periodic monitoring is invoked to verify the SW temperature remains less than or equal to 99°F. Design margins are affected which are associated with systems, structures and components which are cooled by the SW system, and system temperature is an input assumption for mitigating the effects of a DBA [design-basis accident]. However, allowing SW temperature to exceed the surveillance acceptance limit, as long as required cooling is verified, will not significantly reduce the margin of safety associated with this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602 .

NRC Section Chief: Richard P. Correia.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 31, 2000.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to delete the requirement to remove the Reactor Protection System (RPS) circuitry shorting links from TS Section 3/4.3.1, ''Reactor Protection System Instrumentation,'' 3/4.9.2, ''Refueling Operations Instrumentation,'' and 3/4.10.3, ''Shutdown Margin Demonstrations,'' and to increase the required signal-to-noise ratio for the source range monitor in (SRM) TS Sections 3/4.3.7.6, ''Source Range Monitors,'' and 3/4.9.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes to TS Section 3/4.3.1, 3/4.9.2, and 3/4.10.3 will relocate the requirement that the shorting links be removed from the RPS circuitry prior to and during specified plant conditions. The removal or installation of the RPS circuitry shorting links does not have an effect on the probability of any accident previously evaluated. The proposed changes to TS Sections 3/4.3.7.6 and 3/4.9.2 will increase the minimum signal-to-noise ratio from ≥ 2:1 to ≥ 20:1, when the SRM count rate is greater than or equal to 0.7 counts per second (cps) and less than 3 cps.

The operation of the SRM does not have an effect on the probability of any accident previously evaluated. Thus, the probability of any accident previously evaluated is not increased.

The proposed changes do not affect the integrity of the fuel cladding, reactor coolant system or secondary containment, because no credit is taken in the current accident analyses for removal of the RPS circuitry shorting links. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the assumed accident performance of any LaSalle County Station structure, system or component previously evaluated because accidents previously evaluated assumed that the RPS circuitry shorting links were installed and did not credit SRM operation. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to TS Sections 3/4.3.1, 3/4.9.2, and 3/4.10.3 will relocate the requirement that the shorting links be removed from the RPS circuitry prior to and during specified plant conditions. The removal of the RPS circuitry shorting links in Operations Condition 5, ''Refueling,'' modifies the RPS by reconfiguring the scram signal for the intermediate range monitors (IRMs) and average power range monitors (APRMs) to non-coincidental and enabling the SRM non-coincidental high flux scram signal. However, the SRM non-coincidental high flux scram signal is not credited in any Design Basis Accident (DBA) and the IRM and APRM one-out-of-two taken twice full scram provides the credited protection with respect to safety analysis.

Refueling interlocks and shutdown margin requirements ensure that the reactor is maintained in a subcritical condition in Operational Condition 5. The refueling interlocks are required to be operable by TS Section 3/4.9.1, ''Reactor Mode Switch.'' The SRM, IRM, and APRM control rod withdrawal block interlocks are not affected by the removal or installation of the RPS circuitry shorting links. Although shutdown margin may not yet have been demonstrated in Operational Condition 5, shutdown margin calculations performed prior to altering the reactor core, along with procedural compliance for any Core Alterations, provides indication that shutdown margin is available.

The proposed changes to relocate the description and function of the RPS circuitry shorting links to the UFSAR and be controlled in accordance with the requirements of 10 CFR 50.59, are consistent with the requirements of 10 CFR 50.36, ''Technical Specifications.'' The existing TS requirements to remove the RPS circuitry shorting links do not satisfy any of the four criteria of 10 CFR 50.36 for inclusion of a requirement into the TS. In accordance with NRC guidance, existing TS requirements that do not satisfy the criteria of 10 CFR 50.36 can be removed from the TS and relocated to other controlled documents, such as the UFSAR. Changes to the LaSalle County Station UFSAR are controlled in accordance with the requirements of 10 CFR 50.59.

The proposed changes to TS Sections 3/4.3.7.6 and 3/4.9.2 will increase the statistical neutron monitoring confidence that the indicated signal is correct when the SRMs indicate in the range form 0.7 cps to 3 cps. A SRM signal-to-noise ratio of ≥ 2:1 provides a statistical neutron monitoring confidence of 95% that the indicated signal is correct with a minimum count rate of 3 cps. A study was performed which concluded that a SRM signal-to-noise ratio of ≥20:1 is required to provide a statistical neutron monitoring confidence of 95% that the indicated signal is correct at 0.7 cps.

Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 27, 1999.

Description of amendment request: The proposed amendment would revise the technical specifications to increase the allowable out-of-service times and surveillance test intervals for selected actuation instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed TS [technical specification] changes increases the Allowable Outage Times and Surveillance Test Intervals (AOT/STI) for actuation instrumentation based on analyses developed and approved by the Nuclear Regulatory Commission (NRC). TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not involve any physical changes to plant systems, structures or components (SSCs), or the manner in which these SSCs are operated. These changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. As justified and approved in the AOT/STI licensing topical reports, the proposed changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analyses. The proposed changes establish or modify time limits allowable for operation with inoperable instrument channels based on analyses which have been approved by the NRC. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical changes to SSCs, or the manner in which these SSCs function. Therefore, these changes will not create the possibility of a

new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes increase the STIs and AOTs for actuation instrumentation based on generic analyses completed by the Boiling Water Reactor Owners' Group (BWROG). The NRC has reviewed and approved the generic studies and has concurred with the BWROG that the proposed changes do not significantly affect the probability of failure or availability of the affected instrumentation systems. The analysis determined that there is no significant change in the availability and/or reliability of instrumentation as a result of the proposed changes in STIs and AOTs. Furthermore, the change to increase the frequency of the reactor protection system scram contactor testing has been shown to improve plant safety. ComEd has determined these studies are applicable to Quad Cities Nuclear Power Station, Units 1 and 2. The proposed changes to AOTs provide realistic times to complete required testing and maintenance actions without increasing the overall instrument failure frequency. Likewise, the extended STIs do not result in significant changes in the probability of instrument failure. Furthermore, the proposed changes will reduce the probability of test-induced plant transients and equipment failures. Therefore, it is concluded that the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: December 30, 1999.

Description of amendment request: The proposed amendment would revise the technical specifications to (1) remove the Main Steam Line Radiation Monitor (MSLRM) scram and main steam line isolation functions, and (2) add a new requirement for the MSLRM mechanical vacuum pump trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change involves the removal of existing Main Steam Line Radiation Monitor (MSLRM) scram and the MSLRM MSL [main steam line] Valve closure signal. The purpose of the MSLRM reactor scram and the MSL isolation signal is to mitigate the radiological effects of a fuel element failure. These functions do not serve as initiators for any of the accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). Removal of these functions will not increase the probability of any of the accidents previously evaluated.

The radiological effects of a Control Rod Drop Accident (CRDA) have been evaluated for the Boiling Water Reactor Owners' Group (BWROG) by General Electric (GE) in Report NEDO–31400A, ''Safety Evaluation For Eliminating the Boiling Water Reactor Main Steam Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor.'' The GE report was evaluated by the NRC and found acceptable by letter dated May 15, 1991, ''Acceptance for Referencing of Licensing Topical Report NEDO–31400.'' The NRC Safety Evaluation Report accepting the GE report required licensees to demonstrate that the assumptions of the GE report analysis were bounding for their plants. ComEd has evaluated the GE analysis for applicability to Quad Cities Nuclear Power Station, Units 1 and 2.

The GE analysis demonstrates that operation with the proposed change does not represent a significant increase in the consequences of a CRDA. Therefore, operation of Quad Cities Nuclear Power Station, Units 1 and 2, under the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated. A site specific radiological evaluation was completed to confirm the applicability of the generic GE analysis to Quad Cities Nuclear Power Station.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change involves the removal of the existing MSLRM scram and the MSL Valve closure input from the MSL Tunnel High Radiation signal. Removal of these functions does not represent a change in operating parameters for Quad Cities Nuclear Power Station, Units 1 and 2. Removal of these functions does not add any additional hardware and does not represent any new failure modes. Operation of Quad Cities Nuclear Power Station, Units 1 and 2, under the proposed change does not create the possibility of a new or different type of accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change involves the elimination of the MSLRM scram and the MSL Valve closure input from the MSL Tunnel High Radiation signal. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The GE report has demonstrated that the consequences of the CRDA without the MSLRM High scram and MSL Valve closure signal from the MSL Tunnel Radiation detector results in doses which are well within 10 CFR part 100, ''Reactor Site Criteria,'' limits. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: June 5, 2000.

Description of amendment request: The proposed amendment, which changes the Perry Nuclear Power Plant as described in the Updated Safety Analysis Report, modifies the circuitry to the Reactor Core Isolation Cooling (RCIC) System initiation logic. The proposed circuit modification will include a time delay to the main turbine and feedwater pump turbine trip signal associated with a RCIC system automatic initiation. The addition of this time delay will prevent potential main turbine and feedwater pump turbine trips that result in unnecessary reactor scrams from inadvertent RCIC initiations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Core Isolation Cooling (RCIC) initiation turbine trip circuit performs an operational protection of the main turbine for commercial and reliability purposes. The proposed modification slightly alters the methodology by which the turbine protective features are performed but they have no

influence on any of the accidents previously evaluated. The associated circuits do not interfere with higher priority protection systems.

Installation of circuits associated with the proposed modification cannot initiate an accident, nor are they used to mitigate the consequences of any previously defined accident. Their function is to provide turbine protection that is separate and distinct from the turbine overspeed protection system. The circuits modified by this modification will still result in actions taken (auto or manual) that meet the bases for the present design. Also, this modification does not alter or adversely affect the turbine overspeed function in any manner.

The proposed modification reduces the probability of occurrence of spurious turbine trips due to spurious RCIC initiation. Therefore, with the implementation of this modification, the boundaries of the accident analysis will be less challenged and result in fewer false scrams.

The proposed modification provides assurance for compliance with the current licensing basis regarding dose limits of General Design Criteria (GDC) 19 of Appendix A to 10 CFR [Part] 50 and 10 CFR [Part] 100. The proposed modification ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR). With the proposed modification, the radiological consequences are the same as previously stated in the USAR. Therefore, the implementation of the proposed modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The USAR addresses accident analysis of the reactor based on events such as turbine trips, including spurious trips and turbine missiles. The present RCIC initiation turbine trip circuit is a potential contributor to spurious turbine trips. The addition of the time delay relay reduces this potential. A time delay relay failure that fails to trip the turbine would have the same effect on the turbine as the failure of the present trip circuit that has no time delay relay. The consequence of the failure of this circuit to protect the turbine remains unchanged with the addition of a time delay relay and is bounded by the existing accident analysis. The accident analysis for missile protection of those systems, structures, components required for the safe shutdown of the plant remain unchanged.

The probability of external missile generation has not changed with implementation of the proposed modification. The Main Turbine casing and surrounding structures will not be changed by the proposed modification. The location of equipment important to safety as it relates to the turbine missiles will not be changed. Therefore the missile strike probability will not be increased by the 4½ minute time delay.

The proposed modification provides assurance for compliance with the current licensing basis regarding dose limits of GDC 19 of Appendix A to 10 CFR [Part] 50 and 10 CFR [Part] 100. The proposed modification does not change the assumptions used in any accident analysis and no new or different kind of accident is created. The proposed modification ensures originally stated design criteria are met and therefore does not affect the precursors for accidents or transients analyzed in Chapter 15 of the PNPP USAR. Therefore, the implementation of the proposed modification does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety by which this modification is evaluated against is the design/criteria of the turbine overspeed protective system relative to the PNPP USAR, SER, GDC4 and Reg[ulatory] Guide 1.115, [''Protection Against Low-Trajectory Turbine Missiles.''] The change in response time of the main turbine RCIC initiation trip circuit does not affect the margin of safety as reflected in these documents. There is no safety margin criteria associated with this circuit, as defined in the USAR or the bases for any Technical Specifications.

Although there is no margin of safety associated with the turbine, the regulatory requirement for acceptance of the turbine for use at PNPP is based upon a calculated value of probability of external turbine missile interaction with safety related equipment.

The barriers (Turbine casing and surrounding structures) and barrier interaction as previously analyzed will not be changed by this modification. The location of safety related equipment as it relates to the turbine missiles will not be changed. The probability of external missile generation has not changed with implementation of the proposed modification. Therefore, there is no reduction in the margin of safety by the proposed modification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: July 19, 2000.

Description of amendment request: To revise the license: (1) to implement Siemens Power Corporation (SPC) high thermal performance (HTP) fuel assembly design in Cycle 17, (2) relocate shutdown margin (SDM) requirements in Modes 1 to 5 to the Core Operating Limits Report (COLR), (3) update the COLR methodologies listed in the Technical Specification (TS) Section 6.9.1.11, and (4) request relief from the SPC fuel assembly reconstitution restrictions for peripheral low power fuel assemblies. Applicable TS surveillance requirements are changed to be consistent with the proposed license amendment. Additionally, administrative changes are proposed to the boron concentration specifications related to the boration requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would allow the implementation of HTP fuel design for Cycle 17. The design of this fuel will be evaluated to meet all the mechanical, neutronics and thermal-hydraulics requirements, and acceptance criteria based on the approved methodology. The relocation of shutdown margin to the COLR and other proposed changes have no adverse impact on the operation of the plant and have no relevance to the accident initiators. There are no changes to the plant configuration, and thus the frequency of occurrence of previously analyzed accidents is not affected by the proposed changes. The changes proposed to the fuel reconstitution methodology would not impact the design acceptance criteria for the reconstituted fuel assemblies.

The proposed change for the relocation of shutdown margin to the COLR has no impact on current safety analyses and their consequences. Changes to the COLR limits will be controlled per Generic Letter 88–16 under the provisions of 10 CFR 50.59 and the requirements of TS 6.9.1.11.c. The application of the added methodology, which includes the approved HTP DNB [departure from nucleate boiling] correlation, would remain consistent with the design basis requirements and would not involve a significant increase in the consequences of design basis accidents. Other proposed TS and TS bases changes do not affect safety analysis results. The changes proposed to the fuel reconstitution methodology would not impact the safety analysis consequences as the changes are related to the non-limiting rod locations.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different

kind of accident from any previously evaluated.

The proposed amendment updates the list of approved methodology in TS 6.9.1.11, relocates shutdown margin requirements to the COLR and requests relief for fuel reconstitution requirements. None of these changes would create the possibility of a new kind of accident since the reload analysis with these changes would continue to meet all applicable design limits. There is no change to plant configuration, systems or components which would create new failure modes. The modes of operation of the plant would remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed changes have no significant adverse impact on the safety analysis. As such, these changes would continue to provide margin to the acceptance criteria for specified acceptable fuel design limits (SAFDL), 10 CFR 50.46(b) requirements, primary and secondary overpressurization, peak containment pressure, potential radioactive releases, and existing limiting conditions for operation. The future use of updated approved methodologies will follow all design basis requirements to ensure that a safety margin to the acceptance criteria would continue to remain available for full power operation of St. Lucie Unit 1.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company (FPL), Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: July 19, 2000.

Description of amendment request: The amendment would revise the St. Lucie Unit 1 Technical Specifications (TS) to require laboratory testing of activated charcoal samples for applicable engineered safety feature ventilation systems using the ASTM D3803–1989 protocol. In addition the proposed changes revise the TS test criteria for methyl iodide removal efficiency to be consistent with the guidance of NRC Generic Letter (GL) 99–02. The affected Unit 1 TS are the shield building ventilation system (SBVS), TS 4.6.6.1; control room emergency ventilation system (CREVS), TS 4.7.7.1; emergency core cooling system (ECCS) area ventilation system, TS 4.7.8.1; and fuel pool ventilation system—fuel storage, TS 4.9.12.

The July 19, 2000, application is a complete replacement of the proposed Unit 1 TS amendment previously submitted by FPL letter L–99–241 on November 17, 1999. The NRC staff had previously published a **Federal Register** notice on January 12, 2000 (Vol. 65, page 1923), regarding the proposed amendments for St. Lucie Units 1 and 2, but subsequently, issued the licence amendment for St. Lucie, Unit 2 only, on February 17, 2000. This revised amendment request increases the TS-required removal efficiency of the Unit 1 SBVS, ECCS area ventilation system, and CREVS charcoal adsorbers to 97.5% when tested in accordance with ASTM D3803–1989 at 30°C, 70% relative humidity. The revised testing requirements align the TS acceptance criteria and methodology with the Unit 1 accident analysis assumptions and GL 99–02 recommendations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. The new charcoal testing protocol is performed offsite on samples extracted from the safety related ventilation systems. Therefore, there is no impact on any accident initiator and results in no changes in the probability. The proposed testing protocol is more conservative than previous tests; therefore, the efficiency of charcoal for the affected safety related systems would not be overestimated. With the new testing protocol, more conservative testing results are expected since the temperature at which testing is performed is lower and the charcoal retention capability is more consistent with actual accident conditions. The proposed change thus ensures that the charcoal in service will comply with the penetration requirements to meet the design basis accident conditions.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed charcoal testing protocol only affects surveillance testing requirements for safety related ventilation systems. The functions of these systems remain unchanged and unaffected. No new system interactions have been introduced by the proposed amendment, which would create a new or different type of accident than previously analyzed. No physical changes are being made to any structure, system, or component. The operation of the facility will not be altered by the proposed amendment. The systems involved are not initiators of any accidents as previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie Unit 1 systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a reduction in the margin of safety. The margin of safety of the Technical Specifications, its Bases, the Updated Final Safety Analysis Report, the Safety Evaluation Report or in any other design document has been increased by the use of a safety factor of two for the TS affected by the proposed amendment. The change provided in this proposed amendment is related to introducing an improved testing protocol for the activated charcoal in safety related ventilation systems. The change consists of testing the charcoal with a new testing protocol, higher efficiencies, and with lower test temperatures to more closely reflect accident conditions and to eliminate potential overestimation of charcoal efficiency.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: June 21, 2000.

Description of amendment request: The proposed amendments would relocate Technical Specification Surveillance Requirement (SR) 4.8.1.1.2.e.1 to a licensee controlled maintenance program that will be incorporated by reference into the next revision of each unit's Updated Final Safety Analysis Report (UFSAR). SR 4.8.1.1.2.e.1 requires that the emergency diesel generator (EDG) be inspected in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service, at least once every 18 months during shutdown. Upon relocation to the licensee controlled maintenance program the requirement to perform the EDG inspections every 18 months during shutdown will be eliminated. These amendments, in combination with the previously submitted EDG risk informed allowed outage time extension to 14 days, allows the EDG maintenance to be performed in Modes 1 and 2. The licensee stated that approval of these amendments is expected to reduce the complexity of activities performed during refueling outages and, consequently, reduce human errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no changes to the emergency diesel generator (EDG) maintenance program. The actual EDG maintenance program is unaffected.

The only substantive change allows the periodic EDG inspection to be performed in any operational mode instead of only during shutdown. By FPL Letter L–99–228, dated November 17, 1999, FPL has previously submitted a request for a risk informed EDG allowed outage time (AOT) extension from 3 days to 14 days. An evaluation of the impact on plant risk as expressed by the change in core damage frequency (CDF), the incremental conditional core damage probability (ICCDP), the change in large early release frequency (LERF), and the incremental conditional large early release probability (ICLERP) was provided as part of the EDG AOT extension submittal (L–99–228). The EDG downtime (hours/train/year) assumed in the EDG AOT extension risk assessment includes the out-of-service time that would be incurred due to performing the proposed EDG inspections and overhauls in Modes 1 and 2 instead of during shutdown. The risk assessment for the proposed EDG AOT extension bounds the risk for this change.

NRC Regulatory Guide (RG) 1.177, An Approach for Plant-Specific Risk-Informed Decision making: Technical Specifications, states that an ICCDP of <5.0E–07 and an ICLERP of <5.0E–08 is considered small for a single AOT change. Both the ICCDP and ICLERP for the proposed EDG AOT extension and these proposed changes are below the RG 1.177 specified values and are thus considered small.

NRC RG 1.174, An Approach for Using Probabilistic Risk Assessment in Decisions on Plant Specific Changes to the Licensing Basis, discusses acceptance criteria for changes in CDF and LERF. A change in CDF of <1E–06 with a total CDF of <1E–04/year and a change in LERF of <1E–07 with a total LERF of <1E–05 are considered very small. The changes in CDF and LERF for the EDG AOT extension and these proposed changes are below the RG 1.174 criteria and are thus considered very small.

The removal of the Mode restrictions from the maintenance program are bounded by the risk assessment for the EDG AOT extension and therefore do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any previously evaluated.

The use of the modified specifications cannot create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to implementation of this administrative change since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components remain unchanged by the proposed amendments. Therefore, these changes do not involve a significant reduction in the margin of safety. When the full scope of plant risk is considered, the risks incurred by performing either corrective or preventive EDG maintenance during power operation will be substantially offset by plant benefits associated with avoiding unnecessary plant transitions and/or reducing risks during shutdown operations.

Based on the above, we have determined that the proposed amendments do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company (FPL), Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: May 22, 2000.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate the requirements specified in the American Society of Mechanical Engineers (ASME), Section XI, Subsection IWL, as modified and supplemented by the requirements in Section 50.55a(b)(2)(viii), Examination of concrete containments. In this regard, TS Section 3.6.1.6, ''Limiting Condition for Operation,'' will be revised to conform to IWL tendon lift-off force requirements, and TS Sections 4.6.1.6.1, 4.6.1.6.2, and 4.6.1.6.3 will be revised to conform to containment tendon and containment surface inspection requirements specified in ASME Section XI, Subsection IWL, 1992 Edition with the 1992 Addenda, and 10 CFR 50.55a(b)(2)(viii).

The NRC Final Rule (61 FR 41303), dated August 8, 1996, requires implementation of the revised requirements for containment examination by September 9, 2001. FPL is planning to perform the containment tendon surveillance for Turkey Point Units 3 and 4 in March 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Approval and implementation of this amendment will have no effect on the probability or consequences of accident previously evaluated. The containment is not an accident initiating system or structure; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The containment examination requirements in the proposed amendments are identical, equivalent, or more rigorous than previous requirements. The containment serves an important function to mitigate consequences of postulated accidents evaluated and the examinations proposed in this amendment will not result in a reduction in the capability of the containment to meet its intended design function. Additionally, the proposed changes to the Technical Specifications reflect the adoption of ASME Section XI Subsection IWL containment inservice inspections required by 10 CFR 55a(b)(2).

Based on the above, it is concluded that the proposed amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design, physical configuration, or modes of operation of the plant. No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed Technical Specification changes do not impact any plant systems that are accident initiators, since the containment functions primarily as an accident mitigator and the functional requirements of the containment structure are not changed. No new accident causal mechanisms are created as a result of NRC approval of the proposed amendments request. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation, including the performance of the containment. The containment is capable of performing as intended, and its function is verified by visual examination, post-tensioning system examinations, and leakage rate testing. The containment examination requirements in the proposed amendments are identical, equivalent, or more rigorous than previous requirements. As such, the ability of the containment to perform its design function will not be impaired by the implementation of the proposed amendments request. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: July 7, 2000.

Description of amendment request: The proposed amendments would revise the pressure-temperature (P/T) limits specified in Technical Specification (TS) 3.4.9.1 and Figures 3.4–2, 3.4–3 and 3.4–4 to extend their service period to a maximum of 32 effective full power years. Also, the proposed amendments will revise TS 3.4.9.3, Cold Overpressure Mitigation System (COMS) setpoints and its associated Surveillance Requirements 4.4.9.3.1a and 4.4.9.3.1d. COMS is the Westinghouse version of Low Temperature Overpressure Protection. Additionally, the licensee's submittal requested two exemptions from the requirements of 10 CFR 50.60 based on the American Society of Mechanical Engineers (ASME) Section XI, Code Cases N–588, ''Alternative to Reference Flaw Orientation of Appendix G for Circumferential Welds in Reactor Vessels, Section XI, Division 1'' and N–641, ''Alternative Pressure Temperature Relationship and Low Temperature Overpressure Protection (LTOP) System Requirements, Section XI, Division 1.'' The exemption requests will be evaluated separately from the proposed license amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated for Turkey Point is not altered by the proposed amendment to the Technical Specifications. Each accident in the Turkey Point UFSAR [Updated Final Safety Analysis Report] was examined with respect to the changes to the proposed Pressure-Temperature (P/T) limit curves and associated Cold Overpressure Mitigation System (COMS) setpoint limitations.

The proposed changes do not impact the integrity of the reactor coolant system pressure boundary (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore does not increase the potential for the occurrence of a loss of coolant accident (LOCA). The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The proposed P/T limit curves and COMS setpoint limit are not considered to be an initiator or contributor to any accident currently evaluated in the Turkey Point UFSAR.

The curves and setpoint limit were generated in accordance with approved NRC and ASME methodology. Code Cases N–588 and N–641 have ASME Code Committee approval.

Delaying performance of two of the COMS surveillances (PORV [power operated relief valve] Channel Operational Test and the backup nitrogen supply verification) until 12 hours after decreasing the RCS cold leg temperature to ≤275°F during cooldown was also evaluated with respect to the plant accident analyses. The change was determined to not represent a significant increase in the probability or consequences of an accident because a) the likelihood of a low temperature overpressure event occurring concurrently with a loss of the redundant instrument air system is sufficiently small, and b) the existing procedural controls will effectively prevent challenges to the COMS.

Additionally, delaying these surveillances for 12 hours will allow the operators to focus their attention on transitioning the plant to RHR [residual heat removal] cooling. Given the timing sequence of the RHR system entry point to the COMS enable temperature, the time extension is considered to be a prudent and safety focused change to the method of performing a plant cooldown. The proposed time extension is also consistent with the operational flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants.

Based on the above, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not create a new accident scenario. The requirements for the P/T limit curves and low temperature overpressure protection have been in place for some time. The fundamental approach follows approved ASME and Westinghouse topical report methodology. The proposed curves reflect the change in material properties acknowledged and managed by regulation and an upgrade in technology, which has been approved by ASME.

Delaying performance of two of the COMS surveillances (PORV Channel Operational Test and the backup nitrogen supply verification) until 12 hours after decreasing the RCS cold leg temperature to ≤275°F during cooldown was also evaluated with respect to the plant accident analyses. The change was determined to not represent a significant increase in the probability or consequences of an accident because a) the likelihood of a low temperature overpressure event occurring concurrently with a loss of the redundant instrument air system is sufficiently small, and b) the existing procedural controls will effectively prevent challenges to the COMS.

Additionally, delaying these surveillances for 12 hours is consistent with the operational flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants.

Since no new failure modes are associated with the proposed changes, the activity does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The Technical Specifications for P/T limit curves and COMS setpoints are expiring and must be updated. The COMS setpoint is revised to incorporate additional margin in the instrument uncertainty. Conservative ASME code methods including safety factors have been used. The material properties used are from a much larger database than in past submittals. This results in many more datapoints available for the limiting weld metal than in past submittals. A new master curve of irradiated and unirradiated materials data has been developed for Turkey Point which shows that these curves and associated setpoints are conservative and represent an increase to the margin of safety. The new setpoint limit should reduce the possibility of an inadvertent PORV actuation. They should also reduce the potential for reactor coolant pump impeller cavitation or seal damage when the pumps are operated during low temperature conditions in the RCS. Changing the COMS surveillances to allow completion up to 12 hours after decreasing RCS temperature to ≤275°F during cooldown does not result in a reduction in the margin of safety. Acceptability is based on: consistency with NUREG–1431, Standard Technical Specifications Westinghouse Plants, COT [Channel Operational Test] Surveillance Requirements; the inherent reliability and redundancy of the Turkey Point Instrument Air System; and the existing procedural controls established to prevent challenges to the LTOP System. The proposed amendments will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: May 30, 2000.

Description of amendment requests: The proposed amendments would make changes to several Technical Specifications (TSs) to reflect implementation of the revised 10 CFR Part 20, ''Standards for Protection Against Radiation.'' In addition, the licensee proposed to revise TS 6.8.4.a.7 to maintain existing instantaneous dose rate limitations in the Offsite Dose Calculation Manual. Also, the licensee proposed a revision to the requirements governing the annual tabulation of radiation exposures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not physically alter any plant structures, systems, or components (SSCs), and do not affect or create new accident initiators or precursors for any accident evaluated in the Updated Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is unchanged.

The proposed changes do not affect the types or amounts of radionuclides released following an accident, or the initiation and duration of their release. The changes are administrative in nature. Therefore, the consequences of an accident previously evaluated are not increased.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not physically alter any SSC and do not affect or create new accident initiators or precursors. The accident analysis assumptions and results are unchanged. No new failures or interactions have been created.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

10 CFR 20.1301, Appendix I to 10 CFR 50, and 40 CFR 190 establish the controls and limitations on total effective dose equivalent to individual members of the public from effluents discharged to unrestricted areas. The proposed changes maintain established limits for radioactive liquid effluents established in 10 CFR Part 20 and limits for radioactive gaseous effluents established in the ODCM. I&M continues to comply with limits specified in 10 CFR 20.1301, Appendix I to 10 CFR 50, and 40 CFR 190. Since compliance with these regulatory requirements has not been compromised, the proposed changes do not involve a significant reduction in the margin of safety.

In summary, based upon the above evaluation, I&M has concluded that the proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 2000.

Description of amendment request: The following technical specification (TS) changes are being proposed to provide flexibility of operation. These changes include: (1) the ability to have a standby Safety Injection (SI) pump available during Reactor Coolant System (RCS) reduced inventory conditions with the RCS pressure boundary intact; (2) realigning a footnote to clarify the allowance of an inoperable SI pump to be energized for testing or filling accumulators; (3) allowance for an additional charging pump to be made capable of injection during pump-swap operations; (4) recognition that a substantial vent area exists for cold overpressure protection when the reactor vessel head is on, and the studs are fully detensioned; (5) limit maneuvering the plant beyond Hot Shutdown when one charging pump is operable; and (6) establishes a new value for the open permissive interlock associated with the Residual Heat Removal System suction isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against

the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The proposed changes do not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or manner in which structures, systems, and components (SSCs) perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accidents previously evaluated.

The proposed changes do not result in a change to the design basis of any plant SSC. All equipment important to safety will operate as designed. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. The proposed changes do not cause the initiation of any accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 2000.

Description of amendment request: The licensee proposes revising the Technical Specifications (TS) by removing the prescriptive requirement for determining the reactor coolant system flow rate by precision heat balance in Surveillance Requirement 4.2.5.3 and incorporating a time limit for completion of the surveillance requirement. The change would also revise TS Table 2.2–1 to reflect the allowed calibration tolerance of the protection racks and note that the Trip Setpoint for Functional Unit 12, Reactor Coolant Flow-Low reactor trip is based on an indicated value rather than a measured value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design, conditions, and configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Determination of RCS [Reactor Coolant System] total flow rate by elbow tap ΔP measurement will not subject the reactor core to conditions adverse to nuclear safety. The proposed change does not affect the source term; containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. The initial conditions for all accident scenarios modeled are the same. Therefore, the consequences of an accident occurring remain unchanged.

The evaluation for use of elbow tap ΔP measurement determined that sufficient margin exists to account for all reasonable instrument uncertainties, therefore no changes to installed equipment or hardware in the plant are required. Though the calibration process of the elbow tap ΔP transmitters has changed, *i.e.*, normalization to previously performed precision RCS flow calorimetrics for Cycles 1 and 2 instead of normalization to a precision RCS flow calorimetric each cycle, this has been accounted for by the addition of instrument uncertainties usually considered to be zeroed out by normalization performed each cycle. Accounting for the additional instrument uncertainties yields a flow uncertainty that is slightly less (2.3 percent) than the current NRC [Nuclear Regulatory Commission] licensed value (2.4 percent), thus no change is required to the nominal reactor trip setpoint for RCS flow. The proposed change has no adverse affect on component or system interactions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the design, conditions and configuration of the facility or the manner in which the plant is operated and maintained in a state of readiness. Existing system and component redundancy is not being changed by the proposed changes. Though the calibration process of the elbow tap ΔP transmitters has changed, i.e., normalization to previously performed precision RCS flow calorimetrics for Cycles 1 and 2 instead of normalization to a precision RCS flow calorimetric each cycle, this has been accounted for by the addition of instrument uncertainties usually considered to be zeroed out by normalization performed each cycle. Accounting for the additional instrument uncertainties yields a flow uncertainty that is slightly less than the current NRC licensed value, thus no change is required to the nominal reactor trip setpoint for RCS flow. The proposed change has no adverse affect on component or system interactions. The time of reactor trip remains the same. Therefore, since there are no changes to the design, conditions, configuration of the facility, or the manner in which the plant is operated and maintained in a state of readiness, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The additional instrument uncertainties resulting from use of elbow tap ΔP transmitters without the requirement to normalize to a precision RCS flow calorimetric each cycle have been accounted for and no change in the nominal Trip Setpoint is required. The calculated instrument uncertainty is 2.3 percent flow. This uncertainty is slightly less than the current licensed value of 2.4 percent flow. The time of reactor trip, as modeled in the various safety analyses, is maintained. Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: February 22, 2000

Description of amendment request: The proposed changes to the Technical Specifications (TSs) are associated with radiological effluent. The proposed changes will relocate selected radiological effluent TSs and the associated Bases to the Millstone Radiological Effluent Monitoring and Offsite Dose Calculation Manual in accordance with the Nuclear Regulatory Commission's (NRC) Generic Letter 89–01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the Radiological Liquid and Gaseous Effluent Monitoring Instrumentation is to monitor routine radioactive releases. [This] instrumentation provide[s] a surveillance of potential release points and initiates automatic alarm and trip functions which will terminate the release prior to exceeding the limits of 10 CFR Part 20 (1993 version). Relocation of Technical Specification 3.3.3.9, ''Radioactive Liquid Effluent Monitoring Instrumentation,'' and Technical Specification 3.3.3.10, ''Radioactive Gaseous Effluent Monitoring Instrumentation,'' to the Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM) does not imply any reduction in its importance in monitoring routine radioactive releases. These instruments are neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary before a design basis accident, nor do they function as a primary success path to mitigate events which assume a failure of or a challenge to the integrity of fission product barriers. These monitors are not an active design feature needed to preclude analyzed accidents or transients. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Technical Specification 3.11.1.1 ensure[s] the concentration of radioactive materials released in liquid waste effluents from the site will be less than the concentration levels specified in 10 CFR Part 20 (1993 version), Appendix B, Table II. Technical Specification 3.11.1.2 ensures the dose or dose commitment from radioactive materials released in liquid waste effluents will not exceed the requirements of Sections II.A, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.2.1 ensures the dose rate from gaseous effluents released from all units on site will be less than dose limits specified in 10 CFR Part 20 (1993 version), Appendix B, Table II. Technical Specification 3.11.2.2 ensures the dose from noble gases released in gaseous effluents will not exceed the requirements of Sections II.B, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.2.3 implements the requirements of Sections II.C, III.A and IV.A of Appendix I, 10 CFR Part 50. Technical Specification 3.11.3 ensures the reporting requirements of 40 CFR 190 are met. Relocation of these Technical Specifications to REMODCM does not imply any reduction in its importance in ensuring that the regulatory limits are met. The instrumentation covered by these Technical Specifications [is] neither used for, nor capable of, detecting a significant abnormal degradation of the reactor coolant pressure boundary before a design basis accident, nor [does it] function as a primary success path to mitigate events which assume a failure of or a challenge to the integrity of fission product barriers. [This] instrumentation [is] not an active design feature needed to preclude analyzed accidents or transients. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

As a result of the relocation of the Radiological Effluent Technical Specifications (RETS) to the REMODCM, there are no Technical Specifications remaining that use definitions 1.31 and 1.26, ''Radiological Effluent Monitoring and Offsite Dose Calculation Manual (REMODCM),'' of Unit Nos. 2 and 3 respectively. The guidelines and procedures addressing the use of radioactive waste treatment systems are covered by Specifications 6.15 and 6.13 of unit Nos. 2 and 3 respectively, which describes the REMODCM. Therefore, definitions 1.33 and 1.25, ''Radioactive Waste Treatment Systems,'' of Unit Nos. 2 and 3 respectively are no longer needed. In addition, there are no Specifications that use this phrase in the context of a defined term. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

Replacing Technical Specification 6.9.1.6 of Millstone Unit No. 2 with Technical Specifications 6.9.1.6a and 6.9.1.6b and revising Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3 will provide descriptions which satisfy the requirements of parts 10 CFR 50.36a and 10 CFR 50, Appendix I, Sections IV.B.1, IV.B.2, IV.B.3, and IV.C. These changes are consistent with NUREG–1432 and NUREG–1431. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The description of the REMODCM contained in Technical Specifications 6.15 and 6.13 of Millstone Unit Nos. 2 and 3 respectively will be modified to be consistent with the guidance of GL 89–01, and with NUREG–1432 and NUREG–1431. Additional minor changes have been made to be consistent with the proposed changes to Technical Specification 6.9.1.6 of Millstone Unit No. 2 and Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability consequences of an accident previously evaluated.

Adding Technical Specifications 6.20 and 6.15, Radiological Effluent Controls Program, to Millstone Unit Nos. 2 and 3 respectively, and 6.21 and 6.16, Radiological Environmental Monitoring Program, to Millstone Unit Nos. 2 and 3 respectively is consistent with the guidance contained in Generic Letter 89–01 for the relocation of the Radiological Effluents Technical Specifications and with NUREG–1432 and NUREG–1431. Additional minor changes have been made to be consistent with the version of 10 CFR 20, Appendix B, Table II, Column 1 which is being used by Millstone Unit Nos. 2 and 3, namely the 1993 version. These changes do not impact the assumptions used in any accident analysis, affect plant equipment, plant configuration, or the way the plant is operated. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The following proposed changes are administrative in nature. Therefore, these changes will not significantly increase the probability or consequences of an accident previously evaluated.

- Revise Index Pages of Unit Nos. 2 and 3 Technical Specifications to reflect the proposed changes to relocate the RETS to the REMODCM.
- Address additional changes to the Millstone Unit No. 2 Technical Specifications to resolve issues not related to transferring the RETS to the REMODCM.
- Relocate to the associated Bases sections.

The proposed changes do not alter how any structure, system, or component functions. There will be no effect on equipment important to safety. The proposed changes have no effect on any of the design basis accidents previously evaluated. Therefore, this License Amendment Request

does not impact the probability of an accident previously evaluated, nor does it involve a significant increase in the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Relocation of Technical Specifications 3.3.3.9, 3.3.3.10, 3.11.1.1, 3.11.1.2, 3.11.2.1, 3.11.2.2, 3.11.2.3, and 3.11.3 to REMODCM does not imply any reduction in its importance in monitoring and ensuring that the regulatory limits are met. As a result of the relocation of the RETS to the REMODCM, there are no Technical Specifications remaining that use definitions 1.31 and 1.26. Additionally, the guidelines and procedures addressing the use of radioactive waste treatment systems which are covered by Specifications 6.15 and 6.13 remove the need for definitions 1.33 and 1.25 of Unit Nos. 2 and 3 respectively. Replacing Technical Specification 6.9.1.6 of Millstone Unit No. 2 with Technical Specifications 6.9.1.6a and 6.9.1.6b and revising Technical Specifications 6.9.1.3 and 6.9.1.4 of Millstone Unit No. 3 will provide descriptions which satisfy the requirements of parts 10 CFR 50.36a and 10 CFR 50, Appendix I, Sections IV.B.1, IV.B.2, IV.B.3, and IV.C. Modifying the description of the REMODCM contained in Technical Specifications 6.15 and 6.13 of Millstone Unit Nos. 2 and 3 respectively and adding Technical Specifications 6.20, 6.21 and 6.15, 6.16 to Millstone Unit Nos. 2 and 3 respectively is consistent with the guidance contained in Generic Letter 89–01 for the relocation of the Radiological Effluents Technical Specifications and with NUREG–1432 and NUREG–1431.

The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

As described above, this License Amendment Request does not involve a significant increase in the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 26, 2000.

Description of amendment request: The proposed changes to Millstone, Unit 3, Technical Specifications (TS) revise TS Section 1.13, Definitions, ''Engineered Safety Features Response Time'', TS Section 1.28, ''Reactor Trip System Response Time,'' TS Section 3.3.1, ''Instrumentation—Reactor Trip System Instrumentation,'' and TS Section 3.3.2, ''Instrumentation—Engineered Safety Features Actuation System Instrumentation'' to provide for verification of response time for selected components provided that the components and the methodology for verification have been previously reviewed and approved by the Nuclear Regulatory Commission.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS [Reactor Trip System] and ESFAS [Emergency Safety Features Actuation System] instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [Safety Evaluation Report]. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the pressure and differential pressure transmitters, Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. These sensors and systems will still have response time verified by test before being placed in operational service. Changing the method of periodically verifying instrument response for these sensors and systems (assuring equipment operability) from time response testing or calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these sensors and systems will continue and may be used to (a) detect significant degradation in the sensor responses characteristic, and (b) other degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors, the Process Protection racks, Nuclear Instrumentation, and Logic Systems is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which (a) might significantly affect sensor response time, or (b) might cause the response time to exceed the total allowance. The total system time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 31, 2000.

Description of amendment request: The proposed amendments would revise the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, Technical Specifications (TSs) Surveillance Requirement (SR) 3.6.1.3.11 to allow a representative sample of reactor instrumentation line excess flow check valves (EFCVs) to be tested every 24 months, instead of testing each EFCV every 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current SR frequency requires each reactor instrumentation line EFCV to be tested every 24 months. The EFCVs at PBAPS, Units 2 and 3 are designed to not close accidentally during normal operation, but will close automatically in the event of a line break downstream of the valve. The proposed changes would allow a reduced number of EFCVs to be tested each operating cycle. Since the EFCVs are an accident mitigation feature, their postulated failure to isolate cannot initiate previously evaluated accidents. In addition, since the proposed changes will only change the surveillance frequency, there can be no increase in the probability of occurrence of an accident as a result of this proposed change.

The postulated break of an instrument line attached to the reactor coolant pressure boundary is discussed and evaluated in the Updated Final Safety Analysis Report (UFSAR), Section 5.2.3.5. The proposed change will continue to verify the operability of the EFCVs to perform their mitigating functions. Industry operating experience as documented in the Boiling Water Reactors Owners Group (BWROG) Report B21–00658–01 provides supporting evidence that the reduced testing frequency will not affect the high reliability of these valves. The radiation dose consequences of such a break are not impacted by this proposed change. Therefore, the proposed TS changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would allow a reduced number of EFCVs to be tested each operating cycle. No other changes in requirements are being proposed. The changes are not a physical alteration of the plant and will not alter the operation of the structures, systems and components as described in the UFSAR. Therefore, a new or different kind of accident will not be created.

3. The proposed TS changes do not involve a significant reduction in a margin of safety. The consequences of an unisolable rupture of an instrument line has been previously evaluated in the PBAPS, Units 2 and 3 UFSAR, Section 5.2.3.5. That evaluation assumed a continuous discharge of reactor water for the duration of the detection and cooldown sequence. The integrity and functional performance of the secondary containment and standby gas treatment system are not impaired by this event, and the calculated potential offsite exposures are substantially below the guidelines of 10 CFR Part 100. Therefore, a failure of an EFCV, though not expected as a result of this TS change, is bounded by the previous evaluation of an instrument line break. Since the proposed changes are only affecting the surveillance frequency, the accident analyses are unaffected and this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 7, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Unit No. 3 (IP3) Technical Specifications (TSs) would require either the Operations Manager or the Assistant Operations Manager to hold a Senior Reactor Operator (SRO) license. The proposed amendment would also remove the title of ''Shift Manager'' from the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This change allows either the Operations Manager or Assistant Operations Manager to be SRO licensed. This is an administrative change. The Operations department will still have an SRO licensed individual overseeing the operating crews. Therefore, there will be no increase in the probability or consequences of an evaluated accident. This is consistent with the qualifications required to be a manager in TS 6.3.1.

The change also deletes the title of Shift Manager. At IP3, ''Shift Manager'' is the NYPA [New York Power Authority] specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) and TS section 6.2.2 requirements for an SRO and therefore removal is an administrative change with no increase in the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The change allows either the Operations Manager or Assistant Operations Manager to hold the SRO license. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated since they do not affect plant configuration or plant design. The Operations Manager and the Assistant Operations Manager are still required to maintain a knowledge of IP3 plant design and operations through job position requirements.

The change also deletes the title of Shift Manager. At IP3, ''Shift Manager'' is the NYPA specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) and TS section 6.2.2 requirements and it is therefore an administrative change that cannot create the possibility of a new or different accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The change allows either the Operations Manager or Assistant Operations Manager to hold the SRO License. The proposed amendment does not involve a significant reduction in a margin of safety because the Operations Manager and/or the Assistant Operations Manager is still required to maintain a current SRO license. Administrative Controls ensure that shift activities are directed by an individual holding an SRO license. Technical Specification 6.3.1 ensure that the Operations Manager will be a knowledgeable and qualified individual.

The change also deletes the title of Shift Manager. At IP3, ''Shift Manager'' is the NYPA specific title for the person meeting the requirements of 10 CFR 50.54(m)(2)(ii) as the SRO assigned responsibility for overall plant operation. This requirement is redundant to 10 CFR 50.54(m)(2)(ii) therefore the change has no effect on requirements and cannot offset the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: July 21, 2000.

Description of amendment request: The proposed amendment would delete the requirement to have the Control Room Emergency Air Treatment System (CREATS) Actuation Instrumentation and CREATS operable in Modes 5 and 6 except during core alterations and fuel movement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Evaluation of More Restrictive Changes

The more restrictive changes (which is a conservative characterization, as these changes are implied by the current specifications) associated with amending the Applicability section for LCO [limiting condition for operation] 3.3.6 and LCO 3.7.9, and Condition C of LCO 3.3.6 and Condition D and F of LCO 3.7.9, to include ''during CORE ALTERATIONS'', do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes add a conservative Mode of Applicability for the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation. This does not increase the probability of an accident previously evaluated since the CREATS and CREATS actuation instrumentation themselves are not accident initiators. The proposed changes are consistent with the guidance of NUREG–1431 and provide assurance that the CREATS is in the conservative mode of operation for a response to an accident. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change for a new mode of applicability does not of itself involve a physical alteration of the plant or change in the methods governing normal plant operation. The change only involves a conservative increase in the requirement of when the CREATS and CREATS actuation instrumentation are operable. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed change requires the CREATS and CREATS actuation instrumentation to be in the conservative mode of operation for a response to an accident. The change adds conservatism as determined by the guidance of NUREG–1431. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the preceding information, it has been determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

Evaluation of Less Restrictive Changes

The less restrictive changes associated with amending the applicability sections for LCO 3.3.6 and LCO 3.7.9, and Condition C of LCO 3.3.6 and Condition D and F of LCO 3.7.9, to delete Modes 5 and 6 from these sections do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are the result of an analysis performed of the control room dose consequences which could occur as the result of a potential waste gas decay tank failure. This does not increase the probability of an accident previously evaluated since the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation themselves are not accident initiators. The results of the analysis show that if no credit is taken for the CREATS, the control room doses remain well within the limits specified in 10 CFR 50, Appendix A, GDC [General Design Criteria] 19 and the guidance provided by the NRC in NUREG–0737 Section ll.B.2, Dose Rate Criteria, and NUREG–0800 Section 6.4, Control Room Habitability Program. The proposed Mode of Applicability change is consistent with the guidance of NUREG–1431 which allows plant-specific changes with respect to Modes 5 and 6. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes associated with the modes of applicability for the CREATS and CREATS actuation instrumentation are not of themselves nor do they affect potential accident initiators. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes remove the requirements for the control room ventilation system, which has been shown by analysis to not be required to meet regulatory limits. The changes are consistent with the guidance of NUREG–1431. Therefore, these changes do not involve a significant reduction in a margin of safety.

Based upon the preceding information, it has been determined that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, it is concluded that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

The less restrictive change associated with amending the Required Action and Completion Time of Condition C of LCO 3.3.6 and Condition F of LCO 3.7.9 to remove a required action, do not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to remove a required action of restoring equipment to operable status do not affect the probability of an accident as the Control Room Emergency Air Treatment System (CREATS) and CREATS actuation instrumentation, in and of themselves, have no failure modes or effects which are precursors to accidents. The proposed changes do not introduce any new failure modes or effects to any other system or component which is a precursor to an accident. The remaining Required Actions within the referenced Conditions place the plant outside of the Mode of Applicability for these systems. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not of themselves involve a physical alteration of the plant or change in the methods governing normal plant operation. The proposed changes create no new functional interactions with existing plant equipment nor do they introduce any new failure modes or mechanisms which could lead to reactor core damage or fission product release. Therefore, because the changes do not affect any system that can act as an accident precursor, the possibility for a new or different kind of accident from any accident previously evaluated are not created.

(3) Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes remove requirements for restoring systems which are no longer required. The changes are consistent with the guidance of NUREG–1431. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Marsha K. Gamberoni.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: June 29, 2000.

Description of amendment request: The proposed amendment would change the Farley Nuclear Plant, Units 1 and 2, design bases described in the Final Safety Analysis Report. The change adds a description of the methodology Southern Nuclear Operating Company uses to determine what systems and components need to be protected from tornado missiles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed for NRC review and approval are changes to the Farley Nuclear Plant (FNP) Final Safety Analysis Report (FSAR) which in essence constitute a license amendment to incorporate use of an NRC[-]approved methodology to assess the need for additional positive (physical) tornado missile protection of specific features at FNP. The FSAR changes will reflect use of the Electric Power Research Institute (EPRI) Topical Report ''Tornado Missile Risk Evaluation Methodology'' (EPRI NP–2005), Volumes I and II. As noted in the NRC Safety Evaluation Report on this topic dated October 26, 1983, the current licensing criteria governing tornado missile protection are contained in Standard Review Plan (SRP) Sections 3.5.1.4 and 3.5.2. These criteria generally specify that safety-related systems be provided positive tornado missile protection (barriers) from the maximum credible tornado threat. However, SRP Section 3.5.1.4 includes acceptance criteria permitting relaxation of the above deterministic guidance, if it can be demonstrated that the probability of damage to unprotected essential safety-related features is sufficiently small.

As permitted in NRC Standard Review Plan (NUREG–0800) sections, the combined probability will be maintained below an allowable level, i.e., an acceptance criterion threshold, which reflects an extremely low probability of occurrence. The FNP approach assumes that if the probability calculation result for the total plant identifies that the probability of a combination of tornado missiles striking and damaging a portion of an important system or component is greater than or equal to 10^{-6} then installation of unique missile barriers would be needed to lower the total combined probability below the acceptance criterion of 10^{-6}.

With respect to the probability of occurrence or the consequences of an accident previously evaluated in the FSAR, the possibility of a tornado reaching the FNP site and causing damage to plant structures, systems and components is a design basis event considered in the [FSAR]. The changes being proposed do not affect the probability that the natural phenomenon (a tornado) will reach the plant, but from a licensing basis perspective they do affect the probability that missiles generated by the winds of the tornado might strike and damage certain plant systems or components. There are a limited number of safety-related components that could theoretically be struck and consequently damaged by tornado-generated missiles. The probability of tornado-generated missile strikes on ''important'' systems and components (as discussed in Regulatory Guide 1.117) is what is to be analyzed using the probability methods discussed above. The combined probability of damage will be maintained below an extremely low acceptance criterion to ensure overall plant safety. The proposed change is not considered to constitute a significant increase in the probability of occurrence or the consequences of an accident, due to the extremely low probability of damage due to tornado-generated missiles and thus an extremely low probability of a radiological release. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of previously evaluated accidents.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a tornado reaching the FNP site is a design basis event considered in the [FSAR]. This change involves recognition of the acceptability of performing tornado missile probability calculations in accordance with established regulatory guidance. The change therefore deals with an established design basis event (the tornado). Therefore, the proposed change would not contribute to the possibility of a new or different kind of accident from those previously analyzed. The probability and consequences of such a design basis event are addressed in Question 1 above. Based on the above discussions, the proposed change will not create the possibility of a new or different kind of accident than those previously evaluated.

3. The proposed change will not involve a significant reduction in a margin of safety.

The existing licensing basis for FNP with respect to the design basis event of a tornado reaching the plant, generating missiles and directing them toward safety-related systems and components is to provide positive missile barriers for all safety-related systems and components. With the change, it will be recognized that there is an extremely low probability, below an established acceptance limit, that a limited subset of the ''important'' systems and components could be struck and consequently damaged. The change from protecting all safety-related systems and components to ensuring an extremely low probability of occurrence of tornado-generated missile strikes and consequential damage on portions of important systems and components is not considered to constitute a significant decrease in the margin of safety due to that extremely low probability. Therefore, the changes associated with this license amendment request do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Section Chief: L. Raghavan, Acting.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 16, 2000.

Description of amendments request: Amend Technical Specification (TS) 4.8.1.1.2 to revise the emergency diesel generator fuel oil surveillance requirements to adopt more current industry standards.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence or the consequences for an accident is not increased by this request. The proposal to establish a Diesel Fuel Oil Program and specifying the ASTM [American Society for Testing and Materials] standards in the TS Bases does not modify the manner in which the plant is operated. Deletion of the portion of the surveillance requirement (SR) that specifies the use of sodium hypochlorite solution in cleaning of the fuel oil storage tanks, and the deletion of the SR to perform a pressure test of those portions of the diesel fuel oil system designed as Section III, subsection ND of the ASME [American Society of Mechanical Engineers] Code do not alter the way any structure, system, or component functions and does not modify the manner in which the plant is operated.

This request will ensure that the fuel oil continues to be properly evaluated to ensure that the fuel oil will not degrade the ability of the D/G [diesel generator] to perform its intended function. The fuel oil storage tanks will be cleaned at the required frequency. The deletion of the SR to perform a pressure test of those portions of the diesel fuel oil system designed to Section III, subsection ND of the ASME Code, removes potential confusion about testing of the fuel oil system since no portion of the system is designed to Section III, subsection ND of the ASME Code. Therefore, these changes will not change or impact previously evaluated accidents and the D/Gs ability to perform their intended function.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are procedural in nature concerning fuel oil testing, cleaning chemical to be used on the fuel oil storage tanks, and deletion of the pressure test of those portions of the diesel fuel oil system designed as Section III, subsection ND of the ASME Code. The possibility for an accident or malfunction of a different type than any evaluated previously in SQN's [Sequoyah's] Final Safety Analysis Report are not created. The proposal does not alter the way any structure, system, or component functions and does not modify the manner in which the plant is operated. The fuel oil quality will not be reduced and will not result in a decrease in D/G operability. The fuel oil storage tanks will be cleaned at the required frequency. Therefore, the possibility of a new or different kind of accident previously evaluated is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes are procedural in nature concerning fuel oil testing, cleaning chemical to be used on the fuel oil storage tanks, and deletion of the pressure test of the diesel fuel oil system. The margin of safety has not been reduced since the change in test methodologies are NRC approved and will continue to ensure the quality of the fuel oil. Also, deletion of the portion of the SR that specifies the use of sodium hypochlorite does not change the requirement to clean the fuel oil storage tanks. ASME Code requirements will continue to be met. Therefore, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: July 10, 2000 (TS 00–08).

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) as follows:

Part A—Channel Operational Test (COT) 12 Hour Limit

Channel operational tests (COTs) are performed for the Power Range and Intermediate Range neutron monitors in accordance with Reactor Trip System (RTS) Surveillance Requirements (SRs) 3.3.1.7 and 3.3.1.8. While the unit is in Modes 1 or 2, SR 3.3.1.7 is performed for the Power Range monitors every 92 days. SR 3.3.1.8 is performed for the Intermediate Range monitors prior to startup of the reactor and at various points during power escalation or reduction. In addition, SR 3.1.10.1 currently requires that a COT be performed on the Power Range and Intermediate Range neutron monitors within 12 hours prior to initiation of a physics test, even though SR 3.3.1.7 and SR 3.3.1.8 have been performed on the required frequency.

TVA proposes to eliminate the 12 hour requirement for the testing required by SR 3.1.10.1 so that the testing performed for SR 3.3.1.7 and SR 3.3.1.8 can be used to satisfy SR 3.1.10.1. This issue was addressed by Technical Specification Task Force (TSTF) Traveler 108. The proposed amendment revises SR 3.1.10.1 to implement the portion of the approved TSTF 108 applicable to Watts Bar.

Part B—Trip System Logic for Physics Testing TSTF Traveler 315

During the performance of physics testing one power range channel is used to provide input to the reactivity computer. In preparation for the test, the fuses to the electronics drawer for the channel are removed and the channel is placed in a tripped condition and results in the NIS trip logic being in a one-out-of-three logic status. Therefore, any spurious signals received on one channel will result in a reactor trip. The changes proposed by TSTF–315 allows the fuses to remain in the NIS channel that is connected to the reactivity computer and avoid tripping the bistables associated with the NIS channel. This configuration results in the channel being in a bypassed state and places the overall logic in a two-out-of-three logic status. The advantage of this configuration is that a single spurious signal would not result in a reactor trip. The proposed amendment does not deviate from the version of TSTF–315 that was approved by NRC on June 29, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part A—Channel Operational Test (COT) 12 Hour Limit

The proposed amendment removes the requirement to perform an additional Channel Operational Test (COT) on the Intermediate and Power Range functions within 12 hours of performing a physics test. The Intermediate and Power Range instrumentation is determined to be OPERABLE by periodic surveillance requirements which must be confirmed to be within frequency prior to making the reactor critical. A COT for the Intermediate or Power Range instrumentation is not a precursor to, or assumed to be an initiator of any analyzed accident. Therefore, this change does not involve a significant increase in the probability of an accident previously evaluated.

Regarding a significant increase in the consequences of an accident, several factors must be considered. First the physics tests are performed in accordance with the Technical Specifications in Mode 2. Therefore, the power level of the reactor is limited to 5 percent or less. Along with this, the reactor trip function of the intermediate range detectors will be unaffected by the proposed amendment and therefore, will be available to mitigate a reactivity transient at low power. Further, the trip setpoint for the power range monitors are decreased during startup of the reactor from the normal 109% setpoint to a value less than or equal to 85%. This setpoint reduction provides an additional measure to limit a reactivity excursion. Considering these factors, the proposed change will not involve a significant increase in the consequences of an accident previously evaluated.

Part B—Trip System Logic for Physics Testing

During the performance of physics testing one power range channel is used to provide input to the reactivity computer. In preparation for the test, the fuses to the electronics drawer for the channel are removed and the channel is placed in a tripped condition and results in the NIS trip logic being in a one-out-of-three logic status. Therefore, any spurious signals received on one channel will result in a reactor trip. The changes proposed by TSTF–315 allows the

fuses to remain in the NIS channel that is connected to the reactivity computer. This configuration results in the channel being in a bypassed state and places the overall logic in a two-out-of-three logic status. The advantage of this configuration is that a single spurious signal will not result in a reactor trip. In addition, the physics tests required by LCO 3.1.10 are performed while the reactor is in Mode 2. Therefore, the thermal power of the reactor is restricted to 5 percent or less. Neutron flux, which is monitored by the NIS, is only one of several RTS variables which may initiate a reactor trip in Mode 2. The other variables include reactor coolant temperature, pressurizer pressure and steam generator water level. These variables are unaffected by the proposed amendment. Considering this, the low thermal power level of the reactor, and a potential reduction in unnecessary plant transients due to the one-out-of-three logic, the proposed amendment will not significantly impact the safe operation of the plant. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part A—Channel Operational Test (COT) 12 Hour Limit

The proposed amendment is not based on a change in the design or configuration of the plant. Also, the proposed amendment does not change the manner in which the plant is operated. The amendment deletes the requirement for the performance of a COT for the Intermediate and Power Range instrumentation within 12 hours of starting a physics test. Therefore, the proposed change will not create the possibility of a new or different kind of accident than any previously evaluated.

Part B—Trip System Logic for Physics Testing

The NIS provides indication, alarm, control, and trip signals along with the capability to monitor neutron flux over the complete range from reactor shutdown to 120 percent full power. The system also generates permissive and level trip signals, which are then coupled to the logic matrices of the RTS. This interface either allows power changes based upon proper functioning of the next range of measurement instrumentation or shuts down the reactor as unsafe operating limits are approached. The changes in the operation of the NIS proposed by this amendment for TSTF–315, do not inhibit the capabilities of the system to initiate a reactor trip, if required. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident.

C. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Part A—Channel Operational Test (COT) 12 Hour Limit

As stated previously, the proposed change deletes the requirement to perform an additional COT for the Intermediate and Power Range functions within 12 hours of the start of physics test. The Intermediate and Power Range instrumentation channels are determined to be operable by meeting the requirements of the periodic surveillances. These surveillance requirements are not affected by the proposed amendment. Since the equipment will be determined to be operable by periodic surveillances, the performance of the a surveillance prior to the initiation of a physics test does not provide any additional assurance that the functions are more reliable. Considering this, the proposed amendment does not significantly reduce the margin of safety.

Part B—Trip System Logic for Physics Testing

During the low power physics testing, implementation of the proposed amendment will result in one power range channel being in a bypassed state. In this configuration, there will be three available channels with a two-out-of-three logic required to actuate the neutron flux trip function. As required by LCO 3.1.10, the testing will be performed while the reactor is in Mode 2 and therefore, restricted by the Technical Specifications to a power level of less than or equal to 5 percent.

There are two power range control functions, rod control and steam generator level control. At the 5 percent or less power level, rod control is in manual and is not affected by the testing configuration. Steam generator level control is not affected since its input from the NIS channel connected to the Reactivity Computer is placed in bypass when establishing the test configuration. Therefore, an assumed failure affecting these control functions does not have to be considered for the testing configuration. Also while in this configuration, an assumed single failure will not prevent the power range monitors from actuating as designed.

The reactor trip function of the intermediate range detectors will be unaffected by the proposed amendment and therefore, will be available to mitigate a reactivity transient at low power. Further, the trip setpoint for the power range monitors are decreased during startup of the reactor from the normal 109% setpoint to a value less than or equal to 85%. This setpoint reduction provides an additional measure to limit a reactivity excursion.

Based on the preceding, TVA concludes that there is no significant reduction in the margin of safety due to the implementation of the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 22, 2000.

Description of amendment request: The proposed amendments to the Technical Specification Figures 3.4–2, 3.4–3, and associated Bases would extend the cumulative core burnup applicability limits for the reactor coolant system pressure-temperature (P/T) operating limits, Low Temperature Overpressure Protection System (LTOPS) setpoints, and LTOPS enable temperature (T enable). Implementation of American Society of Mechanical Engineers (ASME) Section XI Code Cases N–640 and N–514 will require exemptions from the requirements of 10 CFR 50, Appendix G.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

The proposed changes extend the cumulative core burnup applicability of the existing North Anna Units 1 and 2 P/T limits, LTOPS setpoints, and T enable values. No changes to plant systems, structures, or components are proposed, and no new allowable operating modes are established, The P/T limits, LTOPS setpoints, and T enable values do not contribute to the probability of occurrence or consequences of accidents previously analyzed. The revised licensing basis analyses utilize acceptable analytical methods, and continue to demonstrate that established accident analysis acceptance criteria are met. Therefore, there is no increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated[?]

The proposed changes extend the cumulative core burnup applicability of the existing North Anna Units 1 and 2 P/T limits, LTOPS setpoints, and T enable values. No changes to plant systems, structures, or components are proposed, and no new allowable operating modes are established. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety[?]

The proposed revised analysis bases use the ASME Section XI code Case N–640 K1c stress intensity formulation and a plant

specific application of the analysis methodology which supports ASME Section XI Code Case N–514. These analysis features are less restrictive than those associated with the existing analyses, but are conservative with respect to [those] established by ASME Section XI margins. The proposed revised analyses support continued use of the existing North Anna Units 1 and 2 Technical specification P/T limit curves, LTOPS setpoints, LTOPS enable temperatures for North Anna Units 1 and 2 cumulative core burnups up to 32.3 effective full power years (EFPY) and 34.3 EFPY, respectively. The analyses demonstrate that established analysis acceptance criteria continue to be met. Specifically, the existing P/T limit curves, LTOPS setpoints, and LTOPS T enable values provide acceptable margin to vessel fracture under both normal operation and LTOPS design basis (mass addition and heat addition) accident conditions. Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: L. Raghavan, Acting.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: June 22, 2000.

Description of amendment request: The proposed changes would modify Facility Operating Licenses NPF4 and NPF–7, along with the associated Bases, to permit the elimination of the assumed increase in the rod control cluster assembly (RCCA) drop time resulting from a concurrent trip and seismic event, when determining if the measured rod drop times meet the Technical Specifications limit of 2.7 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

Elimination of the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event when determining if the measured rod drop times, including measurement uncertainties, meet the accident analysis limit[,] does not contribute to the probability of previously analyzed accidents. The proposed change will not alter the limiting results of the safety analyses presented in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report]. Although the proposed change eliminates an accident consideration that is currently addressed in the UFSAR accident analyses (*i.e.* any Chapter 15 accident with the effects of a concurrent seismic occurrence reflected in the RCCA drop time), there is no significant increae in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated[?]

There are no modifications to the plant as a result of the changes. No new accident or event initiators are created by eliminating the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event. The proposed change will not alter the ability of the reactor protection and control system to perform their design functions or to meet the applicable criteria set forth in the IEEE [Institute of Electrical and Electronics Engineers] and ANSI [American National Standards Institute] standards and in 10 CFR 50 Appendix A. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety[?]

The proposed change will not alter the limiting results of the safety analyses presented in Chapter 15 of the UFSAR. Elimination of the assumed increase in the RCCA drop time resulting from a concurrent trip and seismic event when determining if the measured rod drop times, including measurement uncertainties, [meet] the accident analysis limit maintains adequate safety margin in the safety analysis. Therefore, the proposed change does not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: L. Raghavan, Acting.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: March 29, 2000.

Description of amendment request: The proposed change would revise Technical Specification (TS) 3.19 and TS 4.1. The change would reflect two redundant trains of bottled air for the main control room (MCR), include remedial action statements for one train and two trains inoperable, eliminate the extension of 8 hours to 24 hours currently permitted by TS 3.19.B, add requirements for an inoperable control room pressure boundary, and include additional surveillance testing requirements. The TS 3.19 Basis and TS 4.1 Basis would be revised for consistency with the respective TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed TS change includes train specific requirements, adds requirements for an inoperable control room pressure boundary, imposes additional surveillance testing requirements for the MCR bottled air system, and is consistent with the existing accident analyses. We have reviewed the proposed TS change relative to the requirements of 10 CFR 50.92 and determined that a significant hazards consideration is not involved. Specifically, operation of Surry Power Station with the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a physical modification and does not modify the design or operation of the MCR bottled air system or the plant. Since the MCR bottled air system functions to respond to—not prevent—an accident, the probability of occurrence of an accident is not affected. The elimination of the currently allowed extension of the remedial action time, the addition of train specific requirements and inoperable boundary requirements, and the imposition of additional surveillance testing requirements serve to ensure no increase in the consequences of an accident. Therefore, the proposed change does not significantly increase the probability of occurrence or the consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical modification and does not affect the design or operation of the MCR bottled air system or the plant. Consequently, no new or unique operational modes or accident precursors are introduced. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

The proposed change does not involve a physical modification and does not modify the design or operation of the MCR bottled air system or the plant. The elimination of

the currently allowed extension of the remedial action time, the addition of train specific requirements and inoperable boundary requirements, and the imposition of additional surveillance testing requirements serve to ensure the bottled air system's ability to pressurize the main control room for one hour following a design basis accident, which is consistent with the existing accident analyses. Therefore, the proposed change does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Acting Section Chief: L. Raghavan.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 13, 2000.

Description of amendments request: Amend Technical Specification 3.7.5.c to allow an increase in the average essential raw cooling water supply header temperature from 84.5°F to 87°F until September 30, 2000.

Date of publication of individual notice in the **Federal Register:** July 20, 2000 (65 FR 45113).

Expiration date of individual notice: August 3, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 23, 1999, as supplemented January 8, 2000.

Brief description of amendment: The amendment deletes certain license conditions that are obsolete and no longer apply.

Date of issuance: July 24, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 130.

Facility Operating License No. NPF–62: The amendment revised the License.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51346). The January 8, 2000, submittal identified an additional license condition that was no longer applicable and thus did not change the scope of the action noticed or alter the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 2, 1999, as supplemented April 7 and July 5, 2000.

Brief description of amendment: This amendment revises Technical Specification 6.2.2.e, ''Administrative Controls—Unit Staff.'' The license requirements for operations management have been modified.

Date of issuance: July 19, 2000.

Effective date: July 19, 2000.

Amendment No.: 99.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 25, 1999 (64 FR 46426). The supplemental letters dated April 7 and July 5, 2000, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: April 12, 2000, as supplemented June 2, 2000.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.4.9.2, ''Pressure/Temperature (P-T) Limits—Reactor Coolant System,'' and TS 3/4.4.9.4, ''Overpressure Protection System,'' and the associated Bases. Specifically, the amendment incorporates results of the Reactor Vessel Surveillance Program capsule analysis and an exemption from 10 CFR 50.60(a), based on American Society of Mechanical Engineers Code Case N–640.

Date of issuance: July 28, 2000.
Effective date: July 28, 2000.
Amendment No. 100.
Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.
Date of initial notice in ***Federal Register:*** May 3, 2000 (65 FR 25762). The supplemental letter dated June 2, 2000, contained clarifying information only, and did not change the initial no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2000.
No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1999, as supplemented by letters dated August 24, 1999, January 27, 2000, May 22, 2000, and May 31, 2000.
On June 14, 2000, the Commission published in the **Federal Register** (FR) Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing (65 FR 37425). In this finding, incorrect reference is made to supplements dated August 8, 1999, and March 29, 2000. No supplements from the licensee with these dates are related to this amendment.
Brief description of amendment: The amendment modifies Technical Specification 3.8.1.1 and associated Bases by extending the Emergency Diesel Generator (EDG) allowed outage time from 72 hours to ten days. In the supplemental letter dated May 22, 2000, an alternate source for the onsite power system during the EDG maintenance outage, by way of a temporary EDG (TEDG), was added. The application dated July 29, 1999, did not include the TEDG.
Date of issuance: July 21, 2000.
Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.
Amendment No.: 166.
Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** June 14, 2000 (65 FR 37425). This notice is based on the supplement dated May 22, 2000, and supercedes the notice dated February 9, 2000 (65 FR 6406), which is based on the licensee's letter dated July 29, 1999. The May 31, 2000, supplement did not expand the scope of the application as noticed or change the proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 2000.
No significant hazards consideration comments received: No

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 6, 2000.
Brief description of amendment: Revised the Improved Technical Specification Action Condition and Surveillance Requirement related to the diesel-driven emergency feedwater pump (EFW–3) required lube oil volume.
Date of issuance: July 17, 2000.
Effective date: July 17, 2000.
Amendment No.: 192.
Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** April 19, 2000 (65 FR 21036).
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2000.
No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: November 30, 1999, as supplemented March 8, May 15, and July 5, 2000.
Brief description of amendments: The proposed amendments would revise the Technical Specifications to allow the use of credit for soluble boron in the spent fuel pool criticality analyses. In addition, a revised criticality analysis for the fresh fuel storage racks will be used to update the licensing bases.
Date of issuance: July 19, 2000.
Effective date: July 19, 2000.
Amendment Nos.: 206 and 200.
Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** May 3, 2000 (65 FR 25765). The May 15, and July 5, 2000, submittals provided clarifying information that did not change the scope of the original request or change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2000.
No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: April 27, 2000.
Brief description of amendments: Incorporate references to the NRC safety evaluations supporting exemptions granted for the Thermo-Lag Upgrade project. In addition, the amendments modify Technical Specification Section 6.0, Administrative Controls, Section 4.7.6.g, to include page 3/4 7–21 which was inadvertently excluded from the previous submittal and amendment.
Date of issuance: July 20, 2000.
Effective date: July 20, 2000.
Amendment Nos.: 207 and 201.
Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications and the Operating Licenses.
Date of initial notice in ***Federal Register:*** May 31, 2000 (65 FR 34746).
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 2000.
No significant hazards consideration comments received: No.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 15, 1999, as supplemented December 22, 1999, and February 24, 2000.
Brief description of amendment: The amendment editorially revised the Technical Specifications to enhance clarity.
Date of Issuance: July 17, 2000.
Effective date: July 17, 2000 and shall be implemented within 30 days of issuance.
Amendment No.: 211.
Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** March 8, 2000 (65 FR 12293).
The February 24, 2000, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 17, 2000.
No significant hazards consideration comments received: No.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 3, 1999, as supplemented on December 22, 1999.

Brief description of amendment: The proposed amendment revised the Technical Specifications to permit continued plant operation with a maximum of two inoperable recirculation loops, provided certain conditions are met. Oyster Creek's Technical Specifications (TSs), Section 3.3.F.2 currently permit operation with 4 of the 5 recirculation loops with certain constraints. If only 3 loops are operable, however, the TSs require plant shutdown within 12 hours. Analysis indicates that the plant may be safely operated at 90 percent power with three operable recirculation loops.

Two definitions are added to Section 1 of the TSs to specify the difference between an idle recirculation loop and an isolated recirculation loop. These definitions have been incorporated into the specification to provide an explicit description of acceptable valve configurations. In addition, several paragraphs have been added to the Bases of Section 3.3 and one paragraph in the Bases of Section 3.10 has been modified. In each case the Bases section has been segmented from the specification, which affects the pagination of the Bases.

Date of Issuance: July 27, 2000.

Effective date: July 27, 2000 and shall be implemented within 30 days of issuance.

Amendment No.: 212.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 3, 2000 (65 FR 25766). The December 22, 1999, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 27, 2000.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 11, 1997, as supplemented by letter dated May 8, 2000.

Brief description of amendment: The amendment revised the technical specifications by adding a new limiting condition for operation (LCO) for an inoperable engineered safety features logic subsystem. In addition, administrative changes were made to either support the new LCO or clarify existing text.

Date of issuance: July 25, 2000.

Effective date: July 25, 2000, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 194.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 11, 1998 (63 FR 6987). The May 8, 2000, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: April 10, 2000.

Brief description of amendment: This amendment modifies the requirements contained in the Salem Unit No. 2 Technical Specifications regarding the operation of the movable incore detector system and allows continued operation of Salem Unit No. 2 through the remainder of Cycle 11. The revision represents a one-time change to allow use of the movable incore detector system for measurement of core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available. Public Service Electric and Gas Company submitted this request in response to degradation of the movable incore detector system.

Date of issuance: July 25, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days of issuance.

Amendment No.: 212.

Facility Operating License No. DPR–75: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 23, 2000 (65 FR 33378).

The Commission received comments which were addressed in the NRC staff's Safety Evaluation dated July 25, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2000.

No significant hazards consideration comments received: Yes.

Southern California Edison Company, et al., Docket Nos. 50–206, San Onofre Nuclear Generating Station (SONGS), Unit 1, San Diego County, California

Date of application for amendment: December 2, 1999, as supplemented on May 16, 2000.

Brief description of amendment: The amendment revised the SONGS Unit 1 Technical Specifications by revising the administrative controls to be consistent with the SONGS Unit 2 and 3 Technical Specification administrative controls including changes to the administrative control of working hours and working hour deviation approvals, position titles and responsibilities and organizational description reference, qualifications for a multi-discipline supervisor, quality assurance program control of review and audit and record retention procedures, high radiation area controls, description of the plant configuration for environmental protection, and environmental protection related document reporting. The amendment also incorporated changes related to certified fuel handlers and 10 CFR 50.54(x).

Date of issuance: July 19, 2000.

Effective date: July 19, 2000, to be implemented within 30 days of issuance.

Amendment No.: 159.

Facility Operating License No. DPR–13: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73096).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 17, 1999, as supplemented on June 30, 2000.

Brief description of amendments: Revises License Condition to allow storage at the Sequoyah Nuclear Plant site of low-level radioactive waste generated at Watts Bar Nuclear Plant, Unit 1.

Date of issuance: July 18, 2000.

Effective date: July 18, 2000.

Amendment Nos.: 257 and 248.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the Operating Licenses.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9012). The supplemental letter of June 30,

2000, did not change the initial No Significant Hazards Consideration determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated June 29, 2000 (65 FR 41739) and in a Safety Evaluation dated July 18, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: November 20, 1998, as supplemented July 19, 1999, and January 21, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to change the surveillance requirements for an inspection of the ice condenser flow channels that previously used a 0.38 inch ice/frost buildup criterion to a criterion that limits flow blockage to the 15 percent value that was used in the accident analysis. Changes to the Bases were also made. Tennessee Valley Authority also indicated that its proposal is consistent with TS Traveler Form No. 336.

Date of issuance: July 17, 2000.

Effective date: July 17, 2000.

Amendment No.: 25.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70093). The January 21, 2000, letter contained clarifying information that did not change the initial No Significant Hazards Consideration Determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 23, 2000.

Brief description of amendment: The amendment relocates the specifications for reactor coolant conductivity and chloride concentration from the Technical Specifications to the Technical Requirements Manual.

Date of Issuance: July 18, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days of issuance.

Amendment No.: 190.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 14, 2000 (65 FR 37430).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 23, 2000.

Brief description of amendment: The amendment revises the Technical Specifications to increase the interval between Local Power Range Monitor calibrations from 1,000 equivalent full power hours to 2,000 megawatt-days/ton.

Date of Issuance: July 18, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days of issuance.

Amendment No.: 191.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 14, 2000 (65 FR 37431).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 22, 2000.

Brief description of amendment: The amendment removes the Technical Specifications surveillance requirement for visual inspection of suppression chamber coating integrity once each refueling outage.

Date of Issuance: July 19, 2000.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 192.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 14, 2000 (65 FR 37430).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 19, 2000.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 31, 2000, as supplemented by letter of July 7, 2000.

Brief description of amendment: The amendment modifies the actions for Limiting Condition for Operation (LCO) 3.7.9, ''Ultimate Heat Sink (UHS),'' of the TSs. The new Action A for the LCO allows the plant to operate with the plant inlet water temperature of the UHS above 90°F, if the required lake water level is verified within 1 hour and once per 12 hours thereafter, but would require that the plant be shut down if the water temperature exceeded 94°F. The amendment replaces the requirement to shut down the plant if the UHS water temperature exceeds 90°F.

Date of issuance: July 14, 2000.

Effective date: July 14, 2000, to be implemented within 30 days from the date of issuance.

Amendment No.: 134.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 19, 2000 (65 FR 21040). The supplemental letter of July 7, 2000, had minor clarifications that are within the scope of the initial notice and does not alter the no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 2000.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date

the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 8, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has

made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 13, 2000, as supplemented by letters dated July 14 and 21, 2000.

Brief description of amendment: The amendment permitted a one-time change to Technical Specification 4.4.5.0 and allowed alternate inspection scope and expansion criteria for steam generator tube inspections to be implemented during the mid-cycle outage scheduled for summer 2000.

Date of issuance: July 26, 2000.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 217.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes.

The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on July 24, 2000. The notice was published in The Courier (in Russellville) and the Arkansas Democrat-Gazette (in Little Rock) from July 20 through 22, 2000. No public comments were received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Arkansas, and final no significant hazards consideration determination are contained in a Safety Evaluation dated July 26, 2000.

Dated at Rockville, Maryland, this 3rd day of August 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–20014 Filed 8–8–00; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Occupational Safety and Health Review Commission (OSHRC)

SUMMARY: The Executive Director, OSHRC invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 7, 2000.

ADDRESSES: Written comments should be addressed to Stuart Shapiro, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Stuart__Shapiro@omb.eop.gov.

SUPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Executive Director published a notice containing proposed information collection request in the **Federal Register** date May 31, 2000. The proposed information collection included: (1) Type of review requested, (2) Title, (3) Summary of the collection, (4) Description of the need for, and proposed use of, the information, (5) Respondents and frequency of collection, and (6) Reporting and recordkeeping burden. OMB invites public comment.

Dated: August 3, 2000.

Patricia A. Randle,

Executive Director, Occupational Safety and Health Administration.

Type of Review: New.

Title: Evaluation of ''E–Z Trial.

OMB Number: New.

Frequency: Once.

Affected Public: Employers and/or their representatives, and labor organizations who have been involved in cases with the Review Commission.

Reporting and Recordkeeping Hour Burden:

Responses: 100

Burden hours: 75

Abstract: The Occupational Safety and Health Review Commission (OSHRC) published a rule in the **Federal Register** dated August 14, 1995 establishing the ''E–Z Trial'' program. The rule was subsequently amended to eliminate the sunset provisions in the original rule and to revise the procedural rules governing the ''E–Z Trial'' program effective July 31, 1997. We are evaluating the program as modified effective July 31, 1997. The evaluation will involve surveying employers and employer representatives regarding their satisfaction with the fairness and efficiency of the process. The evaluation will also analyze data on the rate at which ''E–Z Trial'' cases go to a hearing, and on the length and cost of hearings. Finally, the evaluation will study the cycle times of these cases as compared to those of conventional cases. Information will also be gathered from Occupational Safety and Health Administration (OSHA) staff and from the Solicitor of Labor.

[FR Doc. 00–20080 Filed 8–8–00; 8:45 am]

BILLING CODE 7600–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 24590; 812–12064]

Investment Company Act; Hillview Investment Trust II, et al.; Notice of Application

August 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a limited partnership to transfer all of its assets to a corresponding new series of a

registered open-end management investment company in exchange for shares of the new series.

Applicants: Hillview Investment Trust II (''Trust''), Hillview Capital Advisors, LLC (''Adviser'') and CMS Concentrated Equity Fund, L.P. (''Partnership'').

Filing Dates: The application was filed on April 14, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 28, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, c/o M. Kathleen Wood, Hillview Capital Advisors, LLC, 1055 Washington Boulevard, Stamford, CT 06901.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and initially will offer two series, one of which, the Hillview Alpha Fund (''Alpha Fund''), will correspond to the Partnership in terms of investment objectives and policies.

2. The Partnership was organized as a Delaware limited partnership in 1997 and is not registered under the Act in reliance on section 3(c)(1) of the Act. MSPS/Feeders, Inc. (''General Partner''), a Delaware corporation, serves as the sole general partner of the Partnership and has exclusive responsibility for its overall management and business. The General Partner is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act''). The General Partner is owned by two officers of the Adviser, who also own more than 5% of the Adviser's outstanding voting securities.[1]

3. The Adviser, registered under the Advisers Act, will serve as the investment adviser to the Alpha Fund under an investment management agreement with the Trust.

4. Applicants propose that, pursuant to an Agreement and Plan of Exchange (''Plan''), the Partnership will transfer to the Alpha Fund its assets, less any funds required to pay the liabilities of the Partnership, in exchange for Class Y shares (the ''Shares'') of the Alpha Fund (the ''Exchange''). Under the Plan, Shares of the Alpha Fund delivered to the Partnership will have an aggregate net asset value (''NAV'') equal to the NAV of the assets transferred by the Partnership to the Alpha Fund. Upon the consummation of the Exchange, the Shares of the Alpha Fund will be credited to the account of each partner of the Partnership (''Partner''), *pro rata,* according to the Partner's interest in the Partnership immediately prior to the Exchange. The Exchange is scheduled to occur on or about September 1, 2000. Thereafter, the Partnership will be dissolved. The Adviser will pay the expenses incurred in connection with the Exchange.

5. On June 12, 2000, the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), approved the Exchange. In approving the Exchange, the Board concluded that: (a) the terms of the Exchange have been designed to meet the criteria contained in Section 17(b) of the Act, and (b) participation by the Alpha Fund in the Exchange is in the best interests of the Alpha Fund and its shareholders and the interests of existing shareholders in the Alpha Fund will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, will be recorded in the minute book of the Trust upon the approval of the minutes of the meeting.

6. The General Partner has determined that it would be in the best interests of the Partnership to enter into the Exchange. The General Partner is authorized by the Partnership Agreement to approve and cause the Partnership to enter into the Exchange. Accordingly, the General Partner will execute the Plan on behalf of the Partnership and will provide each Partner with detailed information concerning the terms of the proposed Exchange before the Exchange is effected.

7. The Exchange will not be effected until: (a) the Trust's registration statement on Form N–1A is effective; (b) the Commission has issued the requested order; and (c) the Trust and the Partnership have received an opinion of counsel that no gain or loss will be recognized by the Alpha Fund upon the transfer of the Partnership's assets.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' as, among other things, any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; any officer, director, copartner or employee of the other person; and, if the other person is an investment company, its investment adviser.

2. Applicants state that the Partnership could be deemed to be an affiliated person of an affiliated person of the Alpha Fund because the Partnership and the Alpha Fund might be deemed to be under the common control of the Adviser. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers or directors, provided, among other requirements, the transaction involves a cash payment against prompt delivery of a security.

[1] The Partnership currently invests all of its assets in the Concentrated Equity Portfolio (''Portfolio''), a series of Hillview Investment Trust, a Delaware business trust advised by the Adviser that is not registered under the Act in reliance on section 3(c)(1) of the Act. On or about September 1, 2000, the Portfolio expects to liquidate by distributing all of its assets to its two investors, the Partnership and the General Partner.

Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will be effected on a basis other than cash. Applicants also state that the General Partner and the Partnership may be deemed an affiliated person of an affiliated person of the Alpha Fund because all of the interests of the General Partner are owned by two officers of the Adviser, who also own more than 5% of the Adviser. Thus, the Alpha Fund and the Partnership may be affiliated in a manner other than allowed under rule 17a–7.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Shares issued by the Alpha Fund will have an aggregate NAV equal to the NAV of the assets acquired from the Partnership, and that because the Shares will be issued to the Partners at NAV, the Partners' interests will not be diluted. Applicants also state that the investment objective and policies of the Alpha Fund are substantially similar to those of the Partnership, and that after the Exchange the Partners will hold substantially the same assets as Alpha Fund shareholders as they held as Partners. Applicants further state that the board, including a majority of the Independent Trustees, has approved the Exchange and that the Exchange will comply with rule 17a–7(b) through (f).

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Exchange will comply with the terms of rule 17a–7(b) through (f).

2. The Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the Alpha Fund in the Exchange is in the best interests of the Alpha Fund and its shareholders and that the interests of existing shareholders will not be diluted as a result of the Exchange. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Trust.

3. The Exchange will not occur unless and until the General Partner of the Partnership has determined in accordance with its fiduciary duties that the Exchange is in the best interests of the Partners of the Partnership.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–20096 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43109; File No. SR–OPRA–00–06]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Establishing a Pilot to Permit Fee-Exempt Access to Market Data

August 2, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 26, 2000, the Options Price Reporting Authority (''OPRA''),[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would establish a two-year pilot period, scheduled to end on May 31, 2002, during which off-floor market maker members of participant exchanges will be permitted to access options market data on a fee-exempt basis. The proposed amendment also would codify current practice by providing that during this same two-year period, floor members of participant exchanges and the participant exchanges themselves are also permitted to access options market data on a fee-exempt basis. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

1. Description and Purpose of the Amendment

OPRA is proposing amendments to the OPRA Plan to establish a two-year pilot period, scheduled to expire on May 31, 2002, during which off-floor market maker members of participant exchanges would be permitted to access options market data on a fee-exempt basis. The proposed amendment also would codify current practice by providing that during this same two-year period, floor members of participant exchanges and the participant exchanges themselves would also be permitted to access options market data on a fee-exempt basis. The text of the proposed OPRA Plan amendment is available at the Commission and at OPRA.

The purpose of the proposed OPRA Plan amendment is to clarify the conditions under which members of floor-based exchanges and their counterparts on electronic exchanges, as well as the exchange themselves, are permitted to access options market information over the OPRA system without thereby becoming liable to pay OPRA's subscriber fees.

Currently, all persons, including members of participant exchanges, who have access to OPRA information at their places of business are subject to OPRA fees. However, members of participant exchanges who function as brokers or market markers on exchange floors and who have access to OPRA information over exchange-provided terminals on the floors are not subject to OPRA fees, and the participant exchanges themselves are not required to pay OPRA fees in respect of these terminals. On the ISE, market-making functions traditionally performed by exchange members on exchange floors are instead performed by exchange members acting as specialists or market-makers from trading desks at off-floor locations. Considerations of competitive fairness suggest either that these off-floor specialists and market markers should be exempt from OPRA fees so long as their floor-based counterpart are not subject to these fees, or that all such specialists and market-makers, both on-floor and off-floor, should be subject to OPRA fees. Although OPRA has not yet decided which of these two alternative approaches should be adopted as a permanent provision of the OPRA Plan, to provide equal treatment for the ISE, OPRA proposes to implement a two-year pilot program during which the market maker members of ISE (and similar off-floor market makers of any

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the OPRA Plan are the American Stock Exchange (''Amex''); the Chicago Board Options Exchange (''CBOE''); the International Securities Exchange (''ISE''); the New York Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''Phlx'').

other participant exchanges, including any other new participant exchange, that operates an electronic facility for the trading of options) would be permitted to access options market data on a fee-exempt basis. [3]

To accomplish this, OPRA is proposing to add new paragraph (vi) to Section VII(d) of the OPRA Plan that would provide an exemption from OPRA device charges for terminals used exclusively by members of participant exchanges who function as brokers or market makers on traditional exchange trading floors, or who function as specialists or other market makers on electronic exchanges or trading facilities. Although exempt from OPRA device charges, members who control data terminals located at their own places of business would be required to sign OPRA's professional subscriber agreements, which contain prohibitions on the retransmission of market data to unauthorized persons.

OPRA also proposes to add new subsection (e) to Section V of the OPRA Plan, which for the duration of the two-year pilot will codify OPRA's current practice whereby the participant exchanges themselves are entitled to access OPRA information at their own places of business without being subject to OPRA's information fees, provided that the information is used by the exchanges in connection with the operation, surveillance or regulation of their respective exchange markets. This entitlement extends to any other self-regulatory organization that performs regulatory or surveillance functions for a participant exchange.

II. Implementation of the Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2),[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–06 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20097 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

[3] OPRA does not propose to extend this exemption to members of electronic exchanges who function as brokers but not as specialists or market makers. Unlike traditional floor-broker members, who are limited in number and represent customer orders typically received in the first instance at the members' off-floor locations where OPRA-enabled terminals are subject to OPRA fees, electronic access members may be unlimited in number, and will more likely receive orders directly from customers. In these respects, electronic access members perform a variety of functions, and they may be unlimited in number. One possible function is the direct receipt of customer orders, which is comparable to the function performed by those persons who today constitute the majority of OPRA's professional subscribers and provide the greater part of OPRA's total revenues.

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43108; File No. SR–CBOE–00–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Amending the Exchange's Flexible Exchange Options Rules

August 2, 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 as amended on July 27, 2000, the Chicago Board Options Exchange, Inc. (''CBOE or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 24A.4 to specifically provide for the listing and trading of Flexible Exchange options (''FLEX Option'') on all of the indices, both broad-based and narrow-based indices, on which the Exchange lists and trades Non-FLEX options. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 27, 2000, the CBOE filed an amendment to the proposed rule change (''Amendment No. 1''). *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, Commission, from Jaime Galvan, Attorney, Legal Division, CBOE, dated July 26, 2000. In Amendment No. 1, the CBOE represents that when it files a proposed rule change to list a trade a new Non-FLEX index option, it will also proposed to list and trade the FLEX index options in the same file.

A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to specifically provide in Rule 24A.4 for the listing and trading of FLEX Options on all indices, both broad-based and narrow-based on which the Exchange lists and trades on all Non-FLEX options or warrants. On February 24, 1993, the Commission approved the Exchange's FLEX ™ Options framework [4] and has since approved rule changes permitting the Exchange to list and trade FLEX Options based on the Russell 2000 Index, the Nasdaq ® 100 Index, the S&P 100 and the S&P 500 indices, the NYSE Composite Index, the Dow Jones Industrial Average, and the Dow Jones Transportation Average. The Exchange now proposes to provide for the trading of FLEX Options on all indices traded on the CBOE. [5]

All of the Exchange's rules now applicable to FLEX Index Options will apply to the additional FLEX Indices. The Exchange is proposing to expand the trading of FLEX options because the Exchange believes this will provide trading opportunities which currently are not available on the CBOE. Additionally, it will increase the Exchange's competitiveness with the over-the-counter market place and other exchanges which have expanded FLEX Options trading on indices.[6]

The Exchange is deleting the list of index options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index that has been approved for Non-FLEX options trading or warrant trading on the Exchange. This change is consistent with Amex Rule 903G(a)(1). The Exchange is likewise deleting the list of index options set forth in Rule 24A.4(a)(2)(i). This change is consistent with Amex Rule 903G(a)(2)(i) and Phlx Rule 1079(a)(1). When the CBOE files a proposed rule change to list and trade a new Non-FLEX index option product, it will also propose to list and trade the FLEX index options in the same filing.[7]

2. Statutory Basis

Because the proposal to expand the trading of FLEX options to all Exchange Indices will provide trading opportunities which currently are not available on the Exchange, the CBOE believes that the proposed rule change is consistent with the provision of Section 6(b) of the Securities Exchange Act of 1934,[8] in general, and Section 6(b)(5) [9] in particular, in that it is designed to facilitate transactions in securities, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] 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 the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. Any time within 60 days of the filing of the amended 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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to SR–CBOE–00–26 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–20095 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 31920, 58 FR 12280 (March 3, 1993).

[5] Rules on trading FLEX Options are set forth under CBOE Rule 24A.

[6] On April 28, 1998, the Commission approved the American Stock Exchange's (''Amex'') proposal to list and trade Flex options on all Amex indices. *See* Securities and Exchange Release No. 39928 (April 28, 1998), 63 FR 25130 (May 6, 1998). On January 14, 1998, the Commission approved the Philadelphia Stock Exchange's (''Phlx'') proposal to establish Phlx Rule 1079 providing for the trading of FLEX Options on equities and narrow-based and broad-based indices. *See* Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998).

[7] The Commission notes that in any proposal to trade a new FLEX Index Option, the CBOE must propose the position and exercise limits that will apply in accordance with CBOE Rules 24A.7 and 24A.8.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43107; File No. SR–NASD–00–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Nasdaq Application of the OptiMark System.

August 2, 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 19, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Association'') through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement Of The Terms Of Substance Of The Proposed Rule Change

Nasdaq is filing this proposed rule change to seek permanent approval of the Nasdaq Application of the OptiMark System (''Nasdaq Application'' or ''Application'') without any restrictions on the trading activity to be conducted through the facility.

II. Self-Regulatory Organization's Statement Of The Purpose Of, And Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Summary of Nasdaq's Application of the OptiMark System

Since October 1999, Nasdaq has operated a new Nasdaq facility called the Nasdaq Application of the OptiMark System (''Nasdaq Application'' or ''Application''). [3] The Application is a screen-based trading service intended for use by NASD members and other non-member users. The Application employs technology developed by OptiMark Technologies, Inc. to provide a computerized mechanism designed to satisfy the trading desires of all market participants, including retail and institutional investors as well as broker-dealers. The Application enables these participants to anonymously represent their trading interest across a full spectrum of prices and sizes, and performs a sophisticated, computer-based, optimal search and match for liquidity in securities listed on Nasdaq. [4]

The Application is available to all Nasdaq market participants and is in addition to existing Nasdaq trading systems. Specifically, the Nasdaq Application is available to any NASD member who chooses to become a User and complies with all applicable rules. A User is a subscriber who has entered into an agreement with Nasdaq and OptiMark Services, Inc. to access the Application. In addition, a non-member may become a User provided it is authorized in advance by one or more NASD members who agree to sponsor the non-member. A non-member User or a member User that is not self-clearing must establish a relationship with a clearing broker that can be deemed a Designated Broker. [5] Orders from sponsored Users are routed, executed, and reported in the Designated Broker's name. To allow a sponsored User to enter a Profile into the Application, Nasdaq must have on file an agreement signed by a Designated Broker stating that the Designated Broker is willing to act in this capacity for a particular User. These agreements include any applicable credit limits imposed by the Designated Broker on the sponsored User. [6] The Designated Broker is responsible for all of its sponsored Users' orders and resulting transactions.

Transactions that result from matches through the Application will be cleared using Nasdaq's post-execution service, the Automated Confirmation Transaction Service (''ACT''). Accordingly, final locked-in trades will be forwarded to The Depository Trust and Clearing Corporation (''DTCC'') in the ordinary course, and will clear and settle the regular way through DTCC, just as any other transaction executed on Nasdaq. [7] All Users will receive a report of any execution resulting from a match of the Profiles submitted by them (including Profiles generated from a quote in the Nasdaq Quote Montage) as soon as possible after the execution takes place. Users that are not self-clearing will have the option of re-allocating for clearing purposes all or a portion of any execution to another broker by the end of the trading day. If the User has designed a trade as set for end-of-day release (*i.e.,* has chosen to re-allocate all or a portion of any trade or trades for clearing purposes), the Designated Broker generally will be notified promptly after the close of the trading day to the extent it has been allocated for clearing purposes any transaction resulting from a Profile submitted by a User sponsored by that Designated Broker.

It is important to note in the comparison, clearance and settlement process, that although the specific identity of the contraparties to a particular trade will be temporarily masked until 4:30 p.m. of the trade day, the Designated Broker that agreed to sponsor a User in the Application is fully responsible for the clearance and settlement of that trade. Nasdaq and the operator of the Application are not responsible for either the User or a Designated Broker failing to pay for or to deliver the securities traded through this facility. Rule 4994(b) clearly states that responsibility for clearance and settlement remains with the Designated Broker. The User and Designated Broker Agreements that each party must sign prior to entering a Profile into the Application likewise make clear that it is the Designated Broker's responsibility to clear and settle the trades, and that the Designated Broker must evaluate the ability of Users to settle trades when it authorizes a User to submit Profiles under its sponsorship.

b. SEC Approval Order

On September 30, 1999, the SEC approved the Nasdaq Application as a pilot program for six months ending on April 3, 2000.[8] Nasdaq commenced operation of the Application in October 1999 for 10 securities and has recently expanded the application to include a total of 205 securities.[9] The Commission recently extended the pilot program for an additional six month period.[10] The order initially approving the Nasdaq Application includes several trading

[3] The OptiMark System was developed by OptiMark, Inc. a computer technology firm located in Jersey City, New Jersey, based on certain patent-pending technology referred to as ''The OptiMark™ System.''

[4] For a more complete discussion of the operation of the Nasdaq Application, *see* Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999) (''OptiMark Approval Order'').

[5] A member user that is not self-clearing is referred to as a correspondent User. Correspondent Users and non-member Users are collectively referred to as sponsored Users.

[6] A User's credit limits, as such limits may be established from time to time by a Designated Broker/Clearing Broker, will be programmed into the OptiMark System. The Designated Broker will be alerted to its potential exposure to its Users, individually or in the aggregate, approaches the established credit limits (''Alarm Threshold'') or reaches the limit at which the Designated Broker will no longer permit a User to submit Profiles (''Trading Limit'').

[7] DTCC was formed by the recent combination of The Depository Trust Company and the National Securities Clearing Corporation.

[8] *See* OptiMark Approval Order, *supra* note 4.

[9] *See* Nasdaq Head Trader Alert 2000–38 (May 23, 2000). Nasdaq Head Trader Alerts are available at http://www.nasdaqtrader.com/Trader/News/headtraderalerts.

[10] *See* Securities Exchange Act Release No. 42618 (Apr. 4, 2000); 65 FR 19420 (Apr. 11, 2000).

parameters that limit the operation of the facility until Nasdaq refines the Application's risk management tools. The Commission, along with other market participants, was concerned that some of the ACT risk management tools were not available to monitor transactions executed in the Application. The trading parameters include the following: (1) a limitation on trading to 250 of the most actively traded Nasdaq securities; (2) a limitation on cycle frequency to once every five minutes; (3) a suspension of trading in the Application for 15 minutes if its volume equals or exceeds 12.5% of the average Nasdaq volume in the 250 securities; and (4) suspension of trading in the Application for the remainder of the trading day if its volume equals or exceeds 15% of the average Nasdaq volume in the 250 securities.[11]

c. Proposed Changes

Nasdaq has developed several modifications to the Application's risk management systems to address the SEC's concerns. Accordingly, Nasdaq seeks to rescind Rule 4999, which contains the trading parameters mentioned above, and seeks approval of the Application on a permanent basis without any of the restrictions contained in Rule 4999.

The first modification enables clearing brokers that are Designated Brokers under the Application's rules (''Designated Brokers/Clearing Brokers'') to require correspondent and non-member Users to use the ''immediate release'' instruction on transactions effected through the Application. This requirement would be specified in the Designated Broker Consent Agreement that each user must execute. The immediate release instruction prevents the User from selecting the end-of-day option discussed earlier. Therefore, this instruction prevents the User from re-allocating a trade from one Designated Broker/Clearing Broker to another at the end of the trading day. In this way, Designated Brokers/Clearing Brokers will be given the ability to know immediately after a trade is done that a sponsored User that the Designated Broker/Clearing Broker allowed to use the Application has completed a trade under the Designated Broker/Clearing Broker's name. To facilitate this flow of information to the Designated Broker/Clearing Broker, the Application has also been modified to permit a one-sided give-up[12] when immediate release instructions have been specified.

The second modification permits Designated Brokers/Clearing Brokers to modify directly through Nasdaq's Act system the Application trading limits that they establish for their Users. As originally constructed, the Application did not permit a Designated Broker/Clearing Broker to adjust a trading limit through ACT's Risk Management system. Instead, Designated Brokers/Clearing Brokers were required to send messages through the electronic data interface or call the Nasdaq/OptiMark desk to change the limits. Nasdaq has developed a new interface between the Application and ACT that permits a Designated Broker/Clearing Broker to directly query and adjust, through the ACT system, the trading limits it establishes in the Application.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[13] and section 11A[14] of the Act.

Section 15A(b)(6)[15] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Section 11A(a)(1)[16] sets forth findings of Congress that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Section 11A(a)(1)(C)[17] states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure (i) economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; (iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (iv) the practicability of brokers executing investors' orders in the best market; and (v) an opportunity for investors orders to be executed without the participation of a dealer.

The Commission previously recognized that the Nasdaq Application is consistent with sections 15A[18] and 11A[19] of the Act when it approved the pilot program.[20] The Application was approved as a pilot program with the limitations discussed above because the Commission, along with other market participants, was concerned that the Application did not provide Designated Brokers/Clearing Brokers with the same type of risk management tools that were available to these firms when transactions were executed outside of the Application. Specifically, the commission was concerned that Designated Brokers/Clearing Brokers did not have the ability to monitor their intra-day risk.

The immediate release function provides a Designated Broker/Clearing Broker with immediate notice that a trade has been executed by one of its sponsored Users and prevents Users from re-allocating trades to other Designated Brokers/Clearing Brokers at the end of the day. Consequently, Designated Brokers/Clearing Brokers are able to monitor their Users' positions on an intra-day basis, which provides these brokers with the opportunity to manage and mitigate their risk. Nasdaq believes this function directly addresses the Commission's concern about the Application's risk management tools. In addition, Nasdaq believes the immediate release function coupled with the one-sided, give-up capability strikes the appropriate balance between a Designated Broker/Clearing Broker's need to manage its risk and its sponsored User's desire to trade anonymously. In a one-sided, give-up situation, the identity of the sponsored User is immediately disclosed to the Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

Furthermore, Designated Brokers/Clearing Brokers will now be able to use the ACT system to query or adjust the credit limits they set for their sponsored Users. Designated Brokers/Clearing brokers previously were required to call the Nasdaq/OptiMark desk or submit instructions through an electronic data interface. The ACT system provides Designated Brokers/Clearing Brokers with a more efficient mechanism to

[11] *See* OptiMark Approval Order, *supra* note 7.

[12] In a one-sided give-up, the identity of the sponsored User is immediately disclosed to the Designated Broker/Clearing Broker, but their identity is not disclosed to the counterparty to the trade until the end of the day.

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78k–1.

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78k–1(a)(1)(C).

[18] 15 U.S.C. 78o–3.

[19] 15 U.S.C. 78K–1.

[20] *See* OptiMark Approval Order, *supra* note 7.

query or change the credit limits they have set.

Nasdaq expects that the systems change necessary to implement the features described above will be in place in the third quarter of 2000. Because these changes address the issues raised by the commission in its approval order, Nasdaq believes that the trading parameters contained in the approval order and reflected in Application rule 4999 can be eliminated. Further, Nasdaq believes that the Application should be permanently approved because the only concerns that were raised during the approval process have been addressed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received written comments.

III. Date Of Effectiveness Of The Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–00–37 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20057 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43103; File No. SR–NASD–00–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delay the Implementation Date of Changes to Riskless Principal Trade Reporting Rules, and To Issue an Interpretation Regarding Net Trading

August 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 31, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b-4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq's proposes to delay until November 1, 2000 the implementation date of the riskless principal trade reporting rule changes announced in SR–NASD–98–59[5] and SR–NASD–98–08,[6] and the interpretations thereto filed in SR–NASD–99–39,[7] SR–NASD–99–52,[8] and SR–NASD–00–06.[9] Nasdaq also is proposing an interpretation to clarify a statement in *Notice to Members 99–65*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 24, 1999 and July 8, 1999, the Commission approved proposals to amend the NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, and non-Nasdaq over-the-counter (''OTC'') equity securities, and exchange-listed securities traded in the Nasdaq InterMarket (''Riskless Principal Trade Reporting Rules'').[10] Under the new Riskless Principal Trade Reporting Rules, a ''riskless'' principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell). The Rules require a firm to report a riskless principal trade as one transaction.

In the Order approving SR–NASD–98–59, the Commission asked Nasdaq to submit an interpretation providing

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b-4(f)(1).

[5] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[6] Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999).

[7] Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[8] Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

[9] Securities Exchange Act Release No. 42494 (March 3, 2000), 65 FR 15933 (March 24, 2000).

[10] *See* footnotes 5 and 6, *supra*.

examples of how mark-ups, mark-downs, and other fees would be excluded for purposes of the amended riskless principal rules.[11] As requested, on August 5, 1999, Nasdaq filed with the Commission SR–NASD–99–39,[12] attached to which was *Notice to Members 99–65*, which gave examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principal Trade Reporting Rules. SR–NASD–99–39[13] and *Notice to Members 99–65* were filed as an interpretation to NASD Rules 4632, 4642, 4652, and 6620.

Notices to Members 99–65 (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *99–66* (discussing, among other things, the trade reporting rules for the Nasdaq InterMarket) were published in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99–65* and *99–66,* a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline, due (in large part) to Year 2000 (''Y2K'') remediation and testing requirements. in response, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620, the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.[14]

Subsequently, a number of NASD member firms requested a further extension of the implementation date of the Riskless Principal Trade Reporting Rules.[15] The firms stated that the approach described in *Notices to Members 99–65* and *99–66* for riskless principal trade reporting raised significant issues that needed to be addressed in greater detail through, for example, interpretive guidance. The firms requested an extension of the implementation date until September 1, 2000 to provide time to resolve the issues posed and to program systems. On February 23, 2000, Nasdaq filed a proposed interpretation to NASD Rules 4632, 4642, 4652, and 6620 to delay the implementation date of the new Riskless Principal Trade Reporting Rules until September 1, 2000.[16]

Nasdaq is now requesting a further extension of the implementation date until November 1, 2000. Nasdaq believes the extension is necessary to allow Nasdaq and the firms the time to finalize a workable solution to the problems the firms identified, and to make the necessary programming changes, especially in light of the resources that are being devoted to the implementation of decimal pricing by both the firms and Nasdaq.[17]

Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the decimalization efforts, the need for the NASD and the firms to develop workable solutions to the problems identified, and the programming changes required by the rule change. Nasdaq believes it would not be prudent, nor would it be consistent with section 15A of the Act,[18] to require members to implement substantial system changes at a time when they are focusing significant resources and time to implement decimal pricing, especially if the changes will not accomplish the objectives of streamlining trade reporting in Nasdaq, OTC, and Nasdaq InterMarket securities and reducing SEC transaction fees.[19]

Nasdaq also proposes to issue an interpretation to clarify a statement that was made in *Notice to Members 99–65* with respect to net trading of Nasdaq and OTC securities. A market maker trades ''net'' with an institution when the firm accumulates a position at one price and executes the offsetting trade with the institutional customer at another price.

Notice to Members 99–65 announced SEC approval of the Riskless Principal Trade Reporting Rules and included an attachment containing questions and answers regarding the rule change. A number of questions and answers in the *Notice* discuss net trading. For example. question and answer 4 state the following:

> Q. How does a member determine whether transactions are at the ''same price''?
>
> [If] a member is working an order for an institutional account * * * or of a block size * * * and the member finds the other side of the order, the presumption will be that the orders will be matched off at the same price (exclusive of any markup or markdown, commission equivalent, or other fee) and reported as riskless principal, unless the customer has specifically requested that the order be traded on a net basis at a difference price.

Questions and answers 3, 6, and 7 also addressed net trading.

After this *Notice* was issued, a number of firms requested guidance on how to document the customer request that the order be traded on a net basis, and asked for permission to use ''negative consent'' letters to refute the presumption that the orders will be matched off at the same price, citing difficulties with obtaining affirmative consent from customers. After thorough consideration of this issue, Nasdaq has concluded that firms may use negative consent letters to evidence a customer request to trade on a net basis, as long as the letter meets the following conditions.

A firm using a negative consent letter to demonstrate a customer request to trade on a net basis should send a letter to the customer clearly disclosing the terms and conditions for handling the customer's orders. Only one letter must be sent to each customer; a letter is not required for each transaction. The customer must be provided with a meaningful opportunity to object to any statements in the letter. If no objection is received, the firm may reasonably conclude that the customer has consented to the terms and conditions in the letter and has requested that the firm trade for the customer on a net basis. Nasdaq will publicize this interpretation in a new *Notice to Members* that will be issued when further revisions are made to the Riskless Principal Trade Reporting Rules.

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[20] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in

[11] Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

[12] *See* footnote 7, *supra.*

[13] *Id.*

[14] *See* footnote 8, *supra.*

[15] *See* letter to Belinda Blaine, Associate Director, SEC, dated February 18, 2000 from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jeffries & Company, Inc.; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Witter; and Salomon Smith Barney Inc.

[16] *See* footnote 9, *supra.*

[17] *See* Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000) (File No. 4–430), and Order Directing the Exchanges and the NASD to Submit a Phase-In Plan to Implement Decimal Pricing in Equity Securities and Options, Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[18] 15 U.S.C. 78o–3.

[19] *See* Section 31 of the Act, 15 U.S.C. 78ee.

[20] 15 U.S.C. 78o–3(b)(6).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[21] and Rule 19b–4(f)(1)[22] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–44 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–20058 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

[21] 15 U.S.C. 78s(b)(3)(A)(i).

[22] 17 CFR 240.19b–4(f)(1).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43110; File No. SR–NYSE–00–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Rule 1006 of NYSe Direct+™, the Exchange's Automatic Execution Facility for Certain Limit Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 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, 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 proposed rule change consists of proposed new Exchange Rule 1006, which will provide automatic execution of coupled orders of 1099 shares or less at a price that is at or within the Exchange's published quotation through the NYSe Direct+™ facility. It also provides for an amendment to the list of rules subject to summary fine procedures under Exchange Rule 476A. The text of the proposed rule change is set forth below. All language is being added.

Rule 1006: Automatic Execution of Coupled Orders

(a) A member or member organization may enter for automatic execution against each other a limit order to buy of 1099 shares or less coupled with a limit order to sell the same number of shares, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed: (1) at the NYSE's published bid price or within the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYS's published offer price, or within the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced either at the NYSE's published offer price or a price within the bid offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced either at the NYSE's published bid price, or within the bid-offer spread.

(b) Coupled orders as described in paragraph (a) may be entered for any amount up to 1099 shares, regardless of the size of the then-prevailing NYSE published bid or offer. Coupled orders shall have priority over all other orders at that price, regardless of time of entry, and shall be immediately executed and reported. Coupled orders may not be entered if both sides are for the account of a broker-dealer.

* * * * *

List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

* * * * *

Failure to adhere to procedures for internalization (automatic execution of coupled orders) under the NYSe Direct+™ facility (Rule 1006)

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.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NYSE–00–18, the Exchange filed a proposed rule change to provide for the automatic execution of limit orders of 1099 shares or less (''auto ex'' orders) against trading interest reflected in the Exchange's published quotation in a new trading facility, NYSe Direct+™.[3] The purpose of the proposed rule change filed herein is to provide for the automatic execution of coupled orders (a buy and sell order paired-off against each other) of 1099 shares or less at a price that is at or within the Exchange's published quotation through NYSe Direct+™. Such orders may be priced and executed only at the minimum trading variation permitted on the Exchange.

Rule 1006 provides for the automatic execution of coupled orders of 1099 shares or less, as follows:

(i) if both orders are for the accounts of non-members that are not broker-dealers, the orders may be priced and executed (1) at the NYSE's published bid price or between the NYSE's published bid-offer spread, if the first order received by the member or member organization was an order to buy; or (2) at the NYSE's published offer price, or between the NYSE's published bid-offer spread, if the first order received by the member or member organization is an order to sell;

(ii) if one of the orders is for the account of a member, member organization or broker-dealer, and (1) the non-member non-broker-dealer is entering a sell order, the coupled orders may be priced at the NYSE's published offer price, or a price between the bid-offer spread, or (2) if the non-member non-broker-dealer is entering a buy order, the coupled orders may be priced at the NYSE's published bid price, or between the bid-offer spread.

Rule 1006 provides that coupled orders as described above have priority over all other trading interest at the execution price, regardless of time of entry. Coupled orders may not be entered if each order is for the account of a member, member organization, or broker-dealer.

Rule 1006 would permit in-house agency crosses, with the better price being received by whichever order was received first by the member or member organization in any case where the execution price is at the bid or offer. Rule 1006 also permits members and member organizations to trade as dealer or principal with agency orders, provided that the agency orders receive a price that is better than the published bid (in the case of an order to sell) or the published offer (in the case of an order to buy). As noted in SR–NYSE–99–48,[4] the Exchange believes that internalization, if permitted by the Commission, should be tied to a public order price improvement requirement.

Addition to Rule 476A Summary Fine List. The Exchange is also seeking approval to add to the List of Rules subject to imposition of fines under Rule 476A the failure by members or member organizations to comply with Rule 1006, which provides for internalization (the automatic execution of coupled orders of 1099 shares or less). Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose for the proposed rule change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited rule. The Exchange believes failure to comply with the requirements of the rule and procedures should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List so as to have a broad range of regulatory responses available. The Exchange believes that this would more effectively encourage compliance by enabling a prompt, meaningful and heightened regulatory response (e.g., the issuance of a fine rather than a cautionary letter) to a minor violation of a rule.

The Exchange wishes to emphasize the importance it places upon compliance with the above-named rule. While the Exchange, upon investigation, may determine that a violation of this rule is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the rule, the Exchange will provide an appropriate regulatory response. This includes the full disciplinary procedures available under Rule 476.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[6] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

With respect to the addition to the summary fine list under NYSE Rule 476A, the proposed rule change will also advance the objectives of Section 6(b)(6) of the Act[7] by providing a procedure whereby member organizations can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. In addition, the proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)[8] and 6(d)(1)[9] of the Act.

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 not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[3] Securities Exchange Act Release No. 42913 (June 8, 2000); 65 FR 37587 (June 15, 2000).

[4] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (May 10, 2000).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7).

[9] 15 U.S.C. 78f(d)(1).

publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–00–19 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–20098 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43100; File No. SR–Phlx–00–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend its Current Enhanced Specialist Participation Provisions and Adopt Two New Programs in Phlx Rule 1014(g); Commission Request for Comment

July 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 17, 2000, the Phlx filed with the Commission Amendment No. 1 to the proposed rule change, and on July 7 and July 18, 2000, the Phlx filed Amendment Nos. 2 and 3, respectively, substantively amending its proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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Commission's Introduction

The Commission has serious concerns as to whether the proposed rule change is consistent with the Act and the rules and regulations thereunder. Accordingly, it is considering whether to approve the proposed rule change or to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[4] to determine whether the proposed rule change should be disapproved. In Section IV below, the Commission elaborates on the nature of its concerns, and asks for comment on them.

I. Statement of the Terms of Substance of the Proposed Rule Change[5]

The Phlx is proposing to amend its current enhanced specialist participation provisions as codified in Phlx Rule 1014(g), primarily by adopting two new programs that would entitle a specialist to a higher participation in ''Top 100 Options.''[6] These programs would:

- Entitle a specialist on parity to an enhanced participation of 80% in Top 100 Options allocated to a Phlx specialist after January 1, 1997. This 80% Enhanced Participation would be effective for a six month pilot period.
- Entitle a specialist on parity to an enhanced participation of 50% in Top 100 Options allocated to a Phlx specialist before January 1, 1997.

The proposal would establish a ''Performance Requirement'' for specialists entitled to the 80% participation. If an average of 10% of the daily consolidated Options Clearing Corporation (''OCC'') volume in a particular specialist's option is not transacted on the Phlx over a six-month period, an Exchange committee would be authorized to reallocate the option.

The proposal would also modify the manner in which orders executed through AUTO–X, the Phlx's automatic execution system, are allocated, specifically with regard to the application of enhanced specialist participations to AUTO–X trades.

The full text of the proposed rule change appears as Exhibit A appended

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The substance of these amendments has been incorporated in the description of the proposal below.

[4] 15 U.S.C. 78s(b)(2)(B).

[5] The Phlx proposal has been condensed and edited for clarity, with some changes based on a series of telephone conversations with the Exchange, the most substantive of which are annotated below.

[6] As defined below, ''Top 100 Options'' are those equity options with the highest total year-to-date option volume across all options markets as of the date specified in the proposed rule.

to this notice. The Phlx's more detailed statement of the terms of substance of the proposed rule change has been incorporated into Section II below.

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries of the most significant aspects of such statements, set forth in edited form in Sections A, B, and C below.[7]

A. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx Rules 119 and 120 and Rule 1014(g) specifically direct members in the establishment of parity and priority in the execution of orders on the options floor. These rules provide that when bids or offers at the same price are made simultaneously, or when it is impossible to clearly determine the order of time in which they were made, all such bids and offers will be on parity.[8] Although not specifically stated in the Phlx rules, the Phlx represents that member son parity receive equal shares of the contra-side participation, except where otherwise set forth in the rules.

An ''enhanced specialist participation''—sometimes called an ''enhanced parity split''—is one type of exception to the general parity rules, allocating to the specialist a greater than pro-rata share of the portion of an order that is divided among the specialist and any ''controlled accounts''[9]—*e.g.,* Registered Options Traders (''ROTs'')—that are on parity. The Exchange currently has several enhanced participation programs, embodied in Rule 1014(g) and described below. These programs establish specified percentages as the specialist's enhanced participation, depending on the category of option.

When an incoming order arrives on the floor and only the specialist and controlled accounts are on parity, the specialist is entitled to the specified percentage of the order before the controlled accounts divide the rest. However, when a customer order is also being represented in the crowd at the same bid or offer as the specialist and controlled accounts, other rules must be taken into account. Specifically, Phlx Rule 1014(g)(i) provides that orders of controlled accounts must yield priority to customer orders, but that specialists and ROTs closing in person are not required to yield priority to customer orders. Nonetheless, a customer may not receive a smaller participation than any trading crowd participant, including the specialist and an ROT closing in person.

Thus, a specialist and an ROT closing in person are considered to be on parity with the customer, according to the Phlx, while other controlled accounts are not.[10] As a result, when an incoming order arrives on the floor, and a customer order, the specialist, an ROT closing in person, and other ROTs are all competing to fill it at the same price, the customer order, the specialist, and the ROT closing in person are all entitled to equal portions of the order and are allocated those portions first. If the size of the incoming order is sufficient, each will receive up to the number of contracts sought by the customer. Any remaining portion of the order will then be divided among the specialist and the other ROTs, with the specialist receiving his greater than pro-rata share of that remainder, *i.e.,* the enhanced specialist participation.

a. *Current Enhanced Specialist Participation Programs:* (i) Enhanced Specialist Participation of Rule 1014(g)(ii): The enhanced specialist participation provided under Rule 1014(g)(ii)[11] currently allocates to the specialist 30% of the portion of an order divided among the specialist and controlled accounts when three or more controlled accounts are on parity and more than five contracts are to be bought or sold.[12] If two controlled accounts are on parity, the specialist is allocated 40%, and if only one controlled account is on parity, the specialist is allocated 60%.[13] If a customer order is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[14]

(ii) New Specialist Unit/New Options Enhanced Specialist Participation: Another enhanced participation program on the Phlx, originally adopted in May 1994 and embodied in current Rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange.[15] For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity, and 40% when two or more controlled accounts are on parity.[16] As in the Phlx's other enhanced participation programs, if a customer order is on parity, the customer may not receive a smaller participation than any

[7] See *supra* note 5.

[8] *See infra* notes 68–71 and accompanying text for additional illustrations of parity.

[9] A ''controlled account'' for the purpose of Phlx Rule 1014(g) includes any account controlled by or under common control with a member broker-dealer of the Exchange. Phlx Rule 1014(g)(i).

[10] Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, Nandita Yagnik, Counsel, Phlx, and Robert H. Miller III, KRJ Securities, Phlx on-floor Governor; and Ira L. Brandriss, Attorney, the Division of Market Regulation (''Division''), the Commission, July 14, 2000 (''Telephone conservation with the Phlx, July 14, 2000''). *See also* Amendment No. 3 to the proposed rule change.

[11] Rule 1014(g)(ii) applies to both equity and index options.

[12] The 30% enhanced participation when three or more controlled accounts are at parity was approved by the Commission on April 18, 2000. *See* Securities Exchange Act Release No. 42700, 65 FR 24246 (April 25, 2000). The enhanced specialist participation in Rule 1014(g)(ii) was originally approved by the Commission as a one-year pilot program for equity options. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). It was later expanded to include index options. *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994). The pilot rule provided for a ''two-for-one'' split when the specialist was on parity with any number of controlled accounts, allocating to the specialist two contracts for every one allocated to a controlled account. The program was later revised to provide for the current 40% allocation when two controlled accounts are on parity and 60% allocation when one is on parity. *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995). The pilot was renewed unaltered on three occasions. *See* Securities Exchange Act Release No. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997). It was thereafter extended for another period with certain modifications. *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997). The pilot was approved as a permanent program on July 1, 1999. *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999).

[13] The Commission notes that the enhanced participation program of Rule 1014(g)(ii) is mandatory. The specialist may not decline the enhanced allocation.

[14] As explained above, *see supra* note 10 and accompanying text, when a customer order is on parity, the customer, specialist, and any ROT closing in person are first allocated an equal number of contracts. Any remaining portion of the order is then allocated among the specialist and the controlled accounts, with the specialist receiving 30% or 40% or 60% of the remaining contracts, depending on the number of controlled accounts on parity.

[15] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994). *See also* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) (extending the new specialist unit/new options program to index options).

[16] The enhanced participation is renewable for one additional six-month period.

other crowd participant, including the specialist.[17]

(iii) *New Products Enhanced Specialist Participation:* On July 1, 1999, still another enhanced participation program, the ''New Products Split,'' was adopted.[18] Under Phlx Rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to 40% when three or more controlled accounts are on parity, and 60% if fewer than three controlled accounts are on parity. In either of these situations, if a customer is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[19]

b. *Proposed 80% Enhanced Specialist participation:* (i) Parameters: The Phlx is now proposing to adopt Rule 1014(g)(vi) on a six-month pilot basis. The proposed rule would entitle a specialist allocated a Top 100 Option after January 1, 1997[20] to participate in 80% of an incoming order where the specialist is on parity with one or more controlled accounts and no customer order is present (''80% Enhanced participation'').[21] If a customer order is on parity, the customer would not receive a smaller participation than any other crowd participant, including the specialist. For example:

- If there is a market order to sell 500 contracts of XYZ option, and the specialist and the ROTs in the trading crowd are at the same price on parity, the specialist would be allocated 400 contracts (80% of 500) and the floor broker would allocate the remaining 100 contracts (20% of 500) to the ROTs.
- If however, a customer order to buy 250 contracts is also represented in the trading crowd at the same price, the ROTs who are not closing in person must yield priority to it. The specialist and any ROTs closing in person are not required to yield to the customer order, but may not receive a greater participation than the customer. Therefore, the customer order would first be allocated 250 contracts, and the specialist would receive an equal allocation of 250 contracts. The ROTs would receive no participation.[22]
- If, however, there is a market order to sell 525 contracts, the customer and the specialist would each receive 250 contracts. Then, the specialist would be entitled to the 80% Enhanced Participation in the remaining 25 contracts (*i.e.,* 20 additional contracts), and the other five contracts would be divided among the ROTs.[23]

As defined in proposed Rule 1014(g)(vi)(A), the Top 100 Options for the pilot period would be those equity options with the highest total year-to-date option volume as of November 30, 1999.[24] The initial list of Top 100 Options would remain in effect for at least the length of the pilot period. If the pilot is extended, the options constituting the Top 100 Options would be re-determined as of May 30 and November 30 of each year. The 80% Enhanced Participation would then become effective for those options on the following July 1 and January 1, respectively.

Proposed Phlx Rule 1014(g)(vi)(B) provides that a specialist eligible for the 80% Enhanced Participation would not be eligible for any other enhanced specialist participation program under Rule 1014(g).

Proposed Rule 1014(g)(vi)(C) provides an exception to the 80% Enhanced Participation, stating that it would not apply when an ROT is closing in person, provided that the ROT announces to the trading crowd that he is doing so. In such case, the proposed 50% Enhanced Participation of proposed Rule 1014(g)(v), as described below, would apply. The purpose of this exception is to better enable an ROT to trade out of a position in its entirety, which could be inhibited by the 80% Enhanced Participation. The following examples illustrated how the exception in proposed Rule 1014(g)(vi)(C) would apply:

- A market order to sell 500 contracts of XYZ option arrives on the floor, and the specialist, a customer order to buy 100 contracts, an ROT closing for 200 contracts, and other ROTs in the trading crowd are at the same price. The customer, the specialist, and the ROT closing are on parity. Each is entitled to 100 contracts. With respect to the remaining 200 contracts, the 80% Enhanced Participation does not apply, because there is an ROT closing. Instead, the 50% Enhanced Participation would apply. Thus, the specialist would be entitled to 100 contracts (50% of 200), and the remaining 100 contracts would be allocated among the ROTs in the crowd, including the ROT closing.
- However, if, in the above example, the customer order was for 300 contracts, the customer would receive 168 contracts, the specialist would be entitled to 166 contracts, the ROT closing would receive 166 contracts, and the other ROTs would receive no participation.

the Phlx believes that by recognizing the additional responsibilities of specialists, the 80% Enhanced Participation would help to attract and retain highly capitalized specialists who would be able to attract sufficient order flow to the Exchange. Because the specialist unit is the key party responsible for marketing to attract order flow in particular options, the Exchange seeks to provide the appropriate encouragement to specialists to plan, invest in, and effect marketing strategies. Therefore, the Exchange believes that an 80% Enhanced Participation would provide the specialists with the appropriate incentive to create more depth and liquidity in applicable options in order to attract greater order flow to the Exchange. The Exchange's reasons for the proposal are outlined more fully in Section II.A.2 below.

(ii) *Performance Requirement:* The Exchange is also proposing to adopt new Rule 511(d)(3), which would require the Exchange's Allocation, Evaluation and Securities Committee (''Committee'') to conduct a ''Special Review''[25] of each specialist assigned a Top 100 Option to which the 80% Enhanced Participation applies. The

[17] *See supra* note 10 and accompanying text illustrating application of this rule.

[18] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999).

[19] *See supra* note 10 accompanying text illustrating application of this rule.

[20] An option that was listed on the Phlx before January 1, 1997, but was reallocated or transferred to a new specialist after that date, would be subject to the 80% Enhanced Participation. *See* proposed Rules 1014(g)(vi)(A) and 511(d)(3)(B).

[21] Unlike the enhanced participation under Rule 1014(g)(ii), the proposed 80% Enhanced Participation would be voluntary, allowing the specialist to decline the allocation. In addition, the Commission notes that the proposed 80% Enhanced Participation, unlike the enhanced specialist split of Rule 1014(g)(ii), is not limited to orders for more than five contracts.

[22] The Phlx states, however, that if the customer order was not represented in the trading crowd, but was on the specialist's limit order book with the specialist acting as agent, the specialist could not be considered on parity with the customer order, due to various restrictions relating to specialist trading ahead of customer orders as well as agency-principal restrictions. In such case, the customer order for 250 contracts would first be executed, and then the 80% Enhanced participation would apply to the remainder, with the specialist entitled to 200 contracts (80% of 250) and the ROTs dividing the remaining 50 contracts.

[23] The Phlx notes that allocating the specialist the same number of contracts as the customer and then adding an enhanced participation of 80% in the remainder of the order might on first impression appear to result in a total specialist participation exceeding 80%. However, the Exchange does not believe it to be mathematically possible that, in such an allocation scheme, a specialist would ever receive more than 80% of the original incoming order.

[24] Volume here refers to the aggregate of trading on all options exchanges. Telephone conversation between Nandita Yagnik, Counsel, the Phlx, and Ira L. Brandriss, Attorney, Division, the Commission, March 15, 2000.

[25] Phlx Rule 511, ''Specialist Performance Evaluation,'' provides for reviews of specialists on the Exchange based on criteria enumerated in Phlx Rule 515. Rule 511(c)(2) provides for ''Routine Reviews'' of options specialists, while Rule 511(d) provides for ''Special Reviews'' addressing specific situations. The proposed rule change would add a new category of Special Review specifically designed for specialists in the 80% Enhanced Participation program. Notwithstanding the Special Review, however, specialists in the program would also be subject to Routine Reviews. Telephone conversation between Edith Hallahan, Deputy General Counsel, and Nandita Yagnik, Counsel, the Phlx; and Ira L. Brandriss, Attorney, the Division, the Commission, May 1, 2000 (''Telephone conversation with the Phlx, May 1, 2000'').

rule would direct the Committee to solicit new specialist applications when a defined ''Performance Requirement'' has not been met by the current specialist in that option.

Specifically, if the Committee finds that an average of 10% of the daily consolidated OCC volume in any Top 100 Option in the 80% Enhanced Participation program has not been transacted on the Exchange for each six month period commencing with the effective date of the rule, the Committee would be authorized to solicit specialist applications to reallocate such option pursuant to Phlx Rule 506.

The intent of this provision, the Phlx states, is to allow a search for another specialist. However, a failure to meet the Performance Requirement would not mean the automatic loss of the book. The current specialist would be permitted to apply and be considered by the Committee. As an applicant, the current specialist would be evaluated as a whole, using the current allocation criteria, such as staffing and expertise.[26] Thus, the Performance Requirement becomes a factor in triggering a process to reevaluate the current specialist's role.

The Exchange is also proposing to amend Rule 515 and Rule 511(e) to reflect that Top 100 Options in the 80% Enhanced Participation program would be subject to different procedures, and that current reallocation and hearing procedures described in Rule 511(e) would not apply to reviews conducted pursuant to Rule 511(d)(3).[27]

Proposed Rule 511(d)(3)(B) provides that if any Top 100 Option is reallocated under this rule, or allocated or transferred after the effective date of the rule, the new specialist would be entitled to 80% Enhanced Participation. It would also require the new specialist to meet the Performance Requirement every six months commencing on the business day following allocation, reallocation, or transfer and continuing until the end of the current six month test period operating for the other options (which originated with the effective date of the rule).[28] If the Performance Requirement is not met, the Committee would again solicit specialist applications.

The Performance Requirement is intended by the Phlx to establish volume criteria that will encourage new business and a viable, active marketplace in Top 100 Options. The Exchange believes that in order to compete, highly capitalized, qualified specialists are needed who are willing to attract order flow to the Exchange. Thus, the Phlx believes that if a specialist unit cannot attract the order flow to meet the Performance Requirement, then its specialist privileges should be reevaluated (by comparing other applicants) to seek out the best specialist unit—to ensure that it does have the capability to attract that order flow. The Exchange believes that Top 100 Options, due to their volume, present both the need for a highly capitalized specialist as well as the opportunity to attract more of this volume to the Exchange.

c. *Proposed 50% Enhanced Specialist Participation:* The Exchange also proposes to adopt Rule 1014(g)(v), to apply to Top 100 Options that were allocated to a Phlx specialist prior to January 1, 1997.[29] The proposed rule change would entitle a specialist in these options to 50% of an incoming order when the specialist is on parity with more than one controlled account (and no customer order is on parity).[30] When one controlled account is on parity, the specialist would be entitled to 60% of the incoming order. If a customer order is on parity, the customer would not receive a smaller participation than any other crowd participant, including the specialist.[31]

Because the 50% Enhanced Participation would not be a pilot program, specialists receiving it would be subject to the enhanced specialist participation review of Phlx Rule 509.[32] The purpose of this review is to monitor all specialists benefiting from an enhanced split.[33] Specifically, the Committee would be permitted to reduce the 50% Enhanced Participation if the specialist performs below any minimum standards or fails to satisfy any conditions established pursuant to the rule, which also includes provisions for reinstatement.[34]

Proposed Phlx Rule 1014(g)(v)(D) provides that a specialist eligible for the 50% Enhanced Participation would not be eligible for any other enhanced specialist participation program under Rule 1014(g).

The 50% Enhanced Participation is intended by the Phlx to create a performance incentive to encourage specialists to attract additional order flow. The Exchange believes that this incentive is reasonable in light of specialists' added responsibilities in updating and disseminating quotations as well as in maintaining the limit order book. In addition, the Exchange proposes to increase the specialist participation to 50% in order to remain competitive with other exchanges.[35] These reasons are outlined more fully in Section II.A.2 below.

d. *Wheel Trades:* The Exchange proposed to modify Option Floor Procedure Advice F–24 (''Advice F–24''), ''AUTO–X Contra-Party Participation (the Wheel),'' to give the specialist whatever split the specialist would receive pursuant to Rule 1014(g)(ii) (v) or (vi). AUTOM is the Exchange's electronic order routing and delivery system for option orders.[36] AUTO–X is the automatic execution feature of AUTOM, which provides customers with automatic executions of eligible option orders at displayed markets. The Wheel is an automated

[26] Allocation criteria are set forth in Phlx Rule 511(b).

[27] Because 80% Enhanced Participation would be a pilot program, the Phlx proposes to provide for specialist evaluations, aside from Routine Reviews, only through the 10% Performance Requirement it is proposing as a Special Review under Rule 511(d)(3). If the current specialist fails the review, the Committee would be authorized to solicit applications for a new specialist without needing to comply with the relevant procedural requirements embodied in Rule 511(e).

Accordingly, the enhanced specialist participation review of Phlx Rule 509 would not apply to specialists in the proposed 80% Enhanced Participation program. Rule 509 generally sets a performance standard for specialists who receive enhanced participations, providing, among other things, that if the Phlx does not maintain a minimum of 10% of market share in a multiply-traded issue listed on five exchanges (or up to 25%, if the issue is traded on fewer exchanges) the specialist may lose the enhanced participation for that option. Telephone conversation with the Phlx, May 1, 2000.

[28] For example, if the effective date of the rule was March 1, 2000, then the first review date would be September 1, 2000, and the following review date would be March 1, 2001. However, if a Top 100 Option was allocated on June 1, 2000, the first review date for that option would be December 1, 2000, and the next review date would be March 1, 2001.

[29] This date differentiates those Top 100 Options in which the Phlx has already achieved a significant market share, such that it believes that an 80% Enhanced Participation incentive is less important for them. In addition, the Exchange recognizes with this differentiation that ROTs are also responsible for having achieved and retained market share in these options.

[30] *See supra* note 10 and accompanying text.

[31] Like the 80% Enhanced Participation, the proposed 50% Enhanced Participation would be voluntary, allowing the specialist to decline the allocation. Similarly, the 50% Enhanced Participation would not be limited to orders of more than five contracts.

[32] Thus, the Phlx proposes to amend Rule 509 to refer to the 50% Enhanced Participation, and Rule 1014(g)(v)(B) to refer to Rule 509.

[33] *But see supra* note 27.

[34] Specialists receiving the 50% Enhanced Participation would also be subject to the Routine Reviews of Phlx Rule 511(c)(2) and the related provisions of Rule 515. Telephone conversation with Phlx, May 1, 2000.

[35] *See, e.g.,* Pacific Exchange Rule 6.82(d)(2), which provides the Lead Market Maker on that exchange with a 50% guaranteed participation similar to the enhanced participation proposed by the Phlx.

[36] AUTOM is an acronym for Automated Options Market System.

mechanism for assigning trade participation among specialists and ROTs on a rotating basis, as contra-side participants to AUTO–X orders. The Exchange's detailed Wheel provisions appear as Advice F–24.[37] The purpose of the Wheel is to increase the efficiency of order execution through AUTO–X by including all floor traders, on a voluntary basis, in the automated assignment as contra parties to incoming AUTO–X orders.

Currently, as detailed in Advice F–24(e), ''Wheel Rotation/Assigning Contracts, Exception to the Normal Rotation,'' the Wheel operates with a different trade participation and allocation process than Rule 1014.[38] At this time, the Exchange proposes to amend Advice F–24(e) so that specialists are allocated the same enhanced participation in Wheel trades that they receive under Rule 1014(g)(ii), (v) and (vi) for non-Wheel trades. Thus, a specialist that receives a 30% enhanced participation in the trading crowd under Rule 1014(g)(ii) would receive a 30% enhanced participation on the Wheel; a specialist that receives a 50% Enhanced Participation under Rule 1014(g)(v) would receive a 50% enhanced participation on the Wheel; and a specialist that receives a 80% Enhanced Participation under Rule 1014(d)(vi) would receive an 80% enhanced participation on the Wheel.[39] The Exchange does not propose, at this time, to extend the new specialist/new option enhanced participation of Rule 1014(g)(iii) or the new product enhanced participation of Rule 1014(g)(iv) to the Wheel.

e. *Relationship Among the Various Enhanced Participation Programs:* For purposes of clarity, the Phlx is proposing to codify a reference to all its enhanced participation programs at the beginning of Rule 1014(g)(i). The Exchange further makes clear in its proposal that all equity and index options that do not qualify under any other enhanced participation program of Rule 1014(g)—*i.e.,* the new specialist unit/new option split, the new product split, or either of the two Top 100 Option splits—would continue to be eligible under the proposal for the enhanced participation of Rule 1014(g)(ii).

Finally, the Phlx is proposing to amend Rules 1014(g)(ii) (the standard 30% enhanced participation) and (iii) (new specialist/new options enhanced participation) to make clear that these programs exclude options subject to the 50% and 80% Enhanced Participations of Rule 1014(g)(v) and (vi),[40] and to amend Option Floor Procedure Advice B–6 (''Advice B–6'') to reflect corresponding modifications.

2. Statutory Basis

Enhanced participation programs are generally intended to create incentives to retain and attract specialist units. The Phlx believes that the proposed enhanced specialist participation programs for Top 100 Options are necessary and important to create such incentives, which are reasonable in light of the increasing responsibilities of specialists. With respect to prior proposals, the Commission has acknowledged the need for well capitalized specialist units, burdens and costs borne by specialists, and how enhanced participation is intended to compensate specialists for these costs and burdens. For the reasons stated below, the Phlx believes the proposal is consistent with the Act.

The Phlx believes that the incentives afforded to specialists by this proposal are justified by the particular responsibilities, burdens, and costs borne by specialists as compared with other market participants. Although both specialists and ROTs perform market making functions, specialists, as the principal market maker, have more responsibilities than ROTs. For instance, various Exchange rules impose higher affirmative and negative market making obligations on specialists.[41] In addition, Rule 11b–1(a)(2)(iii) under the Act, provides that ''the rules of a national securities exchange permitting a member to act as specialist shall include provisions restricting his dealings so far as practicable to permit him to maintain a fair and orderly market.''[42] Thus, the Phlx states, the specialist is considered the market maker of last resort who must not only step in when no other market participant will, but must refrain from trading when others are willing to do so. ROTs, it states, are required to make markets only when called upon by either the specialist, floor broker, or a floor official.

The Phlx notes that in addition to these responsibilities, specialists are faced with certain unique costs associated with being a specialist, including higher capital requirements,[43] staff and risk related costs associated with continually updating and disseminating quotes, as well as reflecting all markets in the displayed quote.[44] Further, specialists market to upstairs firms in order to attract order flow to the Exchange, entailing efforts that require expenditures for appropriate staff to plan and implement strategies. In addition, specialists must also monitor markets on other exchanges. These costs and burdens are exacerbated by today's current increases in options volume, the number of options traded by each specialist, quotation activity, and market volatility. Although specialists might address some of these burdens directly or the Exchange might attempt to offset them differently, the Phlx has determined that it is again appropriate to address these increasing burdens and costs with enhanced trade participation in order to attract and retain specialist units.

The Exchange believes that this proposal should not unreasonably burden competition, and should, in fact, serve as an incentive for market performance. Currently, in Top 100 Options, the Exchange has not benefited

[37] *See* Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994).

[38] Advice F–24(e) currently entitles the specialist the substantial equivalent of a two-for-one split on the Wheel for options covered by Rule 1014(g)(ii), provided that Wheel participants unanimously consent and the Options Committee Chairman or his designee approves. *See* Securities Exchange Act Release No. 42699 (April 18, 2000), 65 FR 24248 (April 25, 2000).

[39] The size of orders guaranteed execution through AUTO–X varies according to the option being traded. Floor Advice F–24 provides that the Wheel rotates and assigns contracts to participants in the system depending on the size of the guarantee for that option. When the guarantee is between 1 and 10 contracts, the Wheel assigns 2 contracts to the first participant in line, rotates and assigns 2 contracts to the next participant in turn, and continues rotating and assigning in this manner. For guarantees between 11 and 25 contracts, the Wheel rotates every 5 contracts. For guarantees of more than 26 contracts the Wheel rotates every 10 contracts. Under the proposal, if the AUTO–X guarantee is 10 contracts, and an order for five contracts that is subject to the 80% Specialist Participation enters the system, the specialist would receive four contracts and the Wheel would assign the remaining one to the Wheel participant next in the line in the rotation. If the next order is again for five, four would be assigned to the specialist and the remaining one to the next Wheel participant in the rotation. Telephone conversation with the Phlx, May 1, 2000.

[40] The Phlx is also proposing a related amendment to clarify that options qualifying for the new products category of Rule 1014(g)(iv) are also excluded from Rule 1014(g)(ii) and (iii).

[41] *See* Phlx Rule 1020(d), which states that it is ordinarily expected that the specialist will engage, to a reasonable degree under existing circumstances, in dealings for his own account in options when lack of price continuity or lack of depth in the options market exists or is to be reasonably anticipated.

[42] *See* 17 CFR 240.11b–1(a)(2)(iii).

[43] Specialists are subject to a minimum net capital requirement of $100,000; ROTs, on the other hand, must meet an initial net capital requirement of $25,000 and thereafter must maintain positive net assets. *See* Rule 15c3–1 under the Act and Phlx Rule 703(a)(iii).

[44] *See* Phlx Rule 1080. *See also* Securities Exchange Act Release No. 34606 at 13 (August 24, 1994), 59 FR 45741 (September 2, 1994).

from significant order flow.[45] To the extent that the proposed enhanced participant programs should provide incentives for specialists to provide tighter markets and attract order flow to the Exchange, all market participants in the crowd, including ROTs, should benefit. This benefit would come in the form of increased depth of markets as well as increased liquidity, both of which are important market performance elements. The Phlx expects that specialist efforts to reach the 10 Performance Requirement should also result in deeper, more liquid markets and tighter spreads. Thus, the Phlx believes that competition should be enhanced, and important auction market principles preserved.

The Exchange believes that the proposal should not materially disadvantage ROTs and other controlled accounts. Specifically, because these accounts have not historically transacted significant volume in Top 100 Options, based on Exchange analysis of certain data, the Exchange believes that if it is successful in attracting order flow to these options, ROTs and controlled accounts should benefit in absolute terms from that enhanced flow. The Phlx notes that, in the past, the Commission has refuted assertions that the enhanced specialist participation programs may harm ROTs by noting that the ''ROTs may in fact benefit from the enhanced parity split, if the specialists are successful in attracting order flow to the Exchange.'' [46] Specifically, more order flow may benefit ROTs, even if they receive a lesser percentage of such order flow when they are on parity. The Exchange believes that this reasoning is still applicable whether the enhanced participation is 80% or 50%.

The Phlx believes that the proposal is narrowly crafted to apply to certain options in certain situations, minimizing the potential negative impact and preserving opportunities in other options. For instance, both the 80% and the 50% Enhanced Participation would only apply when the specialist is on parity with a least one controlled account.[47] Because the specialist must be on parity with another controlled account, that controlled account, such as an ROT, can either establish a better price (improve the market) or establish a market first. In either case, the enhanced participation would not apply. The Phlx notes that an ROT's ability to quote a better price may soon be enhanced by the advent of decimalization, which reduces the cost of improving markets by narrowing minimum increments. In the Phlx's view, the proposal provides an incentive for ROTs to better markets and thus should promote competition. Therefore, the Exchange believes that this proposal should encourage tighter markets and attract order flow to the Exchange.

In addition, the proposal is limited to certain Top 100 Options, in which the Exchange has not received significant order flow. Furthermore, the 80% Enhanced Participant program is being proposed as a six-month pilot program which the Exchange believes should enable both the Exchange and the Commission to evaluate its actual impact and whether is purposes were achieved.

The Exchange also believes that the proposal protects investors and the public interest, because it specifically addresses the situation of a customer order on parity with any other crowd participant. Under the 80% Enhanced Participation, no customer order on parity may received a smaller participation than any other crowd participant including the specialist. If the proposal is successful in attracting order flow, customers should benefit from the additional liquidity and tighter markets. Thus, the proposal contains safeguards to ensure that customers are protected.

The Exchange has also analyzed whether specialists could be encouraged by the proposal to pay for order flow (as opposed to tightening spreads) to meet the Performance Requirement. The Phlx notes that following extensive public policy debate and Commission study of the practice in the equities markets, payment for order flow was not banned, but rather was addressed with enhanced disclosure requirements for broker-dealers and reliance on the duty of best execution. The Exchange does not believe that the proposal would be inconsistent with the Act or that it is necessary for payment for order flow in the options markets to be addressed in the proposal's current, limited context.

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6 of the Act [48] in general, and with Section 6(b)(5) [49] in particular, because it is designed to promote just and equitable principles of trade and protect investors and the public interest, by rewarding specialist units for their cost and responsibilities which, in turn, should attract and retain highly capitalized specialist units, thereby attracting additional order flow and resulting in increased competition and tighter markets. The Exchange believes that in crafting its proposal and presenting its justification, it has addressed and remained consistent with certain principles on which the Commission has focused in approving past enhanced participation programs, including the belief that such incentives encourage specialists to make deep, tight markets, enhance their ability to compete for order flow, address their heightened responsibilities, protect investors, and enhance competition.

B. Phlx's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Comments on the Proposed Rule Change Received by the Phlx from Members, Participants, or Others

No written comments were solicited with respect to the proposed rule change. The Phlx received one letter commenting on the proposal, which it has submitted to the Commission and is available for inspection in the Commission's Public Reference Room.[50]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 19(b)(2) of the Act[51] provides that within 35 days of the date of publication of notice of a proposed rule change in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization that filed the proposal consents, the Commission will:

(A) By order approve such proposed rule change, or

[45] The Phlx represents that its share of volume across the options markets in the Top 100 Options that would be eligible for the 80% Enhanced Participation was approximately 5% in November 1999. Also, for top 100 Options traded on the Phlx in November 1999—69 issues—trading volume was 1,463,477 contracts out of a total Phlx trading volume of 2,368,300 contracts, a percentage of 61.79%.

[46] *See* Securities Exchange Act Release No. 34109 at note 19 (May 25, 1994) 59 FR 28570 (June 2, 1994). The Commission notes that the quotation is cited from an order approving the 40% participation right granted to new specialist units trading new options classes when two or more controlled accounts are on parity, and 50% when one is on parity.

[47] *See* Options Floor Procedure Advice A–10. The Phlx represents that the specialist may establish his market and be on parity either verbally or by electronic means.

[48] 15 U.S.C. 78f.

[49] 15 U.S.C. 78f(b)(5).

[50] *See* Letter from Tim D. Lobach, General Partner, Keystone Trading Partners, to Members of the Board, Phlx, dated December 22, 1999.

[51] 15 U.S.C. 78s(b)(2).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission finds it appropriate to designate a period of 90 days from the date of publication of this notice within which to approve the Phlx proposal or institute proceedings to determine whether to disapprove it. As detailed below, the proposed rule change raises several complex issues on which the Commission is seeking public comment to assist it in its decision whether to institute disapproval proceedings.

IV. Commission's Solicitation of Comments

The Commission believes the proposed rule change could result in a significant alteration to the current structure of the options markets and, as noted in the introduction, has serious concerns as to whether such changes are consistent with the Act and the rules and regulations thereunder. The Commission is concerned specifically about the potential impact that specialist guarantees of up to 80% could have upon competition in the options markets and, consequently, upon the quality of prices that investors receive in those markets.

Section 6(b)(8) of the Act[52] requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate'' in furtherance of the Act. Section 6(b)(5) of the Act,[53] moreover, requires that the rules of a national securities exchange be designed to, among other things, ''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.'' Assuring that price competition remains vigorous is crucial in ensuring that investors receive the best execution possible. Finally, in considering whether any proposed rule change of a national securities exchange is in the public interest, the Commission is required by Section 3(f) of the Act[54] to consider whether the change will ''promote efficiency, competition, and capital formation.''

The Commission believes it will be helpful to provide some background regarding the context of the proposal and the issues it raises, and to pose a number of specific questions concerning its potential ramifications, so that commenters will better be able to assist the Commission in deciding whether to approve the proposed rule change or to institute proceedings to determine whether it should be disapproved.

A. Background

The proposed rule change arises against a backdrop of increasingly intense completion over the past year among the options exchange—the American Stock Exchange (''Amex''), the Chicago Board Options Exchange (''CBOE''), the Pacific Exchange (''PCX''), and the Phlx—to attract the flow of options business to their respective markets.

Prior to August 1999, the great majority of the most actively traded options in this country was listed on only one exchange. Thus, broker-dealers receiving orders from customers to buy or sell these options had only one place to send them for execution. Since then, the number of options that are ''multiply traded''—*i.e.,* traded on more than one exchange—has vastly expanded.[55] In addition, the anticipated entry of the International Securities Exchanges (''ISE'') into the arena as the first fully electronic options exchange[56] increased the demand upon the existing exchanges to compete vigorously for order flow. The ISE, which began operating on May 26, 2000, by trading three options classes, plans to list standardized equity options on 600 of the most actively traded stocks, and is widely considered to be a catalyst for the increase of multiple trading among the existing exchanges. As a result of these ongoing changes in the options market, the exchanges have felt intense pressure to compete with each other for the flow of customer orders that are represented by brokerage firms.

Investors have benefited measurably from the increased competition. Since multiple trading began in earnest, bid-ask spreads have narrowed significantly.[57] The options exchanges have also reduced their transaction fees.[58] The Phlx proposal is another response to these developments. By proposing changes to the Exchange's priority rules, the Phlx believes it would be able to better attract or retain business in the new competitive environment.

To evaluate the proposal's potential impact and determine whether it is consistent with the Act, we must consider it in the context of how options are traded today and the impact on the markets if similar proposals were implemented on all options exchanges.[59]

B. Price Discovery on the Options Markets

An options exchange, like any exchange, is a marketplace where buyers and sellers of a product—in this case, standardized options contracts—come together in the hope of finding a party ready to take part on the opposite side of the transaction at a favorable price.

The buyers and sellers include: (a) Floor brokers, who represent orders to buy and sell sent to the exchange by broker-dealers (''order entry firms'' or ''upstairs firms'') on behalf of customers; (b) market makers, *i.e.,* dealers trading for their own accounts who stand ready to buy and sell contracts on a continuous basis[60] and (c) in many markets, the specialist, who is a market maker that assumes additional leadership responsibilities in assuring fair and orderly markets, is authorized to represent certain types of customer orders as a broker, and may manage the public customer limit order book. On the CBOE and the PCX, market participants serving in a role similar to that of the specialist are called ''Designated Primary Market Makers'' (''DPMs'') and ''Lead Market Makers'' (''LMMs''), respectively.[61] On the ISE, the role is filled by ''Primary Market Makers'' (''PMMs''). These various participants all congregate at a designated ''trading station,'' an

[52] 15 U.S.C. 78f(b)(8).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78c(f).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78c(f).

[55] Between mid-August and mid-September 1999, for instance, 131 equity options classes that were previously listed on only one market became multiply-listed. Although in number these options represent a small percentage of the approximately 3000 options classes that trade, as a result of their addition to the multiple trading category, the volume of trading in multiply-listed options across the markets rose in the same period from 39% to 76% of all options trading.

[56] The ISE's application to become a registered national securities exchange was submitted in February 1999 and was approved in February 2000. *See* Securities Exchange Act Release Nos. 41439 (May 24, 1999), 64 FR 29367 (June 1, 1999) and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[57] *See, e.g.,* ''Best Execution: Promise of Integrity, Guardian of Competition,'' Remarks of Commission citing an analysis of trading in 81 options that had recently become multiply listed, which found that spreads had been narrowed by 15% or more in 76% of the cases.

[58] *See* Exchange Act Release Nos. 41270 (April 9, 1999), 64 FR 19395 (April 20, 1999) (SR–CBOE–99–08); 41307 (April 16, 1999), 64 FR 20349 (April 26, 1999) (SR–PCX–99–09); 41317 (April 24, 1999), 64 FR 23144 (April 29, 1999) (SR–Phlx–99–09); 41370 (May 5, 1999), 64 FR 25931 (May 13, 1999) (SR–Amex–99–12) (reducing options transactions fees).

[59] The Commission notes that in many cases options exchanges adopt similar rules when a rule proposal has been approved by the Commission. Particularly when rules are designed to provide benefits to order flow providers, and therefore create incentives for order flow providers to send their customers' orders to a particular exchange, other exchanges frequently adopt similar rules to compete. The Commission, of course, does not approve or disapprove rules based on which exchange submits them, but instead must base

assigned spot on the exchange floor, to buy and sell options contracts in each particular options class.[62]

1. The General Rules: Priority and Parity

When a customer order arrives at the trading station and the floor broker representing it asks for the current price (*i.e.,* calls for a market), members of the crowd respond with their bids and offers in public outcry.[63] The trade is executed at the best price that emerges from the auction to meet the customer order.[64] To participate in the trade, therefore, market participants at the station compete with each other to provide the best price for the customer order. Among the competitors may be floor brokers representing customer orders to fill, as well as the specialist and the market makers, who must always be prepared to buy and sell at prices reasonably close to the last sale.

In addition, the floor broker who brought the order to the floor may compete to fill the order he is holding. He may, on behalf of the firm that sent it to the floor, propose to cross it at a superior price with the order of another of the firm's customers. Alternatively, he may propose to cross it with an order submitted by the firm itself, seeking to trade with the firm's customer as principal at a better price than that offered by others—in what is called a ''facilitation cross.'' [65]

When more than one market participant is bidding or offering the best price, depending on the circumstance, in general the rules of the exchange grant any one of several different participants the right to fill the order—either entirely, or a certain percentage of it—before anyone else.

As a general rule, the first person to quote the price at which the option is ultimately traded is entitled to ''priority''—the right to fill the order before anyone else.[66]

''Parity,'' by contrast, means that none of the market participants competing to fill the order has rights over any other based on quoting the best price first. Parity is established on the Phlx, for example, when an order arrives on the floor to sell 100 contracts, and three market makers—A, B, and C—all bid to fill it at $3 per contract, but, in the public outcry, no one can determine which of A, B, or C called out the $3 bid first. Generally, in a situation of this kind, participation in the order must be divided up equitably among the crowd participants who simultaneously bid to fill the order at the best price.[67]

According to the Phlx, as a practical matter, in the pace of trading on its options floor today, it is often difficult to determine who cried out the best price first, and therefore crowd participants are frequently on parity on this basis.[68] Moreover, it is common for the members of a trading crowd to be all simultaneously committed to the bid and offer of the Exchange's publicly disseminated quotation,[69] and thereby considered at parity.[70]

In addition, even if one member of the trading crowd is the first to bid or offer at a particular price, if others indicate their willingness to trade at that price, too, then the first member bidding or offering at the price has priority only for the first trade executed at that price. Afterward, all who remain willing to trade at the same price are considered to be at parity for subsequent trades.[71]

In practice, a large majority of trades on the Phlx take place where all participants are at parity.[72]

Although, in its purest form, an auction should treat all participants equally, to create incentives for various market participants, the exchanges have enacted rules that in certain circumstances guarantee a portion of an order to a particular participant even when that participant is on parity.

In a similar vein, but for a different purpose, the exchanges have established automatic execution (''auto-ex'') systems, discussed below, to fill smaller customer orders quickly and efficiently, but without the benefit of an auction on the trading floor. Each of the floor-based options exchanges' auto-ex systems allocate orders to market makers on a rotational basis to execute at the exchange's disseminated quotation.[73]

Allocations of this kind represent exceptions from pure competitive principles. The Commission has approved them when it has believed that vigorous competition would be preserved and the overall price-discovery mechanism of the market would not be substantially affected.

2. Exceptions to the Rule

a. *Specialist Guarantees:* Historically, most of the options exchanges have adopted rules that under certain circumstances guarantee a specialist the right to trade ahead of others in the crowd with a certain percentage of every order, even when the specialist has not otherwise established priority. Of course, the specialist must also be quoting the best price available to the customer to receive such a guarantee. When the specialist is entitled to these special guarantees varies somewhat among the exchanges.

More specifically, a DPM on the CBOE and an LMM on the PCX is entitled to a percentage of each order only when the trade takes place at its previously established ''principal bid or offer'' [74] or ''previously disseminated'' quote.[75] The DPM does not receive its guaranteed portion of the fill if the auction improves the price.

The Phlx's version of the specialist guarantee, the ''enhanced parity split,'' applies, by contrast, when the specialist is ''on parity'' as defined and illustrated above.[76]

These exceptions to the general priority and parity rules, which would otherwise require the equitable division of an order among market makers on a par with the specialist, are intended to provide an incentive for market makers to assume the extra responsibilities assigned to the specialist to supply liquidity and attract order flow to the market.

[62] This description applies, of course, to a floor-based exchange. The Amex, CBOE, PCX, and Phlx, operating on this floor-based model, have installed various systems to route many orders electronically to the trading station. However, the essential process of trading at these exchanges is conducted through open auction outcry of bids and offers and the finalization of transactions by brokers and market makers in person on the floor of the exchange. The ISE substantially replicates the auction process of the floor-based exchange in a fully electronic format.

[63] Often, the trade takes place at the disseminated quotation, which is a posting by the exchange of the best bid and offer currently being quoted on its market. Frequently—in the absence of better-priced customer orders or market maker quotes—the disseminated quotation will be generated by an exchange's ''autoquote'' system, which calculates the price for an option based on variables, including the price of the underlying stock.

[64] Order routed to an exchange's automatic execution system, which is discussed in Section IV.C.2.c below, are executed pursuant to different rules.

[65] *See, e.g.,* Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064.

[66] The rule is not absolute, however. The order of a public customer on the limit order book, on some exchanges, takes priority over the quote of any member of the crowd. *See* CBOE Rule 6.45(a); PCX Rule 6.75(a). Market makers in the trading crowd, for their part, generally have a degree of priority over a bid or offer submitted on behalf of the proprietary account of an upstairs broker-dealer firm. *See* Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064. *But see also infra* Section IV.C.2.b.

[67] *See* Phlx Rule 119(b). *See also* Amex Rule 126(e), applied to options trading by Amex Rule 950(d).

[68] Telephone conversation with the Phlx, May 1, 2000.

[69] *See supra* note 63.

[70] Telephone conversation with the Phlx, July 14, 2000.

[71] Telephone conversation with the Phlx, July 14, 2000.

[72] Telephone conversation with the Phlx, July 14, 2000.

[73] *See supra* note 63.

[74] *See* Securities Exchange Act Release No. 42190 (December 1, 1999) 64 FR 68706 (December 8, 1999) (concerning CBOE Rule 8.80(c)(7)(ii)).

[75] PCX Rule 6.82(d).

[76] *See supra* notes 8 and 67–71 and accompanying text.

The following specialist guarantees are operative on the options exchanges today:

• On the Amex, a specialist is not currently entitled by rule to a participation guarantee. However, the Amex recently filed a proposal to codify the specialist allocation practices that have developed on its trading floor.[77] The proposal would guarantee the specialist approximate 60% of an order when one registered trader is on parity, 40% when two to four are on parity, 30% when five to seven are on parity, 25% when eight to fifteen are on parity, and 20% when 16 or more are on parity. Amex rules provide that a customer will not receive a lesser amount than the market makers or specialist.[78]

• On the CBOE, after all public customer orders in the book have been filled, a DPM is guaranteed to trade with 30% of each order filled at its principal bid or offer.[79]

• On the ISE, after all public customer orders have been filled, a PMM is allocated 60% of an order if only one other participant is quoting at the best price, 40% if two other participants are at the best price, and 30% if more than two other participants are at the best price. A PMM also has precedence to execute orders of five contracts or fewer.[80]

• On the PCX, after all public customer orders in the book have been filled, an LMM is generally guaranteed the right to participate in 50% of each transaction occurring at its disseminated quote.[81] However, the Commission understands that with the expansion of multiple exchange trading of options last summer, LMM guarantees have been reduced on the PCX to between 25% and 35% of each trade in some of the most actively traded issues.

• On the Phlx, as discussed in Section II of this Notice, a specialist is currently allocated 30% of an order when three or more controlled accounts are on parity, 40% when two are on parity, and 60% when one is on parity.[82] A specialist on the Phlx is not required to yield to a customer order on parity, but a customer order may not receive a smaller participation than the specialist.[83]

Specialist guarantees, generally, have been found by the Commission to be consistent with the Act as a reasonable means for an exchange to attract and retain well capitalized specialists who will attract order flow to the exchange, as long as the granting of such guarantees does not unreasonably restrain competition and harm investors.[84]

b. *Guarantees to Upstairs Firms: Facilitation and Customer Crosses:* Until recently, upstairs—or order-entry—firms seeking to cross the order of one customer with that of another, or to trade as principal with a customer order, were required to yield priority to members of the trading crowd for the full size of the order.[85] Even if the cross were proposed at a better price than that given by the crowd in its response to a floor broker's call for a market, if members of the crowd then decided they wanted to trade with the original customer order at the new best price, they could do so, and thus ''break up the cross.''

The options exchanges have made exceptions to this general rule, however. As an incentive to improve market liquidity in FLEX options, for instance, the exchanges guarantee upstairs firms the right to cross or trade with a certain percentage of each order they bring to the floor when the firm improves or matches the best bid or offer supplied by the crowd in response to the floor broker's call for a market.[86]

In addition, most of the options exchanges have adopted rules to permit such crossing and/or facilitation guarantees in the case of standardized options. A trading mechanism on the ISE, for instance, guarantees an Electronic Access Member the right to trade with 40% of its own customer order.[87] New Amex, CBOE, and PCX rules, approved by the Commission in May and June, 2000, similarly give order entry firms the right to trade as principal with up to 40% of each of their customers' orders above a certain size.[88] These rules provides, however, that if the trade takes place at a price at which the specialist too, is entitled to a guarantee, the combined total percentage of an order allocated to the upstairs firm and the specialist may not exceed 40%.

The Commission believes that these new rules and proposals reflect, in part, the increased competition among the options exchanges to attract the flow of customer orders to their respective markets since August 1999, when multiple trading was vastly expanded. By guaranteeing order entry firms the right to participate in the execution of their customers' orders, exchanges allow these firms to profit from the spread. Effectively, these types of guarantees allow order entry firms to internalize a portion of their own customers' order flow through the facilities of the exchange. Multiple trading has meant that order entry firms have more leverage to demand that exchanges provide them these participation rights because they now have more of a choice where to execute their customer orders.

c. *Automatic Execution Allocations:* All the exchanges have systems that automatically execute orders of public customers below a certain size—currently up to 50 contracts[89] without exposing them to the auction on the floor. Auto-ex systems are designed to give investors speed, efficiency, and accuracy in the execution of their small orders. These orders are executed at the exchange's disseminated quotation on a rotational basis against the accounts of specialists and market makers who sign up for the system.

Auto-ex orders are thus not executed according to auction principles and priority rules, but are allocated to market makers on the system by turn, regardless of who was first to bid or offer the disseminated price. Although a

[77] *See* Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

[78] A specialist cannot be on parity with a customer order for which he is acting as agent, however, and a registered trader cannot be on parity with a customer when either establishing or increasing his position in the option. *See id.*

[79] *See* Securities Exchange Act Release No. 42190 (December 1, 1999), 64 FR 68706 (December 8, 1999) (establishing pro-rata percentage pursuant to CBOE Rule 8.80(c)(7)(ii)).

[80] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000) (establishing allocation procedures pursuant to ISE Rule 713(e)). The PMM is entitled to a larger allocation if its quotation size in proportion to the total size of quotations on the market is greater than these percentages. This larger allocation recognizes the superiority of larger sized quotes, and is not based merely on the PMM's status as PMM.

[81] *See* PCX Rule 6.82(d). For more heavily traded options, this guarantee may be reduced based on LMM performance to 40% under certain conditions when PCX market share falls in the case of multiple-traded issues; and to 25% in the case of non-multiple-traded issues.

[82] New specialist units introducing new options and specialists developing and trading new products receive different percentages, as discussed in Section II.

[83] However, orders of controlled accounts—except for orders of ROTs closing inperson—must yield priority to customer orders. Phlx Rule 1014(g)(i).

[84] *See, e.g.,* Securities Exchange Act Release Nos. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994); 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994). These orders, approving specialist guarantees, are cited above by the Phlx in support of the current proposed rule change.

[85] *See, e.g.,* Amex Rule 950(d), Commentary .02; CBOE Rule 6.74; PCX Rule 6.47; Phlx Rule 1064.

[86] *See* Amex Rule 904G(e)(iii); CBOE Rule 24A.5(e)(iii); PCX Rule 8.103(c)(3); Phlx Rule 1079(f)(6).

[87] ISE Rule 716(c). *See also* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[80] *See* Securities Exchange Act Release Nos. 42894 (June 2, 2000) (File No. SR–Amex–99–36), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR–CBOE–99–10); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000) (File No. SR–PCX–99–18).

[89] *See* Securities Exchange Act Release Nos. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (SR–Phlx–99–35); 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) (SR–CBOE–99–17); 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) (SR–PCX–99–04); and 42094 (November 3, 1999), 64 FR 61675) (November 12, 1999) (SR–Amex–99–43). Proposals by the exchanges to increase the maximum size of orders eligible for auto-ex to 75 or 100 contracts are currently pending before the Commission. *See* Securities Exchange Act Release Nos. 42930 (June 13, 2000), 65 FR 38618 (June 21, 2000) (SR–CBOE–99–51); 42931 (June 13, 2000), 65 FR 38615 (June 21, 2000) (SR–Amex–99–45); 42932 (June 13, 2000) 65 FR 38621 (June 21, 2000) (SR–Phlx–99–32); and File Nos. SR–PCX–00–18 and 99–19.

market maker can change the disseminated quote and thereby directly affect the price at which orders will be automatically executed, that market maker will receive no larger an allocation of auto-ex orders as a result, and hence has no incentive to better prices for this purpose. On the other hand, auto-ex prices are not totally isolated from competitive forces. The disseminated quote may be narrowed or widened by the specialist or the market makers to compete with other exchanges in atracting customer orders.

Some exchanges' rules governing their auto-ex systems incorporate a specialist guarantee. On the PCX, the LMM is required to either participate in every other auto-ex trade, or participate in every trade to the extent of the LMM's guaranteed percentage for non-auto-ex orders.[90] On the Phlx, as discussed above in this Notice, the Wheel currently assigns specialists in certain options approximately twice the number of contracts as it assigns every ROT with the unanimous consent of Wheel participants.[91] Under the proposed rule change, Phlx specialists would be guaranteed 30% of each auto-ex order in non-Top 100 options covered by Rule 1014(g)(ii), 50% of each auto-ex order for Top 100 Options assigned to a Phlx specialist before January 1, 1997, and 80% of each auto-ex order for Top 100 options assigned to a Phlx specialist before that date.[92]

C. Special Guarantees as an Exchange's Competitive Strategy

Paradoxically, while the special allocations raise concerns about inhibiting price competition within an exchange, they are often conceived—from the perspective of the exchange and its members—as necessary strategies to compete with other exchanges.

For any market center to survive, it must compete with other, similar centers to attract the flow of customer orders to buy and sell through its own facility. Many of these competitive efforts are designed to appeal to brokers, who play a critical role in deciding where to route their customer orders.[93] These efforts can take many forms, such as providing faster and more reliable execution of orders, lowering transaction fees, initiating innovative trading services, and providing economic inducement to brokers to send their customer order flow to the market center.

The special allocations for specialists, for example, enable an exchange to recruit market makers to serve in the specialist role, which is critical to operating an effective marketplace. Specialists provide the liquidity and offer the services that assure the smooth functioning of today's exchanges. Some exchange rules and policies explicitly oblige the specialist to promote the exchange's standing as a marketplace.[94]

In addition, through their automatic execution systems, exchanges assure brokers that their smaller customer orders will be executed with certainty, speed, and efficiency. The exchanges can provide this assurance only when market makers agree to execute those orders. Exchanges provide market makers with an incentive to participate in these auto-ex systems through rotational allocation.

In addition to competing for orders solely on the strength of their specialists' services, automatic execution facilities, and other services, the exchanges also increasingly rely on providing order entry firms with economic inducements to attract order flow.

1. Offering Internalization Opportunities

One such type of inducement is allowing members to ''internalize''—*i.e.,* trade on a proprietary basis with—at least a portion of the customer order flow they control. Internalization allows the member who brought the customer's order to the exchange to make profit as a dealer, rather than simply act as agent and change the customer a brokerage commission. One way in which an exchange allows its members to internalize is by adopting the kind of facilitation guarantee described above, whereby a broker-dealer is entitled to trade ahead of the crowd with a certain percentage of any customer order it sends to the floor.

A second way in which exchange rules may set the stage for firms to internalize is through the specialist guarantee. When a broker-dealer is affiliated with the specialist in a particular option at a particular exchange, it has the incentive to route its customer orders to that exchange, knowing that its affiliated specialist will have priority, by virtue of the specialist guarantee, to trade with a significant portion of them.

2. Payment for Order Flow and Preferencing

Another economic inducement used by market centers to attract business is ''payment for order flow,'' an arrangement in which a market center or one of its members pays brokers who agree to route their orders to it for execution—in other words, to preference their order flow.[95] For example, the specialist firm in a given option, responsible for attracting order flow in that option to the exchange, may consider paying, or in some other form compensating brokerage firms who choose to send their customer orders to its own market over another. The specialist firm can earn extra profits when those orders are executed, by virtue of its guaranteed right to participate in a significant portion of every transaction at the disseminated price. The higher the specialist firm's percentage, the more contracts it can trade with and the more it can afford to pay for order flow. In this way, the rules by which exchanges provide guarantees can directly impact their specialists' ability to implement this strategy.

The Commission has expressed the views that internalization and payment for order flow, while not unlawful in themselves, can present conflicts between the interests of brokers and the investors they represent. Moreover, internalization and payment for order flow agreements diminish the need for exchange participants to quote competitively. The latter concern is discussed further in Part D below.

D. Specialist Guarantees and Exchange Act Requirements

As discussed above, the Exchange Act requires the Commission to consider the impact on competition in evaluating proposed rules of self-regulatory organizations.[96]

Thus, in approving exchange rules that provide for special guarantees—be they guarantees to specialists, market makers on the automatic execution Wheel, or firms seeking to cross or facilitate customer orders—the

[90] *See* Securities Exchange Act Release No. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999).

[91] *See supra* note 38.

[92] *See supra* Section II.A.1.d.

[93] For amplification on this theme, *see* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (notice of filing of SR–NYSE–99–48, including Commission request for comment on issues relating to market fragmentation) (''Market Fragmentation Release'').

[94] *See, e.g.,* PCX Rule 6.82(c)(8); CBOE Rule 8.80(b)(2), Interpretations and Policies. 01.

[95] Payment for order flow, a common practice in the equities markets, began to appear in the options markets as a result of the competition for order flow engendered by multiple trading. *See, e.g.,* ''Payment for Order Flow has Entered the Options Markets,'' Dow Jones Business News, November 4, 1999. In a recent development in this area, the CBOE, followed by the Amex, submitted rule changes to the Commission—which became effective upon filing—that allow them to collect a fee of 40 cents per contract from their market makers for certain transactions on the exchange. The collected monies are then given to the DPM or specialist in each options class to use, among other things, to pay for options order flow. *See* File Nos. SR–CBOE–00–28 and SR–Amex–0038.

[96] *See supra* notes 52–54 and accompanying text.

Commission has been always mindful that, if too great, guarantees will negatively impact the competitive auction process that lies at the heart of exchange trading.[97] This is because, while such strategies are a competitive response by markets to attract order flow, if a guarantee becomes too large it could significantly discourage another type of competition: Price competition.

Because these guarantees ''lock up'' a certain portion of each affected order, they reduce the number of contracts for which the market making crowd can compete. The concern is that locking up a percentage or the order—for whatever the purpose—may so tilt the playing field that the opportunities available to the crowd are reduced and its members are unable to compete in some or all options.[98]

In its recent approval of the ISE's application for registration as a national securities exchange, the Commission discussed this concern with respect to the ISE's proposed ''facilitation mechanism,'' a system designed to effect a form of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[99]

With respect to specialist guarantees, it is similarly difficult to predict the potential effects on the market of a particular proposed rule change. At some certain point it becomes clear, however, that if the percentage of each order allocated to the specialist rises too high, the members of the trading crowd will be left with too little with which to trade to sustain their competitive market making activity.

When only a small percentage of each order is left to the market makers to trade with, not only are their potential profits reduced, their costs of doing business on a per-unit basis—*e.g.*, their clearing expenses—also rise. This is particularly true when the remaining portion of an order must be divided among several market makers. By the same token, the specialist firm is in a better position to lower its clearing costs, enabling it to compete even more aggressively against the crowd.

If market makers cannot make sufficient profits by trading, for instance, at the spread determined by auto-quote— normally an approximation of the realistic best price, at which the specialist will also be quoting—they will scarcely be able to compete by offering still better prices. Although any market maker can capture an order entirely anytime he chooses if he alone improves the specialist's quote, it is likely that he will not be able to long sustain his business by constantly reducing the spread. Moreover, the specialist firm can use its position and its greater economies of scale to match or continuously best the improving market maker at the auction.

The Phlx argues that a large specialist percentage will encourage the specialist to draw more order flow to the Phlx, so that the absolute amount of volume received by the competing market makers will grow, even though their percentage volume may decrease. But this assumes that other markets do not imitate the Phlx and offer similar specialist guarantees. If they do, the Phlx may not attract any greater volume, while the competing market makers' share will have been reduced.

If the market makers leave the market, the specialist firm will be left as the only one determining the spread. Even if some market makers remain, they may be forced to recognize the specialist firm as the price leader, enabling it to establish the best bid and offer on its own. In either case, the spread is likely to widen, to the detriment of customers.

In addition to the concern over price competition dwindling or disappearing on one market, if other exchanges adopt similar guarantees, the end result could be one price-setter left on each exchange.

Theoretically, the absence of competition on one exchange need not mean that customer orders sent to that exchange will receive inferior prices. In order to attract customer orders, a specialist firm left as the sole price-setter on an exchange would still need to compete with other exchanges to provide the best price. At a minimum it would need to at least match the best price available elsewhere—the national best bid or offer (''NBBO'')—or, if it cannot match that price, agree to send it to another exchange that will.

Several concerns remain, however. Because there is currently no prohibition against trade-throughs,[100] the specialist who is not prepared to match the NBBO can execute an order at an inferior price. Moreover, even the adoption of a rule prohibiting trade-throughs would not necessarily inspire intermarket competition to improve prices if the market makers on one market can match a better price quoted by another market. Such competition might be fostered by a system of ''peer/time priority,'' which would reward the first exchange to offer the best price by requiring that any order received across the country be sent to that exchange for execution, and possibly strengthen the incentives to display competitive quotes. The Commission, however, recently concluded that it does not have sufficient information, at this time, to satisfy itself that the potential benefits of a mandatory price/time priority requirement justify the potential drawbacks.[101]

Further, with one price-setter left on each exchange, the potential grows for payment for order flow and internalization arrangements to interfere with order interaction and discourage the display of aggressively-priced quotations. The preferencing of orders based on factors unrelated to the quality of the market to which they are sent, raises the concern that price spreads may not remain narrow over time. At least one academic study has concluded, for example, that while preferencing to some market centers may not have significant negative effect when competition reigns in the market as a whole, ''once preferencing becomes the norm in a market, there is little question that market performance can deteriorate.'' The authors observe: ''The results [of the study] that shows that the scale of preferencing can be detrimental suggest an active role for regulators in limiting the dominance of preferencing in markets.'' [101] The Commission must consider the potential impact of any proposed rule change in light of these concerns.

In evaluating proposals that increase specialist guarantees, the Commission

[97] *See e.g.,* Securities Exchange Act Release Nos. 34109 (May 25, 1994) 59 FR 28570 (June 2, 1994); 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999); 42455 (February 24, 2000), 65 FR 11388; 42845 (May 26, 2000), 65 FR 35683 (June 5, 2000).

[98] For a discussion of the role dealers and market makers play in the overall structure of the securities markets, see Market Fragmentation Release.

[99] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[100] A ''trade-through'' occurs where a customer's order is executed on one exchange at a price inferior to that available on another exchange.

[101] *See* Securities Exchange Act Release No. 43086 (July 28, 2000) (Order approving options intermarket linkage plan submitted by the Amex, CBOE, and ISE). *See also* Securities Exchange Act Release No. 43084 (July 28, 2000) (proposing new rules under the Act concerning disclosure of order routing and execution practices).

[101] Robert Bloomfield and Maureen O'Hara, Does Order Preferencing Matter?, 50 Journal of Financial Economics 3, 35 (1998). The study, which conducted experiments based on a market design patterned after the Nasdaq, related to the debate over the potential effects of preferencing in the securities markets.

must consider the provisions of Section 6(b)(5) of the Act that require, in addition to the standards cited above that exchange rules be designed to ''promote just and equitable principles of trade'' and not to permit ''unfair discrimination between customers, issuers, brokers, or dealers.'' [103] It must further consider Section 11A(a) of the Act,[104] which sets as one of its objectives ''fair competition among brokers and dealers and among exchange markets.'' [105]

Specialist guarantees, which afford specialists the ability to attract increased order flow to an exchange, may, on the one hand, benefit market markers in the exchange's trading crowd by enabling them to interact with a larger number of customer orders. On the other hand, the larger the specialist guarantee, the less of each order the crowd in left to trade with, raising the question of whether the guarantee is too high and thus unfairly discriminatory.

The Commission must also consider in this context whether an increased guarantee is consistent with Rule 11b–1(a)(2)(iii) under the Act, which requires that the rules of a national securities exchange include provisions restricting the dealings of a specialist ''so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market * * *'' [106]

E. The Phlx Proposal

The proposed rule change would dramatically increase guarantees on the Phlx, to 80% for active options allocated to specialists after January 1, 1997. Among the purposes cited by the Exchange for the proposals is that this enhanced guarantee would provide added incentive for specialists to attract order to flow to the Exchange.

As indicated above, specialist guarantees on the options markets currently rise to more than 40% of an order in only several instances. One exception is on the PCX, where 50% is the general rule, but the trend has been downward since the advent of multiple exchange trading.[107] Otherwise, specialist allocations on the options exchanges generally are 40% or less.[108] Thus, the proposed rule change by the Phlx to establish an 80% specialist guarantee represents a significant increase in the amount of order flow that would be guaranteed to one market participant.

The Phlx believes that allocating this large percentage is warranted as an incentive for specialists in view of the particular responsibilities, burdens, and costs they bear compared to other market participants. The Commission is concerned, one the other hand, with the effect that such a high specialist guarantee will have on the ability of market makers in the crowd to quote competitively or even to continue making markets at all.

In its rule filing, Phlx argues that because the Exchange until now has not benefited from significant order flow in the Top 100 Options in question, its ROTs in these options will not be disadvantaged. To the contrary, the Phlx maintains, the ROTs will benefit by the depth and liquidity the specialists in these options will being to the Exchange. ''Specifically,'' the Phlx writes, ''more order flow may benefit ROTs, even if they receive a lesser percentage of such order flow * * *'' [109]

The Phlx further argues that ROTs indeed will have an incentive to improve prices under the proposed rule change, because by its provisions, the specialist's enhanced participation applies only when the specialist is on parity. If an ROT or other controlled account improves the market or establishes a market first, the specialist's enhanced participation does not apply. ''Thus,'' the Phlx maintains, ''the proposal provides an incentive ROTs to better markets and thus should promote competition.'' It adds: ''Therefore, the Exchange believes that this proposal should encourage tighter markets and attract order flow to the Exchange.''

The Commission is concerned, however, that because the market makers are reduced to so small a percentage of the spread when they are at the best bid or offer in parity with the specialist, they will not be able to continue market making and compete to establish better prices at all. The Commission notes in this regard that the proposal would entitle the specialist to an 80% participation in all eligible trades executed through the Exchange's auto-ex system.

Moreover, the Commission is concerned that under the proposed rule change, a specialist could, for the short term, tighten its quote to the extent that no potential competitor could afford to improve prices any further. Unable to make profits on the 20% left to them, the potential competitors would be forced to follow the specialist's lead, allowing the specialist to widen spreads again.[110]

Further, the Commission believes it is reasonable to expect that, if the Phlx proposal is approved, other exchanges will also propose specialist guarantees of 80% in order to remain competitive. Thus, the increased order flow and benefits for its ROTs that the Phlx anticipates as the result of a higher specialist guarantee may not, in the end, be sustainable.

The Commission is requesting therefore that commenters address the merit of the Phlx's arguments, in addition to any other comments they may wish to submit on the potential impact of the proposed rule on competition. Specifically, the Commission is requesting comments on the following questions:

- Will enhanced specialist entitlements of up to 80% discourage competition and price improvement on the part of market makers in the crowds of individual options exchanges, such as the Phlx, that choose to adopt them?
- If enhanced specialist entitlements of these sizes were approved by the Commission, and other exchanges also adopted them, what would be the

[103] 15 U.S.C. 78f(b)(5).

[104] 15 U.S.C. 78k–1(a). Section 11A(a) sets forth findings and objectives that are intended to guide the Commission in its oversight of the national market system. As the Commission has recently noted, these findings and objectives can be summed up in two fundamental principles: (1) the interests of investors (both large and small) are preeminent, especially the efficient execution of their securities transactions at prices established by vigorous competition; and (2) investor interests are best served by a market structure that, to the greatest extent possible, maintains the benefits of both an opportunity for interaction of all buying and selling interest in individual securities and fair competition among all types of market centers seeking to provide a forum for the execution of securities transactions. *See* Market Fragmentation Release.

[105] Section 11A(a)(1)(C)(ii), 15 U.S.C. 78k–1(a)(1)(C)(ii).

[106] 17 CFR 240.11b–1(a)(2)(iii).

[107] On the Phlx itself, the specialist is entitled in one case to more than half the fill (60%) when only one other controlled account is parity. Also, 50% guarantees are allowed for new products and new specialist units on the Phlx.

[108] The 60% specialist guarantees on some exchanges, described above, apply when only one market besides the specialist is on parity. In this case, as one of two participants, the specialist would receive 50% of the order even without an enhanced allocation. Thus, the 60% allocation entitles the specialist to only 10% more than he would otherwise have received. Moreover, if additional market makers choose to compete, the specialists guarantee is reduced to 40% or less.

[109] While the Phlx cites a statement by the Commission itself to this effect, we note that this statement appeared in the approval order for a rule change instituted by the Phlx in 1994 that provided for only a 40% guarantee when two or more ROTs were on parity with the specialist and 50% when only one ROT was on parity.

[110] The Commission notes that the proposal includes no limitation on the number of option classes that could be allocated to a specialist under the 80% Enhanced Participation program. The Commission also notes that allocations of options classes to specialists as mandated by Phlx Rule 511(b) may be based on, in addition to specialist evaluation results, ''such other factors as the Committee deems appropriate,'' among them capital resources and order flow commitments. The Commission is thus concerned about the proposal's potential to strengthen the position of specialists still further.

ultimate effect, if any, on price competition and the width of bid-asks spreads across the options markets as a whole?

• Would enhanced specialist entitlements of up to 80% be unfairly discriminatory and induce the exit of market makers?

• How have existing specialist entitlements on the options exchanges affected competition and market quality?

• What is the likelihood of the Phlx proposal leading to preferencing as a norm and in turn creating a risk to overall market quality?

• The Commission has elsewhere asked for comment on the alternative of requiring greater disclosure by market centers and brokers concerning their trade executions and order routing as a means of addressing market fragmentation. Would this alternative impact any of the concerns raised above? If so, how?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing questions and other issues raised by this notice, including whether the proposed rule change is consistent with the Act or whether the Commission should institute proceedings to determine if it should be disapproved as inconsistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–00–01 and should be submitted by August 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [111]

Jonathan G. Katz,

Secretary.

Exhibit A

Text of Proposed Rule Change

Additions are italicized and deletions are in brackets.

Rules

Obligations And Restrictions Applicable To Specialists And Registered Options Traders

Rule 1014

(a)–(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customers orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule. Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders, except that PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts.

Orders of controlled accounts are not required to yield priority to other controlled account orders, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield.

Orders of controlled accounts, other than ROT's and Specialists market making in person, must be:

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and

(2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order.

Several programs described below provide an enhanced participation (or split) to specialists, which refer to the portion of an options trade available for allocation to the specialist on parity, including a 30% enhanced specialist participation, new unit/new option enhanced specialist participation, new product enhanced specialist participation, 50% enhanced participation, and 80% enhanced participation.

(ii) Enhanced Specialist Participation—*Except as provided in (g)(iv), (g)(v) and (g)(vi) below, i*[I]n equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% *when there are three or more controlled accounts on parity* (''Enhanced Specialist Participation''), except in the following circumstances: (1) Where there is one controlled account on parity, the specialist is entitled to 60%; or (2) where there are two controlled accounts on parity, in which case the specialist is entitled to 40%. Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. Enhanced Specialist Participation will be effective for: (a) All newly listed issues and issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

(A)–(C) No change.

(iii) New Unit/New Option Enhanced Specialist Participation—*Except as provided in (g)(iv), (g)(v) and (g)(vi) below, t*[T]o encourage the establishment of new specialist units to trade equity and index option classes that heretofore have never been listed on the Exchange (''New Options Classes''), when such units are on parity with controlled accounts in such classes, the new specialist units will be entitled, for a period of six months following commencement of trading in New Option Classes, to the following enhanced specialist participation in a any such parity trade: (1) Fifty percent (50%) where there is one controlled account on parity; and (2) Forty percent (40%) where there are two or more

[111] 17 CFR 200.30–3(a)(12).

controlled accounts on parity, except that no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. The Allocation, Evaluation and Securities Committee may extend such enhanced parity split for each applicable option beyond the initial six month period for one additional six month period upon petition by the specialist unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest. Additionally, the Committee after granting such extension may at any time terminate with enhanced parity split for any particular options class if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.

(A)–(D) No change.

(iv) No Change.

(v) 50% Enhanced Participation—in 50% Enhanced Participation Options (defined in (A) below), when the registered specialist is on parity with more than one controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120, the specialist is entitled to 50% when there are two or more controlled accounts on parity (''50% Enhanced Participation''. Why there is one controlled account on parity, the specialist is entitled to 60% participation. No customer order which is on parity may receive a smaller participation than any other crowd participation including the specialist.

(A) *50% Enhanced Participation Options are the Top 100 Options, defined in Rule 1014(g)(vi)(A) below, which were allocated to Phix specialist before January 1, 1997.*

(B) *Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee may reduce the 50% Enhanced Participation authorized under this Rule to a parity level in accordance with Rules 119 and 120. The reduction shall be in accordance with the provisions of this rule if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any 50% Enhanced Participation Options. The Committee may reinstate the 50% Enhanced Participation for a particular option if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.*

(C) *50% Enhanced Participation Options that are reallocated or transferred to a Phlx specialist after January 1, 1997, are eligible to be 80% Enhanced Participation Options, as defined in Rule 1014(g)(vi)(A) below.*

(D) *A 50% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).*

(vi) 80% Enhanced Participation—When the registered specialist in 80% Enhanced Participation Options (as defined in (A) below) is on parity with a controlled account(s) (as defined in subparagraph (i) above), the specialist is entitled to 80% participation (''80% Enhanced Participation''). No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. This 80% Enhanced Participation will be in effect for a six-month pilot period commencing on a date determined by the Exchange (''Effective Date'').

(A) *Initially, Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; the 80% Enhanced Participation will become effective for those options on July 1 and January 1 of each year.*

Top 100 Options allocated, reallocated or transferred to a Phlx specialist after January 1, 1997 are eligible to be an 80% Enhanced Participation Option.

(B) *An 80% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).*

(C) *Exception: The 80% Enhanced Participation does not apply to orders when there is a Phlx ROT closing in-person on parity, provided that the ROT must announce to the trading crowd that he is closing. 50% Enhanced Participation, as defined in subparagraph (g)(v) of this Rule, may be applicable to such order.*

(D) *The volume requirement for 80% Enhanced Participation Options appears in Rule 511(d)(3).*

Enhanced Specialist Participation Review

Rule 509

(a) A Quality of Markets Subcommittee shall be established as a permanently standing subcommittee of the Committee. The purpose of the Subcommittee will be to monitor and evaluate the performance of equity and index option specialists to determine if they will retain an enhanced participation as defined in Rule 1014(g)(ii) *and Rule 1014(g)(v),* to strengthen the equity option floor, and to oversee the specialists' performance respecting multiply traded issues. The Chairman of the Subcommittee will be a floor broker who shall be a member of the Committee. The Other members of the Subcommittee may be anyone that the Chairman of the Committee finds to be qualified and there must be an equal number of specialists and ROTs on the Subcommittee. The Subcommittee also may assist the Committee in conducting informal reviews of specialist units which do not meet minimum standards on specialist evaluations pursuant to Rule 515.

(b)–(e) No change.

Specialist Performance Evaluation

Rule 511

(a)–(c) No change.

(d) Special Reviews.

(1)–(2) No change.

(3) 80% Enhanced Participation Options. The Committee will conduct special reviews for 80% Enhanced Participation Options. Specifically, if the volume transacted on the Exchange for each 80% Enhanced Participation Option does not exceed an average of 10% of the daily consolidated volume compiled by The Options Clearing Corporation (''Performance Requirement'') in each such option for the six month period commencing on the Effective Date or any six month period thereafter, the Committee, pursuant to rule 506, will solicit specialist applications to reallocate such option. This subparagraph (3) will be in effect for a six-month pilot period commencing on a date determined by the Exchange (''Effective Date'').

(A) *Initially, Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; and will become effective for those options on July 1 and January 1 of each year.*

(B) *For each Top 100 Option reallocated to a new specialist pursuant to Section (A) above, or transferred or allocated after the Effective Date (which now qualifies as an 80% Enhanced Participation Option), the new specialist*

is entitled to receive the 80% Enhanced Participation as described in Rule 1014(g)(vi), and the Performance Requirement must be met with the initial six month period commencing on the next business day following allocation, reallocation or transfer and continuing until the end of the next six month period operating for the other options in (A) above (that originated with the Effective Date.).

(C) *Reviews conducted pursuant to this subsection (3) will not be subject to the hearing procedures described in Section (e) below.*

(e) Hearing Procedures. Prior to a final determination with respect to any proceedings instituted under Sections (c) and (d) *(1) and (2) above,* the Committee shall notify the Registrant in writing of the Committee's preliminary evaluation and proposed action and inform the Registrant of its right to a hearing on this matter. If the Registrant elects to receive a hearing, the information supporting the Committee's evaluation of the Registrant's performance shall be presented. The Registrant shall have the opportunity to comment on the Committee's evaluation and present any information that it believes is relevant. The Registrant may question members of the Committee and Exchange staff with respect to the evaluation of its performance. Formal rules of evidence shall not apply. The Registrant and the Committee shall have the right to have present at the hearing one or more technical consultants for the purpose of answering questions about trading techniques and procedures and shall not otherwise participate in the Committee's final evaluation of the Registrant's performance. The Registrant may be represented by legal or other counsel. A transcript shall be kept of the hearing and copies will be furnished to the Registrant upon request and payment of the costs of reproduction. Based on the entire hearing record, the Committee shall prepare and deliver to the Registrant a written decision setting forth its conclusions regarding the Registrant's performance and the action, if any, to be taken with respect to removing and reallocating securities and the basis therefore. The decision also shall describe the Registrant's appeal rights. In the event of such appeal, the Committee's action shall be stayed pending the conclusion of the Registrant's appeal. If, after receiving notice of the Committee's preliminary evaluation and right to a hearing, the Registrant refuses to appear at a scheduled hearing or otherwise fails without reasonable justification or excuse to attend a scheduled hearing, he shall have waived his rights to such hearing.

Supplementary Material:

.01–.04 No change.

Specialist Evaluations

Rule 515

(a) No Change.

(b) Review Frequency and Weight of Evaluations. Routine reviews will be conducted quarterly for equity specialist units and every six months for option specialist units. Special reviews shall be commenced where a specialist unit's performance in a particular market situation was so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining efficient, fair and orderly markets, where a material change in the specialist unit has occurred, within 760 days after a transfer of one or more equity books or option classes has become effective pursuant to Rule 511(d0(2) or within 90 days after a new allocation and will cover such time periods as are deemed appropriate. Special reviews may incorporate the same review methodology and procedures as established for routine reviews, although special reviews may instead or in addition, examine such other matters related to a Registrant's performance as the Committee deems necessary and appropriate. The Committee may seek input from members, customers and Exchange staff and consider any other information the Committee deems relevant in making a final determination to initiate a reallocation proceeding pursuant to Rule 511(c). *The reallocation proceedings described in Rule 511(c) do not apply to the 80% Enhanced Participation Review described in Rule 511(d)(3).*

Option Floor Procedure Advice F–24

AUTO–X Contra-Party Participation (The Wheel)

(a)–(d) No change.

(e) Wheel Rotation/Assigning Contracts—The AUTO–X participation shall be assigned to Wheel Participants on a rotating basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in that listed option at that time. The Wheel shall rotate and assign contracts depending upon the size of the AUTO–X guarantee, as follows:

1–10 contracts every 2 contracts;

11–25 contracts ever 5 contracts

26 and more every 10 contracts

The Options Committee, or its designees, may approve a Wheel rotation in a size larger than the minimum stated above, if requested by the specialist and Wheel participants. However, the Wheel may not rotate in a size larger than ten contracts. Each remaining portion shall be successively assigned to individual Wheel Participants on that same basis. The specialist shall receive the first execution of the day; thereafter, if four or less ROTs are participating on the Wheel, the specialist shall participate in a normal rotation. However, if an average of five to 15 ROTs have signed-on the Wheel, the specialist shall receive every fifth execution; of an average of 16 or more ROTs have signed-on the Wheel, the specialist shall receive every tenth execution, unless Wheel participation falls below ten participants at any time, then the specialist shall automatically participate in a normal rotation.

Execution to the normal rotation: [With the unanimous consent of Wheel participants in an option and approval of the Options Committee Chairman or his designee, t] *T*he specialist shall receive [an enhanced participation substantially equivalent to twice the number of contracts as other crowd participants where the Enhanced Specialist Participation of Rule 1014(g)(ii) applies.] *the same enhanced participation on the Wheel as such specialist should receive under the enhanced specialist participation programs of Rule 1014(g)(ii), the 30% Enhanced Specialist Participation, Rule 1014(g)(v), 50% Enhanced Participation, or Rule 1014(g)(vi), 80% Enhanced Participation.*

(f) The provisions of section (e) above will be reviewed and evaluated by the Options Committee, on a six-month basis.

FINE SCHEDULE

F–24 Fine not applicable, except paragraph (c). Matters subject to review by the Business Conduct Committee.

Option Floor Procedure Advice B–6

Priority of Options Orders for Equity Options and Index Options by Account Type

Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described.

For the purpose of this Advice, an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Specialist

accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed controlled accounts by this Advice. Customer accounts are all other accounts.

Section A

No change.

Section B

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd, and

(2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order.

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

Several programs described below provide an enhanced participation (or split) to specialists, which refers to the portion of an options trade allocated to the specialist on parity, including a 30% enhanced specialist participation, new unit/new option enhanced specialist participation, new product enhanced specialist participation, 50% enhanced participation, and 80% enhanced participation.

Section C

Enhanced Specialist Participation—*Except as provided sections D–F,* [i[I]n equity and index option classes, when the registered specialist is on parity with a controlled account, as defined above, in accordance with exchange Rules 119 and 120 and the number of contracts to be bought or sold is grater than five, the specialist *is entitled to received an enhanced participation of 30% when there are three or more controlled accounts on parity (''Enhanced Specialist Participation''),* except in the following circumstances:

(1) where there is one controlled account on parity, in which case the specialist is entitled to 60%; or

(2) where there are two controlled accounts on parity, in which case the specialist is entitled to 40%.

Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. Enhanced Specialist Participation will be effective for:

(a) all newly listed issues,

(b) all index options, and

(c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee.

Section D

No change.

Section E

50% Enhanced Participation—In 50% Enhanced Participation Options (defined in (a) below), when the registered specialist is on parity with more than one controlled account as defined in subparagraph (i) above, in accordance with exchange Rules 119 and 120, the specialist is entitled to 50% participation when there are two or more controlled accounts on parity. When there is one controlled account on parity, the specialist is entitled to 60% participation. No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.

(a) 50% Enhanced Participation Options are the Top 100 Options, defined in Section F below, which were allocated to a Phlx specialist before January 1, 1997.

(b) Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee may reduce the 50% Enhanced Participation authorized under Rule 1014(g)(v) to a parity level in accordance with Rules 119 and 120. The reduction shall be in accordance with the provisions of this rule if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any 50% Enhanced Participation Options. The Committee may reinstate the 50% Enhanced Participation for a particular option if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.

Section F

80% Enhanced Participation—When the registered specialist in 80% Enhanced Participation Options (as defined in (a) below) is on parity with a controlled account(s), the specialist is entitled to 80% participation (''80% Enhanced Participation''). No customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist. The 80% Enhanced Participation will be in effect for a six-month pilot period commencing on a date determined by the Exchange (Effective Date).

(a) Initially, the Top 100 Options are those equity options with the highest total year-to-date option volume as of November 30, 1999. The initial Top 100 Options will remain in effect for at least the length of the initial pilot period and until the next evaluation date as follows: subsequent Top 100 Options will be evaluated and established on May 30 and November 30 of each year; the 80% Enhanced Participation will become effective for those options on July 1 and January 1 of each year.

Top 100 Options allocated, reallocated or transferred to a Phlx specialist after January 1, 1997 are eligible to be 80% Enhanced Participation Options.

(b) An 80% Enhanced Participation Option is not eligible for any other enhanced specialist participation programs provided in Rule 1014(g).

(c) Exception: The 80% Enhanced Participation does not apply to orders when there is a Phlx ROT closing in-person on parity, provided that the ROT must announce to the trading crowd that he is closing. 50% Enhanced Participation, as defined in subparagraph (g)(v) of Rule 1014(g), may be applicable to such order.

(d) The volume requirement for 80% Enhanced Participation Options appears in Rule 511(d)(3).

FINE SCHEDULE (Implemented on a one year running calendar basis)

No change.

[FR Doc. 00–20094 Filed 8–8–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and

recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Application of Circuit Court Law—0960–0581. SSA regulations at 20 CFR 404.985 and 416.1485 inform claimants of their right to request that a published Acquiescence Ruling (AR) be applied to a prior determination when we make a determination or decision on a claim between the date of the Circuit Court decision and the date we publish the AR. The regulations also specify that claimants can request that the AR be applied to a prior determination or decision by submitting a statement that demonstrates how the AR could change the prior determination or decision. SSA will use the information provided in the statement to readjudicate the claim, if the claimant demonstrates the Ruling could change the prior determination. Claimants may use Form SSA–795, Statement of Claimant or Other Person (OMB No. 0960–0045), to request and support application of a published AR to the prior determination or decision. The respondents are claimants whose determinations or decisions on their claims may be affected by an AR.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 28,333 hours.

2. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—0960–0145. SSA uses Form SSA–8202–F6 to conduct low- and middle-error-profile (LEP-MEP) telephone or face-to-face interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients' have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The respondents are recipients of SSI benefits or their representative payees.

Number of Respondents: 920,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 260,667 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. State Vocational Rehabilitation Agency Claim (SSA–199–U2) and Subpart V—Payments for Vocational Rehabilitation Services, 20 CFR Sections 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213 and 416.2217–0960–0310. The information collected on Form SSA–199–U2 and through these current rules is used by the Social Security Administration (SSA) to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary, and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

Number of Respondents: 80–100.

Frequency of Response: On occasion.

Number of Responses: 16,300.

Average Burden Per Response: Varies from 23 minutes to 4 hours.

Estimated Annual Burden: 9,048 hours.

2. SSA/DDS Cost-Effectiveness Measurement System (CEMS) Data Reporting Form—0960–0384. The data requested on Form SSA–1461 is input directly into the CEMS by the Disability Determination Services (DDS). This data is used by SSA in making DDS funding allocations, in measuring the cost effectiveness of operating each of the 52 reporting DDSs, and in setting cost-effectiveness goals. The respondents are State DDS's that report data for cost analysis and evaluation.

Number of Respondents: 52.

Frequency of Response: 4.

Average Burden Per Response: 6 hours.

Estimated Annual Burden: 1,248 hours.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

(OMB Address), Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: August 3, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–20034 Filed 8–8–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2000–7587]

Advisory Circular 36–4C, Noise Standards: Aircraft Type and Airworthiness Certification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is publishing a notice of availability of the draft advisory circular on ''Noise Standards: Aircraft Type and Airworthiness Certification.'' This notice is intended to assist interested persons who are reviewing a notice of proposed rulemaking on noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes that is currently out for public comment. It also solicits comments on this draft circular.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Copy of the draft AC 36–4C may be obtained on the FAA's web site (*http://www.aee.faa.gov/ac-36-4c*), or by mail by contacting the Office of Environment and Energy at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Connor, Noise Division (AEE–100), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8933.

SUPPLEMENTARY INFORMATION: The draft Advisory Circular (AC) 36–4C, ''Noise Standards: Aircraft Type and Airworthiness Certification'' contains information concerning the standards and requirements for aircraft noise certification and presents explanatory information, as necessary, to identify acceptable means of compliance.

The draft AC contains a section-by-section review of the 14 CFR part 36. The draft AC presents acceptable noise certification procedures for normal, utility, acrobatic, and commuter

category small airplanes, transport category airplanes and normal and transport category rotorcraft.

The FAA recently proposed changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes that were published in the **Federal Register** in a notice of proposed rulemaking (65 FR 42796, July 11, 2000). The comment period closes on October 10, 2000. These proposed changes are based on the joint effort of the FAA, the European Joint Aviation Authorities, and Aviation Rulemaking Advisory Committee, to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes. The draft AC 36–4C, ''Noise Standards: Aircraft Type and Airworthiness Certification'' is referred to in the above NPRM and, therefore, the draft AC is being made available by the FAA to review in conjunction with this NPRM. Comments are invited on the draft AC and should be submitted along with comments on the companion NPRM through the NPRM docket (Docket No. FAA–2000–7587).

The FAA intends to issue the final AC 36–4C concurrently with the final rule on the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes.

Issued in Washington, DC, on August 2, 2000.

James D. Erikson,

Director of Environment and Energy.

[FR Doc. 00–20130 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on August 23, 2000, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, Room 900 W, 800 Independence Ave, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–204), 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss noise certification issues. This meeting will be held August 23, 2000, at 8:30 a.m., at the Federal Aviation Administration. The agenda for this meeting will include the presentation and vote on the NPRM from FAR/JAR Harmonization Working Group for Helicopters. Members of the public may obtain copies of this NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 2, 2000.

Paul Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–20129 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 8, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 18, 2000, the FAA determined that the application to use a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than October 27, 2000.

The following is a brief overview of the use application.

PFC Project #: 00–11–U–99–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: April 1, 1999.

Charge expiration date: January 1, 2000.

Estimated total PFC revenue: $6,257,923.

Brief description of projects: Construction of Snow Removal Equipment Storage and Maintenance Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts, on July 25, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–20127 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (00–03–C–00–EAT) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pangborn Memorial Airport, Submitted by the Ports of Chelan & Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 8, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Site 250, Renton, Washington, 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Colin A. Clarke, Airport Manager, at the following address: One Pangborn Drive, East Wenatchee, WA 98802–9233. Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pangborn Memorial Airports, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang (425) 227–2654, Seattle Airports district Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–03–C–00–EAT) to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (15 CFR Part 158).

On July31, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 10, 2000.

The following is a brief overview of the application.

Level of the proposed FPC: $3.00.

Proposed charge effective date: February 1, 2001.

Proposed charge expiration date: September 30, 2002.

Total requested for use approval: $240,687.

Brief description of proposed project: Land Acquisition (Koether Property); Pavement Overlay-Apron and Tiedown Area; Taxiway Overlay; Vacuum Sweeper Truck; Construct Taxiway F, F–2 and Guidance Signs; Master Plan Update; Acquire Snow Removal Equipment and Aircraft Rescue and Fire Fighting Vehicle; Acquire Land Parcels (F4 and F5).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pangborn Memorial Airport.

Issued in Renton, Washington on July 31, 2000.

David A. Field,

Manager Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–20128 Filed 8–8–00; 8:45 am]

BILLING CODE 1910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activities Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collections was published on May 5, 2000 [65 FR 26269].

DATES: Comments must be submitted on or before September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, (202) 366–4104 (for OMB Nos. 2125–0519 and 2125–0522) and Mr. Robert Winans, (202) 366–4656 (for OMB No. 2125–0521), Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

1. Title: Developing and Recording Costs for Utility Adjustments.

OMB Control Number: 2125–0519 (Expiration Date: November 30, 2000).

Affected Public: State highway agencies and public utilities.

Abstract: Under 23 U.S.C. 123, the FHWA reimburses the State highway agencies when they have paid the costs of utility facilities' relocations that are required by the construction of Federal-aid highway projects. The FHWA requires the utilities to document the costs for adjusting their facilities. The utilities must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the State highway agency to the utility and in turn the FHWA reimburses the State for its payment to the utility. The utilities are required to maintain these records of costs for three years after final payment is received.

Estimated Annual Burden: The FHWA estimates that this collection imposes a total annual burden of 72,000 hours; *i.e.,* approximately 9,000 reimbursable utility adjustments are made yearly by approximately 3,000 of the 30,000 utility firms. The average amount of time required by these firms to calculate the adjustment costs and maintain the required records is estimated at 8 hours for each adjustment.

2. Title: Utility Use and Occupancy Agreements.

OMB Control Number: 2125–0522 (Expiration Date: October 31, 2000).

Affected Public: State/local highway authorities and public utilities.

Abstract: Under 23 U.S.C. 116, the FHWA requires the State and/or local highway authorities to maintain the highway rights-of-way including the control of its use by the utilities. In controlling the utilities' use of the highway rights-of-way the State/local highway authorities are required to document the terms under which the utility is to cross or otherwise occupy the highway rights-of-way. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the State/local highway authority's files for a three-year retention period.

Estimated Annual Burden: The FHWA estimates that the total annual burden imposed on the public by this collection is 414,000 hours; *i.e.,* nearly 4,600 of the 6,700 State and local highway authorities are involved in an average of 15 use and occupancy agreements per year, and the estimated average amount of time required by these entities to process each permit is 6 hours.

3. Title: Developing and Recording Costs for Railroad Adjustments.

OMB Control Number: 2125–0521 (Expiration Date: October 31, 2000).

Affected Public: State highway agencies and railroad companies.

Abstract: Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

Estimated Annual Burden: The FHWA estimates that the total annual burden imposed on the public by this collection is 9,600 hours; *i.e.,* nearly 120 of the 500 railroad companies are involved in an average of 10 railroad/highway projects per year, and the average number of hours required to calculate the railroad adjustment costs and maintain the required records is 8 hours for each adjustment.

Authority: 23 U.S.C. 101, 116, 121, 123, 130 and 315; 49 CFR 1.48.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: August 3, 2000.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 00–20100 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Conversion of Traveler Information Telephone Numbers to 511; Request for Participation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for participation.

SUMMARY: This document requests applications from public agencies for assistance in converting existing traveler information telephone numbers to the common three-digit national access number, 511. This assistance program provides Federal funding to public agencies to help defray the costs of telephone service providers in converting traveler information telephone numbers. Applications in response to this notice will be assessed to determine: (1) The level of coordination of the applicant with other agencies in the effected areas to reach agreement on a conversion approach for all traveler information numbers in the effected region; (2) the readiness of the applicant to convert traveler information telephone numbers in a timely fashion; and (3) the quality of the traveler information to be provided.

DATES: Applications to participate in the conversion of traveler information telephone numbers to 511 will be accepted anytime. Decisions regarding the acceptance of specific applications for funding will be made within 60 business days of receipt.

ADDRESSES: Applications to participate in the conversion of traveler information telephone numbers to 511 should be submitted directly to the Federal Highway Administration, Intelligent Transportation Systems (ITS) Joint Program Office, 511 Conversion, HOIT–1, 400 Seventh St. SW., Room 3416, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (HOIT–1), (202) 366–2128; Mr. Robert Rupert, Office of Travel Management (HOTM–1), (202) 366–2194; or Mr. Wilbert Baccus, Office of Chief Counsel (HCC–32), (202) 366–1346; Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from

the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

The document may also be viewed at the DOT's ITS home page at *http://www.its.dot.gov.*

Background

On March 8, 1999, the U.S. DOT petitioned the Federal Communications Commission (FCC) to adopt a new, national three-digit telephone number to allow Americans on the move access to on-the-spot transportation and traveler information, such as, road conditions and bus schedules. The burgeoning traffic reporter industry reflects the hunger that citizens have for more travel information, and the positive role the government can play as a partner in providing that information.

The nationwide three-digit number would utilize and significantly advance the intelligent transportation infrastructure already in place to assist some 45 States and cities in providing traveler information. The traveler information would continue to be provided by private companies or public/private partnerships already delivering this service. The number would provide information about bad weather, construction, or traffic jams that cause delays for businesses and the general public, as well as information about the status of transit buses, ferries, light rail, and other public transportation in local communities. In addition, by directing drivers away from congestion and hazardous conditions, the nationwide three-digit number would provide better access for emergency vehicles responding to accidents.

The FCC placed the U.S. DOT's petition in its docket (File No. NSD–L–99–24, CC Docket 92–105; 57 FR 22681, May 29, 1992), and comments submitted to the FCC were favorable to adoption of a national three-digit traveler information number. On July 21, 2000, the FCC assigned 511 as the nationwide traveler information telephone number.

In order to assist locations in converting existing telephone access numbers and facilitate implementing the 511 telephone service, the U.S. DOT developed a program of assistance to provide Federal funding to help defray the costs to convert existing traveler information telephone numbers to 511. This notice and request for participation implements that assistance.

This is anticipated as a three-year program with a total of up to $5 million of Federal funds available, and program funding beginning in fiscal year (FY) 2000. The maximum amount of Federal funding provided for any individual application is limited to $50,000. The number of applications approved for funding each FY will depend upon the number of applications submitted, the amount of assistance requested, and the total funding available (anticipated to be up to $2 million) for each FY.

Objectives of the Traveler Information Telephone Conversion Program

The goal of the Traveler Information Telephone Conversion Program is to accelerate the implementation of telephone number 511 nationwide for traveler information. Through this program, the U.S. DOT expects to enable the approximately 300 existing telephone numbers used to access traveler information around the country to be converted to 511, as approved by the FCC for traveler information.

Applications for the Traveler Information Telephone Conversion Program may be submitted by any public agency capable of receiving Federal funds, entering into agreements with telephone service providers, and acting on behalf of the effected parties in the geographic area specified in the application.

Funding

It is anticipated that conversions selected for funding will begin in FY 2000. Federal funding authority is derived from section 5001(a)(5) of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 419 (1998). Actual award of funds will be subject to funding availability. The anticipated amount of funding available in each FY is up to $2 million.

Federal ITS funding for the traveler information telephone conversion program may be used to support:

1. System design;
2. Conversion support including software modifications and necessary hardware changes; and
3. System and acceptance testing.

Matching Share/Cost Sharing

There is a twenty percent matching share that must be from non-federally derived funding sources, as statutorily required, and must consist of either cash, substantial equipment contributions that are wholly utilized as an integral part of the project, or personnel services dedicated full-time to the proposed integrated deployment for a substantial period, as long as such personnel are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. Note that funding identified to support continued operations, maintenance, and management of the system will *not* be considered as part of the partnership's cost-share contribution.

In an ITS partnership, as with other U.S. DOT cost-sharing grants, it is inappropriate for a fee to be included in the proposed budget as part of a partner's contribution to the project. This does not prohibit appropriate fee payments to vendors or others that may provide goods or services to the partnership. It also does not prohibit business relationships with the private sector, which result in revenues from the sale or provision of ITS products or services. U.S. DOT regulations require grant income to be deducted from expenditures before billing. Given prior approval, grant income can be used either as match or cost share.

The U.S. DOT and the Comptroller General of the United States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must maintain sufficient documentation to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, public involvement costs, subcontractor costs, and travel costs should be included in that documentation.

Instructions to Applicants

An application to participate in the conversion of traveler information telephone numbers to 511 shall consist of three parts: Regional Coordination Arrangements, a Technical Plan, and a Financial Plan that together describe the proposed conversion approach. The complete application shall not exceed 20 pages in length, including the Regional Coordination Arrangements, the Technical Plan, the Financial Plan, the title page, index, and tables. A page is defined as one side of an 8½ by 11-inch paper, with a type font no smaller than 12 point.

Applications shall be submitted in an electronic format compatible with Microsoft Office 1997. The cover sheet or title page of the application shall include the name, address, and phone number of an individual to whom correspondence and questions about the application may be directed. Any portion of the application or its contents that may contain proprietary information shall be clearly indicated;

otherwise, the application and its contents shall be non-proprietary.

Selection Criteria

Applicants must submit acceptable Regional Coordination, Technical, and Financial Plans that together provide sound evidence that the proposed conversion can successfully be completed in a timely fashion.

Proposals should be organized into the following three sections:

1. Regional Coordination Arrangements

The proposed conversion should demonstrate a coordination among affected agencies and firms in reaching agreement to convert existing traveler information telephone numbers to 511. Letters of agreement, memorandums of understanding (MOUs), and other documents shall be referenced and included as appropriate.

(a) The application should discuss current working relationships, existing cooperation, and information sharing among State, local, and other relevant public agencies, and the private sector for the dissemination of travel information services. The proposed conversion should demonstrate a commitment to cooperation among agencies, jurisdictions, and the private sector.

(b) The application should discuss any institutional or organizational issues that arose during discussions with affected parties, and the resolution of these issues. Any key decisions related to the timely implementation of the conversion shall be identified, especially if the decisions have not been made prior to application submittal.

(c) Memorandums of understanding, or other appropriate documentation, that clearly define the responsibilities and relationships of all parties, including institutional relationships and financial agreements needed to support the conversion, should be attached to the application.

2. Technical Plan

The Technical Plan shall describe how the proposed conversion will take place and describe the quality of the traveler information to be provided. The Technical Plan shall demonstrate that the appropriate telephone service providers have provided detailed plans and schedules for telephone number conversions.

In addition, an acceptable Technical Plan should:

(a) Contain an operational concept and technical approach that demonstrate how the proposed conversion will be fully implemented, as well as any incremental stages leading to full implementation. The specific roles and responsibilities of the all parties should be defined.

(b) Contain a technical approach that responds to traveler information needs of the entire affected area. A description of the affected area, including geographic size and major jurisdictions served. Any data or information exchanges among traveler information services and/or telephone service providers should be described along with implementation schedules.

(c) Describe the type(s) of information that will be available to a caller, and the method that will be used to access information. Descriptions of the information will include how frequently it is updated, any variations in details provided across the affected geographic area, any variations in coverage or details based on the time of the day, and the primary source(s) of the information, e.g., construction schedules, transit schedules, transportation management systems, enforcement dispatch systems.

(d) Demonstrate that the proposed system follows the privacy principles developed by ITS America. For further information, see ''References and Note to Applicants'' below. Where the privacy principles conflict with applicable Federal and State law, the latter shall prevail.

References and Note to Applicants: The ITS privacy principles are available from ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024, telephone (202) 484–4847. The document is also available on the Internet at http://www.itsa.org.

3. Financial Plan

The Financial Plan should demonstrate that sufficient funding is available to successfully complete all aspects of the proposed conversion as described in the Technical Plan. The Financial Plan should also provide the financial information described under the heading, Matching Share/Cost Sharing.

An acceptable Financial Plan should:

(a) Provide a clear identification of the proposed funding for the conversion of traveler information telephone numbers to 511, and a commitment that no more than 80 percent of the total cost will be supported by these Federal ITS funds. All financial commitments, from both the public and private sectors, should be documented in signed MOUs, or other appropriate documents.

(b) Describe how the conversion will be implemented and how the traveler information service(s) will be operated to ensure the timely implementation and the continued, long-term operations of the system.

(c) Include documented evidence of continuing fiscal capacity and commitment from anticipated public and private sources.

(d) Include corresponding public and/or private investments that minimize the relative percentage and amount of Federal ITS funds.

Authority: sec. 5001(a)(5), Pub. L. 105–178, 112 Stat. 107, 420; 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: August 1, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–20083 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–98–3611]

Guidelines for Development of Functional Specifications for Performance-Based Brake Testers Used to Inspect Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final determination.

SUMMARY: The FMCSA is announcing its final determination establishing functional specifications for performance-based brake testing machines purchased with Federal funds from the agency's Motor Carrier Safety Assistance Program (MCSAP). The FMCSA is nearing the completion of a multi-year research program to evaluate prototype performance-based brake testing technologies, including roller dynamometers, flat-plate testers, breakaway torque testers, an on-board electronic decelerometer, and an infrared brake temperature measurement system. To date, the FMCSA has determined that certain performance-based brake testing machines are eligible for funding under MCSAP, but only as screening and sorting devices in commercial vehicle inspections. The FMCSA is establishing generic functional specifications that will be applicable to a range of brake testing technologies. The States may use the functional specifications as guidelines to determine whether the purchase of a specific brake tester would be an eligible expense item under the MCSAP.

DATES: The effective date for this determination is September 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Woodford, Office of Bus and Truck

Standards and Operations, FMCSA, (202) 366–4009, or Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, in response to the previous notice on this subject, by using the universal resource locator, (URL): *http://dms.dot.gov,* and referencing the docket number at the beginning of this notice. The URL is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

Assessment of large truck and bus braking capability in the United States has traditionally been done using visual- and sensory-based inspection methods. These include visual examination of components, measurement of push-rod travel on air braked vehicles, and listening for air brake system leaks. Truck and bus fleets, repair and maintenance facilities, and the enforcement community all generally use these methods to look for defective brakes. While these methods have been successful, they do have limitations. These include: (1) Falsely identifying adequately braked vehicles as unsafe and placing them out-of-service (OOS), (2) failure to detect brake force-related deficiencies that cause no visually apparent defects, and (3) inability to inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved. With regard to roadside inspections conducted by Federal and State officials, guidelines developed by the Commercial Vehicle Safety Alliance (CVSA) are used to determine when violations of the Federal Motor Carrier Safety Regulations (FMCSRs) are severe enough to warrant placing the vehicle OOS. These guidelines are known as the North American Uniform Vehicle Out-of-Service Criteria, used by officials in the United States, Canada, and Mexico.

In the early 1990s, the Federal Highway Administration (FHWA) [1] initiated research to evaluate various types of performance-based brake testing technologies for application to commercial motor vehicle inspections. The purpose of the research was to determine, through laboratory investigation, if performance-based brake testers (PBBTs) could be used to evaluate commercial vehicle braking capability. A PBBT is a device that can assess vehicle braking capability through quantitative measure of individual wheel brake forces or overall vehicle brake performance in a controlled test. The PBBTs cannot replace an inspector in finding brake defects unrelated to immediate brake performance, such as air leaks, chafed brake hose, or thin brake pads. However, they can provide an objective and consistent measure of vehicle braking performance, irrespective of brake type, energy supply, or actuation method, and without having to crawl underneath the vehicle as with the current inspection method. PBBTs are widely used for brake inspection in Europe and Australia, and are beginning to emerge in the United States as both an enforcement tool and diagnostic aid for private sector maintenance and repair shops.

Field Test Evaluations

After analyzing various PBBT technologies during the above referenced research, the FHWA selected several types for further evaluation in roadside field-test inspections. The types selected were the: (1) Roller dynamometer, (2) flat-plate tester, (3) breakaway torque tester, (4) infrared system, and (5) decelerometer. During the field testing, joint roadside inspections with State officials were conducted on almost 3,000 commercial vehicles. The joint inspections consisted of a CVSA Level 4 inspection [2] and a PBBT test. Ten States and several commercial fleets participated in the program with each evaluating a specific type of PBBT. The ten States which volunteered to participate in the evaluation were Colorado, Connecticut, Indiana, Maryland, Minnesota, Nevada, Ohio, Oregon, West Virginia, and Wisconsin. The roller dynamometer, flat-plate, and breakaway torque testers were evaluated for at least one year by CVSA Certified State Inspectors. The infrared system and decelerometer were also investigated in the field, though less extensively than the three other types of PBBTs. The PBBTs used in this program were first-and second-generation prototype machines to which improvements have since been made by the PBBT manufacturers.

During the field evaluation testing, data were collected from both the CVSA Level 4 inspections and the PBBT measurements. The degree of correlation between the two methods was identified. Data on the operational characteristics of each PBBT were also collected and evaluated, including set-up and tear down times, maintenance requirements, calibration, operator skill level needed, user interface, and vehicle inspection times. These data on operational characteristics were gathered to help in the development of PBBT functional specifications, which are the subject of this notice and are discussed below in more detail.

Agreement on individual weak or defective brakes identified by the CVSA inspection method versus those identified by a PBBT ranged from 53 to 88 percent, depending on the type of PBBT. This was considered reasonable since the two methodologies assess different brake system characteristics. The PBBTs used in the field tests were not necessarily faster than the brake-only portion of the CVSA inspection, considering time for data entry, driver instruction, and printing of test results. However, the times were generally considered comparable. It was apparent that 30 to 80 five-axle vehicles per eight-hour workday could be screened for further CVSA inspection using one of

[1] On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748), which established the FMCSA in the Department of Transportation. Prior to that time, the functions that are now carried out by the FMCSA were carried out within the FHWA.

[2] Level 4 inspection is the CVSA designation for a Special Inspection, which typically includes a one time examination of a particular item in support of a study or to verify or refute a suspected trend. In this study the CVSA Level 4 inspection comprised the brake and tire portions of a full Level 1 inspection. Level 1 is the most thorough inspection, including the tires, brake system, driver documents, and a variety of other vehicle safety systems.

the PBBT technologies. Accurate screening is important since only approximately 8 to 12 vehicles per eight-hour workday per inspector can be checked using a CVSA Level 1 inspection. [3]

The overall results of the field test evaluations indicated there were no insurmountable performance or operational limitations with the roller dynamometer, flat-plate, or breakaway torque testers that would prevent them from being used for screening purposes or enforcement. However, the infrared and decelerometer technologies did present some difficulties. In the case of the onboard decelerometer, which measures deceleration rate during a vehicle stop, finding a convenient and large enough space to perform a panic stop with a commercial motor vehicle was at times difficult. Moreover, it is likely that few commercial vehicle drivers would be willing to perform a panic stop in other than an emergency situation because of the potential damage to onboard cargo. Results using the decelerometer were also found to be strongly dependent on driver skill. In the case of the infrared system, applicability of this technology was found to be limited to the detection of inoperative brakes or brakes with push rod stroke measurements in excess of 12.7 millimeters (mm) (0.5 inch) beyond the recommended adjustment limit. The FMCSA is continuing its research into use of the infrared technology as a possible brake screening device for vehicles.

A final report describing in greater detail the results of these field test evaluations has been placed in the docket referenced above. The report is titled, ''Development, Evaluation, and Application of Performance-Based Brake Testing Technologies,'' February 1999, Report No. FHWA–MC–98–048. Copies of the report may be purchased from the National Technical Information Service (NTIS), Springfield, VA 22161, telephone (703) 605–6000. The NTIS accession number for this publication is PB99-134454.

[3] A Level 1 inspection usually takes approximately 20 to 30 minutes if there are no violations of applicable regulations, and includes both the driver and the vehicle. The inspector reviews the driver's license, medical certificate, record of duty status (or log book) and any readily available supporting documents. The inspection of the vehicle includes an examination of the brake system, coupling devices, exhaust system, frame, fuel system, cargo securement, steering system, suspension system, tires, trailer body, wheels, rims and hub assemblies, windshield wipers, lights, and horn.

Round Robin Tests

In July 1998, the FHWA conducted a series of round robin tests to assess the suitability of PBBTs for use in enforcement. These tests were conducted at the National Highway Traffic Safety Administration's (NHTSA) Vehicle Research and Test Center. The purpose of the tests was to evaluate the ability of current generation PBBTs to accurately and consistently: (1) Measure the brake forces and wheel loads of commercial motor vehicles, and (2) predict the vehicle's deceleration capability from a 32.2 kilometers/hour (km/hr) (20 miles per hour (mph)) on-road stop.

The test program involved PBBT tests and 32.2 km/hr (20 mph) stops using two different vehicles, which were tested fully laden and unladen, with weak brakes on selected wheels. The vehicles were (1) a two-axle flatbed straight truck, and (2) a three-axle tractor, two-axle flatbed semi-trailer combination. These vehicles were selected for the tests because they were considered representative of a majority of the commercial vehicle axle configurations on the road. There were eight PBBTs used in the testing: five roller dynamometers (two in-ground and three portable), two flat-plate testers, and one breakaway torque tester.

The tests indicated that, under most conditions, the accuracy and repeatability of most of the PBBT results, regardless of the principle of operation, were acceptable for meeting the functional specifications (discussed below). Therefore, they were considered suitable for use in enforcement in the event the FMCSA amends 49 CFR 393.52, Brake performance, to allow the use of these devices to determine compliance with certain provisions of the rule. Nearly all of the PBBTs were able to accurately measure the vehicle brake forces. In contrast, several of the PBBTs had difficulty reporting accurate vehicle weights. For the most part, however, this was related to test procedures. Calibration checks of the PBBT weighing mechanisms indicated that all of them could meet the functional specifications. In those instances where PBBT accuracy did not achieve acceptable performance, the problems were identified and conveyed to the PBBT manufacturers as recommendations for improvement. Most of the recommendations were consistent with the requirements of the PBBT functional specifications.

Copies of the report, further describing the round robin tests, are available in the docket referenced above. The report is titled, ''PBBT Round-Robin Testing,'' February 2000.

MCSAP Funding Eligibility

During the period 1996–98, the FHWA issued four policy memoranda advising that specific PBBTs are eligible for funding under the MCSAP. Copies of the memoranda are available in the docket referenced above and are dated April 1, 1996, October 8, 1996, March 13, 1997, and November 3, 1998. The MCSAP is a Federal program, administered by FMCSA, providing funds to States and U.S. territories in support of commercial motor vehicle safety. This means that States or territories may use MCSAP funding to purchase one of the approved PBBTs for use in commercial motor vehicle brake inspections. To date, however, these prototype devices have been used only for screening or sorting purposes, and not enforcement, since PBBT pass/fail criteria have not yet been established within the FMCSRs. Specific pass/fail criteria for use with PBBTs are being proposed and published elsewhere in today's **Federal Register**. The proposed criteria would enable enforcement officials to issue citations based upon PBBT test results.

The PBBTs which have been approved to date for MCSAP funding are:

- Hunter B400T Flat Plate Tester (in-ground)
- Nepean [4] Mark III Roller Dynamometer (portable)
- Nepean Mark IV Roller Dynamometer (portable)
- Hicklin RBD Roller Dynamometer (portable)
- Radlinski RAI 12200 Roller Dynamometer (in-ground)
- Radlinski RAI 20200 Roller Dynamometer (portable)

The above referenced policy memoranda set forth requirements and suggested procedures for States to follow in using the PBBTs to help in gathering field evaluation data and information relative to the PBBT functional specifications. As the memoranda were issued, they reflected the evolving progress made in the development of functional specifications for PBBTs.

PBBT Functional Specifications

On December 8, 1997, the FHWA held a public meeting at the NHTSA's Vehicle Research and Test Center to discuss the development of functional specifications for PBBTs. A notice announcing the meeting was published in the **Federal Register** on November 13,

[4] Nepean is now called Vehicle Inspection Systems (VIS).

1997 (62 FR 60817). Data gathered during the PBBT field evaluation tests, referenced above, served as background information for draft functional specifications, which were discussed at the meeting. In addition to the NHTSA and the FHWA, the following companies were represented at the meeting: Battelle, B&B Automotive, B&G Technologies, Inc., Dennis National Lease, Hicklin Engineering, Hunter Engineering Company, Gooch Brake, MGM Brakes, Motion Control Industries, Inc., Nepean Engineering Pty. Ltd., Radlinski & Associates, Inc., and Truckalyser Canada, Inc. Most of the participants were either manufacturers of PBBTs or distributors of such devices.

On June 5, 1998, the FHWA published a **Federal Register** notice (63 FR 30678) requesting public comments on the proposed functional specifications, which incorporated comments received during the public meeting. The agency requested further public comment through this notice to ensure that all interested persons who were unable to attend the meeting would have an opportunity to comment on this subject. The functional specifications are intended to be generic and, therefore, applicable to a range of PBBT technologies. They include requirements for: (1) Functional performance, such as measurement accuracy with tolerances, calibration, and operator interface, (2) physical characteristics including portability, (3) environmental resistance, (4) operator safety, (5) documentation, including operator and maintenance manuals, and (5) skill level and number of operator personnel required. The specifications also include quality assurance provisions or methodologies for verifying PBBT compliance with each of the functional specification requirements. The intent is for the functional specifications to serve as a guideline for States in determining whether a particular PBBT would be eligible for funding under MCSAP, and to ensure a certain level of PBBT accuracy and performance.

In this **Federal Register** notice, the FMCSA is announcing its final determination establishing functional specifications for performance-based brake testing machines purchased with Federal funds through the agency's MCSAP. The final specifications reflect revisions to the draft functional specifications, based on comments received in response to the June 5, 1998, **Federal Register** notice referenced above. Those comments and revisions are discussed below.

Discussion of Comments

The FMCSA received submissions from six commenters in response to the June 5, 1998, **Federal Register** notice. The submissions are from: B & G Technologies, Inc. (B&G); Cantlon Computer Consulting (Cantlon); Hicklin Engineering (Hicklin); McKay Security Supplies; Radlinski & Associates, Inc. (Radlinski); and an individual, Mr. John Fobian. The submission from McKay Security Supplies was not responsive to the notice, and therefore will not be discussed further. It consisted of a copy of functional specifications for a brake system screening device using infrared technology, IRISystems, which is outside the scope of the functional specifications being addressed here. The specific issues raised by the remaining commenters are discussed below, along with our response.

Determining Braking Capability at Full Vehicle Load

The draft functional performance specifications require PBBTs to measure braking force at current vehicle load.[5] There is no requirement for PBBTs to predict stopping capability at full vehicle load.

B&G stated that testing and certifying the braking performance of vehicles at their current weight is a step back in safety, since it provides no assurance the vehicle will stop adequately when fully loaded. It argued that the current method of measuring allowable, brake push rod travel[6] is a predictive test, since the limits of travel were established to ensure stopping capability within the full range of the vehicle's weight capacity. B&G believes the draft functional specifications should be changed so that if a vehicle is not fully loaded when tested, then the PBBT should be capable of predicting stopping performance at full load (gross vehicle weight rating). Similarly, Cantlon expressed concern that the specifications not be limited to determining whether a vehicle can stop at its current load, but also allow for determining stopping capability when fully loaded. As with B&G, Cantlon stated that without this specification there is no assurance that a vehicle with adequate braking at current load would necessarily stop safely at full load.

The FMCSA does not agree that the draft functional performance specifications represent a step back in safety. Overall, the agency believes that the current method of measuring allowable brake push rod travel, or brake adjustment, is no more predictive of vehicle braking performance, over a full range of operating conditions, than are some PBBT tests. For example, the table of push rod readjustment limits used by enforcement officials does not take into account brake temperature. Moreover, visual- and sensory-based inspection methods have limitations, as indicated earlier. These include: (1) Falsely[7] identifying adequately braked vehicles as unsafe and placing them OOS, (2) having brake force-related deficiencies, but no visually apparent defects, and (3) the inability to thoroughly inspect the brake systems on more than a small portion of the commercial vehicle population due to the time involved.

In addition, the ability to check brake adjustment on some vehicles can be hindered because brake push rods are not always readily accessible for measurement. Brake push rod travel, or brake misadjustment, is only one factor which can contribute to poor braking performance. In contrast, PBBTs objectively measure the actual braking performance of the vehicle, regardless of the factors which may contribute to weak brakes.

The functional performance specifications do not require PBBTs to be capable of predicting brake performance at full load on a vehicle that is not fully loaded. At the same time, however, the specifications do not preclude a PBBT manufacturer from incorporating this capability into its brake tester. At the time of the field evaluation tests referenced above, there were only three PBBTs which had this capability.[8] The FMCSA is hopeful that more PBBT manufacturers will enhance the design of their brake testers to

[5] Current vehicle load is the weight of the vehicle and its load at the time of inspection.

[6] Allowable brake push rod travel is an indicator of brake adjustment as well as lining wear. It is one criteria used by State and local enforcement personnel in determining whether a vehicle should be placed out of service, and is contained in the North American Uniform Out-of-Service Criteria established by the CVSA.

[7] In a February 1995 FHWA study, ''Evaluation of Brake Adjustment Criteria for Heavy Trucks,'' Report No. FHWA–MC–94–016, it was found that 936 of 2,146 vehicles with S-cam brakes were placed out-of-service for their brake adjustment. Among the 936 vehicles, it was found that 480 had braking capability that was greater than 80 percent of what the braking capability would have been if the brakes were fully adjusted. Thus, these vehicles were incorrectly placed out-of-service. (Under current CVSA guidelines, a vehicle is placed out-of-service if 20 percent or more of its brakes are found defective, which includes improper adjustment.) This report is available in the docket referenced above and through the National Technical Information Service, Springfield, VA 22161.

[8] As with the method of measuring brake push rod travel, these PBBTs do not take into account future brake performance at higher brake temperatures.

predict braking performance at full load on a vehicle that is not fully loaded. However, the agency does not believe this should currently be required, since that would eliminate a majority of brake testers, thereby precluding use of this new technology for enhancing heavy vehicle safety. For these reasons, the FMCSA believes that the use of PBBTs to measure braking performance at current load will not degrade heavy vehicle safety, and has, therefore, decided not to revise the functional specifications with respect to this issue.

The remaining comments are presented in the same order as the items to which they relate in the draft functional specifications, published with the June 5, 1998, **Federal Register** notice, as follows:

Item 2. Abbreviations/Definitions

Mr. John Fobian commented on the abbreviation/definition for kg_f, which reads ''Kilograms force (common metric unit used for weight).'' He stated that the correct term for weight is mass, and that the common metric unit for mass is kilogram (kg), or kilogram mass (kg_m). The FMCSA disagrees with this assertion. Although weight and mass are related, they are not the same. Weight is the measured heaviness of a particular object, equal to the product of the object's mass and the value of gravitational acceleration [weight = (mass) × (acceleration of gravity)]. In other words, the weight of an object is the force due to the acceleration of gravity acting upon its mass. So, the mass of an object is different from, but proportional to, its weight. Therefore, the FMCSA is retaining the term ''weight'' in the definition, since that is the intended measurement.

In addition, Mr. Fobian states that the newton, rather than kilograms force, is the common metric unit for force. The FMCSA agrees that this is generally true for most force measurements. However, with respect to weight (gravitational force), the agency believes that ''kilogram'' rather than ''newton'' is more commonly used. Therefore, the agency has decided to retain the term ''kilograms force (kg_f)'' and the definition remains unchanged.

3.1.2 Determining Braking Capability

Hicklin and Radlinski requested clarification of the last sentence in this requirement, which states ''The road/tire friction coefficient should be considered to be at least 0.6.'' They both asked whether this refers to the friction coefficient between tire and brake tester, or tire and typical road surfaces. Further, they asked how this should be used, if it refers to typical road surfaces.

This sentence refers to the friction coefficient between the tire and a typical road surface. The intent of the requirement, *Determining Braking Capability,* is to assure that braking force measurements are representative of, or can be related to, the braking forces the tires would impart to the ground. Thus, by stating that road/tire friction coefficient should be considered to be at least 0.6, the sentence means that manufacturers should maintain a coefficient of friction between the test surface and the tire of at least 0.6. This is confirmed in a subsequent requirement, 3.1.4, *Coefficient of Friction,* which specifies that friction coefficient between test surface and a standard tire must be at least 0.6 under dry conditions.

3.1.3 Brake Force Determination

This requirement states in part that ''Independent determination of maximum brake forces on each side of an axle is required [of brake testers].'' The purpose of this requirement is to assure that brake testers are capable of measuring braking forces at each wheel.

Radlinski stated that in using independent determination of maximum braking force, it should be specified that brake force imbalance across an axle is to be measured at first wheel lockup, rather than at lockup of each wheel. Similarly, Hicklin requested clarification of the statement, ''Independent determination of * * * brake forces * * *,'' and asked whether it referred to a specific method of testing.

The purpose of this particular requirement is to simply assure that brake testers are capable of measuring braking forces at each wheel. The requirement does not refer to a methodology, nor is that the intent. The subject of test methodology is being addressed in another notice on pass/fail criteria for vehicles tested with a PBBT. That notice is being published elsewhere in today's **Federal Register**. The particular section of that notice addressing this issue is *Braking Stability,* and PBBT manufacturers and users are encouraged to provide comments in response to that notice.

3.1.4 Coefficient of Friction

This item requires that the coefficient of friction (COF) between the PBBT test surface and a standard tire (e.g., 295/75R22.5) be reported for a range of loads. The COF must be at least 0.6 under dry conditions.

Radlinski and Hicklin both stated that the standard tire needs to be better defined to assure that the COF for all brake testers is measured the same way. Hicklin suggested that the tread design of the standard tire be specified, since it has found that different tread designs can yield different results. It also stated the tire compound may be a consideration, which may require a specific tire brand or material. Hicklin also stated, however, that the specification should not require expensive testing methods, thereby eliminating some PBBT manufacturers due to cost. Radlinski requested that at least the size and tread type of the standard tire be specified, and suggested a tire size of 11R24.5 with rib type tread design be used, since this is a tire commonly used on heavy trucks. Neither commenter provided supporting data.

After analyzing this matter, the FMCSA concurs with Radlinski and Hicklin on the need for a more specific definition of the standard tire. As indicated earlier, the goal of this specification is to assure that brake testers have a COF of at least 0.6, although it may be higher than 0.6. The agency agrees with Radlinski that a tire size of 11R24.5 with a rib type tread design is a commonly used heavy truck tire. The FMCSA has, therefore, revised the final functional specification to reflect this as the standard tire. Specifying such a commonly used truck tire as the standard will make it more accessible for PBBT manufacturers when certifying the COF of their brake testers. In addition, specifying a particular tread design will assure greater consistency in results, since tread design can affect tire-to-test surface friction.

For the same reason the FMCSA has decided to specify limits for the inflation pressure of the standard tire, as well as vehicle load, when certifying brake tester COF. Both of these factors have a direct bearing on the amount of friction that exists between the tire and test surface. The agency has decided to require that the inflation pressure of the standard tire be within (plus or minus) 2 pounds per square inch (psi) of the tire manufacturer's recommended cold inflation pressure for a given load on the tire. This is consistent with the tolerances used by the NHTSA in testing passenger car tires under its Uniform Tire Quality Grading Program.[9] It is also consistent with the accuracy of readily available tire pressure measuring equipment (tire gauges). For vehicle load during the PBBT certification test, the agency is specifying that COF be at

[9] In this program, the NHTSA rates the performance of new passenger car tires for tread life, temperature, and traction, based on actual testing, and requires tire manufacturers to provide this information to consumers.

least 0.6 for wheel loads ranging from 2,500 through 7,000 [10] pounds per tire, since this is the expected range of wheel loads on vehicles that will be commonly tested by PBBTs.

Finally, the FMCSA has decided not to specify tire material compound for the standard tire. Although this was suggested by Hicklin, it provided no supporting data to justify such a requirement. The tire compound could influence COF results, however, the agency believes that the degree of influence would be minimal for purposes of this test. Moreover, the agency anticipates that PBBT manufacturers will assure that the COFs of their PBBTs will be sufficiently above 0.6 for the range of truck tire compounds available on the market. This is because it is advantageous for PBBT manufacturers to have adequate COF on their PBBTs. Inadequate COF could result in false PBBT brake force measurements.

3.1.5 Weighing Capability

The functional specification, *Weighing Capability,* states that many of the criteria to be used for identifying weak brakes require determination of gross axle weight (GAW) or gross vehicle weight (GVW). For brake testers which use this criteria, the capability of measuring GAW or GVW is preferred, but not required. For those brake testers which have no weighing capability, the necessary weight measurements can be obtained independently. However, those testers must still be capable of having independent weight measurements entered into their operating and analysis software, so that comparisons of such data can be made in conjunction with the measured brake forces.

In commenting on this requirement, Radlinski expressed concern over placing vehicles OOS using weights measured on certain machines. It stated that brake testers which require vehicles to use ramps are known to give false weight measurements for individual axles. Therefore, any OOS criteria using such measurements could be challenged.

Since Radlinski provides no specific recommendations for revising the *Weighing Capability* requirement, the FMCSA is leaving the requirement unchanged. The agency notes that weighing capability is not a required machine specification, but rather preferred. Among those machines for which accurate weight measurements are in question, accurate weight data could still be obtained independently. Through ongoing research, the FMCSA plans to work with the PBBT Manufacturers Association to help manufacturers overcome the kind of problem cited by Radlinski. Also, the functional specifications require PBBT manufacturers to certify their machines to a specific level of accuracy.

3.1.7.1 Initial Calibration Certification

This requirement states that brake testers shall be supplied with calibration certificates guaranteeing system measurement accuracy ''. . . traceable to NIST [National Institute of Standards and Technology] standards.'' Radlinski commented that since brake testers may be manufactured outside the United States, calibration certifications should be allowed based on recognized organizations in other countries that are similar in function to NIST.

The FMCSA agrees, however, PBBTs manufactured to these functional specifications could be used for enforcement of FMCSRs on braking performance. Therefore, the agency believes it is important, for purposes of traceability, to allow only calibration certifications from those standards organizations that meet certain qualifications.

On October 14, 1999, the national metrology institutes of 38 member States of the Metre Convention, and two international organizations, including NIST, signed a Mutual Recognition Arrangement (MRA). As signatories to the MRA, they agreed to a number of issues, including establishing a degree of equivalence of national measurement standards and providing for the mutual recognition of calibration and measurement certificates. Further information on the MRA is available at the world wide web site, *http://www.bipm.fr/enus/8_Key_Comparisons/mra.html.* To assure a minimum level of equivalence, the FMCSA believes that only those organizations that signed the MRA along with NIST should be recognized for the purpose of the functional specifications. Therefore, the requirement, 3.1.7.1, Initial Calibration Certification, has been revised accordingly. The 38 Member States of the Metre Convention that signed the MRA are: South Africa, Germany, Argentina, Australia, Austria, Bulgaria, Belgium, Brazil, Canada, China, Republic of Korea, Denmark, Spain, United States, Finland, France, Hungary, India, Ireland, Italy, Japan, Mexico, Norway, New Zealand, The Netherlands, Poland, Portugal, Romania, United Kingdom, Russian Federation, Singapore, Slovakia, Sweden, Switzerland, Czech Republic, Thailand, Turkey, and Uruguay. The two international organizations are: (1) International Atomic Energy Agency and (2) European Commission Directorate General, Joint Research Centre.

3.1.7.4 Calibration History

This requirement states that ''. . . sufficient calibration histories . . . shall be maintained with the tester in hard copy form and in a software file that can be accessed upon request by the user.'' Radlinski and Hicklin both asked for clarification of the phrase, ''software file.'' They asked whether the term means: (1) A computer generated file created as part of a computer based calibration routine, or (2) a computer file generated by manually entering pertinent calibration data into a computer file on the machine.

The intent of the term ''software file'' was to allow either one of the interpretations set forth by Radlinski and Hicklin. The FMCSA agrees that ''software'' is confusing, since it tends to imply a specific calibration related software that generates the necessary data. Therefore, the agency has replaced ''software file'' with the more generic phrase, ''computer file.''

3.1.10 Identification of Faulty Tests

This requirement states that the machine shall be able to identify an improperly run test or one that was otherwise invalid, and the reason for the invalid test shall be indicated to the machine operator. It further states that examples include low coefficient of friction between the test surface and tires, insufficient data for computations, premature test termination, unreasonable or out of range values, and malfunctioning or improperly connected transducers. Radlinski and Hicklin both asked that this requirement be clarified to refer to the identification of faulty individual tests, and not long term machine self diagnostics, such as monitoring changes in surface coefficient of friction.

The FMCSA believes that no clarification of this requirement is necessary, since it refers to a single ''test.'' The requirement does not refer to long term machine self diagnostics, nor is that its intent. However, to the extent that a particular feature, such as machine surface coefficient of friction, deteriorates over time and improperly affects a particular test, the machine must be capable of identifying this

[10] The Tire and Rim Association 1999 Yearbook specifies 7,160 pounds as the maximum load limit at 120 psi cold inflation pressure for 11R24.5 radial ply tires mounted on 15 degree drop center rims and used on trucks, buses, and trailers in normal highway service. The Yearbook for 1999 is available for purchase ($50) from the Association at 175 Montrose Ave. West, Copley, OH 44321.

invalid test, along with the reason, to the machine operator.

3.1.11 Inspection Time

The purpose of this requirement for brake testers is to assure that the amount of time required to conduct a full vehicle braking capability assessment is minimal. The requirement states that it shall take skilled operators no longer than 15 minutes to perform a brake test on a five-axle tractor-trailer combination. In addition, the range of actual inspection times, including paperwork, for various truck configurations shall be included in the brake tester Operation Manual.

Radlinski and Hicklin both suggested that the amount of time required per axle be required, rather than specifying the time involved for all vehicle configurations. They stated that the amount of time per axle would be sufficient to determine the amount of time involved for any vehicle combination.

The FMCSA has decided not to incorporate these comments. While it would be feasible to specify brake tester time per axle, such an approach would not take into account the amount of time involved between axle tests on a given vehicle. This cumulative amount of vehicle time could vary significantly, depending upon the brake tester design. However, the agency notes that wording in the draft requirement was somewhat vague in stating ''. . . inspection times for *various* [emphasis added] truck configurations . . . shall be listed.'' Therefore, in order to provide more specificity to this requirement, the FMCSA has revised the second sentence to require that inspection times on three different vehicle configurations be listed in the Operation Manual. These are: (1) A two-axle straight truck or bus, (2) a five-axle tractor-trailer combination, and (3) a five-axle tractor-double trailer combination, e.g., a two-axle tractor pulling a one-axle semi-trailer coupled to a converter dolly and semi-trailer. The agency has specified these because it believes they are representative of the range of heavy vehicle configurations most likely to be encountered by brake testers.

3.3.3 Water Resistance

This requirement states that all PBBT electrical systems shall be sealed against water intrusion from wind driven rain, and that towed brake testers shall meet water intrusion requirements when being towed in the rain at typical towing speeds.

Radlinski and Hicklin both asked for clarification of the phrase, ''water intrusion requirements.'' Radlinski asked whether this was a specific requirement published by a recognized organization. If so, it asked that the requirement reference be identified. Similarly, Hicklin asked whether this referred to a specification that needs to be identified, and suggested that perhaps a measurable requirement should be stated.

The phrase ''water intrusion requirements'' does not refer to a specific requirement limiting a measurable amount of water. The agency notes that this requirement is consistent with the other environmental requirements in the functional specifications, including temperature, humidity, sunlight, and ultraviolet radiation. None of the environmental requirements specify measurable performance limits. This is because their intent is to serve as design guidelines for PBBT manufacturers. The agency believes that free market competition will encourage PBBT manufacturers, through design and warranties, to provide an acceptable level of protection against environmental degradation. Further, the FMCSA notes that functional specification 4.1, *Compliance,* states that failure to perform adequately in the field could result in manufacturer penalties.

3.5.1 Operation Manual

This requirement states that the Operation Manual shall explain how to properly and safely operate the brake tester, including setting it up, conducting tests, and interpreting and printing out results. It must be written for a first time user, which is described as one unfamiliar with the equipment, at the skill level described in functional specification 3.6.2. The skill level attributes described there include ''. . . familiarity with using personal computers and common operating systems.''

Radlinski and Hicklin both commented that a manual for an ''untrained'' user is impractical. Radlinski cited the level of complexity of the brake testers. Both commenters stated that this specification should address an operation manual for trained users.

The FMCSA believes that PBBT manufacturers can write the Operation Manual for persons with some training and level of familiarity with brake testers in general. However, the agency believes that no change to the functional specifications are necessary. Specification 3.6.2, *Skill Level,* refers to personnel having ''. . . familiarity with using personal computers and common operating systems.'' Moreover, the specifications for *Skill Level* and *Operation Manual* do not use the word ''untrained'' personnel, as referenced by Radlinski and Hicklin. However, the specification on *Operation Manual* refers to personnel ''. . . unfamiliar with the equipment . . . .'' This refers to someone unfamiliar with a particular manufacturer's PBBT, but not PBBTs in general. The agency anticipates working with the CVSA, PBBT manufacturers, and others, as appropriate, to develop PBBT operator training. This subject is further discussed elsewhere in today's **Federal Register** in the proposal setting brake performance pass/fail criteria for use with PBBTs. PBBT manufacturers and users are encouraged to submit comments on this subject, as discussed in that notice.

4.1. Compliance

The draft functional specifications, Section 4.1, *Compliance,* stated that compliance with the performance requirements in Section 3, be accomplished by one or more methods of verification. These included analysis, test, demonstration, inspection, and certified vendor data. The draft further stated that ''Self-certification is acceptable, although failure to adequately perform in the field could result in [brake] tester decertification.'' This wording implied that there was an alternative method to self-certification, such as certification through an outside entity. However, no such entity was named in the draft with the exception of a reference to FHWA (now FMCSA) under the *Test* method of verification, Section 4.1.2. There it stated that ''Self-certification of compliance is permissible provided that the Test Plan is pre-approved by the FHWA and the Test Report is submitted to the FHWA for approval.''

Radlinski and Hicklin both commented, requesting that compliance be achieved solely through self-certification by PBBT manufacturers with appropriate penalties for non-compliance. Radlinski likened this to the way the NHTSA imposes penalties on vehicle manufacturers, which self-certify to Federal safety standards, but may fail to comply. Hicklin stated that self-certification should be allowed rather than requiring oversight by an entity that is not named in the specifications.

After considering these comments, the FMCSA has concluded that self-certification by PBBT manufacturers should be the sole method of certifying PBBTs to the functional specifications. The alternative is to have an oversight entity, which would be the FMCSA or its representative, certify each PBBT

design through a documented type-approval process. The agency believes that this approach would be too costly, burdensome, and time consuming for FMCSA technical staff. Self-certification is much more appropriate, since it places responsibility for compliance with the PBBT manufacturer, which is the most knowledgeable about its design.

Self-certification means that a PBBT manufacturer certifies its PBBT to meet the functional specifications at the time of manufacture, and clearly states which specifications, if any, its PBBT does not meet. PBBTs which are certified to meet the functional specifications are eligible for funding under the MCSAP. This means that States or territories may use MCSAP funding to purchase certified PBBTs for use in commercial motor vehicle brake inspections.

The agency agrees with Radlinski and Hicklin that penalties should be imposed for flagrant non-compliance. The FMCSA has no regulatory authority over PBBT manufacturers and therefore cannot impose civil penalties. However, the agency will require each manufacturer to sign a declaration, under penalty of perjury, that its PBBT meets the functional specifications at the time of manufacture. States will be allowed to spend MCSAP funds for a PBBT only if the manufacturer has signed such a declaration and presented it to the State. This does not mean that every minor flaw or service interruption will make the PBBT manufacturer liable to prosecution for perjury. The warranty requirement included in the functional specifications is intended to address routine repairs or service that may be necessary. The FMCSA will consider referring a matter to the Department of Justice for prosecution only if a State experiences pervasive problems with a PBBT which could reasonably be explained only by significant non-compliance with the functional specifications.

Accordingly, the FMCSA has revised Section 4.1, *Compliance,* to reflect this in the final functional specifications.

4.4. Extended Verification Duration

The draft functional specifications stated that any item requiring an extended period of time for evaluation of compliance shall be warranted by the manufacturer, and failure to comply may result in decertification of the tester. The items so designated were: (1) Accuracy between calibrations, (2) re-calibration interval, (3) ruggedness, (4) appearance, (5) temperature, (6) humidity, (7) water resistance, and (8) UV radiation. The methods for verifying compliance of these include demonstration, inspection, or certified vendor data, depending on the requirement involved.

Radlinski and Hicklin both requested that any method for verifying compliance with these items be replaced by manufacturer warranty. Radlinski further stated that the results of long-term demonstrations are meaningless unless a very specific and uniform test procedure can be developed and followed by all suppliers. This would be a costly and complicated process, according to Radlinski, and one that is not practical in light of all the possible weather scenarios. Radlinski stated that the desired result—a machine durable in all weather—can be achieved if manufacturers are required to warrant these items for a period of one year.

After reviewing this matter, the FMCSA sees no need to change the wording in this requirement, since it states that a manufacturer's warranty must be provided for those items referred to by Radlinski and Hicklin. The agency does not concur with their suggestion that the method of verification be replaced by the word, ''warranty.'' Even though a warranty is provided, there must still be a method for determining compliance. The FMCSA anticipates that PBBT manufacturers will clarify the method for determining compliance through their specific warranty. In addition, the agency concurs with Radlinski in specifying a one year warranty. This is discussed below in more detail.

Warranties

No comments were submitted regarding the subject of warranties. However, the agency has added a new Section 4.5, *Warranty,* for the purpose of clarification. Under this specification, a manufacturer shall be required to warrant the functional performance of its PBBT for a period of at least one year from the date of purchase. The FMCSA believes that such a warranty is necessary to ensure that PBBTs are designed and built with a satisfactory level of quality, particularly since they will be used for enforcement. The agency also believes that such a warranty is appropriate, since relatively large amounts of MCSAP funds will be used to purchase certified PBBTs, each of which can cost several hundred thousand dollars. Therefore, the FMCSA has specified one year as the warranty period to assure a minimum level of brake tester reliability. However, PBBT manufacturers may, if they wish, provide a warranty period that is longer than one year, and the FMCSA is hopeful that PBBT manufacturers will take the initiative to provide longer warranty periods consistent with the useful life of PBBTs. Accordingly, Section 4.5, *Warranty,* is added to the final functional specifications.

Paperwork Reduction Act

The FMCSA has determined that this action is exempt from the information collection provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). There is a certification requirement that is imposed on six PBBT manufacturers, as discussed above in 4.1, *Compliance.* However, OMB clearance is not required because there are less than 10 public entities affected by this certification requirement. See 49 CFR 1320.(3)(c). In addition, there is no new paperwork requirement on the part of the States, because they would only be required to complete the same paperwork they currently prepare, when requesting funds for the purchase of PBBTs from the FMCSA. Accordingly, the agency has determined that the certification requirement does not constitute a ''collection of information'' covered by the PRA.

Authority: 49 U.S.C. 31102, 31136, 31502; and 49 CFR 1.73.

Issued on: July 24, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

BILLING CODE 4910–22–P

APPENDIX:
FUNCTIONAL SPECIFICATIONS FOR PERFORMANCE-BASED BRAKE TESTERS FOR COMMERCIAL MOTOR VEHICLES

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FUNCTIONAL SPECIFICATIONS FOR PERFORMANCE-BASED BRAKE TESTERS FOR COMMERCIAL MOTOR VEHICLES

1. SCOPE

1.1 **Identification** – This specification establishes the performance, verification, and documentation requirements for developing a Performance-Based Brake Tester for Commercial Vehicles (herein referred to as the "brake tester").

1.2 **General Description** - A performance-based brake tester for commercial vehicles is considered to be any device that can determine the braking capability of a vehicle based on the results of a physical measurement related to slowing or stopping the vehicle. Examples of different brake tester configurations include roller dynamometers, instrumented skid plates, breakaway torque testers, and decelerometers. The determination of braking capability shall be independent of the type of brake (disk or drum), method of application (hydraulic, pneumatic, or electric), or rate of brake application by the vehicle driver.

Once the braking capability has been measured, the brake tester shall be able to compare the available braking to preset performance limits or criteria in order to determine whether a particular brake or vehicle has sufficient brake force to stop safely. Based on this comparison, the brake tester shall clearly indicate to the operator(s) whether or not the individual brake or vehicle satisfies the predetermined performance criteria. Lastly, the brake tester shall be able to both print a hardcopy of the test results showing the target criteria and whether the individual brake or vehicle passed, and must accommodate the transmission of the data electronically in Commercial Vehicle Information Systems and Networks (CVISN)-compatible Electronic Data Interchange (EDI) formats and transaction sets.

2. ABBREVIATIONS/DEFINITIONS

ASCII	American Standard Code Information Interchange
ASME	American Society of Mechanical Engineers
COF	Coefficient of Friction
CVISN	Commercial Vehicle Information Systems and Networks

CVSA	Commercial Vehicle Safety Alliance
EDI	Electronic Data Interchange
FMCSR	Federal Motor Carrier Safety Regulations
FMVSS	Federal Motor Vehicle Safety Standards
g	The magnitude of deceleration equal to the magnitude of the acceleration due to gravity (32.2 ft/sec^2 or 9.8 m/sec^2).
GAW	Gross Axle Weight
GVW	Gross Vehicle Weight
kg_f	Kilograms force (common metric unit used for weight)
NHTSA	National Highway Traffic Safety Administration
NIST	National Institute of Standards and Technology
OSHA	Occupational Safety and Health Administration
Brake force (BF)	The force that the outer diameter of the tire imparts on the road surface as a result of the brakes being applied.
Deceleration	The rate of change of a decreasing velocity profile.
Accuracy	How closely a reported measurement agrees to the true value of that quantity.
Tolerance	The allowable deviation of a reported measurement from its true value.
UV	Ultraviolet

3. REQUIREMENTS

3.1 Functional Performance

3.1.1 Vehicles to be Tested – The brake tester shall be designed to maximize the number of truck and bus configurations in the North American trucking and motorcoach fleets that can be tested. Examples of configuration differences that can impact brake tester design include tire sizes, axle spacing, ground clearance, full time drive axle interlocks, dynamic or unstable cargo, and aerodynamic fairings. The tester software should be able to accommodate up to 11 axles. Any limitations in vehicles that can be tested shall be clearly outlined in the Operation Manual (See section 3.5 Documentation).

3.1.2 Determining Braking Capability – The brake tester shall be able to determine braking capability either by measuring brake forces at the tire perimeter, stopping distance, or deceleration. It is imperative that the braking force measured on the tester is representative of, or can be related

to, the braking force that the tires would impart to the ground. The road/tire friction coefficient should be considered to be at least 0.6.

NOTE : The braking capability of a commercial vehicle can be determined either with respect to an individual wheel or to the vehicle as a whole using the three types of measurements above. Often the brake force measurement is limited by the traction between the vehicle tire and the surface with which it is contacting, so any method of increasing the amount of tractive force transferred through the tire contact patch is beneficial. Braking capacity for an entire vehicle can be inferred by summing brake forces measured at each wheel and comparing the total BF to the GVW, by measuring the stopping distance of a vehicle, or by measuring the average vehicle deceleration during a stop.

3.1.3 Brake Force Determination – Independent determination of maximum brake forces on each side of an axle is required. If a gross technique, such as stopping distance or deceleration is proposed, it is up to the tester supplier either to make a disclaimer or to demonstrate how such a device can be made to comply with this requirement.

3.1.4 Coefficient of Friction - The COF between the test surface and a standard tire, 11R24.5, rib type tread design, must be reported for the machine for a wheel load ranging from 2,500 through 7,000 pounds per tire. Standard tire inflation pressure must be within (+) or (-) two psi of the tire manufacturer's recommended cold inflation pressure for a given tire load. The COF must be at least 0.6 under dry conditions.

3.1.5 Weighing Capability – Many of the criteria to be used for identifying insufficient brakes require determination of either GAW or GVW. While the ability to measure individual axle weights or entire vehicle weight using the tester is preferred, it is not required. If the machine has no weighing capability, then the ability to compare brake forces with GAW, GVW, or remotely measured axle weights shall be part of the operating and analysis software.

3.1.6 Measurement Accuracy – Overall system accuracy requirements shall be within the tolerances specified in Table 1 below. Stopping distance and deceleration accuracy requirements may be ignored by suppliers of testers of braking forces.

Table 1. Required System Accuracy

Measured Quantity	Unit	System Accuracy (% of reading)
Brake Force	Lbs. (N)	+/- 2.5
Weight	Lbs. (kg_f)	+/- 2.5
Air Pressure*	psi (kPa)	+/- 2.5
Brake Pedal Force*	Lbs. (N)	+/- 2.5
Velocity	ft/s (m/s)	+/- 2.5
Deceleration	%g	+/- 2.5
Stopping Distance	ft (m)	+/- 2.5

* If so equipped

3.1.7 Calibration

3.1.7.1 Initial Calibration Certification - The brake tester shall be supplied with calibration certificates guaranteeing system measurement accuracy as specified by the manufacturer within the tolerances listed in Table 1, traceable to NIST standards, or other national metrology institutes which are signatories to the Mutual Recognition Arrangement of October 14, 1999.

3.1.7.2 Accuracy Between Calibrations - System accuracy shall be maintained to within allowable tolerances between calibrations, subject to verification at any time.

3.1.7.3 Recalibration Interval – The recalibration interval required to maintain accuracy shall be maximized. The minimum allowable calibration interval under normal service shall be no shorter than 180 days. More frequent calibrations may be needed after factory authorized adjustments or modifications are made or if severe usage occurs where measurement accuracy may be compromised.

3.1.7.4 Calibration History – Calibrations shall be traceable to NIST standards, or other national metrology institutes which are signatories to the Mutual Recognition Arrangement of October 14, 1999. Sufficient calibration histories (to show compliance to tester specifications) shall be maintained with the tester in hardcopy form and in a computer file that can be accessed upon request by the user.

3.1.8 Identification of Faulty Brakes - The unit shall have the capability to be set by the tester supplier so that the results of a performance-based brake test are compared with predetermined user criteria and can subsequently designate a "pass" or "fail" to that brake or vehicle tested. This pass/fail criterion shall be selected by the appropriate agency using the machine and may include a combination of stopping distance, average deceleration, brake force and weights, brake force and air pressure, or simply brake force over time.

3.1.9 Operator Interface – A computer system and operating software shall be part of the brake tester. In addition, it shall meet the requirements listed in 3.1.9.1 through 3.1.9.6.

Note: Current off-the-shelf computers and peripherals are preferred from a repair and replacement standpoint; however, well-designed custom equipment is acceptable.

Note: Brake testing software that can run in a MS Windows-type environment is preferred although other common operating systems are acceptable.

3.1.9.1 Measurement Units – The software shall allow the operator to conduct tests and provide output in both Metric and English units.

3.1.9.2 Language – All operator interfaces shall use the English language.

3.1.9.3 Results Presentation - The brake tester shall have the capability of providing results of the brake test, with a clear indication of each brake's performance as appropriate, and that of the vehicle as a whole. Output showing a comparison of brake forces to actual wheel or axle weights, GVW, and/or application air pressure, is required depending upon the criteria used for assigning the target value. An ASCII format file for output of brake forces and wheel loads is required for each axle measured.

3.1.9.4 Unique Test Identification - For enforcement purposes, the unit shall be capable of assigning each test a unique test identification number and shall also have, at a minimum, two (2) user-defined fields for input of other information. For example, a corresponding CVSA inspection report number or a unique vehicle identification code.

3.1.9.5 Printer Output - Hardcopy printout capability is required, and capability for digital storage of the results for future reference is also required using standard ASCII character output.

3.1.9.6 Results Transmission – The brake tester computer must accommodate the transmission of the data electronically in CVISN-compatible EDI formats and transaction sets. At a minimum, this shall include a standard RS232 serial port. The ASCII file format will be defined in a subsequent document.

3.1.9.7 User Defined Inputs – A minimum of two blank fields for additional test vehicle information, such as truck type and driver information shall be included in the software's input functions.

3.1.10 Identification of Faulty Tests - The machine shall be able to identify a test that was improperly run or otherwise invalid. The reason for the invalid test shall be indicated to the machine operator. Examples include: low COF between the test surface and the tires, insufficient data for computations, premature test termination, unreasonable or out of range values, and malfunctioning or improperly connected transducers.

3.1.11 Inspection Time – The amount of time required to conduct a braking assessment for a vehicle shall be minimal. In no instance shall it take skilled operators longer than 15 minutes to perform a brake test on: (1) A two-axle straight truck or bus, (2) a five-axle tractor-trailer combination, or (3) a five-axle tractor-double trailer combination, e.g., a two-axle tractor pulling a one-axle semi-trailer coupled to a converter dolly and semi-trailer. The actual range of inspection times for various truck configurations including paperwork shall be listed in the Operation Manual (See section 3.5 Documentation).

3.1.12 Setup/Tear Down Time – The amount of time required to get the brake tester operational shall be minimal. In no instance shall it take two skilled operators longer than 30 minutes to setup or tear down a portable machine or longer than 10 minutes to start up or shut down a fixed installation. The actual setup and teardown times for a two-person crew shall be listed in the Operation Manual (See section 3.5 Documentation).

3.2 Physical Characteristics

NOTE: The brake testers do not have a predefined dimensional specification, although they shall be sized to be transportable by ship, rail, or truck using conventional shipping containers and semi trailers.

3.2.1 Capabilities

3.2.1.1 Weight Capacity – The brake tester shall be capable of operating with up to a 40,000 lb. (18,000 kg_f) axle or a 100,000 lb. (45,000 kg_f) total vehicle weight. If this limit is impractical for a given tester, it should be so stated to avoid damage to the tester and clearly documented in the tester's specifications section of the owner's manual.

3.2.1.2 Brake Force Capacity – The brake tester shall be capable of measuring, within the required accuracy, brake forces of 25 percent of maximum axle weight capacity.

3.2.2 Portability - Any unit that is to be towed from one location to another shall have a trailering device, or self-contained trailering system, that meets the requirements listed in 3.2.2.1 through 3.2.2.4.

3.2.2.1 Trailer Safety - All lighting, markings, brakes, wheels, tires and safety attachment devices shall be consistent with 49 CFR 393 (the FHWA's safety regulations for commercial motor vehicles, including trailers) and 49 CFR 571 (the NHTSA's manufacturing standards, the FMVSSs, for new motor vehicles, including trailers) and other applicable State requirements as dictated by the State agency responsible for the unit.

3.2.2.2 Towing Requirements - All machine specifications pertinent to towing the machine shall be outlined clearly in the Operation Manual (See section 3.5 Documentation) so that a suitable tow vehicle and hitch arrangement can be purchased by the user.

3.2.2.3 Ruggedness - Portable units shall be constructed with a ruggedness to withstand the shock and vibration associated with towing the brake tester over any road surface.

3.2.2.4 Spare Tire – All portable machines shall be fitted with a secured, full-size spare tire and rim compatible with the tires on the trailer.

3.2.3 Utilities

3.2.3.1 Power Source – Brake testing machines may run on either a self-contained power source or electric or pneumatic utilities available at the installation site. Equipment requiring external utilities hookup shall be designed for standard North American voltages, AC frequency, and/or air pressure.

3.2.3.2 Battery Power – If battery power is required for computers or engine starting/running, and there is no onboard charging device, the batteries shall have enough power to allow the brake tester to run for an entire 8-hour shift without recharging.

3.2.3.3 Recharging of Brake Tester Batteries by the Tow Vehicle - Reliance upon the tow vehicle for battery recharging during brake tester operation is not acceptable.

3.2.4 Appearance – All exposed surfaces of the brake tester need to be made of either a corrosion-resistant material or be coated with a durable finish that can withstand repeated abrasion associated with normal machine usage, as well as protect the painted surfaces from corrosion due to water, road salt, or other de-icing chemicals. Lastly, any protective coatings shall be unaffected by contact with gasoline, diesel fuel, and oils.

3.3 **Environment** – Equipment shall be suitable for the environment in which it is to be used as described in 3.3.1 through 3.3.5 below. Any portable brake tester or permanent outdoor installation shall meet all of the requirements below. Fixed indoor installations shall only meet the applicable requirements.

3.3.1 Temperature – The brake tester shall be capable of operating in ambient temperatures ranging from 0° Fahrenheit (F) (-18° Celsius (C)) to 120° F (49° C).

3.3.2 Humidity – The brake tester shall be capable of operating in relative humidities ranging from 5 to 100 percent over the operating temperature range listed above.

3.3.3 Water Resistance – All electrical systems shall be sealed against water intrusion from wind driven rain. Trailered testers also shall meet water intrusion requirements when being towed in the rain at typical towing speeds.

3.3.4 Sunlight – All controls and computer readouts shall be visible to the operator in direct sunlight. If shading devices are required, they must be included with the unit.

3.3.5 UV Radiation – All exposed surfaces shall be resistant to degradation from ultraviolet light. This is especially important for appearance coatings, hoses, and unpainted plastic parts.

3.4 **Safety** – Depending on how the brake tester is constructed, there are several classes of hazards to which the operators may be exposed. Noise, electrical shock, pressurized systems, rotating machinery, trip hazards, slip hazards, lifting hazards, and pinch points are just some of the hazards that may be present in brake testers. In order to ensure operator safety, the brake tester design shall address these and any other applicable safety issues. While no specific standards are listed in this specification, regulatory agencies such as OSHA, NEC, ASME have standards applicable to mitigate these hazards. The manufacturer may select applicable standards from any recognized regulatory agency (e.g., NEC) and submit a list of those standards for approval.

3.5 **Documentation** – Two copies each of the following manuals shall be provided with the brake tester. All documentation shall be in English and shall be easily understood by an individual who meets the personnel requirements in section 3.6.

3.5.1 Operation Manual – This manual shall explain how to properly and safely operate the system. This manual shall be written so that a first-time user, with a skill level as listed in Section 3.6.2, unfamiliar with the equipment, can set up the brake tester, conduct tests using it, interpret the results, and print out hardcopy evidence of braking capability for the vehicle being tested.

3.5.2 Maintenance Manual – This manual shall specify preventive maintenance procedures and schedules, the tools required for performing maintenance, diagnostic procedures, and information for ordering replacement parts.

3.5.3 Calibration Procedure – This document shall be provided with the unit, and shall include, at a minimum, the following:

i. A detailed list of calibration equipment and materials required to perform the calibration
ii. A calibration strategy, or summary
iii. Detailed calibration procedures
iv. Sample calibration data sheets (if hardcopies) and calibration data file
v. Recommended calibration interval
vi. Conditions where more frequent calibrations are required
vii. Error analysis showing that the machine is capable of meeting the overall accuracy requirements.

3.5.4 Drawings – A full set of assembly drawings is not required to be provided to the purchaser; however, exploded-view drawings shall be provided to help in identifying part numbers and descriptions. This document can be included in the Maintenance Manual if desired.

3.6 Personnel Requirements

3.6.1 Number of Personnel – The number of people needed to set up and to operate the brake tester, excluding the vehicle driver, shall be no more than two. The actual number of operators needed to run the brake tester shall be listed in the Operation Manual (See section 3.5 Documentation).

3.6.2 Skill Level – The brake tester shall be designed to be operated by English-speaking personnel that have at least a secondary school education and a familiarity with personal computers and common operating systems. The brake tester shall also be designed so that a vehicle operator that is unfamiliar with the tester can easily perform the tasks that will be asked of him by the machine operators.

4. QUALITY ASSURANCE PROVISIONS

4.1 **Compliance** – Showing compliance with the requirements listed in Section 3 shall be accomplished by one or more of the verification methods defined below. Each manufacturer shall certify that its PBBT meets these functional specifications at the time of manufacture (or identify those specifications which it does not meet). Each self-certification shall end with the following statement: "I declare (or certify, verify, or state) under penalty of perjury pursuant to 28 U.S.C. 1746 that the foregoing is true and correct. Executed on (date). (Signature)." If the field performance of the PBBT fails to meet the terms of the self-certification, even after the manufacturer has had an opportunity to correct

the deficiencies, the FMCSA will consider referring the matter to the Department of Justice for prosecution.

4.1.1 Analysis – Verification by analysis includes mathematical or graphical studies that demonstrate with a high degree of confidence that a requirement can be met.

4.1.2 Test – Verification by test requires that a test be carried out in accordance with a pre-approved written Test Plan and followed by a Test Report, with quantitative results, showing that each requirement has been met. Examples of requirements to be verified by this method include measurement accuracy of weight, force, and pressure. Verification tests may be performed by any agency or engineering firm equipped to perform and document NIST, or NIST equivalent, traceable measurements. NIST equivalent organizations are those 38 Member States of the Metre Convention, and two international organizations, including NIST, which signed a Mutual Recognition Arrangement (MRA) on October 14, 1999. As signatories to the MRA, they agreed to a number of issues, including establishing a degree of equivalence of national measurement standards and providing for the mutual recognition of calibration and measurement certificates. Self-certification of compliance is permissible provided that the Test Plan is pre-approved by the FHWA and the Test Report is submitted to the FHWA for approval.

4.1.3 Demonstration – Verification by demonstration requires that the item be operated and that the required function be carried out and witnessed to perform satisfactorily. Little or no quantitative data is generally required. Examples of requirements to be verified by this method include operator skill level and the brake tester's capability to handle a variety of commercial vehicle configurations.

4.1.4 Certified Vendor Data – For purchased items, certified vendor data shall be provided to document compliance with requirements. Examples of requirements to be verified by this method include sensor accuracy and resistance of components to water intrusion or UV radiation.

4.1.5 Inspection – Verification by inspection is carried out by a visual check of the requirement. Examples of requirements to be verified by this method include lighting, existence of spare tire (portables only), dimensions.

4.2 **Non-Compliance Disclosure** – The vendor shall provide a list of all requirements listed in Section 3 that cannot be met and include either the reasons why the requirements cannot be met or how close the brake tester can come to satisfying the requirement. For requirements that are not applicable to a particular type of brake tester, simply indicate that the requirement does not apply.

4.3 **Methods of Verification** – Table 2 defines the verification methods to be used for each requirement.

4.4 **Extended Verification Duration –** Items that require an extended period of time for evaluation of compliance (see Table 2) shall be warranted by the manufacturer. Failure to comply may result in decertification of the tester.

4.5 **Warranty -** The functional performance of a PBBT shall be warranted for a period of at least one year from the date of purchase. This means that the PBBT manufacturer is responsible for repair of the brake tester and its components during this one-year period, except for repair of damage caused by accidents or abuse of the equipment.

Table 2. Verification Requirements Summary

Requirement	Paragraph	Verification Method(s) Required
Vehicles to be Tested	3.1.1	Analysis or Demonstration
Determining Braking Capability	3.1.2	Test or Demonstration
Brake Force Determination	3.1.3	Demonstration
Coefficient of Friction	3.1.4	Test
Weighing Capability	3.1.5	Demonstration (if applicable)
Measurement Accuracy	3.1.6	Test
Calibration Certification	3.1.7.1	Inspection
Accuracy Between Calibrations*	3.1.7.2	Demonstration
Recalibration Interval*	3.1.7.3	Demonstration
Calibration History	3.1.7.4	Demonstration
Identification of Faulty Brakes	3.1.8	Demonstration
Operator Interface	3.1.9	Inspection
Measurement Units	3.1.9.1	Demonstration
Language	3.1.9.2	Demonstration
Results Presentation	3.1.9.3	Demonstration
Unique Test Identification	3.1.9.4	Demonstration
Printer Output	3.1.9.5	Demonstration
Results Transmission	3.1.9.6	Demonstration
User Defined Inputs	3.1.9.7	Inspection
Identification of Faulty Tests	3.1.10	Demonstration
Inspection Time	3.1.11	Demonstration
Setup/Tear Down Time	3.1.12	Demonstration
Weight Capacity	3.2.1.1	Analysis, Test, or Demonstration
Portability	3.2.2	Inspection
Trailer Safety	3.2.2.1	Inspection
Towing Requirements	3.2.2.2	Inspection
Ruggedness*	3.2.2.3	Inspection
Spare Tire	3.2.2.4	Inspection
Power Source	3.2.3.1	Demonstration or Inspection
Battery Power	3.2.3.2	Analysis or Demonstration
Tow Vehicle Recharging	3.2.3.3	Analysis or Demonstration
Appearance*	3.2.4	Inspection or Certified Vendor Data
Temperature*	3.3.1	Demonstration
Humidity*	3.3.2	Demonstration
Water Resistance*	3.3.3	Demonstration
Sunlight	3.3.4	Demonstration
UV Radiation*	3.3.5	Test or Certified Vendor Data
Safety	3.4	Inspection
Operation Manual	3.5.1	Deliverable
Maintenance Manual	3.5.2	Deliverable
Calibration Procedure	3.5.3	Deliverable
Drawings	3.5.4	Deliverable
Number of Personnel	3.6.1	Demonstration
Skill Level	3.6.2	Demonstration

* Requires extended period of time to establish compliance.

[FR Doc. 00–19916 Filed 8–8–00; 8:45 am]
BILLING CODE 4910–22–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 14, 2000, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 5:00 p.m. on August 31, 2000. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by September 5, 2000, to the address given below. If sufficient time is available, questions received after the September 5 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by September 5 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia. Suggestions for specific research and development topics as described below and questions for the September 14, 2000, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh Street, S.W., Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-seventh meeting in that series, and it will be held on September 14, 2000, at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

NHTSA requests suggestions from interested parties on specific agenda topics to be presented at this meeting. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by 5:00 p.m. on August 31, 2000. Before the meeting, NHTSA will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the request to the telephone numbers listed in this notice, through the E-mail address listed in this notice, or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA asks that the suggestions be limited to three topics, in priority order, so that the presentations at the September 14, 2000, meeting can be most useful to the audience. Specific research and development topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other research and development topics of specific interest to their organizations or items of general interest. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by 5:00 p.m. on August 31, 2000.

Specific R&D topics are:

Fiscal Years 2000–2001 R&D Research Efforts,

International Harmonized Research Activities (IHRA),

On-line tracking system for NHTSA's research projects, and

Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research and up-to-date results,

Preparation of new dummies for assessment of advanced air bag technology,

Improved frontal crash protection (program status, problem identification, offset testing),

Vehicle compatibility,

Upgrade side crash protection,

Child restraint/air bag interaction (CRABI) dummy testing,

Head and neck injury research,

Lower extremity injury research, and

Thorax injury research.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),

Intelligent vehicle initiative (the rear-end collision avoidance system operational test),

Drowsy driver monitoring,

Driver workload assessment, and

Lane change/merge collision avoidance system guidelines.

Specific National Center for Statistics and Analysis (NCSA) topics are:

NCSA Overview,

Special crash investigation studies, and

Crash avoidance data collection.

Separately, questions regarding research projects that have been submitted in writing not later than 5:00 p.m. on September 5, 2000, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5:00 p.m. September 5, 2000.

Should it be necessary to cancel the meeting due to inclement weather or to any other emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. If you do not have access to the Web site, you may call for information at the contact listed below and leave your telephone or telefax number. You will be called only if the meeting is postponed or canceled.

The next meeting to discuss NHTSA's research and development projects is scheduled for Thursday, December 14, 2000, at the Best Western Gateway International Hotel, Romulus, Michigan.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: August 4, 2000.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 00–20099 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–6992; Notice 2]

Blue Bird Body Company; Denial of Application for Decision of Inconsequential Noncompliance

Blue Bird Body Company (Blue Bird), 402 N. Camellia Blvd., P.O. Box 937, Fort Valley, Georgia 31030, has determined that 25,839 model TC/2000 Conventional and MiniBird school buses do not meet the 60 percent tensile strength requirements of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, ''School bus body joint strength,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Blue Bird has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on March 13, 2000 in the **Federal Register** (65 FR 13412). The National Highway Traffic Safety Administration (NHTSA) received no comments.

FMVSS No. 221, S5, requires that, when tested in accordance with the test procedures of S6, each body panel joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel, determined pursuant to S6.2.

Blue Bird has notified NHTSA that the subject school buses were manufactured at its Mount Pleasant, Iowa, plant from November 1, 1993 through December 6, 1999. The noncompliance involves a failure to meet the 60 percent joint strength requirements on certain 8-inch segments of the exterior roof joints. Agency compliance tests, performed by General Testing Laboratories (GTL), determined that the tensile strength of the roof joint tested was 54.9 percent of the required load. Blue Bird stated that a variance in rivet spacing in the vicinity of the roof stringers occurred as some assembly workers at this plant, without authorization, departed from manufacturing procedures of using the pre-punched holes in the roof bows as drill guides to control fastener spacing and, as a result, there are fewer than the six rivets required by Blue Bird in certain 8-inch segments of the roof joints in the affected buses.

Blue Bird supported its application for inconsequential noncompliance with the following statements which have been quoted from its petition:

I. Overall Joint and Body Strength

Blue Bird stated that the purpose of the School Bus Body Joint Strength Standard No. 221 is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes. Blue Bird concluded from the previous rulemakings discussion that the strength of the overall joint and consequently the strength of the overall bus body is the safety objective of Standard 221 and that the measured performance of an eight (8) -inch long joint segment is merely a procedure chosen to evaluate the overall joint in a practical manner.

Blue Bird stated that by that its analysis shows that the overall strengths of the roof joints on the subject test bus not only meet, but comfortably exceed the strength performance requirements of FMVSS 221. Consequently, Blue Bird believes that the noncompliance of several small selected segments of these roof joints is not representative of actual, overall bus body strength performance and is inconsequential as it relates to motor vehicle safety.

II. Occupants Not Exposed to Roof Joints

Blue Bird stated that, in a crash, vehicle occupants are not exposed to exterior joints like the roof joint in question. Also of importance is the fact that the few small segments of exterior roof joints believed to be in noncompliance are completely separated from the occupant compartment by headlining panels with joints in full compliance with FMVSS 221 requirements.

III. Interior Headlining Joint and Overall Bus Body Joint Strength

Blue Bird reiterated that the overall strength of the joints is of critical importance with regard to the purpose of Standard 221. Blue Bird argued that the test results showed that the headlining joint performance was 71.3 percent vs. the 60 percent requirement. Blue Bird further argued that if the strength of the entire body joint consisting of both the interior headlining joint and the exterior roof joint were to be analyzed together, the overall performance of the joint would be 62.4 percent, which exceeds the 60 percent requirement of FMVSS 221 and satisfies the stated purpose and safety objectives of the standard.

IV. The Remedy in This Case Could Result in Degradation and Leakage of Bus Body Panels

Blue Bird argued that there is no safety need to require notification and remedy of the subject school buses to add additional fasteners. Blue Bird stated that in reality, a recall of the subject buses would be counterproductive to safety in that the resulting inconvenience to the owners/operators of the buses could disrupt the service they provide, resulting in the use of much less safe means of transportation.

Blue Bird stated that the only feasible remedy on completed buses is the addition of blind repair (pop type) rivets in the areas where there are fewer than six (6) rivets in each eight (8)-inch segment. Blue Bird argued that blind rivets are susceptible to water leaks and the installation of these rivets could result in mechanical damage to the roof joint sealer and possible damage to the exterior body paint. Water leaks and/or possible corrosion could occur as a result of the mechanical damage done during drilling and rivet installation.

V. The Current Status of FMVSS 221 Indicates that Curved Joints Are Not A Safety Concern

Blue Bird argued that the current version of FMVSS 221, which permitted optional early compliance as of November 5, 1998, provides an instructive insight into the agency's position with respect to curved joint testing. The November 1998 final rule (see Reference 3), in § S5.2.2, appears to exclude all curved and complex joints from the 60 percent strength requirements of § S5.1.2. Blue Bird argued that intent of the agency was to exclude all curved joints from the joint tensile strength requirements of revised Standard 221. Blue Bird argue that until the standard properly defines what does or does not constitute a ''curved joint,'' the actual requirements that roof and ceiling joints must meet will continue to be unclear.

VI. There Have Been No Roof Joint Failures in the Field

Blue Bird argued that they have never had a field complaint regarding the strength of roof joints and is not aware of any accidents or crash tests which resulted in roof joint separations within the scope of the Standard. The test bus from which the subject roof joint was obtained had other joints tested and all were found to be in full compliance with all FMVSS 221 requirements.

Blue Bird concluded that the noncompliance is not a safety problem and that the noncompliance is inconsequential and in no way compromises the safety of the subject school buses and that the disruption of our customers and likely degradation of these buses by the indicated remedy is not in the public interest.

NHTSA's Decision

We have reviewed Blue Bird's arguments and do not agree. The primary safety purpose of joint strength requirements in FMVSS No. 221 is to ensure that school bus bodies do not structurally collapse during crashes, thereby causing deaths and injuries. Another purpose is to ensure that school bus body panels do not separate during crashes leaving exposed edges that can result in severe lacerations to passengers. NHTSA does not agree with Blue Bird's assessment that overall joint strength is the intended purpose of FMVSS No. 221. Failure to include adequate joint strength in localized areas of joints can lead to body panel separation in those areas and thus pose a hazard of joints becoming unattached in collisions. Separated joints can lead to occupants becoming seriously or fatally injured from lacerations caused by the separated bus body panels.

In the final rule promulgating FMVSS No. 221, January 27, 1997, NHTSA stated that this standard established the minimum requirements for school bus body crashworthiness and that, ''Its purpose is to prevent panels from separating at the joint in the event of an accident. In order to deal with the problem of laceration, this regulation must be applicable to both exterior and interior joints.'' The 60 percent joint strength requirement applied equally to both the interior and exterior body panels to ensure that school bus bodies maintained it's integrity in severe crashes. Prior to the implementation of this standard the National Transportation Safety Board (NTSB) investigated several school bus crashes in which the sparsely riveted panels separated in severe crashes contributing to deaths, injuries and ejections when the bus body disintegrated. In a 1987 follow up study ''Crashworthiness of Large Poststandard School Buses'' NTSB stated that, ''School bus bodies withstood crash forces very well, maintaining structural integrity even in severe crash forces.'' The agency maintains its earlier conclusion that both interior and exterior joints in bus body panels must meet the 60 percent strength requirement to maintain effective crashworthiness of the school body to mitigate against injuries caused by body panel separation.

The agency also does not agree with Blue Bird that school bus occupants are not exposed to exterior roof joints during crashes. While the agency is not aware of any fatalities or injuries caused by joint separations in the roofs of school buses, the potential exists that inadequate external localized joint strength can lead to possible joint failure of internal joints. Separated exterior joints can cause interior joints to be subjected to higher crash forces and can cause the interior joints to become separated in a crash. Separated joints can lead to the occupants being exposed to the jagged edges and increase the threat of becoming seriously or fatally injured. In the final rule promulgating FMVSS No. 221, January 27, 1997, NHTSA stated that, ''In order to deal with the problem of laceration, this regulation must be applicable to both exterior and interior joints.''

The agency also does not agree with Blue Bird that its proposed remedy (blind repair, pop-type rivets) would necessarily result in degradation and leakage of bus body panels. We believe that with the proper use of modern sealants any leakage caused by adding additional discreet fasteners can adequately be prevented. More importantly, if Blue Bird believes that the above remedy is unsafe or inadequate, it is up to Blue Bird to develop and implement an alternative remedy for the noncompliance.

NHTSA also does not agree with Blue Bird's conclusion that the November 5, 1998 final rule amending FMVSS No. 221 excluded all curved joints. The final rule excluded small curved and complex joints from the tensile test requirement that cannot be accommodated in the test apparatus. The joint the agency tested fit in the test apparatus without compromising the integrity of the joint. Blue Bird's internal review, field inspection and analysis showed that the failure to meet the joint strength requirement specified in FMVSS No. 221 was caused by departure from manufacturing procedures. Issues regarding petitions for reconsideration of the November 5, 1998 final rule are irrelevant to petitions for inconsequential noncompliance. These issues will be discussed when the agency responds to the petitions for reconsideration.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is denied, and the applicant must now provide the notification of the noncompliance that is required by 49 U.S.C. 30119, and the remedy of the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120, with delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: August 4, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–20164 Filed 8–8–00; 8:45 am]

BILLING CODE 4910–59–P

Corrections

Federal Register
Vol. 65, No. 154
Wednesday, August 9, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AH–FRL–6536–3]

RIN 2060–AF01

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models)

Correction

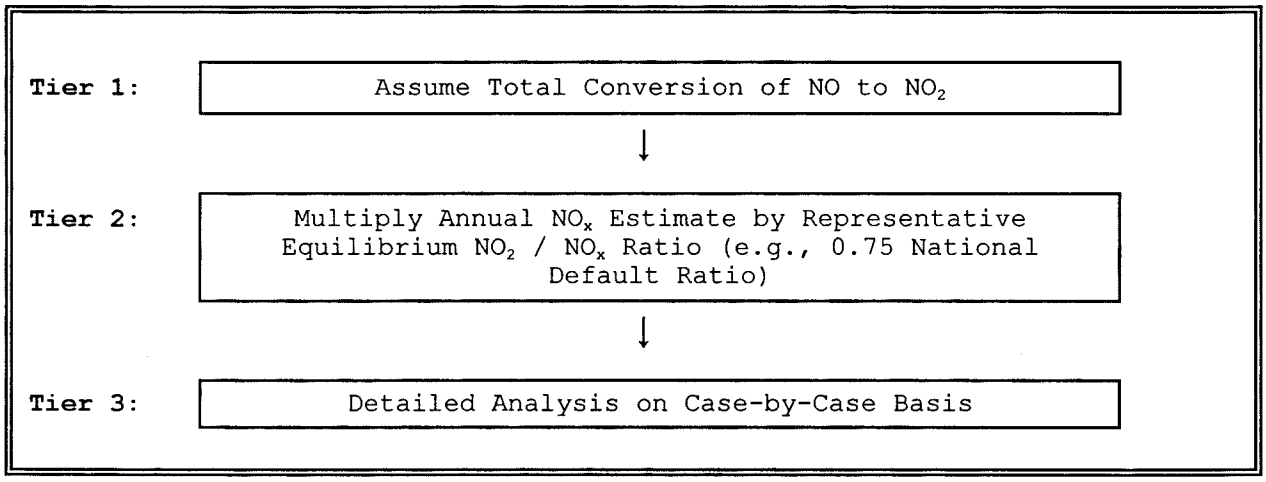
In proposed rule document 00–4235 beginning on page 21506 in the issue of Friday, April 21, 2000, make the following correction:

Appendix W to Part 51 [Corrected]

On page 21520, in the second column, in the appendix, in the second line, after ''through d:'' add the following figure:

FIGURE 5-1

Multi-tiered Screening Approach for Estimating Annual NO_2 Concentrations from Point Sources



[FR Doc. C0–4235 Filed 8–8–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 9, 2000

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps, Commercial Packaged Boilers, Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks; Proposed Rules

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/TP–99–460]

RIN 1904–AA97

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps

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

ACTION: Proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial air conditioners and heat pumps. In today's proposed rule, the Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these air conditioners and heat pumps.

DATES: The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit ten (10) copies. In addition, we request that you provide an electronic copy (3½″ diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 21, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4 p.m., September 7, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4:00 p.m., September 14, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

ADDRESSES: Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–460, 1000 Independence Avenue, SW., Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov. The workshop will begin at 9 a.m., on September 21, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, ''Public Comment,'' of this notice.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the following address: http://www.eren.doe.gov/buildings/codes standards/index.htm.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The proposed rule incorporates, by reference, four test procedures contained in industry standards referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 for commercial air conditioners and heat pumps. Three of these industry standards were published by the Air-Conditioning and Refrigeration Institute (ARI) and the fourth was jointly published by the ARI and the Canadian Standards Association (CSA). These four standards are as follows:

- Standard 210/240–94, ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment'',
- Standard 340/360–93, ''Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'',
- Standard 320–98, ''Water-Source Heat Pumps'', and
- Standard 310/380–93 (which also has a CSA designation CSA–C744–93), ''Standard for Package Terminal Air-Conditioners and Heat Pumps.''

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies of the ASHRAE and ARI Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, http://www.ashrae.org; and the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, http://www.ari.org, respectively.

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F. Review Under the Paperwork Reduction Act
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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which included air conditioning equipment and other types of commercial products.

EPACT also amended EPCA with respect to commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial air conditioners and heat pumps, ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B). Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial air conditioner and heat pump, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d). Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

B. Background

1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers primarily consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled ''Energy Conservation Program for Commercial and Industrial Equipment,'' to implement DOE's program for most commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: Test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs DOE, rather than the FTC, to administer the statute's efficiency labeling provisions for these commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comment on a number of specific issues, including issues related to test procedures for commercial products, as well as the most cost effective and reliable regimes for sampling, certification and enforcement. Statements during the public workshop and written comments that were received afterwards helped refine the issues involved in this rulemaking and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the National Institute of Standards and Technology (NIST) for resolving them.

2. Issues Concerning Commercial Air Conditioners and Heat Pumps

During the April 1998 workshop, we sought comments on the following issue regarding test procedures for commercial air conditioners and heat pumps:

(1) Does the current test procedure for commercial air conditioners and heat pumps adequately specify the external static pressures?

Attendees at the April 1998 workshop provided comments and input on this issue. Section II, Discussion, will cover it in more detail. The workshop participants also raised the following additional major issues (which are numbered continuously with the first issue):

(2) Are heating-only heat pumps covered products?

(3) Are computer room air conditioners covered products?

(4) What should be the test procedures for water-source heat pumps?

After the April 1998 workshop, we worked towards addressing the identified issues for commercial air conditioners and heat pumps. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October 1998 workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial air conditioners and heat pumps. We received additional comments at the second workshop. The following additional issue, raised in a letter to the Department after the October 1998 workshop, is also numbered continuously with the prior issues:

(5) What should be the test procedures for equipment with variable-speed drives?

C. The Proposed Rule

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial air conditioners and heat pumps, (2) definitions that clarify EPCA's coverage of these products, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II contains the reasons for incorporating or not incorporating any significant recommendations.

II. Discussion

A. General

This section discusses the issues identified for commercial air conditioners and heat pumps. Subsection II–B addresses ''Commercial Air Conditioner and Heat Pump Definitions and Scope of Coverage,'' and subsection II–C addresses ''Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency.''

B. Commercial Air Conditioner and Heat Pump Definitions and Scope of Coverage

1. Coverage of Heating-Only Heat Pumps

During the April 1998 workshop the California Energy Commission (CEC) asked the Department to clarify whether heating-only heat pumps were covered by EPCA. During the October 1998 workshop, NIST recommended that we should not include heating-only heat pumps among the covered equipment. All workshop attendees who spoke on this issue supported this opinion.

All of the definitions in EPCA indicate that commercial air conditioners and heat pumps covered by EPCA must have a cooling function. Large and small ''package air-conditioning and heating equipment'' are limited to ''unitary central air conditioners and central air-conditioning heat pumps,'' and EPCA categorizes all of them by cooling capacity. (42 U.S.C. 6311(8)–(9)). Also, EPCA defines ''package terminal heat pump'' as a package terminal air conditioner that utilizes a reverse cycle as the prime method of providing heat. (42 U.S.C. 6311(10)). Furthermore, the equation for the minimum coefficient of performance for the package terminal heat pump involves the energy efficiency ratio for cooling. (42 U.S.C. 6313(a)(3)(B)).

We further believe that to construe EPCA as excluding heating-only heat pumps from coverage would have no significant impact on national energy consumption. According to information provided by representatives of major Heating, Ventilating and Air Conditioning (HVAC) manufacturers and ARI during the April 1998 and October 1998 workshops, although a small number of heating-only heat pumps, mostly hydronic systems, are marketed in Europe, none are now available, or expected to be available any time soon in the United States.

Accordingly, today's proposed rule excludes heating-only heat pumps.

2. Coverage of Computer Room Air Conditioners

a. *Background:* At the April 1998 workshop, the CEC asked for clarification of whether computer room air conditioners are covered equipment under EPCA, or whether they are exempt from efficiency standards.

In subsequent written comments, CEC contends that EPCA indeed covers computer room air conditioners. CEC maintains that nothing in the EPACT language suggests that equipment currently marketed as computer room air-conditioning equipment can be excluded from the scope of the statute. CEC also maintains that we can not exclude this equipment on the basis of either terminology used by those who market it or the primary market into which the equipment is sold.

CEC has administered a certification program for all air-conditioners, including computer room air conditioners, since 1977. For nearly a decade after the program started, manufacturers certified computer room air conditioners to CEC using the same test method as used for conventional central air-conditioning equipment. Manufacturers had to test this product on the basis of ARI Standard 210/240, which is referenced by ASHRAE Standard 90.1. Subsequently, CEC allowed manufacturers to certify it on the basis of ANSI/ASHRAE Standard 127, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners.'' CEC tested a few computer room air conditioners according to both these standards and stipulated the minimum EER levels that would need to be met if equipment is tested using ASHRAE Standard 127–88. CEC selected the minimum EER levels for ASHRAE Standard 127–88 testing, such that they represent equivalent energy efficiency to the efficiency levels required under the ARI standard. In April 1998, CEC had 637 certified computer room air conditioners on file.

b. *Legislative history and position of ASHRAE Standard Project Committee 90.1:* The Report that accompanied the House of Representatives version of EPACT (House Report) states that the law ''amends the existing law [EPCA] to set minimum energy efficiency standards for electric air-conditioning, electric heating, and gas heating equipment * * * intended for use in commercial buildings.'' H.R. Rep. No. 474, 102d Cong. 2d Sess., pt. 1, at 175 (1992). Thus, it appears that the statute is not concerned, for example, with energy used in industrial processes.

The House Report also points out that the efficiency standards specified in the bill ''were developed by * * * [ASHRAE] in ASHRAE Standard 90.1.'' This indicates that the efficiency standards in EPACT for commercial products have the same scope as the standards in ASHRAE 90.1. ASHRAE Standard 90.1–1989 neither discussed computer room air conditioners nor referred to ASHRAE Standard 127–88. However, the ASHRAE Standard 90.1 committee has discussed the coverage of computer room air conditioners during past meetings, including a September 1998 interim meeting. The committee decided that Standard 90.1 does not cover computer room air conditioners since the primary function of computer room air conditioners is to provide cooling for equipment (*i.e.,* computers) rather than for human comfort. This determination is consistent with the Title, Purpose, and Scope of the Standard, which was revised in 1997 to state that the Standard does not apply to ''equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing or commercial processes.''

In sum, the House Report, the direct reliance of the EPACT legislation on ASHRAE Standard 90.1, the scope of the Standard, and the position of the Standard 90.1 committee regarding computer room air conditioners, all support the conclusion that computer room air conditioners are not covered by EPACT.

c. *Functional differences between comfort cooling air conditioners and computer room air conditioners:* While the basic design and many of the vital components of computer room air conditioners are the same as those of conventional air conditioners, there are certain important feature differences. The most common temperature setting for computer room air conditioners is 72°F and the most common relative humidity setting is 50%. In addition to producing the desired cooling effect,

computer room air conditioners may humidify or dehumidify the air and then, if necessary, reheat it. Computer room air conditioners achieve dehumidification by cooling the air even under conditions when the temperature alone does not warrant it. This may push the space temperature below the set point, and thus may require correction by reheating the air. The coils are usually larger, and so is the air flow rate, typically 425–500 cfm/ton as compared to 400 cfm/ton for conventional air conditioners. These features differentiating computer room air conditioners from conventional air conditioners are also reflected in ASHRAE Standard 127–88, discussed below, which was developed for testing computer room air conditioners.

d. *ASHRAE Standard 127–88:* ASHRAE developed ASHRAE Standard 127–88, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air-Conditioners.'' The American National Standard Institute (ANSI) approved ASHRAE Standard 127–88, which indicates recognition of the national consensus reached during development of the Standard.

ASHRAE Standard 127–88 is not referenced by ASHRAE Standard 90.1. Several differences exist between ASHRAE Standard 127–88 and the ARI test procedure standards for commercial air-conditioning and heating equipment that are referenced by ASHRAE Standard 90.1. The following, for example, is a list of differences between ASHRAE Standard 127–88 and ARI Standard 210/240–1994:

i. ASHRAE Standard 127–88 specifies standard rating conditions for the cooling system, the reheating system, and the humidification system. ARI Standard 210/240 does not specify conditions for reheating and humidification rating. Therefore, the ARI standard can not accommodate testing for all the functions that computer room air conditioners may provide.

ii. ASHRAE Standard 127–88 specifies an indoor air temperature of 72°F dry bulb and a wet bulb temperature of 60°F . ARI Standard 210/240–94 specifies an 80°F dry bulb temperature and a wet bulb temperature of 67°F. Since the typical operating indoor temperature for computer room air conditioners is set at 72°F, mandating the ARI test method with 80°F indoor air temperature would most likely result in computer room air conditioners being optimized at the 80°F indoor temperature. A system optimized at 80°F will not perform optimally at the 72°F indoor temperature, leading to wasted energy if computer room air conditioners are tested under ARI Standard 210/240.

iii. ASHRAE Standard 127–88 does not impose restrictions on the indoor-side air quantity. ARI Standard 210/240 limits the indoor-side air quantity to 37.5 scfm per 1000 Btu/h. The limit on the indoor-side air quantity limits to some degree the sensible heat ratio (the ratio of the sensible capacity to the total capacity), minimizes the possibility of condensate carry over from the evaporator coil, and prevents noise generation in the duct system. It appears that the sensible heat ratio, condensate carry over, and duct noise issues are not as significant for computer room air conditioners as for conventional air conditioners.

iv. ASHRAE Standard 127–88 prescribes two different levels of external resistance for the total delivered air for systems that are intended for use with field-installed ducts. These two levels are 0.3 in. of water external pressure for air conditioners with standard cooling capacity less than 60,000 Btu/h, and 0.5 in. of water for systems with capacities equal to and above 60,000 Btu/h. ARI Standard 210/240–94 prescribes five different values of the minimum external pressure, one for each of five specified cooling capacities up to 135,000 Btu/h (ARI Standard 210/240–94, Table 6). Consequently, different external static pressures are used during tests in the two methods. For example, for a cooling capacity of 70,000 Btu/h, the ARI standard prescribes a minimum external resistance of 0.2[0] in. of water, while the ASHRAE standard stipulates 0.5 in. of water. It appears that computer room air conditioners may experience a higher external static pressure in a typical installation than conventional air conditioners, and that the ASHRAE standard reflects this difference.

Similar differences also exist between ASHRAE Standard 127–88 and ARI standards 340/360 and 320–93. The last three differences lead to different energy efficiency ratios (EER) when using ASHRAE Standard 127–88 and the ARI standards. The difference in the specified indoor dry bulb temperature (72°F vs. 80°F) has the dominating effect, which results in EERs from the ASHRAE Standard 127–88 test having lower values than those obtained from tests according to the ARI test procedures.

Because of being referenced in ASHRAE Standard 90.1, the foregoing ARI standards are the EPCA test procedures for testing commercial air-conditioning equipment. But as just discussed, these standards are not best suited for testing and rating computer room air conditioners. On the other hand, the consensus standard for performing such testing and rating, ASHRAE Standard 127–88, is not referenced in Standard 90.1 and, therefore, is not prescribed by EPCA. The omission from EPCA of a test procedure for computer room air conditioners provides further support for the conclusion that this product is not covered by the statute.

e. *October 1998 Workshop Discussion:* The workshop participants also discussed the coverage of computer room air conditioners. Except for the CEC, all the participants took the position that computer room air conditioners is not a covered product under EPCA.

f. *Conclusion:* Based on the above considerations, our view is that computer room air conditioners are not currently covered by EPCA within the definition of commercial package air-conditioning and heating equipment (section 343(8)–(9) of EPCA, 42 U.S.C. 6311(8)–(9)). If some of the above circumstances were to change, however—if, for example, ASHRAE Standard 90.1 were to incorporate efficiency standards and test procedures for this product or the product was to become widely used for conventional air conditioning applications—the Department might re-visit this issue.

3. Coverage of Equipment with a Variable-Speed Drive

We received a written comment after the October 1998 workshop from Laclede Gas Company, which requested that a minimum energy efficiency standard be formulated for variable speed cooling equipment. The comment contended that the significant market penetration of this type of equipment mandates minimum energy efficiency standards. We believe the intent of the comment is to request establishment of efficiency standards and performance descriptors that would address part load performance of commercial equipment.

Sections 342(a)(1), (2), and (3) of EPCA set forth efficiency standards and performance descriptors for cooling equipment. U.S.C. 6313(a)(1), (2), and (3). Pursuant to these sections, only small commercial, air-cooled package air-conditioning equipment having cooling capacity less than 65 ,000 Btu/h have to meet a prescribed minimum Seasonal Energy Efficiency Ratio (SEER) which accounts for part load performance. For those systems that also have a heating function (*i.e.,* heat pumps), a minimum Heating Seasonal Performance Factor (HSPF) is prescribed. For all other equipment, EPCA only mandates efficiency

descriptors that involve a steady-state operation and does not refer to any descriptors based on part load performance.

With regard to efficiency standards, the purpose of this proposed rule is to incorporate the requirements currently imposed by EPCA. Today's proposal, therefore, incorporates standards for part load performance only in these instances where EPCA prescribes such standards. To the extent that EPCA does not prescribe efficiency standards for the part load performance of a product, it is beyond the scope of this rulemaking to do so.

C. Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency

EPCA requires that the testing procedures for measuring the efficiency of commercial air conditioners and heat pumps must be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and that were in effect on June 30, 1992. Also, if such an industry test procedure or rating procedure for commercial air conditioner or heat pump is amended, the Secretary must adopt such revisions unless the Secretary determines that to do so would not produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the procedures would be unduly burdensome to conduct.

1. Test Procedures the Department Intends to Adopt

ASHRAE Standard 90.1–1989 was in effect on June 30, 1992, and referenced four industry test standards that apply to commercial air conditioners and heat pumps. Three of these industry standards were published by the Air-Conditioning and Refrigeration Institute (ARI) and the fourth was jointly published by the ARI and the Canadian Standards Association (CSA). The current versions of the four standards are as follows:

- ARI Standard 210/240–94, ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment;''
- ARI Standard 340/360–93, ''Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment;''
- ARI Standard 320–98, ''Water-Source Heat Pumps;'' and
- ARI Standard 310/380–93 (which also has a CSA designation CSA–C744–93), ''Standard for Package Terminal Air-Conditioners and Heat Pumps.''

These current versions of the four standards require the same test methods and calculation procedures as do the versions that were referenced by ASHRAE Standard 90.1–1989. These new versions of the ARI standards have better availability than the older standards and are referenced for convenience of the parties affected by the rule.

Today's proposed rule reflects our intent to adopt the amended ARI standards, in accordance with section 343(a)(4)(B) of EPCA, 42 U.S.C. 6314(a)(4)(B). The Department does not intend to determine that any of these amendments to the ARI standards contains a test procedure that is either unduly burdensome to conduct or not reasonably designed to reflect the energy efficiency of commercial air conditioners and heat pumps.

2. Minimum External Static Pressure

ARI Standard 210/240–94, ARI Standard 340/360–93 and ARI Standard 320–93 specify the minimum external static pressures to test commercial air-conditioning and heating equipment with indoor fans and field-installed ducts. The standards prescribe the minimum pressures in a table which lists the levels of external resistance by system capacity (appearing in Table 6 in ARI Standard 210/240–94, Table 2B in ARI Standard 340/360, and Table 2 in ARI Standard 320–93.) The standards prescribe larger values of minimum external resistance for larger-capacity systems based on the assumption that larger systems would be connected to longer duct systems with more bends and obstructions. Before the April 1998 workshop, we had the concern that external pressures specified by the ARI standards would be lower than values that one generally encounters in commercial buildings. This could lead to a potentially overstated efficiency rating. Consequently, we raised this issue for discussion at the April 1998 workshop.

None of the participants at the April 1998 workshop shared our concern regarding the minimum external static pressure specified in the ARI standards, and several participants spoke in support of not changing the current test requirements. They observed that: (1) Actual static pressure varied among building sites, so any single specification could not be fully representative; (2) the present test procedures—ARI Standard 210/240–94, ARI Standard 340/360–93 and ARI Standard 320–98—provide consistency for purposes of comparing equipment; (3) the differences in static pressure would primarily affect the energy consumption of the indoor air circulating fan, which represents a very small fraction of the total energy consumed by the unit, so the effect of changing the pressure specification on the energy efficiency would be minimal; and (4) because an increase in the pressure specification, above the levels in the ARI test procedures, would likely result in *some* reduction in rated efficiencies, if the DOE test procedures were to contain such an increase manufacturers would have to re-test and re-rate their products, and incur testing and marketing costs as a consequence.

Section 343(a) of EPCA, 42 U.S.C. 6314(a), provides in essence that the test procedures under EPCA for measuring the efficiency of commercial air conditioners and heat pumps shall be industry test procedures developed or recognized by ARI or ASHRAE, and that DOE has limited authority to adopt other test procedures for these products. Indeed, it can be argued that because the external static pressures in the ARI standards have not changed since June 1992, DOE has virtually no power to change them. See EPCA Section 343 (a)(4)(B)–(C), 42 U.S.C. 6314(a)(4)(B)–(C).

In view of the above, we have decided not to propose any changes in the minimum static pressures. We believe that if we were developing from scratch a test procedure for commercial air-conditioning and heating equipment, inclusion of static pressures higher than those in the existing test procedures might well be warranted. But the reasons for retaining the pressure specifications in the existing test procedures have considerable merit, and to some extent offset any benefits of making a change at this point. Our limited authority to alter the existing test procedures provides a further reason not to make such a change at this point.

3. Test Procedure for Water-Source Heat Pumps

In ASHRAE Standard 90.1–1999, ASHRAE amended Standard 90.1's provisions for water source heat pumps by both changing the level of the applicable efficiency standards and changing the referenced test procedure from ARI Standard 320, ''Water-Source Heat Pumps,'' to the International Standards Organization (ISO) Standard 13256–1, ''Water-Source Heat Pumps—Testing and Rating for Performance—Part 1: Water-to-Air and Brine-to-Air Heat Pumps.'' Under the amendments, the new efficiency levels will go into effect on October 29, 2001, and ISO

Standard 13256–1 will be used to measure compliance with those levels. Prior to that time, ARI Standard 320 will remain in force under Standard 90.1 to measure compliance with existing efficiency levels for water source heat pumps. Recently, the Department has become aware that ARI has changed its certification program for water-source heat pumps to reference ISO Standard 13256–1 as the test procedure used in its program.

As discussed above, we intend to prescribe ARI Standard 320–98 as the DOE test procedure for water-source heat pumps, in the final rule in this proceeding. This is the test procedure that is currently in place under ASHRAE Standard 90.1. We also intend to address DOE adoption of the ISO test procedure, to replace ARI 320–98, in a subsequent proceeding.

Nevertheless, in light of ASHRAE's adoption in Standard 90.1–1999 of ISO Standard 13256–1, as well as ARI's actions, we are also considering adoption in the final rule in this proceeding of ISO Standard 13256–1, instead of ASHRAE Standard 320, as the DOE test procedure for water source heat pumps. We would like to receive comment on that issue. In particular, we would like to receive results of testing the same products using the two test procedures, to compare efficiency differences of the two test procedures. We will decide whether to adopt ISO Standard 13256–1 in the final rule as the DOE test procedure for water-source heat pumps after reviewing this data, and after addressing any technical, legal and procedural issues and concerns about its immediate adoption.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

EPCA prescribes energy efficiency standards and test procedures for commercial products, and in today's rule, we propose to implement these requirements for commercial air conditioners and heat pumps. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, our regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's Regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's proposed rule has been determined not to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, the agency must propose for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3585, which includes air conditioners and heat pumps, is 750. We estimate that approximately 31 firms manufacture covered commercial air conditioners and heat pumps, and of these, 14 are considered small businesses.

EPCA establishes efficiency standards for covered commercial equipment and requires us to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. As EPCA specifies the standards and test procedures incorporated in today's proposed rule, any costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule simply codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of today's proposed rule will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by EPCA and would consequently need to be redesigned or removed from the market. Since the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. To the extent that manufacturers must already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, they will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on those firms which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have no discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial products. In this regard, it is noteworthy that although EPCA contains a ''small manufacturer exemption'' for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, DOE certifies that the proposed rule would not impose a significant impact on a substantial number of small businesses.

D. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The proposed rule published today would not regulate the States. The proposed rule would primarily codify energy efficiency standards and test procedures already established in EPCA for commercial air conditioners and heat pumps. We have determined that today's proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''

We have determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this proposed rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), we must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates certain commercial standards which EPCA requires to be used. These include testing standards referenced by ASHRAE Standard 90.1–1989 for the measurement of steady state thermal efficiency of commercial air conditioners and heat pumps. Because we have very limited discretion to depart from the standards referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to them.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that we prepare an impact assessment before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The impact assessment must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of our prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

J. Review Under the Plain Language Directives

The President's Memorandum on ''Plain Language in Government Writing,'' 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes ''plain language.'' Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Public Comment

A. Written Comment Procedures

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's rule to Ms. Brenda Edward-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. We will make our own determination with regard to the confidential status of the information and treat it according to our determination.

Factors of interest to us, when evaluating requests to treat as

confidential information that has been submitted, include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

B. Public Workshop

1. Procedures for Submitting Requests to Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Commercial Air Conditioner and Heat Pump Definition and Scope of Coverage

- Coverage of Heating-Only Heat Pumps
- Coverage of Computer Room Air Conditioners
- Coverage of Equipment with a Variable-Speed Drive

Commercial Air Conditioner and Heat Pump Test Procedures for the Measurement of Energy Efficiency

- Test Procedures the Department Intends to Adopt
- Minimum External Static Pressure
- Test Procedure for Water-Source Heat Pumps
- Other Test Procedure Topics

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues on Which Comments Are Requested

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on June 9, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Subpart J is added to read as follows:

Subpart J—Commercial Air Conditioners and Heat Pumps

Sec.

431.251 Purpose and scope.

431.252 Definitions for commercial air conditioners and heat pumps.

Test Procedures

431.261 Materials incorporated by reference.

431.262 Uniform test method for the measurement of energy efficiency of

small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

Energy Efficiency Standards

431.271 Energy efficiency standards and effective dates.

Subpart J—Commercial Air Conditioners and Heat Pumps

§ 431.251 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial air conditioners and heat pumps, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6316.

§ 431.252 Definitions for commercial air conditioners and heat pumps.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this subpart, in section 340 of the Act, and as follows—

Coefficient of Performance, or COP means the ratio of the produced cooling effect of an air conditioner or heat pump (or its produced heating effect, depending on the mode of operation) to its net work input, when both the cooling (or heating) effect and the net work input are expressed in identical units of measurement.

Energy Efficiency Ratio, or EER, means the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour.

Heating seasonal performance factor or HSPF means the total heating output of a central air-conditioning heat pump during its normal annual usage period for heating, expressed in Btu's and divided by the total electric power input, expressed in watt-hours, during the same period.

Large commercial package air-conditioning and heating equipment means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application that are rated at or above 135,000 Btu per hour and below 240,000 Btu per hour (cooling capacity), and that are commercial HVAC & WH products.

Packaged terminal air conditioner means a wall sleeve and a separate un-encased combination of heating and cooling assemblies specified by the builder and intended for mounting through the wall, and that is a commercial HVAC & WH product. It includes a prime source of refrigeration, separable outdoor louvers, forced ventilation, and heating availability by builder's choice of hot water, steam, or electricity.

Packaged terminal heat pump means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source, that has a supplementary heat source available, with the choice of hot water, steam, or electric resistant heat, and that is a commercial HVAC & WH product.

Seasonal energy efficiency ratio or SEER means the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu's, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.

Single package unit means any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet.

Small commercial package air-conditioning and heating equipment means air-cooled, water-cooled, evaporatively cooled, or water-source (not including ground water-source) electrically operated, unitary central air conditioners and central air-conditioning heat pumps for commercial application which are rated below 135,000 Btu per hour (cooling capacity), and which are commercial HVAC & WH products.

Split system means any central air conditioner or central air conditioning heat pump in which one or more of the major assemblies are separate from the others.

Test Procedures

§ 431.261 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.*

(1) Air-Conditioning and Refrigeration Institute (ARI) Standard 210/240–94 published in 1994, ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment.''

(2) ARI Standard 310/380–93 published in 1993, ''Standard for Package Terminal Air-Conditioners and Heat Pumps.''

(3) ARI Standard 320–98 published in 1998, ''Water-Source Heat Pumps.''

(4) ARI Standard 340/360–93 published in 1993, ''Commercial and Industrial Unitary Air-Conditioning and Air-Source Heat Pump Equipment.''

(c) *Availability of references.*

(1) *Inspection of test procedures.* You may inspect the test procedures incorporated by reference at:

(i) Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps,'' Docket No. EE–RM/TP–99–460, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) *Obtaining copies of Standards.* You may obtain a copy of the ARI standards from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, http://www.ari.org/.

§ 431.262 Uniform test method for the measurement of energy efficiency of small and large commercial package air conditioning and heating equipment, packaged terminal air conditioners, and packaged terminal heat pumps.

(a) *Scope.* This section contains test procedures you must follow if, pursuant to EPCA, you are measuring the energy efficiency of small and large commercial package air-conditioning and heating equipment, packaged terminal air conditioners and packaged terminal heat pumps.

(b) *Testing and Calculations.* For each covered product, determine the energy efficiency by conducting the test procedure listed in the rightmost column of the following table for that product, category, cooling capacity, and energy efficiency descriptor:

Product	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions and procedures in
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase, AC and HP.	<65,000 Btu/h	SEER	ARI Standard 210/240–94
			HSPF	ARI Standard 210/240–94
	Air Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER	ARI Standard 210/240–94
			COP	ARI Standard 210/240–94
	Water Cooled AC	<135,000 Btu/h	EER	ARI Standard 210/240–94
	Evaporatively Cooled AC.	<135,000 Btu/h	EER	ARI Standard 210/240–94
	Water-Source HP	<135,000 Btu/h	EER	ARI Standard 320–98
			COP	ARI Standard 320–98
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–93
			COP	ARI Standard 340/360–93
	Water Cooled AC	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–93
	Evaporatively Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	ARI Standard 340/360–93
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	All	EER	ARI Standard 310/380–93
			COP	ARI Standard 310/380–93

Energy Efficiency Standards

§ 431.271 Energy efficiency standards and effective dates.

Each commercial air conditioner or heat pump manufactured on or after January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995) must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section.

TABLE 1.—MINIMUM COOLING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Subcategory	Efficiency Level [1]
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	≥65,000 Btu/h	Split System	SEER = 10.0
			Single Package	SEER = 9.7
	Air Cooled	≥65,000 Btu/h and ≥135,000 Btu/h.	All	EER = 8.9
	Water Cooled Evaporatively Cooled, and Water-Source.	≥65,000 Btu/h	All	EER = 9.3
		65,000 Btu/h and ≥135,000 Btu/h.	All	EER = 10.5
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	°135,000 Btu/h and ≥240,000 Btu/h.	All	EER = 8.5
	Water-Cooled, and Evaporatively Cooled.	135,000 Btu/h and ≥240,000 Btu/h.	All	EER = 9.6
Packaged Terminal Air Conditioners and Heat Pumps.	All	≥7,000 Btu/h	All	EER = 8.88
		≥7,000 Btu/h and 15,000 Btu/h.		EER = 10.0 − (0.16 × capacity [in thousands of Btu/h at 95° outdoor dry-bulb temperature])
		≥15,000 Btu/h		EER = 7.6

[1] All EER values must be rated at 95°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 85°F entering water temperature for water-source and water-cooled products.

TABLE 2.—MINIMUM HEATING EFFICIENCY LEVELS

Product	Category	Cooling capacity	Subcategory	Efficiency Level [2]
Small Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled, 3 Phase	≥65,000 Btu/h	Split System	HSPF = 6.8
			Single Package	HSPF = 6.6
	Water-Source	≥135,000 Btu/h	Split System and Single Package.	COP = 3.8
	Air Cooled	65,000 Btu/h and ≥135,000 Btu/h.	All	COP = 3.0

TABLE 2.—MINIMUM HEATING EFFICIENCY LEVELS—Continued

Product	Category	Cooling capacity	Subcategory	Efficiency Level [2]
Large Commercial Packaged Air Conditioning and Heating Equipment.	Air Cooled	135,000 Btu/h and ≥240,000 Btu/h.	Split System and Single Package.	COP = 2.9
Packaged Terminal Heat Pumps.	All	All	All	COP = 1.3+(0.16 × the applicable minimum cooling EER prescribed in Table 1—Minimum Cooling Efficiency Levels)

[2] All COP values must be rated at 47°F outdoor dry-bulb temperature for air-cooled products and evaporatively-cooled products and at 70°F entering water temperature for water-source products.

[FR Doc. 00–19723 Filed 8–8–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/TP–99–470]

RIN 1904–AB02

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Packaged Boilers

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

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial packaged boilers. In today's proposed rule, the Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these boilers.

DATES: The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit ten (10) copies. In addition, we request that you provide an electronic copy (3½″ diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 20, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4 p.m., September 6, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4 p.m., September 13, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

ADDRESSES: Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–470, 1000 Independence Avenue, SW., Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The workshop will begin at 9 a.m., on September 20, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, ''Public Comment,'' of this notice of proposed rulemaking.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the following address: http://www.eren.doe.gov/buildings/codes standards/index.htm

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The proposed rule incorporates, by reference, the test procedures contained in industry standards referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 for commercial packaged boilers. Those industry standards are: American National Standards Institute (ANSI) Standard Z21.13a–1993, ''Gas-Fired Low Pressure Steam and Hot Water Boilers;'' The Hydronics Institute (HI) Standard ''Testing and Rating Standard for Heating Boilers,'' 6th Edition, 1989; and American Society of Mechanical Engineers (ASME) PTC 4.1–1964/RA–1991, ''Power Test Codes for Steam Generating Units.'' The proposed rule would also incorporate by reference, ASHRAE Standard 103–1993, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers,'' for its test procedure with respect to condensing boilers.

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies of the ASHRAE, ANSI, HI, and ASME Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, Internet URL: http://www.ashrae.org/book/bookshop.htm; Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or Internet URL: http://webstore.ansi.org/ansidocstore/; the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, NJ 07922, Internet URL: http://www.gamanet.org/publist/hydroordr.htm; and the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, Internet URL: http://www.asmeny.org/catalog, respectively.

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which included air conditioning equipment, boilers, and other types of commercial products.

EPACT also amended EPCA with respect to certain commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial packaged boilers, ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B).

Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial packaged boiler, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d).

Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring compliance with requirements. See 42 U.S.C. 6316(a).

B. Background

1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers primarily consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled ''Energy Conservation Program for Certain Commercial and Industrial Equipment,'' to implement DOE's program for the commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs DOE, rather than the FTC, to administer the statute's efficiency labeling provisions for commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comments on a number of specific issues, including issues related to test procedures for commercial products, as well as the most cost effective and reliable regimes for sampling, certification and enforcement. Statements during the public workshop and written comments that were received afterwards helped refine the issues involved in this rulemaking and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the

National Institute of Standards and Technology (NIST) for resolving them.

2. Issues Concerning Packaged Boilers

During the April 1998 workshop, we sought comments on the following issues regarding test procedures for commercial packaged boilers:

(1) Definitions of the term ''packaged boiler'' in the ASHRAE Standard 90.1-referenced test standards do not precisely coincide with those in EPCA. Should we clarify the EPCA definition by rule?

(2) In establishing the energy conservation standard levels for commercial packaged boilers, EPCA specified a lower capacity limit of 300,000 Btu per hour below which the standard levels do not apply. EPCA sections 342(a)(4)(C) and (D), 42 U.S.C. 6313(a)(4)(C) and (D). There is no upper capacity limit specified in EPCA for these products. Accordingly, the proposed DOE test procedures are designed expressly for commercial packaged boilers whose rated capacities are 300,000 Btu per hour or more. However, certain packaged boilers do exist whose capacities range in tens or even hundreds of millions of Btu per hour, and which are difficult to test under controlled laboratory conditions. Should we explicitly specify a capacity upper limit for the covered packaged boilers in the proposed test procedures?

(3) In extending EPCA to cover packaged boilers, along with other commercial HVAC and hot water heating products, EPACT articulated no limits on the applications for which the covered packaged boilers would be used (*e.g.,* space heating/conditioning of commercial buildings). Should we interpret EPCA as covering only the types of commercial packaged boilers used in heating buildings, or should the test procedure also apply to boilers used exclusively in other applications (*e.g.,* industrial process heating or power generation)?

(4) The industry test procedures referenced in ASHRAE Standard 90.1–1989 (and specified in EPCA), that form the basis for a DOE test procedure for packaged boilers, do not contain methods for determining jacket losses. An exception is the test procedure ASME PTC 4.1, ''Power Test Codes for Steam Generating Units,'' which provides a graph correlation for jacket loss, as well as a detailed test method. Should the DOE test procedure include a jacket loss test method which can be used to determine, for example, the efficiency of a boiler installed outdoors?

(5) EPCA specifies industry test procedures referenced in ASHRAE Standard 90.1–1989 for measuring the energy efficiency of packaged boilers. There are four test standards for gas-fired boilers and three for oil-fired boilers. The test conditions and procedures in those test standards are not identical. Use of different test conditions for a given boiler could produce different efficiency values. Is there a need to prescribe a set of uniform test conditions selected from among those referenced test procedures for a DOE test procedure?

(6) Should the DOE test procedure contain separate provisions for condensing boilers, modulating boilers, modular boilers, as well as for hot water boilers designed for low temperature applications?

(7) If a boiler is designed for both hot water and steam applications, should we specify a steam test and allow a water test as an optional procedure?

Attendees at the April 1998 workshop provided comments on these issues. In addition, the California Energy Commission (CEC) provided additional written comments afterwards. These comments helped to further clarify the issues. Section II, Discussion, will cover them in more detail.

After the April 1998 workshop, we worked towards addressing the identified issues for commercial packaged boilers. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial packaged boilers. We received additional comments, and the participants raised certain additional issues at the second workshop.

The following additional major issues, raised at that time, are numbered by using the same numbering scheme as the prior issues:

(8) EPCA defines a packaged boiler as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' For the majority of sectional cast iron boilers, a distributor, and not the boiler manufacturer, physically ships out sections of the boiler to the purchaser. Sometimes, a burner manufacturer may ship the burners directly to the purchaser from the factory, or alternately, an installer can supply them at the installation site. Are such boilers covered products under EPCA, and if so, who is responsible for ensuring their compliance with EPCA requirements?

(9) Are high pressure boilers covered products? Here, the term ''high pressure boilers'' applies to boilers classified by ASME Boiler and Pressure Vessel Code, Section I, Power Boilers, which are designed to operate at steam pressures above 15 psig, or at hot water temperatures above 250°F.

(10) For low pressure hot water boilers, should we specify inlet and outlet temperatures as per uniform test conditions recommended by NIST? These include an inlet water temperature of 80°F ±10°F and an outlet water temperature of 180°F ±2°F, for both gas-fired and oil-fired boilers.

C. The Proposed Rule

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial packaged boilers, (2) definitions that clarify EPCA's coverage of this product, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II contains the reasons for incorporating or not incorporating any significant recommendations.

II. Discussion

A. General

This section discusses the issues identified for commercial packaged boilers. Subsection (B) addresses ''Commercial Packaged Boiler Definition and Scope of Coverage,'' and subsection (C) addresses ''Commercial Packaged Boiler Test Procedures for the Measurement of Energy Efficiency''.

B. Commercial Packaged Boiler Definition and Scope of Coverage

1. Definitions

EPCA defines a packaged boiler as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' EPCA, Sec. 340(a)(11)(B). ASHRAE Standard 90.1–1989, section 10, entitled ''Heating, Ventilating, and Air-Conditioning (HVAC) Equipment'' (which appears to be the relevant source referenced by Section 343(a)(4) of EPCA, concerning test procedures), refers to five test standards for commercial heating boilers. Of these five, four include an explicit definition for one or more types of a packaged boiler. The definitions in three of the four referenced standards are essentially similar with respect to the heating equipment and controls. The fourth standard introduces a size limit within the definition of a packaged boiler. The

fifth standard, ASME PTC 4.1, does not define a packaged boiler.

Specifically, the first referenced test standard, the Hydronics Institute (HI) test standard ''Testing and Rating Standard for Heating Boilers—1989'' (HI–1989), defines a packaged boiler as ''a boiler-burner unit factory assembled and wired'', where the ''boiler-burner unit'' is defined as ''a combination of boiler, burner, combustion chamber design (if required) and controls, marketed as a unit''. HI–1989 does not specifically limit the test standard to packaged boilers. However, HI–1989 limits the test standard to low pressure heating boilers defined in ASME Boiler and Pressure Vessel Code, Section IV, Heating Boilers.

The second referenced test standard, Underwriters Laboratory (UL) test standard UL Standard 726 for ''Oil-Fired Boiler Assemblies,'' defines an oil-fired boiler assembly as ''a boiler assembly equipped with one or more oil burners, and all the necessary safety controls, electrical equipment as needed, and related equipment, manufactured for assembly as a unit.''

The third referenced test standard, UL Standard 795 for ''Commercial-Industrial Gas Heating Equipment,'' including gas-fired boilers, defines a gas-fired device as one which ''* * * shall be factory-built and shall include all essential components necessary for its normal function as intended, and may be shipped as two or more major subassemblies.'' In addition, both UL Standard 726 and UL Standard 795 specify that '' * * * each subassembly shall be capable of being incorporated into the final assembly without requiring alteration, cutting, drilling, threading, welding or similar tasks by the installer * * *'' Both UL Standard 726 and UL Standard 795 also limit the scope of coverage to a boiler assembly.

The fourth referenced test standard, ANSI Standard Z21.13, does not define a packaged boiler. However, the standard limits its scope of coverage to gas-fired low pressure steam and hot water boilers (defined in its Part IV, Definitions, as a self-contained gas burning appliance for supply steam or hot water) with input ratings of less than 12,500,000 Btu per hour.

The fifth referenced test standard, ASME Power Testing Codes for Steam Generating Units, ASME PTC 4.1, does not include a definition for a packaged boiler.

During the April 1998 DOE workshop, participants discussed the defining characteristics of a packaged boiler in terms of its method of shipment and assembly, its application (*e.g.,* space heating/conditioning, service water heating, industrial processing, and utility applications), its capacity (size), and its operating characteristics (*e.g.,* low pressure steam and hot water heating boilers, high temperature hot water boilers, and high pressure steam boilers). Each of them are discussed individually below.

2. Method of Shipment and Assembly

The Gas Appliances Manufacturers Association (GAMA) stated that a packaged boiler is a boiler which the manufacturer designs with specific component models which are listed in the manufacturer's catalog. (GAMA, April 1998 transcript, at 133). The boiler may not come out of the manufacturer's factory as a completely assembled product ready for shipment, due to a heavy bulk or other considerations. It may be shipped in subsections that are assembled together in the field. However, when assembled, the boiler would conform to the manufacturer's predefined design for its basic model.

The Council of Industrial Boiler Owners stated that even though there were no clear-cut criteria on what constitutes a packaged boiler, generally a boiler will not be considered a packaged boiler if it needs field welding, pressure parts, or fabrication of the assembly at the site. (CIBO, April 1998 transcript, at 136).

The October 1998 workshop participants also discussed what constitutes a packaged boiler. Weil-McLain Co. stated that the cast iron boiler industry subscribes to the definition of packaged boiler in the Hydronics Institute (HI) Standard, as ''a boiler-burner unit factory assembled and wired.'' (Weil-McLain Co., October 1998 transcript, at 209). Weil-McLain stated that this definition is different from the EPCA definition, under which the boiler can be shipped in separate sections not assembled in the factory. Weil-McLain stated further that it sells cast iron boilers in three different ways: (1) Factory assembled and wired as defined by HI, so that the boilers can be installed at the site without any further assembly, (2) with only the heat exchanger sections bolted together in the factory, and with these and other boiler components (*e.g.,* burner, controls and jacket) shipped in separate sections for subsequent assembly at the job site, and (3) through boiler distributors, who maintain inventories of heat exchanger sections, controls and burners (or order them directly from their respective manufacturers), and who either ship all the necessary components, or have manufacturers ship some or all of the components, to the customer for assembly as a complete boiler at the customer's site. Weil-McLain stated that the third manner accounts for probably 90 percent of their sales and asked whether the manufacturer would be held accountable for the performance of boilers sold in this way since they had no control over the distributors and how the unit was assembled. Mestek, Inc. agreed with Weil-McLain. (Mestek, October 1998 transcript, at 214).

Weil-McLain also stated that for every model of boiler that it sells for field assembly, it also sells a packaged boiler of the same design factory assembled and wired (as per HI definition). These factory assembled boilers are tested and certified by the Hydronics Institute. Weil-McLain stated that it will guarantee the efficiency rating of boilers that are not factory assembled, if all the components used in the field assembly (including cast iron heat exchanger sections, burner, and controls) are identical (by model, by type, and by design) to those on the factory assembled boiler. However, Weil-McLain stated that it can not guarantee the efficiency of field-assembled boilers with Weil-McLain cast iron sections, if these use burners that were not specified by the company and not tested and certified by HI.

For purposes of this rulemaking, the definition in EPCA for packaged boilers is the governing definition. It seems obvious that boilers sold in the first two ways described by Weil-McLain fit within the EPCA's definition of packaged boiler. As to the third, we considered the statements by Weil-McLain and Mestek on sectional cast iron boilers, and believe that these boilers also meet the statute's definition of a packaged boiler. This conclusion is supported in part by our belief that the wording in the definition, ''usually shipped in one or more sections,'' is designed to include not only steel and copper boilers, which are usually shipped as completely assembled units, but also large sectional cast iron boilers, which can be shipped in sections. This language would become almost meaningless if the definition were construed as excluding boilers sold in the third manner, since it appears that 90 percent of cast iron boilers are shipped in this way, *i.e.,* components are shipped by distributors or separate manufacturers, sometimes from distinct locations. In addition, cast iron boilers are a major portion of the commercial boilers that provide space heating in buildings. To exclude boilers shipped in this manner from coverage under EPCA would, therefore, exclude a major share of commercial boilers from the statute's reach. We see no basis for concluding that Congress intended such an

exclusion. In this regard, the statute does not state that the components of a packaged boiler must be shipped from the same initial location, or at the same time.

Furthermore, we agree with the manufacturers' concern over the use of burners not approved and specified by the boiler manufacturers. EPCA defines ''manufacturer'' as ''any person who manufactures a consumer product'' and ''manufacture'' to mean ''manufacture, produce, assemble or import.'' (42 U.S.C. 6291(12) and (10)). Therefore, we construe EPCA as meaning that a firm that produces a boiler in its entirety, or that specifies and approves a boiler's components by make and model numbers, including burners or other components produced by others, is a manufacturer of that boiler within the meaning of the statute. If a distributor, installer or another vendor sells a boiler with components that are not specified and approved by another manufacturer, we consider that vendor to be the manufacturer by virtue of having assembled the boiler.

We believe that the definition of packaged boilers, which may consist of boilers shipped in major sub-assemblies for ease of transport and designed to fit together at customers' sites, is clear enough to distinguish them from custom-designed, field-constructed boiler systems, which generally require alteration, cutting, drilling, threading, welding or similar tasks by the installer. In this respect no additional clarification is needed to establish the definition of packaged boilers beyond the text that appears in the statute.

3. Application

Participants at the April 1998 workshop raised questions regarding the effect of a packaged boiler's end use on its coverage under a DOE test procedure, since the statute does not explicitly limit its type of application. Several attendees, including GAMA and Lennox International asserted that EPCA requirements are based on ASHRAE Standard 90.1, and that the standard's scope is limited to heating products for space conditioning and service water only. (GAMA, April 1998 transcript, at 144; Lennox, April 1998 transcript, at 237).

By its title, ''Energy Efficiency Design of New Buildings except Low-Rise Residential Buildings'' ASHRAE Standard 90.1 indicates that it is concerned with minimizing energy consumption in the operation and maintenance of the building *per se* (that is, energy consumption with respect to the function of the building and the comfort of the occupants). While ASHRAE Standard 90.1–1989 contains no specific language excluding any specific type of heating products installed in the building, the test procedures and standards referenced by ASHRAE Standard 90.1 do appear in the section for HVAC equipment (Section 10 of ASHRAE Standard 90.1–1989, Heating, Ventilation, and Air-Conditioning (HVAC) Equipment). A recent major revision to ASHRAE 90.1, entitled ASHRAE Standard 90.1–1999, revised the Title, Purpose, and Scope (TPS) of the standard to exclude from coverage ''equipment and portions of building systems that use energy primarily to provide for industrial, manufacturing or commercial processes.''

We also reviewed the statute to ascertain its intent with respect to the end use of a packaged boiler. The review indicated the following:

(1) In the section that defines ''packaged boiler,'' the statute does not explicitly specify the end use of the boiler.

(2) In EPCA's list of ''covered equipment,'' warm-air furnaces, which are used for space heating, and packaged boilers are entered together as a single item. EPCA, section 340(1)(E), 42 U.S.C. 6311(1)(B).

(3) EPCA groups packaged boilers with other covered products, including small commercial packaged air conditioning and heating products and storage water heaters, all of which are used exclusively for space conditioning and service water heating. EPCA sections 340(2)(B) and 342(a), 42 U.S.C. 6311(2)(B) and 6313(a).

(4) EPCA includes ''steam boilers'' in its list of industrial equipment, separate from warm air furnaces and packaged boilers. EPCA section 340(2)(B), 42 U.S.C. 6311(2)(B).

(5) The Report that accompanied H.R. 776, the House version of EPACT, states that the Act ''amends existing law to set minimum energy efficiency standards for electrical air conditioning, electrical heating and gas heating equipment, boilers and water heaters intended for use in commercial buildings. * * * The standards * * * were developed * * * in ASHRAE Standard 90.1.'' HR Report No. 474, 102nd Congress, 2nd Session, Part 1, at 175 (1992).

(6) The conservation standards prescribed in EPCA for heating and air conditioning products coincide with those contained in ASHRAE Standard 90.1 at the time of enactment, and the statute provides for adoption by the Department, under prescribed conditions, of future amendments by ASHRAE to Standard 90.1. 42 U.S.C. 6313(a)(1)–(6).

On the basis of the above review, we believe that the intent of the statute is to apply the term ''packaged boiler'' to commercial boilers used in buildings for heating, space conditioning and service water heating, and to designate the term ''steam boilers'' for other industrial applications, such as for manufacturing processes and power generation. Therefore, consistent with the comments from the April 1998 workshop, under DOE's proposed definition of commercial packaged boiler EPCA efficiency requirements would apply only to boilers that, to any significant extent, are distributed for heating, space conditioning, or service water heating applications in buildings.[1]

4. Capacity

As mentioned above, participants at the April 1998 workshop discussed the scope of the definition of packaged boiler with respect to capacity (size). Some attendees suggested that size or rated capacity can be a possible criterion for defining the scope of coverage in a DOE test procedure for packaged boilers. As indicated previously, ANSI Standard Z21.13 limits itself to low pressure steam and hot water boilers with less than 12,500,000 Btu per hour input. A review of commercial boilers in the 1998 certified rating directory of the Hydronics Institute showed the largest capacity boiler to be a gas-fired heating unit with approximately 14,000,000 Btu per hour gross output, which would imply that packaged low pressure steam and hot water heating boilers are produced in quantity with output capacities of up to approximately 14 million Btu per hour. However, the California Energy Commission (CEC) stated that the statute does not provide an upper limit on capacity in its definition of packaged boilers, and asserted that one cannot therefore specify an upper limit on capacity in a DOE test procedure for them.

[1] Boilers that provide service water are generally referred to as ''hot water supply boilers.'' For the most part, the Department is addressing the efficiency requirements for this product in a separate, parallel rulemaking that concerns commercial water heating products. The instant rulemaking covers commercial packaged boilers that provide service water, however, in two instances. First, a boiler that is covered by the water heating requirements, but that is also distributed to a significant extent for heating or space conditioning applications, would have to comply with both sets of requirements. Second, a service water heating boiler that is not subject, under Addendum n to ASHRAE Standard 90.1–1989, to the efficiency requirements that apply to commercial water heaters, would have to meet the requirements for boilers.

We agree with CEC's statement that the statute does not specify an upper limit on the capacity. We also understand that there are packaged boilers used for heating buildings, especially of the fire tube and water tube design, whose capacities greatly exceed the capacity values specified in ANSI Standard Z21.13 or those in the Hydronics Institute's certified rating directory. Therefore, we see no basis to conclude that EPCA covers only commercial packaged boilers below a certain size, and we include no upper limit on capacity in today's proposed definition of the product. Consequently, the proposed test procedure would apply to commercial packaged boilers regardless of size. Nevertheless, DOE recognizes that the limited quantities of the types of high-capacity boilers used for space heating, coupled with their large capacities, may make their testing under a DOE test procedure in laboratory conditions costly or impractical. Therefore, we solicit comments from all stakeholders on whether there is an upper limit on capacity above which the testing procedure proposed today would be unduly burdensome to conduct, and thus improper to prescribe under the provisions of EPCA (42 U.S.C. 6314 (a)(2)).

5. Operating Characteristics

During the April 1998 workshop, attendees raised the coverage issue for packaged high pressure boilers. CIBO and others pointed out that when the end user applies a packaged boiler to produce hot water and steam for heating in industrial and manufacturing processes, considerations other than efficiency at steady state may strongly influence the selection and operation of the boilers. (CIBO, April 1998 transcript, at 145). The American Boiler Manufacturers Association (ABMA) and CIBO stated that the operation of packaged high pressure steam and high temperature hot water boilers for industrial processing is different from the low pressure steam and hot water heating boilers typically used in space heating and service water heating applications. (CIBO, April 1998 transcript, at 145).

According to Chapter 10, Steam Systems, of the 1996 ASHRAE HVAC System and Equipment Handbook, investment and operating cost considerations, energy efficiency, and control stability all require the pressure to be held to a minimum value that will accomplish the required heating task. The text goes on to say that space and domestic water heating can best be accomplished with low-pressure systems. During the October 1998 workshop, NIST proposed in its recommendation report that only packaged low pressure steam and hot water boilers should be covered in the proposed test procedure. The CEC objected to that proposal. CEC stated the opinion that the statute sets a minimum efficiency standard for all packaged boilers, which it considers to include high pressure boilers, and that DOE cannot limit the scope of the test method to low pressure steam and hot water boilers. (CEC, October 1998 transcript, at 233). The Natural Resources Canada stated that smaller packaged high pressure boilers are used in district heating applications, where the boilers are located in a small building near the commercial buildings in question and therefore, the high pressure boilers used in those applications should be covered. (NRC, October 1998 transcript, at 241). Other attendees at the workshop stated that high pressure utility boilers and central station boilers are not used in commercial buildings and hence should not be covered by the DOE test procedure. (Laclede Gas Company, October 1998 transcript, at 246; GAMA, October 1998 transcript, at 246; PNNL, October 1998 transcript, at 248).

No language in EPCA excludes packaged high pressure boilers from coverage under the statute. Moreover, based on the above, we believe there are instances where high pressure packaged boilers are used for heating buildings. Therefore, under today's proposed rule, EPCA's efficiency requirements would in effect apply to packaged high pressure boilers which, to any significant extent, are distributed for use for space conditioning in buildings.

During the two DOE workshops, participants expressed differing opinions on the coverage of high pressure boilers, and we realize that there may not be clear-cut criteria for distinguishing a packaged high pressure boiler that can be used for space conditioning. Also, as discussed above under the issue of capacity, the limited quantities and large sizes of packaged high pressure boilers employed in space heating may make testing under the proposed DOE procedure unduly burdensome. Therefore, we are soliciting comments from all stakeholders on the options of:

(1) Limiting application either of all EPCA efficiency requirements, or of only the proposed DOE test procedure, to packaged high pressure boilers that are principally designed for heating buildings, or

(2) Limiting coverage of packaged high pressure boilers to a certain maximum working pressure, such as 150 psig, above which one is unlikely to use a boiler in a commercial building due to the pressure limitation of the terminal heating equipment.

C. Commercial Packaged Boiler Test Procedures for the Measurement of Energy Efficiency

Section 343(a)(4)(A) of EPCA requires the test procedures for measuring the efficiency of commercial packaged boilers to be those generally accepted industry testing procedures or rating procedures that were developed or are recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., as referenced in ASHRAE/IES Standard 90.1 and that were in effect on June 30, 1992. 42 U.S.C. 6314(a)(4)(A). Also, if such an industry test procedure or rating procedure for commercial packaged boilers is amended, the Secretary must adopt such revisions unless the Secretary determines that to do so would not produce test results which reflect energy efficiency, energy use, and estimated operating costs, or that the procedures would be unduly burdensome to conduct. 42 U.S.C. 6314(a)(4)(B).

The version of ASHRAE Standard 90.1 in effect on June 30, 1992, references five industry test standards that apply to gas-fired boilers or oil-fired boilers or both. These are the ANSI Standard Z21.13–1987 for gas-fired boilers; the HI Testing and Rating Standard for Heating Boilers, sixth edition, 1989, for gas and oil-fired boilers (HI 1989); ASME Power Test Codes (PTC) 4.1–1964 including the 1968 and 1969 Addenda (reaffirmed R1991) for Steam Generating Units for fossil fuel boilers (ASME PTC 4.1); the Underwriters Laboratory Standard 795–1973 for gas heating equipment (UL Standard 795); and the Underwriters Laboratory Standard UL Standard 726–1990 for oil-fired boilers (UL Standard 726). Of the five test standards, four are applicable to gas-fired boilers and three are applicable to oil-fired boilers.

Specifically, ANSI Standard Z21.13 covers gas-fired boilers and limits the size of the test boiler to 12,500,000 Btu per hour. The 1991 version of the standard sets the outlet water temperature at 180°F±2°F without specifying an inlet test temperature. A value of 80°F ±10°F, however, is specified in its Combustion Test section. A revision of the standard in 1993 (ANSI Standard Z21.13a–1993) specifies the inlet temperature of 80°F±10°F.

HI–1989 is applicable to both low pressure gas-fired and low pressure oil-fired heating boilers. For hot water

boilers, HI specifies a test condition of 200°F outlet water temperature, and a range of temperature rises across the boiler, ranging from 120°F to 165°F, that result in a test inlet water temperature ranging from 35°F to 80°F.

UL Standards 726 and 795 apply to both low pressure and high pressure boiler assemblies fired by oil and gas, respectively. The section on Combustion Test specifies that the boiler is to be installed and adjusted in accordance with manufacturer's instructions, and fired at the rated input until steady state combustion conditions of draft, fuel input rate, and flue gas temperature have been established. A flue loss which is based on the measured flue gas temperature and flue CO_2 concentration is used in the efficiency evaluation. However, the standards do not provide a calculation procedure for the flue loss. The Continuous Operation Test does set the test conditions for steam pressure and water temperatures. However, these conditions are meant to ensure the continuous safe operation of the boiler and are not necessarily those intended for an energy performance test in accordance with the manufacturer's instructions. Also, the conditions for the Continuous Operations Test are set close to the limit setting of the pressure and/or temperature limit control device, and not at the settings for normal operation of the boilers.

ASME PTC 4.1 is devised for steam generating units and high temperature water heaters. The standard is basically designed for an acceptance testing after installation. It does not specify the operational conditions for the efficiency test. The operational conditions are to be determined by agreement between interested parties. The standard recommends that in determining the efficiency of gaseous or liquid fuel-fired steam generating units, the test runs should preferably be not less than of four hours duration. The standard provides a procedure for an abbreviated efficiency test (Simplified Efficiency Test) based on the heat loss method, where only the major losses (flue losses and radiation or jacket loss) and the chemical heat in the fuel, are considered. Most manufacturers of packaged steel boilers use the Simplified Efficiency Test, and not the detailed procedure appearing in the standard.

1. Test Procedure and Test Conditions for Low Pressure Steam and Hot Water Boilers

All ASHRAE Standard 90.1 referenced test standards from the above list are applicable to low pressure steam and hot water boilers. However, we understand that at present, most gas-fired boilers are rated for energy efficiency according to the ANSI Standard Z21.13, and most oil-fired boilers according to the HI–1989 standard. The two UL standards are mostly used for safety certification purposes. The ASME PTC 4.1 is used mostly for steel fire tube and water tube type boilers with low to very high pressure ratings.

During the April 1998 workshop, it was suggested that, for comparison purposes, a single uniform test procedure for both gas-fired and oil-fired boilers would be preferable within the DOE test procedure. As stated, HI–1989 covers both gas and oil-fired boilers. However, in its Scope section, HI–1989 states that for gas-fired boilers, test reports from the American Gas Association (AGA) and Canadian Gas Association (CGA) Laboratories which comply with ANSI Standard Z21.13a–1993 are acceptable in lieu of the procedures spelled out in HI–1989. A comparison of HI–1989 and ANSI Standard Z21.13a–1993 shows that the test setups, instrumentation, and other features of the two test standards for gas-fired boilers are very similar. The only differences are the water inlet and outlet conditions for hot water boilers, which are discussed later, and the insulation requirement of the test flue stack. The difference in the insulation requirement in the test setup is that the HI–1989 standard requires insulation of the test stack up to the location of flue gas temperature measurement, while ANSI Standard Z21.13 does not require any insulation. This would result in a higher combustion efficiency (and a lower calculated flue loss based on flue gas temperature) by using the ANSI Standard Z21.13 procedure compared with the HI–1989 procedure, if all other test conditions were the same.

Also at the October 1998 workshop, the CEC recommended that the HI–1989 test standard be adopted by us as the test standard for both gas-fired and oil-fired boilers. (CEC, April 1998 transcript, at 178).

The American Boilers Manufacturers Association (ABMA) and Council of Industrial Boiler Owners (CIBO) state that EPACT requires the test procedures to be those generally accepted industry testing or rating procedures. (ABMA, April 1998 transcript, at 187; CIBO, April 1998 transcript, at 194). ABMA states that in the boiler industry (those represented by ABMA) the HI standard was not generally accepted as the industry standard, and that the ASME PTC 4.1 is used more frequently than the HI standard. CIBO stated that members, who are involved in using packaged boilers for industrial type processing, follow ASME, and are not familiar with the HI standard. (CIBO, April 1998 transcript, at 196). Also, during the October 1998 workshop, BR Laboratories Inc. stated that there is no difference in the test method for combustion efficiency between packaged low pressure boilers and high pressure boilers, and it believes that one can use the HI test procedure specified for low pressure boilers to also test the combustion efficiency of high pressure boilers. (BR Laboratories, October 1998 transcript, at 242).

As mentioned above, ANSI Standard Z21.13 and HI–1989 differ in their test conditions for both inlet and outlet water temperatures. At the April 1998 workshop, participants pointed out that the specification of water inlet temperature in ANSI Standard Z21.13a–1993 is more precise (80°F ±10°F) than the corresponding specification in HI–1989 (a range between 35°F to 80°F), and that efficiency values resulting from testing identical units under HI–1989 could vary depending on the test inlet temperature. We understand that the reason for this latitude in the HI–1989 specification is that the boilers are tested at the manufacturers' locations, and not at the Hydronics Institute. Depending on the season and geographical location of the manufacturer, the inlet water temperature from the water main (or other source) can vary widely. During the workshop, York International cautioned that a more stringent test condition could require controlling the temperature of a large quantity of inlet water in a way that may be difficult to achieve. (York, April 1998 transcript, at 194).

At the October 1998 workshop, NIST proposed adopting the HI–1989 standard for both gas and oil-fired low pressure steam and hot water boilers, with a revised inlet water temperature of 80°F ±10°F and an outlet temperature of 180°F ±2°F, to conform to the requirement of ANSI Standard Z21.13a–1993. This test, with a controlled inlet water temperature, may require temperature pre-conditioning of large volumes of inlet water in some regions of the country. However, since this procedure is specified in ANSI Standard Z21.13a–1993, and has been an established practice since 1993, we believe it will not be a major problem for a boiler of less than 12,500,000 Btu per hour rated input.

The proposed temperature of 180°F±2°F for the required outlet temperature for hot water boilers, as opposed to the 200°F ±5°F in the HI

standard, might produce a slight increase in the combustion efficiency value of oil-fired boilers currently tested by the HI standard (which is due to a lower flue gas temperature and flue loss). However, we believe that this increase would be small. BR Laboratories Inc. stated that the use of the HI standard's wide range for the permissible inlet water temperature would lessen the burden on manufacturers, and the inlet temperature specification has no impact on the efficiency. (BR Laboratories, October 1998 transcript, at 254–55). Weil-McLain agreed that the outlet water temperature has more of an impact on the combustion efficiency. A lower (180°F) temperature would give those oil and power gas boilers currently tested to the HI standard a better efficiency value. (Weil-McLain, October 1998 transcript, at 257). However, for gas-fired boilers currently tested to the ANSI Standard Z21.13 standard, changing the outlet temperature from 180°F (under current specification) to 200°F (if the HI standard is used instead, as suggested) might cause their efficiency to degrade. Therefore, Weil-McLain recommended keeping the two standards, HI–1989 and ANSI Standard Z21.13, with the HI standard for use with the power gas and oil-fired boilers, and the ANSI Standard Z21.13 for use with the gas-fired boilers. However, if a single test standard is needed, Weil-McLain would prefer the 180°F outlet water temperature, since it reflects the current practice for testing gas-fired boilers, and is also the temperature tested under the Hydronics Institute auditing program.

We also considered the other three test standards referenced by ASHRAE Standard 90.1–1989. Of these three test standards, the ASME PTC 4.1 standard, with the exception of its Simplified Efficiency Test procedure, is intended for (large) steam generating heating and power boilers. It requires a detailed account of the energy expenditures of all components in the boiler system, and appears to be burdensome for smaller capacity boilers. The HI standard appears to be a satisfactory substitute for the ASME PTC 4.1 for low pressure steam boilers, since the test and calculation procedure in the HI standard is close to the Simplified Efficiency Test (Abbreviated Efficiency Test) of ASME PTC 4.1. The two UL standards are mainly used for the safety certification of boilers. The test procedures for energy performance in the UL standards for low pressure boilers are similar to the HI–1989 standard. However, the UL standards do not provide a procedure for calculating flue loss. We thus believe that the HI–1989 standard is better equipped than the two UL standards for testing the energy efficiency of low pressure steam and hot water boilers.

Even though there might be some differences in the test conditions between HI–1989 and ANSI Standard Z21.13, the attendees at the two workshops suggested that basically the HI test standard can be used to cover gas-fired and oil-fired low pressure heating boilers. We considered three options. The first is to adopt ANSI Standard Z21.13a for all gas-fired boilers and HI–1989 for all oil-fired boilers. This would make the currently listed efficiency values (in Hydronics Institute Certification Directory, for example) of boiler models that are already on the market to stay unchanged. However, because of the differences in test conditions between the two test standards, the gas-and oil-fired boilers will not compare accurately. The second option is to adopt the HI–1989 test standard for both gas-and oil-fired heating boilers. This option may create the problem that for a gas-fired hot water boiler, the resulting efficiency based on a 200°F outlet water temperature is likely to be less than its current value based on a 180°F temperature. This may create a problem for those boilers that just meet the minimum efficiency standard specified in EPCA. The third option is to adopt the HI–1989 test standard for both gas-and oil-fired heating boilers, with a modification that the outlet temperature for hot water boilers be specified at 180°F instead of at 200°F. As discussed before, this option will cause an oil-fired hot water boiler to attain a test efficiency that could be slightly higher than its current value. However, we believe that no re-testing is necessary since the boiler's current efficiency value would be a conservative one. The other two factors that may cause the efficiency value of a gas-fired boiler to change under HI–1989 are the larger inlet temperature range permitted (35°F to 80°F) and the flue pipe insulation requirement (up to the point of flue temperature measurement location—12-inches maximum from the flue collar). However, we believe that the effect of these differences is small, since combustion efficiency is mainly a function of the outlet water or steam temperature (as discussed above), and the portion of the heat loss through the flue pipe that would affect the flue temperature measurement (and flue loss) due to the insulation is restricted to the first 12 inches of the flue pipe.

Based on the above, we are proposing to adopt the HI–1989 standard as the DOE test procedure for gas and oil-fired, low pressure steam and hot water commercial packaged boilers, with the provisions that: (1) the outlet water temperature for hot water boilers be set at 180°F ±2°F, and (2) for gas-fired boilers, to calculate the flue loss a manufacturer may use the procedure specified in Exhibit D of ANSI Z21.13–1993 instead of the procedure in section 11.2 of HI–1989.

Based on the comments from CIBO that some manufacturers use mainly the ASME PTC 4.1 test standard and may not be familiar with the HI–1989 test standard, we are proposing to allow manufacturers the alternative of using the Simplified Efficiency Test of ASME PTC 4.1, with the provisions that: (1) The inlet water temperature will range from 35°F to 80°F, (2) for hot water boilers, the outlet water temperature will be 180°F ±2°F, (3) for steam boilers, steam pressure will range from atmospheric (0 psig) to 2 psig; and (4) in the heat loss method of ASME PTC 4.1 for the determination of efficiency, the radiation loss term will be set to zero to obtain the combustion efficiency (of 100 percent minus percent flue loss).

We believe the calculation procedures by the heat loss method according to HI–1989 and the Simplified Efficiency Test of ASME PTC 4.1 are nearly identical, and that comparisons between the test results from the two standards would be valid when the Simplified Efficiency test is used with the above four provisions. We welcome comments from all stakeholders on today's proposed test procedures as described in this paragraph, and on whether we should adopt instead, one of the other considered options.

2. Testing for High Pressure Steam and High Temperature Water Boilers

ASHRAE Standard 90.1–1999, modified the definition of a boiler (section 3.2 of ASHRAE Standard 90.1–1999, definitions) so that a boiler is defined as a ''self-contained, low pressure appliance for supplying steam or hot water.'' This definition is followed by a definition for packaged boilers, which is defined as a specific class of boilers. ASHRAE Standard 90.1–1989 did not include the term ''low pressure'' in the boiler definition, and did not include a definition for packaged boilers. For test procedures that are applicable to packaged high pressure steam and high temperature hot water boilers, ASHRAE Standard 90.1–1989 references three test procedures. They are ASME PTC 4.1 for steam boilers, UL Standard–795 for gas-fired heating equipment including boilers, and UL Standard–726 for oil-

fired boilers. Of these three test procedures, ASME PTC 4.1 provides detailed procedures for energy efficiency tests. However, ASME PTC 4.1 does not specifically provide the test conditions with respect to steam pressure or water temperature. The intent of ASME PTC 4.1 is to guide the acceptance testing of large steam generating units, where the operational conditions are part of the agreements negotiated between the interested parties (Sections 3.01and 3.04 of ASME PTC 4.1).

As described above in section II C, ASME PTC 4.1 also provides for an abbreviated (simplified, or short form) efficiency test for small heating and industrial steam generators. The two UL standards specify test conditions (installed and adjusted in accordance with the manufacturer's instructions and fired at the rated input) for determining steady state energy performance in their combustion test sections (see Section 36 of UL Standard 726 or Section 51.1 of UL Standard 495). However, the two standards do not provide procedures for the flue loss calculation.

During the October 1998 workshop, BR Laboratories Inc. suggested that one can use the HI–1989 standard to test high pressure boilers, since the measurement requirements for combustion efficiency test are the same for both low and high pressure boilers. (BR Laboratories, October 1998 transcript, at 242). However, during the April 1998 workshop, both ABMA and CIBO stated that their members use the ASME PTC 4.1 test procedure, and are not familiar with the HI–1989 standard (see discussion under section II.C.1 for low pressure boilers above). Informal conversations with some steel boiler manufacturers indicated that industry manufacturers of steel fire tube and water tube boilers of all pressure ranges (from 15 psig steam pressure and up) use the short form test (the Simplified Efficiency Test) of ASME PTC 4.1 and not the HI–1989 standard.

Based on a consideration of the above, we are proposing today to adopt the abbreviated efficiency test (the Simplified or short form Efficiency Test) as specified in section 1.07 of ASME PTC 4.1 as the DOE test procedure for packaged high pressure steam and high temperature hot water boilers covered by EPCA. Also, since the ASME PTC 4.1 does not specify the test condition for the efficiency test, and the test conditions with respect to steam pressure and water temperature vary with the design of the boiler, we are proposing that the conditions specified in the two UL standards be specified as test conditions, *i.e.,* the boiler must be installed and adjusted in accordance with the manufacturer's instructions and fired at its rated input. We further propose that the water temperature and steam pressure be prescribed to reflect the normal conditions for which the manufacturer designed the boiler. As stated previously, even though the calculation procedure for the heat input term (from chemical heat in the fuel only, ignoring any other heat credit) and the major heat loss terms in ASME PTC 4.1 are similar to those specified in the HI–1989, the steel boiler industry's familiarity with the test procedure would make the ASME PTC 4.1 test procedure less burdensome to these manufacturers.

We welcome comments on the proposal to adopt the Simplified Efficiency Test of ASME PTC 4.1 for packaged high pressure boilers. In particular, we solicit suggestions on a uniform procedure for determining the normal steam pressures and water temperatures for which boilers are designed, perhaps based on (or with reference to) the maximum pressure ratings, and for specifying the corresponding conditions in the efficiency test procedures.

3. Provisions for Low Temperature Applications

ASHRAE Standard 90.1 and the test standards referenced by it do not specifically provide test conditions for hot water boilers designed for low temperature applications (having a supply water temperature of 140°F or a return water temperature of 120°F, or less). Attendees at the April 1998 workshop questioned whether a significant number of these boilers were sold on the market, and commented it was unnecessary for DOE to develop another set of test conditions that deviate from those specified in ASHRAE Standard 90.1. We agree with these comments and will not propose a different set of test inlet and outlet water temperatures for applications requiring low supply and return temperature settings.

4. Provision for Condensing Boilers

ASHRAE Standard 90.1 and its referenced test standards do not specifically provide test conditions for a condensing boiler, which is a hot water boiler designed to condense part of the water vapor in the flue gases and which is equipped to collect and drain such condensate. Attendees at the April 1998 workshop commented that, because of the absence of commercial condensing boilers from the market, it was not necessary for DOE to develop a test procedure different from that specified in the ASHRAE Standard 90.1.

We disagree with the comments from the workshop attendees on this issue. We are unable to conclude that commercial size condensing boiler models are unavailable in the market. Also, since condensing boilers are significantly more energy efficient than non-condensing boilers, we believe that even if there were presently no such boilers on the market, a test procedure should be in place so that any manufacturer of condensing boilers would have a readily available accurate method for testing them to establish their efficiencies for compliance with EPCA. In addition, a test procedure is needed for evaluating design options underlying any future minimum efficiency standards. Even though the ASHRAE Standard 90.1-referenced standards do not specify an appropriate test procedure, ASHRAE Standard 103–1993 has been in use over the last decade and provides a method for measuring the increased energy efficiency of residential condensing boilers under steady state test conditions. We believe that the method of collecting and measuring the quantity and the temperature of the flue condensate under steady state conditions at the maximum rated input over a 30 minute test period can also be applicable to a commercial condensing boiler. Therefore, we are proposing to adopt the procedure specified in sections 7.2.2.4, 7.8, 9.2 and 11.3.7 of ASHRAE Standard 103–1993 as the test procedure for determining the incremental increase in energy efficiency due to the condensing feature of a such a boiler.

In proposing the adoption of that test procedure, a slight modification is applied to the equation in Section 11.3.7.2 of ASHRAE 103–1993 for steady state heat loss due to hot condensate flowing down the drain. In the aforementioned section, the assumed indoor temperature is specified as 70°F, and the average outside temperature as 42°F. The modification replaces both of these temperatures with the actual temperature of the test area. In addition, even though the boiler inlet water temperature may not be a major factor affecting the combustion efficiency of a non-condensing boiler, previous experience with residential condensing boilers indicates that the inlet water temperature has a significant effect on the amount of flue condensate produced, so a more precise specification is needed for the inlet temperature. Therefore, we are proposing that for testing a condensing boiler, the boiler inlet water temperature

be restricted to 80°F±5°F instead of the range of 35°F to 80°F specified for non-condensing boilers.

5. Modular Boilers and Multiple Boilers

Participants at the DOE April 1998 workshop raised the issue of how to rate a modular boiler assembly (consisting of a group of identical, smaller boilers or modules, usually of less than 400,000 Btu/h input each, installed as a unit) or a multiple boiler system (consisting of a group of individual boilers, not necessarily of identical design, installed as a system). Since a modular boiler assembly consists of identical individual boilers or modules, it was suggested that for those types of packaged boilers, only a single boiler from the assembly needs to be tested and rated, and that the efficiency rating of the boiler assembly can be derived from the efficiency of the module. For a multiple boiler system, participants suggested that testing and rating the individual boilers in the system should be sufficient, and that the rating of the system as a whole can be derived from the individual ratings. There was no disagreement on either of these suggestions from the workshop attendees, and at the October 1998 workshop, NIST recommended these suggestions for adoption.

The Department is proposing today that the efficiency rating for a packaged modular boiler system with the individual modules or boilers of identical design and construction may be based on the rating for only one boiler module in the assembly. For a multiple boiler system where the individual boilers are of different designs, each boiler of a different design will be considered a separate packaged boiler and must meet the minimum efficiency standard by using the test procedure prescribed for this product.

6. Testing and Rating a Steam and Hot Water Boiler

The test procedures DOE proposes today provide methods for testing both hot water and steam boilers. A packaged boiler designed to produce only hot water or only steam would obviously be tested and rated for efficiency under today's proposed rules only in the applicable mode. As to boilers capable of supplying either hot water or steam, DOE understands that manufacturers customarily test and rate them in the steam mode, and only sometimes in the hot water mode. Moreover, participants at the April 1998 workshop indicated that industry practice is commonly to use the efficiency rating derived from the steam boiler test as the efficiency rating when the boiler is sold as a hot water boiler. (April 14 workshop at page 226) Since the steam test will generally provide an efficiency rating lower than the rating obtained by a hot water test, NIST recommended that we should also accept this practice. (October 13 Workshop at page 199)

In view of the above, DOE proposes to require that a boiler that can be used for both steam and hot water applications must be tested as a steam boiler, as required by HI–1989 (see Sections 8.1.4.1 and 8.1.4.2 of HI–1989), and that such efficiency rating must be reported to DOE and used to determine whether the boiler complies with the applicable efficiency standard. We also propose to allow the manufacturer the option of either using such efficiency rating for both the steam and water operations of the boiler, or, if the manufacturer prefers to report a different rating for water operation, using a rating obtained by also testing the boiler in accordance with the test procedure for a hot water boiler, as allowed in HI–1989. Section 431.362(d)(1)(ii) of the proposed rule implements the testing aspect of these proposals. Although the proposed rule does not include language implementing the rating and reporting proposals, DOE intends to include it in the final rule.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

EPCA prescribes energy efficiency standards and test procedures for commercial products, and in today's rule, we propose to implement these requirements for commercial packaged boilers. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's NEPA Regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review'

Today's proposed rule has been determined not to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which the agency must propose for public comment, by law, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3433, which includes commercial packaged boilers, and other non-electric heating equipment, is 500. We estimate that no more than 29 firms manufacture commercial packaged boilers, and of these, the majority are considered small businesses. The number of small businesses that manufacture commercial-sized packaged boilers covered by the EPACT standards (with capacities of 300,000 Btu per hour and above) could be smaller.

EPCA establishes efficiency standards for commercial packaged boilers and requires the Department to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. For the most part, EPCA specifies the standards and test procedures incorporated in today's proposed rule. Therefore, any costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of today's proposed rule will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by

EPCA and would consequently need to be redesigned or removed from the market. Since the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. To the extent that manufacturers must already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, they will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on those firms which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have, at most, very limited discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial products. In this regard, it is noteworthy that although EPCA contains a ''small manufacturer exemption'' for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, we conclude that the proposed rule would not impose a significant impact on a substantial number of small businesses.

D. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The proposed rule published today would not regulate the States. The proposed rule would primarily codify energy efficiency standards and test procedures already established in EPCA for commercial packaged boilers. We have determined that today's rule does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'

We have determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's proposed rule will primarily codify energy efficiency standards and test procedures already established in EPCA for commercial packaged boilers and will not require any additional reports or record-keeping. Accordingly, this action was not subject to review under the Paperwork Reduction Act.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3 (c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates certain commercial standards which EPCA requires to be used. These include testing standards referenced by ASHRAE Standard 90.1–1989 for the measurement of steady state combustion efficiency of commercial packaged boilers. Because we have very limited discretion to depart from the standards referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to them.

The only standard incorporated in this proposed rule that is not referenced by ASHRAE Standard 90.1–1989 is ASHRAE Standard 103–1993, '' Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers.'' We propose to adopt this standard to obtain a suitable optional test procedure for condensing boilers, which are not covered by the test procedures in ASHRAE Standard 90.1–1989. We have evaluated this standard and are unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.,* that it was developed in a manner that fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, we will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that we prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the

aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

J. Review Under the Plain Language Directives

The President's Memorandum on ''Plain Language in Government Writing,'' 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes ''plain language.'' Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

IV. Public Comment

A. Written Comment Procedures

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to us when evaluating requests to treat as confidential information that has been submitted include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

B. Public Workshop

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed rules, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. We, at our discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Packaged Boiler Definition and Scope of Coverage

- Method of Shipment and Assembly.
- Boiler Application.
- Boiler Capacity.
- Boiler Operation.

Test Procedures and Energy Efficiency Standards for Commercial Packaged Boilers

- Test Procedure and Test Conditions for Low Pressure Boilers.
- Test Procedure and Test Conditions for High Pressure Boilers.
- Boilers Designed for Low Water Temperature Applications.
- Condensing Boilers.
- Modular Boilers and Multiple Boilers.
- Testing and Rating a Steam and Hot Water Boiler.
- Other Test Standard Topics.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements must be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues on Which Comments Are Requested

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on May 8, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Subpart K is added to read as follows:

Subpart K—Commercial Packaged Boilers.

Sec.

431.351 Purpose and scope.
431.352 Definitions for commercial packaged boilers.

Test Procedures

431.361 Materials incorporated by reference.
431.362 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

Energy Conservation Standards

431.371 Energy conservation standards and effective dates.

Subpart K—Commercial Packaged Boilers

§ 431.351 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial packaged boilers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316.

§ 431.352 Definitions for commercial packaged boilers.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this subpart, in section 340 of the Act, and as follows—

Combustion efficiency for a commercial packaged boiler means the efficiency descriptor for packaged boilers, determined using test procedures prescribed under § 431.362 and equals to 100 percent minus percent flue loss.

Commercial packaged boiler means a packaged boiler that is a commercial HVAC & WH product with a capacity of 300,000 Btu per hour or more which, to any significant extent, is distributed in commerce,

(1) For heating or space conditioning applications in buildings, or

(2) For service water heating in buildings but does not meet the definition of ''hot water supply boiler'' in this part.

Condensing boiler means a packaged boiler which will condense part of the water vapor in the flue gases, and which includes a means of collecting and draining this condensate from its heat exchanger section.

Flue condensate means liquid formed by the condensation of moisture in the flue gases.

Packaged boiler means a boiler that is shipped complete with heating equipment, mechanical draft equipment and automatic controls; usually shipped in one or more sections. If the boiler is shipped in more than one section, the sections may be produced by more than one manufacturer, and may be originated or shipped at different times and from more than one location.

Packaged high pressure steam and high temperature water boiler means a commercial packaged boiler which operates at a steam pressure higher than 15 psig for a steam boiler, and at a water pressure above 160 psig or at a water temperature exceeding 250°F, or both, for a high temperature water boiler.

Packaged low pressure steam and hot water boiler means a commercial packaged boiler which operates at or below a steam pressure of 15 psig for a steam boiler, and at or below 160 psig pressure and 250°F temperature for a hot water boiler.

Test Procedures

§ 431.361 Materials incorporated by reference.

(a) The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *List of test procedures incorporated by reference.* (1) The Hydronics Institute (HI) Standard ''Testing and Rating Standard for Heating Boilers'', 6th Edition, 1989 (''1989 HI Standard'').

(2) The American Society of Mechanical Engineers Power Test Codes for Steam Generating Units, ASME PTC 4.1–1964, Reaffirmed 1991 (Including 1968 and 1969 Addenda) (''ASME PTC 4.1'').

(3) American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 103–1993, ''Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers'', Sections 7.2.2.4, 7.8, 9.2, 11.2.7.1 and 11.3.7.2.

(4) American National Standards Institute (ANSI) Standard Z21.13–1993, ''Gas-Fired Low Pressure Steam and Hot Water Boilers'', Exhibit D.

(c) *Availability of references.*

(1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures and Efficiency Standards for Commercial Packaged Boilers,'' Docket No. EE–RM/TP–99–470, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can obtain a copy of standards incorporated by reference from the following sources:

(i) Request copies of the ASHRAE Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, or http://www.ashrae.org/book/bookshop.htm.

(ii) Request copies of the ANSI Standard from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or http://global.ihs.com/, or http://webstore.ansi.org/ ansidocstore/.

(iii) Request copies of the HI Standard from the Hydronics Institute Inc., 35 Russo Place, Berkeley Heights, NJ 07922, or http://www.gamanet.org/publist/hydroordr.htm.

(iv) Request copies of the ASME Standard from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or http://www.asmeny.org/catalog.

§ 431.362 Uniform test method for the measurement of energy efficiency of commercial packaged boilers.

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the steady state combustion efficiency of a gas-fired and oil-fired, packaged commercial boiler having a rated capacity of 300,000 Btu per hour or more.

(b) *Definitions.* For purposes of this section, the Department incorporates by reference the definitions specified in section 3.0 of the Hydronics Institute Testing and Rating Standard for Heating Boilers, sixth edition, June 1989, with the exception of the definition for the terms packaged boiler, condensing boilers, packaged low pressure steam and hot water boiler, and packaged high pressure steam and high temperature water boiler.

(c) *Test Setup.* (1) *Test Setup for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Classifications: If you employ boiler classification, you must classify boilers as given in section 4.0 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(ii) Requirements: You must conduct the combustion efficiency test as given in sections 5.1.2, (Combustion Efficiency Test), 5.4 (Basis of Ratings, sec. 5.4.1, 5.4.4, 5.4.5, and 5.4.6) of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(iii) Instruments and Apparatus: You must follow the requirements for instruments and apparatus in sections 6 (Instruments) and 7 (Apparatus, with the exception of sec. 7.2.3 which is for boilers of less than 300,000 Btu per hour capacity) of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(iv) Test Conditions: Use test conditions from section 8.0 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers, with the exception of subsection 8.5.1, in place of which you must use the following paragraphs:

(A) Water Temperatures—For the water test, use a boiler inlet temperature of 35°F to 80°F and a boiler outlet temperature of 180°F±2°F.

(B) Inlet Water Temperature for Condensing Boilers—To test the boiler as a condensing boiler (see paragraph (d)(1)(ii) of this section for condensing boilers), set the inlet water temperature to 80°F±5°F.

(v) Alternative Test Procedure for Testing Low Pressure Steam and Hot Water Boilers. Instead of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers as specified in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section, you may conduct the combustion efficiency test for low pressure steam and hot water boilers using the Abbreviated Efficiency Test (Simplified Efficiency Test) as specified in ASME PTC 4.1 (see paragraphs (c)(2), (c)(2)(i), (c)(2)(ii)(A) of this section). If you select the ASME PTC 4.1 procedure for conducting the required combustion efficiency test for low pressure steam and hot water boilers, you must use the test conditions specified in paragraphs (c)(1)(iv), (c)(1)(iv)(A), and (c)(1)(iv)(B) of this section.

(2) *Test Setup for Packaged High Pressure Steam and High Temperature Water Boilers, and Optional Test Procedure for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Use the test procedure for the efficiency test from ASME PTC 4.1. Conduct the combustion efficiency test with the Abbreviated Efficiency Test (Simplified Efficiency Test) for gas and oil fuels described in Section 1.07 of ASME PTC 4.1.

(ii) Test Conditions for the Combustion Efficiency.

(A) Low Pressure Steam and Hot Water Boilers—If you select ASME PTC 4.1 for the efficiency test of low pressure steam and hot water boilers, use test conditions specified in paragraph (c)(1)(iv) of this section.

(B) High Pressure Steam and High Temperature Water Boilers—For the efficiency test, use a test steam pressure for high pressure steam boilers, and a test water pressure and water temperature for high temperature water boilers, consistent with the normal design point operating conditions for which the manufacturer designed the boiler. The boiler must be tested at the manufacturer's rated maximum input.

(d) *Test Measurements.* (1) *Test measurements for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Test for combustion efficiency according to sections 9.1 (excluding sec. 9.1.1.2.3 and 9.1.2.2.3), 9.2 and 10.2 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers, except that you must replace the boiler water inlet temperature, boiler water outlet temperature, and boiler water temperature rise (outlet minus inlet) in sections 9.1.2.1.1 and 9.1.2.1.3 of the HI test standard with the inlet and outlet temperatures specified in paragraphs (c)(1)(iv)(A) (for non-condensing boilers) and (c)(1)(iv)(B) (for condensing boilers) of this section.

(ii) Procedure for the Measurement of Condensate for a Condensing Boiler. With the inlet water temperature as specified in paragraph (c)(1)(iv)(B) of this section, measure the condensate from the flue gas under steady state

operation according to sections 7.2.2.4, 7.8 and 9.2 of ASHRAE Standard 103–1993 under the rated input conditions. Conduct the measurement during an additional 30 minutes of steady state operation after completing the steady state combustion efficiency test in paragraph (d)(1)(i) of this section.

(iii) Steam and Hot Water Boilers. Test a steam and hot water boiler as a steam boiler for its combustion efficiency. Optionally, you may also test this boiler as a hot water boiler to obtain a combustion efficiency rating when the boiler is operated as a hot water boiler.

(2) Test measurements for Packaged High Pressure Steam and High Temperature Water Boilers, and Optional Test Procedure for Packaged Low Pressure Boilers. Use the test procedure from Section 5, Efficiency by Heat Loss Method, of ASME PTC 4.1.

(e) *Calculations.* (1) *Calculations for Packaged Low Pressure Steam and Hot Water Boilers.* (i) Combustion Efficiency. Use the calculation procedure for combustion efficiency test specified in section 11.2 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers (except that for gas fuel, do not calculate Item 9 of sec. 11.2.1 which is for oil fuel only). For gas-fired boilers, instead of using section 11.2 of the 1989 HI Standard to calculate the flue loss, you may calculate the flue loss by the procedure specified in Exhibit D of the ANSI Standard Z21.13a–1993.

(ii) Procedure for the Calculation of the Additional Heat Gain and Heat loss, and Adjustment to the Combustion Efficiency, for a Condensing Boiler.

(A) Procedure for the Calculation of the Additional Heat Gain and Heat loss. After following the procedure for the measurement of flue condensate of paragraph (d)(1)(ii) of this section, calculate the latent heat gain from the condensation of the water vapor in the flue gas and heat loss due to the flue condensate down the drain according to section 11.3.7.1 and 11.3.7.2 of ASHRAE Standard 103–1993, with the exception that in the equation for the heat loss due to hot flue condensate flowing down the drain in section 11.3.7.2, replace the indoor temperature of 70°F and the temperature term TOA by the measured room ambient temperature as determined in section 8.4.3 of the 1989 Hydronics Institute Testing and Rating Standard for Heating Boilers.

(B) Adjustment to the Combustion Efficiency for a Condensing Boiler. Adjust the combustion efficiency calculated in paragraph (e)(1)(i) of this section by adding the latent heat gain from the condensation of the water vapor in the flue gas, and by subtracting the heat loss (due to the flue condensate down the drain) as calculated in (e)(1)(ii)(A) of this section, to obtain the combustion efficiency of a condensing boiler.

(2) *Calculations for Packaged High Pressure Steam and High Temperature Water Boilers, and for the Alternative Test Procedure (paragraph (c)(1)(v) of this section) for Packaged Low Pressure Boilers.* Use the Abbreviated Efficiency Test by the heat loss method for gas or oil fuel as specified in section 7.3 and the Test Forms for the Abbreviated Efficiency Test, PTC 4.1–a (Summary Sheet) and PTC 4.1–b (Calculation Sheet), of ASME PTC 4.1 to determine the combustion efficiency, except that you must set the following specific heat loss terms (as listed in section 7.3 of ASME PTC 4.1) to 0: sections 7.3.2.03 (moisture in fuel), 7.3.2.01 (combustible in dry refuse), 7.3.2.10 (radiation to surroundings), 7.3.2.05 through 7.3.2.09 and 7.3.2.11 through 7.3.2.14 (unmeasured losses).

Energy Efficiency Standards

§ 431.371 Energy conservation standards and effective dates.

Each commercial packaged boiler manufactured on or after January 1, 1994 must meet the following energy efficiency standard levels:

(a) For a gas-fired packaged boiler with a capacity of 300,000 Btu per hour or more, the combustion efficiency at the maximum rated capacity must be not less than 80 percent.

(b) For an oil-fired packaged boiler with a capacity of 300,000 Btu per hour or more, the combustion efficiency at the maximum rated capacity must be not less than 83 percent.

[FR Doc. 00–19721 Filed 8–8–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM/TP–99–480]

RIN 1904–AA95

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

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

ACTION: Proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), establishes energy efficiency standards and test procedures for certain commercial products, including commercial water heaters, hot water supply boilers and unfired hot water storage tanks. The Department of Energy (we, DOE, or the Department) proposes regulations to implement the standards and test procedures for these commercial water heaters, hot water supply boilers and unfired hot water storage tanks.

DATES: The Department will accept comments, data, and information regarding the proposed rule until October 23, 2000. Please submit a signed original and ten (10) copies. In addition, we request that you provide an electronic copy (3½″ diskette) of the comments in WordPerfect™ 8.

We will hold a public hearing (workshop) on September 20, 2000, in Washington, DC. Please send requests to speak at the workshop so that we receive them by 4:00 p.m., on September 6, 2000. Send ten (10) copies of your statements for the public workshop so that we receive them by 4:00 p.m., on September 13, 2000. We also request a computer diskette (WordPerfect™ 8) of each statement.

ADDRESSES: Please submit written comments, oral statements, and requests to speak at the workshop to Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, Docket No. EE–RM/TP–99–480, 1000 Independence Avenue, SW, Washington, DC 20585. You may send email to: brenda.edwards-jones@ee.doe.gov. The workshop will begin at 9:00 a.m., on September 20, 2000, in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section IV, ''Public Comment,'' of this notice.

You can read the transcript of the public workshop and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

You can obtain the latest information regarding the public workshop from the Office of Building Research and Standards world wide web site at the

following address: http://www.eren.doe.gov/buildings/codes_standards/

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq, U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The proposed rule incorporates, by reference, certain test procedures contained in an industry standard referenced by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 90.1 (ASHRAE or ASHRAE/IES Standard 90.1) for commercial water heaters. The industry standard is American National Standards Institute (ANSI) Standard Z21.10.3–1998, ''Gas Water Heaters Volume III Storage Water Heaters, with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous.'' We propose to incorporate by reference the ''Method of Test'' subsections of sections 2.9 and 2.10 and the sections referenced there, including sections 2.1.7 and 2.30.

You can view copies of this standard at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can obtain copies of the ASHRAE and ANSI Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, http://www.ashrae.org; and Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, http://global.ihs.com/, respectively.

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Pub. L. 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part 3 of Title IV of NECPA amended EPCA to add ''Energy Efficiency of Industrial Equipment,'' which included commercial water heaters, hot water supply boilers, unfired hot water storage tanks and other types of commercial products.

EPACT also amended EPCA with respect to commercial products. It provided definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. See 42 U.S.C. 6311–6316. EPCA authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6314.

With respect to some commercial products for which EPCA prescribes energy conservation standards, including commercial water heaters, hot water supply boilers, and unfired hot water storage tanks, ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the American Society of Heating, Refrigerating and Air Conditioning Engineers, as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' 42 U.S.C. 6314(a)(4)(A). Further, if such an industry testing or rating procedure gets amended, DOE must revise its test procedure to be consistent with the amendment, unless the Secretary determines, based on clear and convincing evidence, that to do so would not meet certain general requirements spelled out in the statute for test procedures. 42 U.S.C. 6314(a)(4)(B). Before prescribing any test procedures for commercial products, the Secretary must publish them in the **Federal Register** and afford interested persons at least 45 days to present data, views and arguments. 42 U.S.C. 6314(b). Effective 360 days after a test procedure rule applicable to a covered commercial product, such as a commercial water heater, hot water supply boiler, or unfired hot water storage tank, is prescribed, no manufacturer, distributor, retailer or private labeler may make any representation in writing or in broadcast advertisement respecting the energy consumption or cost of energy consumed by such a product, unless it has been tested in accordance with the prescribed procedure and such representation fairly discloses the results of the testing. 42 U.S.C. 6314(d). Finally, EPACT extends certain powers, originally granted to the Secretary under NAECA, to require manufacturers of products covered by this proposed rule to submit information and reports for a variety of purposes, including insuring

compliance with requirements. See 42 U.S.C. 6316(a).

B. Background

1. General

The Department of Energy has an energy conservation program for consumer products, and a few commercial products, conducted under Part B of Title III of EPCA, 42 U.S.C. 6291–6309. Under EPCA, this program essentially consists of four parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and we implement the remainder of the program as codified in Title 10 of the Code of Federal Regulations, Part 430—Energy Conservation Program for Consumer Products.

Since 10 CFR Part 430 covers consumer products, which differ from commercial and industrial products, we created a new Part 431 (10 CFR Part 431) in the Code of Federal Regulations, entitled ''Energy Conservation Program for Certain Commercial and Industrial Equipment,'' to implement our program for most commercial and industrial products covered under EPCA. These will include commercial heating, air conditioning and water heating products. This new program will consist of: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. EPCA directs us, rather than the FTC, to administer the statute's efficiency labeling provisions for commercial products.

On April 14 and 15, 1998, we convened a public workshop to solicit views and information from interested parties that would aid in the development of rules for commercial heating, air conditioning and water heating products. We requested comment on a number of specific issues, including issues related to test procedures, as described below. Statements during the public workshop and written comments that were received afterwards helped refine the issues and provided useful information contributing to their resolution. We convened a second public workshop on October 18, 1998, to obtain comments on the issues as they had been refined, and on approaches presented by the National Institute of Standards and Technology (NIST) for resolving them. We received additional comments at the October 1998 workshop.

2. Issues Concerning Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

During the April 1998 workshop, we sought comments on the following issues regarding commercial water heaters, hot water supply boilers, and unfired hot water storage tanks:

(1) Which of the recognized test procedures should we prescribe for testing commercial water heaters?

(2) What clarifications are needed concerning EPCA's coverage of commercial water heating products?

(3) What should be the nature and content of our test procedure for unfired hot water storage tanks?

Attendees at the April 1998 workshop provided comments and input on these issues. Section II, Discussion, will cover them in more detail.

After the April 1998 workshop, we worked towards addressing the identified issues. A set of recommendations resulted from that work, and NIST developed a summary report of the recommendations. The summary report formed the basis for discussions during the October 1998 workshop, which enabled us to elicit further views and information from interested parties. The summary report included draft rule language for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. The additional comments received at the October 1998 workshop will be discussed below.

C. The Proposed Rule

Today's proposed rule incorporates (1) energy efficiency test procedures for commercial hot water heaters, including hot water supply boilers, and unfired hot water storage tanks, (2) definitions that clarify EPCA's coverage of these products, and (3) energy conservation standards prescribed by EPCA. In preparing these proposals, we have considered both oral and written comments, and have incorporated recommendations where appropriate. Section II, Discussion, contains the reasons for incorporating or not incorporating any significant recommendations.

II. Discussion

A. General

This section discusses the issues identified for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. Subsection II–B addresses the definitions and scope of coverage for commercial water heaters and hot water supply boilers, subsection II–C addresses ''Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency,'' and subsection II–D addresses the efficiency requirements and test procedures for commercial unfired hot water storage tanks.

B. Commercial Water Heaters and Hot Water Supply Boilers—Definitions and Coverage

1. Instantaneous Water Heaters

The EPCA definitions for commercial and consumer water heaters neither explicitly address nor exclude instantaneous water heaters that are designed to raise the water temperature to 180 °F or higher, or have a storage volume of two gallons or more. See EPCA sections 321(27) and 340(12), 42 U.S.C. 6291(27) and 6311(12). However, EPCA provides, in effect, that an instantaneous water heater would be considered to be a commercial product if it is not, to any significant extent, distributed for personal use or consumption by individuals, and if it is, to any significant extent, distributed for industrial or commercial use. EPCA sections 321(1) and 340(1)–(2), 42 U.S.C. 6291(1) and 6311(1)–(2).

During both the April 1998 and October 1998 workshops, GAMA stated that instantaneous water heaters designed to heat water to temperatures of 180 °F or higher are not designed or marketed for consumer/residential applications, regardless of the input ratings. (GAMA, April 1998 transcript, at 67, and GAMA, October 1998 transcript, at 183–184.) Therefore, GAMA believes these products should be subject to the energy efficiency standards that apply to commercial water heaters. This would be consistent with the definition of gas-fired instantaneous water heaters contained in the DOE test procedure for consumer water heaters, Appendix E to Subpart B of 10 CFR Part 430, which excludes water heaters designed to deliver water at a controlled temperature of 180 °F or higher, or that have storage volumes of two gallons or more. Six manufacturers of commercial water heaters were contacted regarding these products, and they confirmed that these are marketed and sold primarily for commercial applications. Although the manufacturers did not provide exact numbers, they indicated that the size of the market for these products is relatively small. The product literature of three manufacturers of products in this category (*i.e.,* instantaneous water heaters having storage volumes greater than 2 gallons, capable of delivering water at temperatures of 180 °F or higher) states that these are intended for use as booster water heaters for

commercial applications, such as ware-washing in restaurant kitchens.

Based on GAMA's statements, product literature and the definition of gas-fired instantaneous water heaters in DOE's test procedure for consumer water heaters, see 55 FR 42161, 42164 (October 17, 1990), the Department concurs that these products are generally distributed for commercial or industrial use, and rarely if ever for use by individual consumers. Therefore, under the EPCA definition provisions summarized above—sections 321(1), and 340(1), (2) and (12)—such water heaters are subject to the applicable standards and test procedures set forth in sections 342(a)(5) and 343(a)(4), respectively, for commercial water heaters. Today's proposed rule incorporates and implements these provisions of EPCA. Consequently, although the proposed rule does not specifically mention instantaneous water heaters designed to heat water to temperatures of 180 °F or higher, or having a storage volume of two gallons or more, we intend, and the proposed rule clearly contemplates, that they would be subject to the energy efficiency standards and test procedures for commercial products established by EPCA.

2. Hot Water Supply Boilers

One of the issues this rulemaking is addressing is the application of EPCA energy efficiency standards and test procedures to hot water supply boilers, because such boilers perform functions that are also typically performed by water heaters. In the following discussion we present some background on the nature of these and related products, on how they were addressed by ASHRAE Standard 90.1–1989 before and after the publication of Addendum n to Standard 90.1–1989 (''Addendum n''), and on how we propose to treat them under EPCA.

a. *Types of water heating products:* The following sets forth our understanding of the facts relevant to the proposals below for rating and testing commercial hot water supply boilers.

The term ''boiler'' normally applies to a self-contained appliance for supplying steam or hot water. A ''boiler'' generally neither has a storage tank nor heats the water within the appliance unless there is a demand for hot water, *i.e.,* it does not use its energy source to maintain the temperature of the water within the appliance when there is no demand. There are many types of boilers and they can be categorized according to a variety of characteristics including: Application, fuel-type, operating temperature and pressure, heat exchanger material and configuration, burners, and input ratings. However, within the building industry, boilers are typically categorized according to two fundamental applications: space and service water heating. *Hydronic boilers* usually supply water within a closed system that provides space heating. They typically employ a maximum temperature limit of about 250 °F, and a maximum pressure of 30 to 60 psig. *Hot water supply boilers* usually provide potable water to be used external to the water heating system, *i.e.,* they provide service water heating. These boilers are typically limited to providing hot water (and no steam) at temperatures up to 210 °F, and to operate at pressures not to exceed 160 psig. In addition, boilers used to provide service hot water employ heat exchangers made of materials that will not affect water potability (*e.g.,* by rusting), whereas hydronic boilers can use water treatment that renders the water unpotable to prevent deterioration (*e.g.,* rusting) of the heat exchanger components.

A ''water heater'', on the other hand, is generally a self-contained appliance for heating water that is withdrawn for use external to the water heating system, for purposes other than space heating or process requirements. Water heaters are typically designed to operate at pressures not in excess of 160 psig, and temperatures that do not exceed 210 °F. The materials that come in contact with the service hot water provided by water heaters must not render the water unpotable, and must therefore be corrosion resistant.

There are several means of classifying water heaters. Within this rulemaking, we deal with two basic categories of water heaters: *storage water heaters* and *instantaneous water heaters.* Storage water heaters have storage tanks that are integrated with the energy source and maintain the stored water temperature based on thermostatic control. Instantaneous water heaters typically lack integral storage tanks. They usually heat water only when there is a demand for the water (*i.e.,* water is being withdrawn from the system), and the temperature of the water within the appliance is not maintained when there is no demand. Instantaneous water heaters are also identified as having an input-to-volume ratio greater than 4,000 Btu/h per gallon of stored water, where input is the rate of heat input of the energy source.

It is our understanding that, notwithstanding the features they have in common with instantaneous water heaters, commercial hot water supply boilers are constructed in accordance with boiler specifications and are still considered to be ''boilers.'' Physically, many similarities exist between hot water supply and hydronic boilers, with the main differences being the temperature limiting controls and pressure or pressure/temperature relief valves with which they are typically equipped. We understand that these distinctions are not always evident when a product is manufactured, *i.e.,* a boiler might not be outfitted with these features until a distributor is filling a specific order for one product or the other. In other words, some manufacturers provide the same boiler to be used either as a hydronic boiler or a hot water supply boiler. Other manufacturers sell essentially the same boiler, but with different temperature controls and pressure relief valves already installed, in both hot water supply and hydronic boiler models. And finally, other manufacturers provide only hot water supply boilers or only hydronic boilers.

We understand that boiler manufacturers generally test and rate their products based on the uses for which they sell them. For example, manufacturers that market the same or similar boilers as both hot water supply boilers and hydronic boilers test and rate them as both. Manufacturers that provide only one type of product only test and rate as that type of product.

b. *Standards and test procedures in EPCA and ASHRAE Standard 90.1*: EPCA covers commercial packaged boilers and defines a packaged boiler as ''a boiler that is shipped complete with heating equipment, mechanical draft equipment, and automatic controls; usually shipped in one or more sections.'' 42 U.S.C. 6311(11)(B). Hot water supply boilers meet this statutory definition and are therefore covered by EPCA.

The minimum energy efficiency standards prescribed in section 342(a)(4) of EPCA for commercial packaged boilers are shown in Table 1.

TABLE 1.—ENERGY EFFICIENCY STANDARDS FOR PACKAGED BOILERS FROM EPCA AND ASHRAE STANDARD 1989 (PRE AND POST ADDENDUM N).

Equipment	Size or input rating	Energy efficiency standard
Packaged Boiler (gas-fired)	300,000 Btu/h or more	80% minimum combustion efficiency.
Packaged Boiler (oil-fired)	300,000 Btu/h or more	83% minimum combustion efficiency.

EPCA also requires uniform test procedures for determining the efficiency of commercial packaged boilers. Basically, section 343(a)(4) provides that the test procedures shall be those referenced in ASHRAE Standard 90.1 and in effect on June 30, 1992, and may be amended if ASHRAE Standard 90.1 is amended. These test procedure provisions, as well as specific efficiency standards, also apply to commercial water heaters.

Neither EPCA nor ASHRAE Standard 90.1–1989 (as in effect on June 30, 1992) explicitly addressed the category of hot water supply boilers. However, an ASHRAE Interpretation (Interpretation IC 90.1–1989–18; June 26, 1995) provided that hot water supply boilers were to be considered packaged boilers under ASHRAE Standard 90.1–1989. Thus, one or more of the five packaged boiler test procedures referenced in ASHRAE Standard 90.1–1989 applied to hot water supply boilers, both under ASHRAE Standard 90.1 and EPCA, and under ASHRAE Standard 90.1 the efficiency standards for boilers applied to this product. This was consistent with EPCA in that the statute's energy efficiency standards for packaged boilers, listed in Table 1, were the same as those in Standard 90.1 and applied to hot water supply boilers.

In 1997, ASHRAE amended Standard 90.1–1989 by adopting Addendum n. The foreword to ASHRAE Standard 90.1–1989 contains the following statement: ''Addendum 90.1–1997 provides more equitable treatment for service water heating equipment by requiring hot water supply boilers to meet the same requirements as water heaters.'' The Addendum also added definitions for water heaters, hot water supply boilers and boilers, which previously were not defined in Standard 90.1. Table 11.1 and section 11.4.2 of Standard 90.1, as revised in Addendum n, state that gas and oil-fired hot water supply boilers with input ratings between 300,000 and 12,500,000 Btu/h, ''and used solely for heating potable water,'' must meet the energy efficiency requirements presented in Table 2 and be tested according to ANSI Standard Z21.10.3–1993. The Department understands that Addendum n became effective on January 28, 1998, the date ANSI approved it.

TABLE 2.—ENERGY EFFICIENCY STANDARDS FOR HOT WATER SUPPLY BOILERS FROM ADDENDUM N OF ASHRAE STANDARD 90.1–1989.

Equipment	Input	Volume	Energy efficiency standard
Hot water supply boiler (gas and oil-fired).	≥300,000 Btu/h and ≤12,500,000 Btu/h and Input/Volume ≥4,000 Btu/h per gallon.	under 10 gallons	80% minimum thermal efficiency.
		10 gallons or more	77% minimum thermal efficiency; (2.3+67/measured storage volume) maximum standby loss.

The requirements presented in Table 2 are the same as those prescribed for commercial instantaneous water heaters with the same ranges of storage volumes, and ANSI Z21.10.3–1993 is a testing standard for commercial water heaters.

c. *The proposed rule for hot water supply boilers:* EPCA provisions require the Department to adopt amendments to the ASHRAE Standard 90.1 energy efficiency standards and test procedures for commercial products such as packaged boilers, except in certain circumstances. Addendum n amended ASHRAE Standard 90.1–1989 with respect to hot water supply boilers (a type of packaged boiler), and the EPCA provisions apply to these amendments. We are proposing in this rulemaking to adopt these amendments, with limited modifications necessary to adapt them for use under EPCA.

We propose to define a ''hot water supply boiler'' in terms of the intrinsic characteristics of such a boiler, as well as the way the manufacturer markets this product for use as a hot water supply boiler. Such hot water supply boilers would have to meet energy efficiency requirements set forth in ASHRAE Standard 90.1 for water heaters. Further, the Department proposes that if a boiler is manufactured to be used as both a hot water supply boiler and a hydronic heating boiler, then it would have to meet the energy efficiency standards for, and be tested as, both types of products. In large part because we believe manufacturers are already following the provisions of Addendum n, these proposals would become effective 30 days after the final rule is promulgated. We also continue to consider other approaches.

i. Product definition. ASHRAE Standard 90.1–1989, as amended by Addendum n, prescribes requirements for a hot water supply boiler according to the *actual use* of the appliance. Section 3.4 of ASHRAE Standard 90.1–1989 defines ''hot water supply boiler'' as ''a boiler used to heat water for purposes other than space heating.'' Section 11.4.2 further provides that the efficiency requirements applicable to water heaters shall apply to ''[h]ot water supply boilers with inputs from 300,000 Btu/h to 12,500,000 Btu/h and used solely for heating potable water.'' These provisions remain unchanged in the recently adopted ASHRAE Standard 90.1–1999. Thus, under Standard 90.1, the actual use of a boiler is a significant element in determining whether it must satisfy the requirements for water heaters or for boilers.

EPCA requirements, however, apply to products as *manufactured.* EPCA defines ''packaged boiler,'' for example, as a boiler with certain specified characteristics, and prescribes efficiency standards and test procedures that apply to ''each * * * packaged boiler manufactured'' after a specified date. 42 U.S.C. 6313(a)(4) and 6314(a)(4)(A). A manufacturer can identify and comply with the requirements that apply to a

''packaged boiler'' it manufactures, and other parties can monitor the manufacturer's compliance. If DOE were to adopt the above-quoted language of Sections 3.4 and 11.4.2 of Standard 90.1, however, the applicable requirements under EPCA for hot water supply boilers would depend on a product's actual use: the standards and test procedures for packaged boilers would apply to a boiler used as a hydronic boiler, whereas the water heater requirements would apply to a boiler used as a hot water supply boiler. For manufacturers that do not know how their product will be used, the applicable requirements would be unknown, or at best uncertain, at the point of manufacture. This would be untenable for manufacturers and for monitoring compliance. In addition, adoption of the ''use'' criterion would appear to create uncertainty as to the applicable requirements even for boilers with features that identify them as hydronic or hot water supply boilers.

As discussed, a manufacturer of boilers lacking such features often *manufactures products with the intent that they will be used for* hydronic heating and/or service water heating. Although the manufacturers may not foresee the actual end uses of their products, we understand that they normally provide information as to the intended use of the products in one or more of the following: product literature, product markings, product marketing, and product installation and operating instructions. This is consistent with Sections 10.3 and 11.3 of ASHRAE Standard 90.1–1989, which require that when hydronic heating and service water heating equipment is supplied, information must be included to enable the determination of compliance with the applicable energy efficiency requirements of ASHRAE Standard 90.1.

Based on the above discussion, we are proposing, for purposes of EPCA, to define a hot water supply boiler as follows:

A packaged boiler that (a) has an input rating from 300,000 Btu/h to 12,500,00 Btu/h and of at least 4,000 Btu/h per gallon of stored water, (b) is suitable for heating potable water, and (c) meets either or both of the following conditions: (1) It has temperature and pressure controls necessary for heating potable water for purposes other than space heating, or (2) the manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

Finally, if a product meets the above definition of hot water supply boiler, and is also manufactured to provide space heating, then it must also meet the requirements established under EPCA for commercial packaged boilers and be tested accordingly. Standards and test procedures for commercial packaged boilers manufactured to be used for hydronic heating purposes are being addressed within a separate rulemaking for those products.

In summary, we are proposing to adopt verbatim virtually all of the criteria in ASHRAE Standard 90.1 that define and delineate the hot water supply boilers to which efficiency requirements for water heaters will apply. But in lieu of the language concerning the actual use of the product, which DOE believes is not suitable for adoption under EPCA, we propose to adopt provisions that define a hot water supply boiler in terms of physical features that are a necessary part of the product, and of how the manufacturer intends that the product be used. We believe that our proposed definition implements the intent of Addendum n, which is to apply requirements for commercial water heaters to boilers that provide service water heating.

ii. Energy efficiency standards. We are directed under EPCA Section 342(a)(6)(A) to establish an amended uniform national energy efficiency standard for each covered commercial product at the level specified in the amended ASHRAE Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a more stringent standard for such product would result in significant additional conservation of energy and is technologically feasible and economically justified. Addendum n amended ASHRAE Standard 90.1 by providing, in part, that hot water supply boilers must meet the same efficiency standards that apply to commercial instantaneous water heaters. We intend to adopt that amendment in this rulemaking. Hence, today's proposed rule provides that any products that are hot water supply boilers, as defined in this notice, are to meet the requirements established for such products in Table 11.1 of ASHRAE Standard 90.1–1989 as amended by Addendum n. The relevant portions of Table 11.1 are presented in Table 2 of this preamble. We are not proposing a more stringent standard at this time. However, an upcoming rulemaking will address this issue due to the recent publication of ASHRAE Standard 90.1–1999, which modifies Standard 90.1's energy efficiency standards for commercial water heating products.

iii. Test procedures. As indicated in EPCA Section 343(a)(4)(A), the test procedures to be used to determine energy efficiency must be those prescribed by ASHRAE Standard 90.1–1989 as in effect on June 30, 1992. Section 343(a)(4)(B) of EPCA further states that if such industry test procedures are amended, then the Secretary shall amend the DOE test procedure as necessary to be consistent with the amended industry test procedure unless the Secretary determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures described in sections 343(a)(2) and (3). These latter sections basically state that the test procedure must be reasonably designed to produce test results that reflect the energy efficiency of the product, and not be unduly burdensome to conduct. Addendum n's amendments to ASHRAE Standard 90.1 include a requirement that hot water supply boilers use the test procedure that ANSI Standard Z21.10.3–1993 specifies for water heaters. As mentioned below in section II.C.1. of this document, this test procedure was amended in 1998. At the October 1998 workshop, stakeholders indicated that this amended test procedure is accepted by industry as being reasonably designed and not overly burdensome to conduct for hot water supply boilers (BR Laboratories, October 1998 transcript, at 143–149). As reflected in today's proposed rule, we intend to require that commercial hot water supply boilers be tested according to ANSI Z21.10.3–1998, and to incorporate relevant provisions by reference into DOE regulations. We do not intend to determine that ANSI Z21.10.3–1998 is either unduly burdensome to conduct or not reasonably designed to produce results that reflect the energy efficiency of such boilers.

iv. Effective date. EPCA does not address specifically when the Department's adoption of an amendment to a test procedure in ASHRAE/IES Standard 90.1 can become effective. Section 342(a)(6)(C) of EPCA, however, provides that our adoption of an efficiency standard contained in an amendment to Standard 90.1, for packaged boilers or instantaneous water heaters, shall become effective two years or more after the effective date of such amendment for purposes of Standard 90.1. Thus, because Addendum n became effective as an amendment to

Standard 90.1 on January 28, 1998, January 28, 2000 is the earliest date DOE could have made Addendum n's efficiency standards effective as a Federal requirement.

The Department understands that manufacturers currently are, and for some time have been, observing Addendum n's test procedures and efficiency standards for hot water supply boilers. Imposing them immediately as Federal requirements, therefore, should not create any burdens or alter the status quo for manufacturers. Consequently, the Department intends to make its adoption of the above described provisions for hot water supply boilers effective 30 days after publication of the final rule. Today's proposed rule also provides that, for the most part, hot water supply boilers manufactured prior to such effective date, and subsequent to the date Addendum n became effective as a provision of Standard 90.1, could meet either the requirements of Addendum n or the applicable requirements for packaged boilers under EPCA, and that any products manufactured prior to Addendum n's becoming effective must meet the latter requirements.

d. *Alternative Proposals:* In addition to the proposals set forth in today's notice, we are considering other possible approaches in applying energy efficiency standards and test procedures to hot water supply boilers. This is because we are concerned about whether basing efficiency requirements on product marketing could create too much uncertainty as to which requirements apply, or could cause manufacturers to alter their marketing strategies to fit their products into one category or another.

Therefore, we continue to consider adoption of the following alternative approaches for rating and testing hot water supply boilers under EPCA, in lieu of the approach outlined above:

(1) Any packaged boiler that is capable of providing potable water must meet the energy efficiency standards for, and be tested as, both a hydronic boiler and a hot water supply boiler/water heater.

(2) Any hot water supply boiler must meet the energy efficiency standards for, and be tested only as, a packaged boiler.

(3) Any packaged boiler that is capable of providing potable water must meet the energy efficiency standards for, and be tested as, a hot water supply boiler.

We seek comments regarding both the proposal in this notice and these three alternative approaches.

3. Heat Pump Water Heaters

The October 1998 workshop generated both oral and written comments with respect to the application of EPACT energy efficiency test procedures to commercial heat pump water heaters. Workshop participants commented that a variety of heat pump water heaters sold in the market exceed the size threshold to be considered consumer products under the NAECA amendment to EPCA, and appear to fall within the scope of the EPACT amendment to EPCA. In written comments, the American Gas Association advocated that ''commercial heat pump water heaters should be covered by DOE test procedures * * * based on the commercial availability and extensive commercial and utility promotion of this technology.'' LaClede Gas Company of St. Louis, Missouri expressed the same opinion. (Written comments number 11 and 12, Public Workshop, October 13, 1998)

American National Standard Institute (ANSI) standard Z21.10.3 is the test procedure presently referenced in ASHRAE/IES Standard 90.1–1989 for testing commercial water heaters. Heat pump water heaters are not within the scope of this standard, nor can the procedure be readily adapted to measure their performance. Furthermore, the existing DOE residential water heater test procedure is not suitable for commercial heat pump water heaters for the following reasons:

- The water draw rates are not representative of commercial applications.
- The small tank sizes used in testing are not representative of commercial installations, and the disparity could adversely affect test results of large heat pump water heaters.
- Water temperatures are higher, and ambient air temperatures are lower than those typically found in commercial applications.

Therefore, we do not consider either the existing ANSI Z21.10.3 standard or our residential water heater test procedure to be reasonably designed to produce results which reflect energy efficiency of the commercial product as required under EPCA Section 343(a)(2).

ASHRAE is currently developing a new Standard ASHRAE 118.1–1993R, Method of Testing for Rating Commercial Service Water Heating Equipment, which is currently undergoing public review. Its current draft covers commercial heat pump water heaters explicitly. The ASHRAE development process is expected to lead to an approved standard that would be referenced in revised versions of ASHRAE Standard 90.1.

Since a new test procedure would need to be developed for commercial heat pump water heaters, and because ASHRAE has already made progress in developing one, the Department is postponing action within the current rulemaking to consider a test procedure for these products. The Department anticipates considering such a test procedure after ASHRAE develops/publishes it.

4. Waste Heat Recovery Water Heaters

According to the *Commercial Water Heating Applications Handbook* (EPRI TR–100212 December 1992) published by the Electric Power Research Institute (EPRI), waste heat recovery water heaters use simple heat exchangers to recover useful heat, from fluid streams leaving commercial facilities. The heat that is recovered by these systems is often that which would have otherwise been lost to the environment. Often a heat recovery water heater is used to preheat incoming cold service water before it is heated by a conventional water heater. One workshop participant pointed out that these devices should not be confused with heat exchangers used to heat water via a dedicated heat source such as a hot water supply boiler that provides a stream of hot fluid for indirectly heating the service water within the heat exchanger. (LaClede Gas Company, October 1998 transcript, at 187–191.) In this case both the heat source (the boiler) and the tank that contains the heat exchanger might be covered under EPCA. Some waste heat recovery systems employ products that are considered EPCA-covered products. For example, a hot water storage tank might contain a heat exchanger and supplemental electric resistance heating elements used as a backup when the heat recovery capabilities of the heat exchanger are temporarily inadequate.

EPCA does not provide energy conservation standards or test procedures for waste heat recovery water heaters. Therefore, we do not address these products within today's proposed rule. However, the fact that an EPCA-covered product is used as part of a waste heat recovery system does not exclude the product from coverage.

C. Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency

1. Gas-Fired Water Heaters

As quoted above, EPCA states that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures

developed or recognized by the Air-conditioning and Refrigeration Institute or by [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' EPCA section 343(a)(4)(A), 42 U.S.C. 6314(a)(4)(A). EPCA also provides that if such industry test procedure is amended, the Secretary must adopt the amended procedure unless the Secretary determines, in essence, that the amended procedure is unduly burdensome to conduct or is not reasonably designed to produce results which reflect the energy efficiency of the product. EPCA section 343(a)(4)(B), 42 U.S.C. 6314(a)(4)(B).

ASHRAE/IES Standard 90.1–1989 with Addendum b was in effect on June 30, 1992 and the referenced test procedure for commercial water heaters was ANSI Z21.10.3–1990. Since then, ANSI Z21.10.3 has been amended several times. Table 3 lists the amendments, their dates, and a brief summary of changes to the portions related to energy efficiency test procedures.

TABLE 3.—LIST OF AMENDMENTS TO ANSI Z21.10.3

Document version	ANSI approval date	Summary of changes to efficiency test portions
ANSI Z21.10.3a–1990	4 October 1990	Correction to equation for standby loss.
ANSI Z21.10.3b–1992	27 January 1992	None.
ANSI Z21.10.3–1993	8 April 1993	None.
ANSI Z21.10.3a-1994	14 February 1994	None.
ANSI Z21.10.3b–1994	5 December 1994	None.
ANSI Z21.10.3c–1996	29 March 1996	None.
ANSI Z21.10.3–1998	19 March 1998	—Specifies accuracy of measurement devices. —Requires two full cutout periods prior to initiation of standby loss measurement period. —Changes the requirements for the duration of the standby loss test.

Some of the discussion at the October 13, 1998 workshop related to whether we should adopt the latest version of this test procedure . The stakeholders at the workshop agreed that the test for thermal efficiency contained in the 1998 version of ANSI Z21.10.3 has not changed from previous versions. However, as some stakeholders acknowledged, the standby loss portion of this test procedure, which has been slightly modified from the previous version, could yield slightly different results and thus affect compliance with standby loss requirements. In versions of ANSI Z21.10.3 prior to the 1998 version, the standby loss test procedure called for the water heater to undergo one cutout period prior to the initiation of data collection, and the standby test loss duration was at least 48 hours from the initiation of data collection. The test terminated at the end of 48 hours unless the water heater was in the heating mode at that time, in which case the test continued until the thermostat acted to reduce the gas supply to a minimum. The 1998 version of the test procedure calls for the water heater to undergo two cutout periods prior to the initiation of data collection, and the standby loss test continues until the first cutout that occurs after 24 hours from the time that data collection is initiated. Two workshop participants with experience in the field of testing these appliances, Bodh Subherwal of B.R. Laboratories, Inc. and Mark Taylor of Bradford-White Corporation, commented that this is not likely to have a significant effect on results. While no data has yet been provided in support of these comments, there is also no data to contradict them. (Various participants, October 1998 transcript, at 138–149.)

The Department recognizes the differences between the 1998 and 1990 versions of the ANSI test procedure. However, we are aware of no evidence which would establish that the newer version would significantly alter the standby loss measurements.

In accordance with EPCA section 343(a)(4)(B), the Department intends to adopt, through incorporation by reference, those portions of the ANSI Z21.10.3–1998 that address thermal efficiency and standby loss testing. Specifically, we intend to adopt the subsections labeled ''Method of Test'' in sections 2.9 and 2.10, as well as sections 2.1.7, 2.3.3, 2.3.4, and 2.30 and Figure 3. The Department does not intend to determine that the 1998 version of ANSI Z21.10.3 is either unduly burdensome to conduct or not reasonably designed to produce results that reflect the energy efficiency of commercial water heaters.

2. Oil-Fired Water Heaters

ANSI Z21.10.3–1998 does not directly address the testing of oil-fired water heaters. However, footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n provides a means to adapt the ANSI Z21.10.3 test procedure for testing of oil-fired water heaters. The Department intends to incorporate these same adaptations for the purpose of testing commercial oil-fired water heaters.

3. Electric Water Heaters

ANSI Z21.10.3–1998 does not directly address the testing of electric water heaters. However, as in the case of oil-fired water heaters, footnote e to Table 11.1 of ASHRAE/IES Standard 90.1–1989 Addendum n provides a means to adapt the ANSI Z21.10.3 test procedure for testing of electric water heaters. The Department intends to incorporate these same adaptations for the purpose of testing commercial electric water heaters. Also, today's proposed test procedure will provide additional instructions related to the adjustment of multiple thermostats for those electric water heaters that utilize them.

D. Commercial Unfired Hot Water Storage Tanks

1. Exemption From and Application of Maximum Heat Loss Requirement

EPCA Sections 342(a)(5)(F) and 342(a)(5)(G) provide that the maximum heat loss of an unfired hot water storage tank must be 6.5 Btu per hour per square foot (Btu/h–ft^2) of tank surface area, unless the tank has more than 140 gallons of storage capacity and its surface area is thermally insulated to R–12.5.

We believe the latter criterion does not contemplate that the tank be insulated to an ''effective R-value'' of R–12.5. Heat losses occur both through the actual surface area of a tank (the surface that has not been eliminated by pipe penetrations and tank supports) and through the areas that have such penetrations and supports. The latter areas cannot be insulated. An ''effective R-value'' of R–12.5 would mean that the product as a whole would have to be insulated to R–12.5, and as a practical matter, that the insulation of the actual surface area would have to be greater than R–12.5. Such a requirement would appear to be at odds with the language

of the statute, and a statement at the April 1998 workshop that such a requirement was not intended went uncontested. The Department has therefore tentatively concluded that only the actual surface area of a tank larger than 140 gallons must be covered by R–12.5 insulation in order for the tank to be exempt from the requirement to have a maximum heat loss of 6.5 Btu/h–ft^2 of tank surface area.

As indicated, this heat loss requirement applies to all storage tanks having capacities of 140 gallons or less. It was suggested at the October 1998 workshop that, since R–12.5 insulation is roughly equivalent to a heat loss of 6.5 Btu/h–ft^2, for these storage tanks the Department's regulations could permit use of such insulation as an alternative to testing for heat loss.[1] (BR Laboratories, October 1998 transcript, at 156–158.) Because only the actual surface area of a tank is insulated, such an approach would be problematic. On the one hand, it could imply that the heat loss requirement applies only to losses from the actual surface area. Section 342(a)(5)(F) of EPCA appears to provide, however, that losses from the entire tank shall be 6.5 Btu/h–ft^2 of surface area. In other words, all losses, not just losses from the insulated portion of the surface area, must be divided by the tank surface area. On the other hand, to allow R–12.5 insulation in lieu of heat loss testing would in effect decrease the efficiency requirement for tanks smaller than 140 gallons, by allowing a heat loss of more than 6.5 Btu/h–ft^2 of surface area. This is because the heat losses from areas with pipe penetrations and supports, which are not insulated, would necessarily result in a heat loss per square foot of actual surface area, and even of ''nominal surface area'' (the actual surface area plus the surface area that would exist absent the penetrations and supports), in excess of 6.5 Btu/h. But EPCA does not authorize the Department to lower efficiency levels prescribed by the statute and, in any event, the Department does not seek in this rulemaking to alter the level EPCA prescribes for unfired storage tanks. Finally, under such an approach, the efficiency requirements for tanks smaller than 140 gallons would be virtually identical to those for the larger tanks. EPCA specifies different requirements, however, for hot water storage tanks and storage water heaters in these two categories, in effect requiring the smaller products to be more efficient.

Consequently, the proposed rule provides that unfired hot water storage tanks having capacities of 140 gallons or less must be tested for heat loss. Moreover, the proposed test procedure takes the approach that all losses must be included in determining the heat loss per square foot of surface area. The proposed test procedure also requires calculation of the heat loss per square foot of tank surface area that would exist if the tank had no pipe penetrations or supports, *i.e,* of the ''nominal surface area.'' As presented previously, the nominal surface area is used here, because it includes the entire area of the tank through which heat loss can occur. The Department believes that this approach is consistent with section 342(a)(5)(F) of EPCA.

2. Unfired Hot Water Storage Tank Test Procedure

As indicated above, EPCA specifies in essence that the test procedures for the products covered by this notice shall be those referenced in ASHRAE/IES Standard 90.1. But since Standard 90.1 references no test procedure for unfired hot water storage tanks, none is prescribed in EPCA.

At the October 1998 workshop, two methods were presented for determining the heat loss of unfired hot water storage tanks. The first method involves performing the standby loss test procedure on an electric storage water heater utilizing an identical tank with identical insulation and jacketing as that of the unfired storage tank model, and performing the necessary calculations to determine heat loss per square foot of tank surface area. The second method utilizes a separate water heater connected to the unfired storage tank to charge the storage tank before and after a standby loss test period. Stakeholders present at the October 1998 workshop responded that they favored the first method, and that the second method was unnecessary.

We agree with the comments from the October 1998 workshop attendees, and are proposing the first method as the DOE test procedure for determining the rate of heat loss per square foot of tank surface area of unfired hot water storage tanks. We understand that typically a manufacturer will sell a tank as an unfired storage tank, and also use the same tank as part of an electric water heater. Therefore, it makes sense to require the tank to be tested as part of a water heater. Indeed, it appears that the same test used to rate the standby loss of the water heater could be used to rate the heat loss of the unfired storage tank. Thus, the proposed rule provides that the method of testing an unfired storage tank would be to test an electric storage water heater utilizing electric resistance heating as the energy source, using the standby loss test procedure of ANSI Z21.10.3–1998.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

EPCA prescribes energy efficiency standards and test procedures for commercial products, and we propose to implement these requirements for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, our regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). Implementation of the proposed rule would not result in environmental impacts. We have therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D of the Department's regulations, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

We have determined that today's proposed rule is not a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB).

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, an agency must propose for

[1] We assume for purposes of this discussion that, at a temperature difference of 80°F, an insulation level of R–12.5 is equivalent to a heat loss rate of 6.5 Btu/h–ft^2 of covered surface. We note that ideally, however, for a flat surface insulated to R–12.5 h·°F·ft^2/Btu having a temperature difference across it of 80 °F, the heat loss would be approximately 6.4 Btu/h–ft^2. For the walls of a cylinder, the heat loss would vary depending on the radius of the cylinder and would likely be greater than 6.5 Btu/h–ft^2 unless the cylinder was quite large—about 16 feet in diameter.

public comment, unless it certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

The Small Business Administration considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR Part 121. The threshold number for SIC classification 3589, which includes commercial water heaters, hot water supply boilers, and unfired hot water storage tanks, along with other service industry machinery not elsewhere classified, is 500. We estimate that approximately 25 firms manufacture water heaters, hot water supply boilers, and unfired hot water storage tanks, and the majority of these are small businesses. The number of small businesses that manufacture commercial-sized equipment covered by the EPACT standards could be smaller.

EPCA establishes efficiency standards for covered commercial products and requires us to prescribe test procedures that are accepted by industry and referenced in ASHRAE Standard 90.1. As EPCA specifies the standards and virtually all of the test procedures incorporated in today's proposed rule, the costs of complying with them are imposed by EPCA and not the rule. Moreover, today's proposed rule simply codifies testing procedures that are already generally employed by manufacturers, both large and small.

The cost of meeting the requirements of the rule as proposed will depend on the number of basic models a manufacturer produces and the number of these models that do not comply with the efficiency standards imposed by EPCA and would consequently need to be redesigned or removed from the market. Since most of the efficiency standards have been in force by statute since 1994, we expect that a negligible number of products presently manufactured would need to be redesigned or discontinued. The cost of performing the proposed test procedures depends on unit size, but could amount to several thousands of dollars per basic model. Those manufacturers who already test their products for efficiency to assure that they meet the existing statutory efficiency standards, or for any other reason, will not incur new costs in complying with today's proposed rule. We believe that any significant economic impact will fall only on companies which do not now routinely test their products. We further believe that testing is a widely accepted practice, and that companies that do not test are rare and do not represent a substantial number of small entities.

We have no discretion to apply different requirements to small manufacturers. EPCA mandates uniform standards and test procedures for commercial and industrial products, irrespective of the size of a business. In this regard, it is noteworthy that although EPCA contains a ''small manufacturer exemption'' for consumer products (42 U.S.C. 6295 (t)), it includes no such exemption for commercial and industrial products.

Based on the above, we certify that this proposed rule would not impose a significant impact on a substantial number of small businesses.

D. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies must have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy on March 14, 2000 (65 FR 13735). The proposed rule published today would not regulate the States. It would primarily codify energy efficiency standards and test procedures already established by EPCA for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. We have determined that today's proposed rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''

We have determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's proposed rule would primarily codify energy efficiency standards and test procedures already established by EPCA for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. The proposed rule would not require any additional reports or record-keeping. Accordingly, this action does not contain a collection of information subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3 (c) of the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

We reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), we must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides in part that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates a commercial testing standard referenced by ASHRAE/IES Standard 90.1–1989 for measuring the efficiency of commercial water heaters and hot water supply boilers, which EPCA requires be used. Because we have very limited discretion to depart from a standard referenced in ASHRAE/IES 90.1, Section 32 of the FEAA does not apply to it.

ASHRAE/IES Standard 90.1 does not, however, reference a test procedure to measure the heat loss of unfired hot water storage tanks. DOE proposes to require use of portions of ANSI Standard Z21.10.3–1998 to test this product. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, *i.e.,* that it was developed in a manner that fully provides for public participation, comment and review.

As required by section 32(c) of the Federal Energy Administration Act, we will consult with the Attorney General and the Chairman of the Federal Trade Commission, prior to prescribing a final rule, concerning the impact on competition of requiring use of this standard to test unfired hot water storage tanks.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that we prepare an impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of our prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented. DOE published a policy statement on intergovernmental consultation under the unfunded mandates act on March 18, 1997 (62 FR 12820).

We have determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Plain Language Directive

The President's Memorandum on ''Plain Language in Government Writing,'' 63 FR 31885 (June 10, 1998) directs each Federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes ''plain language.'' Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

IV. Public Comment

A. Written Comment Procedures

We invite interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the issues set forth in today's rule to Ms. Brenda Edward-Jones, at the address indicated at the beginning of the notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. We will make our own determination with regard to the confidential status of the information and treat it according to that determination.

Factors of interest to us, when evaluating requests to treat as confidential information that has been submitted, include:

(1) A description of the items;

(2) An indication as to whether and why such items are customarily treated as confidential within the industry;

(3) Whether the information is generally known by or available from other sources;

(4) Whether the information has previously been made available to others without obligation concerning its confidentiality;

(5) An explanation of the competitive injury to the submitting person which would result from public disclosure;

(6) An indication as to when such information might lose its confidential character due to the passage of time; and

(7) Why disclosure of the information would be contrary to the public interest.

B. Public Workshop

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. We invite any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the

beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this workshop as indicated at the beginning of this notice. At our discretion, we may still permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

2. Conduct of Workshop

The Department will designate a Department official to preside at the workshop, and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

Commercial Water Heaters and Hot Water Supply Boilers—Definitions and Coverage

- Instantaneous water heaters
- Hot water supply boilers
- Heat pump water heaters
- Waste heat recovery water heaters

Commercial Water Heaters—Test Procedures for the Measurement of Energy Efficiency

- Gas-fired water heaters
- Oil-fired water heaters
- Electric water heaters

Commercial Unfired Hot Water Storage Tanks

- Exemption from and application of maximum heat loss requirement
- Unfired hot water storage tank test procedure

Other Topics

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, we will permit each participant to briefly clarify his or her statement and comment on statements made by others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues on Which Comments Are Requested

We are interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's rulemaking. Also, we welcome discussion on improvements or alternatives to the proposed approaches. We also invite comments on how to make this proposed rule easier to understand. For example:

- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs, or would a different organization be better?
- Can we improve the rule's format?

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on July 18, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Title 10, Part 431 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for Part 431 continues to read as follows:

Authority: 42 U.S.C. 6311–6316.

2. Subpart L is added to read as follows:

Subpart L—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

Sec.
431.451 Purpose and scope.
431.452 Definitions for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

Test Procedures

431.461 Materials incorporated by reference.
431.462 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Water Heaters and Hot Water Supply Boilers (Other than Commercial Heat Pump Water Heaters).
431.463 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Heat Pump Water Heaters [Reserved].
431.464 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Unfired Hot Water Storage Tanks.

Energy Conservation Standards

431.471 Energy conservation standards and their effective dates.

Subpart L—Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks

§ 431.451 Purpose and scope.

This subpart contains energy conservation requirements for certain commercial water heaters, hot water supply boilers and unfired hot water storage tanks, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C 6311–6316.

§ 431.452 Definitions for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

For purposes of subparts I through P of this part, terms are defined as provided for elsewhere in this part, in section 340 of the Act, and as follows:

ASTM–D–2156–80 means the test standard published in 1980 by the American Society of Testing and Measurements and titled Method for Smoke Density in Flue Gases from Burning Distillate Fuels.

Gas means natural gas or propane as defined by the Federal Power Commission.

Hot water supply boiler means a packaged boiler that,

(1) Has an input rating from 300,000 Btu/h to 12,500,00 Btu/h and of at least 4,000 Btu/h per gallon of stored water,

(2) Is suitable for heating potable water, and

(3) Meets either or both of the following conditions:

(i) It has the temperature and pressure controls necessary for heating potable water for purposes other than space heating, or

(ii) The manufacturer's product literature, product markings, product marketing, or product installation and operation instructions indicate that the boiler's intended uses include heating potable water for purposes other than space heating.

Instantaneous water heater means a water heater that has an input rating not less than 4,000 Btu per hour per gallon of stored water, and that is a commercial HVAC & WH product.

Nominal tank surface area means the outside surface area of an uninsulated tank or the jacket area of a jacketed storage tank. To determine this area, assume that there are no holes or protrusions within the main body of the tank or jacket.

R-value means the thermal resistance of insulating material as determined based on ASTM Standard Test Method C177–97 or C518–91 and expressed in ($°F°ft^2°h/Btu$).

Standby loss means the average hourly energy required to maintain the stored water temperature, expressed as a percentage (per hour) of the heat content of the stored water and determined by the formula for S given in Section 2.10 of ANSI Z21.10.3–1998.

Storage water heater means a water heater that heats and stores water within the appliance at a thermostatically controlled temperature for delivery on demand and that is a commercial HVAC & WH product. Such term does not include units with an input rating of 4,000 Btu per hour or more per gallon of stored water.

Tank surface area means, for the purpose of determining portions of a tank requiring insulation, those areas of a storage tank, including hand holes and manholes, in its uninsulated or pre-insulated state, that do not have pipe penetrations or tank supports attached.

Thermal efficiency means the ratio of the heat transferred to the water flowing through the water heater to the amount of energy consumed by the water heater as measured during the thermal efficiency test procedure prescribed in this subpart.

Unfired hot water storage tank means a tank used to store water that is heated externally, and which is a commercial HVAC & WH product.

Test Procedures

§ 431.461 Materials incorporated by reference.

(a) *General.* The Department incorporates by reference the following test procedures which are not otherwise set forth in this part 431. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to this material by the standard-setting organization will not affect the DOE test procedures unless and until DOE amends its test procedures. The Department incorporates the material as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**.

(b) *Test procedures incorporated by reference:* American National Standards Institute (ANSI) Standard Z21.10.3–1998, ''Gas Water Heaters, Volume III, Storage Water Heaters with Input Ratings above 75,000 Btu per Hour, Circulating and Instantaneous'', subsections entitled ''Method of Test'' of sections 2.9 and 2.10, sections 2.1.7, 2.3.3, 2.3.4 and 2.30, and Figure 3.

(c) *Availability of references.* (1) *Inspection of test procedures.* The test procedures incorporated by reference are available for inspection at:

(i) Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(ii) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, ''Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers, and Unfired Hot Water Storage Tanks,'' Docket No. EE–RM/TP–99–480, 1000 Independence Avenue, SW, Washington, DC 20585.

(2) *Obtaining copies of Standards.* Anyone can obtain a copy of standards incorporated by reference from the following sources:

(i) Request copies of the ASHRAE Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, or http://www.ashrae.org/book/bookshop.htm.

(ii) Request copies of the ANSI Standard from Global Engineering Documents, 15 Inverness Way West, Englewood, CO 80112, or http://global.ihs.com/, or http://webstore.ansi.org/ansidocstore/.

(d) *Reference standards.*

(1) *General.* The standards listed in this paragraph are referred to in the DOE test procedures, and elsewhere, in this subpart L, but they are not incorporated by reference. These sources are given here for information and guidance.

(2) *List of References.* (i) ASTM Standard Test Method C518–91, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.''

(ii) ASTM Standard Test Method C177–97, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus.''

(iii) ASTM Standard Test Method D2156–80, ''Method for Smoke Density in Flue Gases from Burning Distillate Fuels.''

§ 431.462 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Water Heaters and Hot Water Supply Boilers (Other than Commercial Heat Pump Water Heaters).

(a) *Scope.* This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the thermal efficiency or standby loss, or both, of a storage or instantaneous water heater or hot water supply boiler (other than commercial heat pump water heaters).

(b) *Testing and Calculations.* Determine the energy efficiency of each covered product by conducting the test procedure(s), set forth in the two rightmost columns of the following table, that apply to the energy efficiency descriptor(s) for that product:

Product	Energy efficiency descriptor	Use test setup, equipment and procedures in subsection labeled ''Method of Test'' of	With these additional stipulations
Gas-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers.	Thermal Efficiency	ANSI Z21.10.3–1998, § 2.9	None.
	Standby Loss	ANSI Z21.10.3–1998, § 2.10.	
Oil-fired Storage and Instantaneous Water Heaters and Hot Water Supply Boilers.	Thermal Efficiency	ANSI Z21.10.3–1998, § 2.9	(1) Connect a vertical length of flue pipe to the flue gas outlet of sufficient height so as to meet the minimum draft specified by the manufacturer. (2) Adjust the burner rate so that (a) the hourly Btu input rate lies within ±2% of the manufacturer's specified input rate, (b) the CO_2 reading shows the value specified by the manufacturer, (c) smoke in the flue does not exceed No. 1 smoke as measured by the procedure in ASTM-D–2156–80, and (d) fuel pump pressure lies within ±1% of manufacturer's specifications.
	Standby Loss	ANSI Z21.10.3–1998, § 2.10.	
Electric Storage and Instantaneous Water Heaters.	Standby Loss	ANSI Z21.10.3–1998, § 2.10.	(1) Assume that the thermal efficiency (E_t) of electric water heaters with immersed heating elements is 98 percent. (2) Maintain the electrical supply voltage to within ±1% of the center of the voltage range specified on the water heater nameplate. (3) If the set up includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range.

§ 431.463 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Heat Pump Water Heaters. [Reserved]

§ 431.464 Uniform Test Method for the Measurement of Energy Efficiency of Commercial Unfired Hot Water Storage Tanks.

(a) *Scope.*

This section covers the test procedures you must follow if, pursuant to EPCA, you are measuring the heat loss per square foot of tank surface area of an unfired hot water storage tank.

(b) *Test Method.* You must use the test setup, equipment and procedures from the subsection entitled Method of Test of section 2.10 in ANSI Z21.10.3–1998, with the following additional stipulations:

(1) Use an electric water heater whose size, thickness and type of insulation, and jacketing are identical to that of the unfired storage tank.

(2) Maintain the electrical supply voltage to within ±1% of the center of the voltage range specified on the water heater nameplate.

(3) If the set up for that water heater includes multiple adjustable thermostats, set the highest one first to yield a maximum water temperature in the specified range as measured by the topmost tank thermocouple. Then set the lower thermostat(s) to yield a maximum mean tank temperature within the specified range.

(4) Use the value of 98 percent for Et_t for the calculation of the standby loss.

(c) *Calculations.* (1) Calculate the difference in internal energy of the tank water volume based on the mean tank temperature, at the beginning and end of the test, Q_{diff}, in Btu as follows:

$$Q_{diff} = K \cdot V_a \cdot \Delta T_4$$

Where,

K = 8.25 Btu per gallon °F, the nominal specific heat of water,

V_a = tank capacity expressed in gallons, as determined under section 2.30 of ANSI Z21.10.3–1998, and

ΔT_4 = difference between the final and initial mean tank temperatures, °F.

(2) Determine the rate of heat loss per square foot of nominal tank surface area, Q_{loss}, in Btu/h-ft² as follows:

$$Q_{loss} = \frac{E_c - \frac{Q_{diff}}{\eta_t / 100}}{A_s \cdot t}$$

Where,

E_c = electrical energy consumption as presented in section 2.10 of ANSI Z21.10.3–1998,

A_s = nominal tank surface area (ft²,

η_t = 98 percent, the assumed recovery efficiency for electric water heaters with immersed heating elements, and

t = duration of standby loss test as defined in section 2.10 of ANSI Z21.10.3–1998.

Energy Conservation Standards

§ 431.471 Energy conservation standards and their effective dates.

Each commercial storage water heater, instantaneous water heater, and unfired hot water storage tank manufactured on or after January 1, 1994, and each hot water supply boiler manufactured 30 days or more after [publication date of the final rule],[1] must meet the applicable energy conservation standard level(s) as follows:

Product	Size	Energy efficiency descriptor	Energy conservation standard
Electric storage water heaters.	All	Standby Loss [a] (in %/hr)	Maximum of 0.30 + (27/Measured Storage Volume [in gallons]).
Gas-fired and oil-fired storage water heaters.	≤155,000 Btu/h input	Standby Loss [a] (in %/hr)	Maximum of 1.30 + (114/Measured Storage Volume [in gallons]).
		Thermal Efficiency	Minimum of 78%.
	>155,000 Btu/h input	Standby Loss [a] (in %/hr)	Maximum of 1.30 + (95/Measured Storage Volume [in gallons]).
		Thermal Efficiency	Minimum of 78%.
Instantaneous water heaters; or hot water supply boilers.	<10 gallons storage volume.	Thermal Efficiency	Minimum of 80%.
	≥10 gallons storage volume.	Thermal Efficiency	Minimum of 77%.
		Standby Loss [a] (in %/hr)	Maximum of 2.30 + (67/Measured Storage Volume [in gallons]).
Unfired hot water storage tank.	≤140 gallons storage volume.	Heat Loss	Maximum of 6.5 Btu/h per ft^2 of the nominal tank surface area.
	>140 gallons [b] storage volume.	Heat Loss [b]	Maximum of 6.5 Btu/h per ft^2 of the nominal tank surface area.
		Thermal Insulation Level [b]	Minimum of R–12.5 over the tank surface area.

[a] Storage and instantaneous water heaters having more than 140 gallons of storage capacity need not meet the standby loss requirement if the tank surface area is thermally insulated to R–12.5 or more and if a standing pilot light is not used.

[b] Only one of the two requirements (*i.e.*, either the heat loss requirement or the thermal insulation requirement) must be met.

[FR Doc. 00–19722 Filed 8–8–00; 8:45 am]

BILLING CODE 6450–01–P

[1] The following provisions apply to a hot water supply boiler manufactured before [publication date of the final rule]: (1) if it was manufactured before January 28, 1998, it must meet the applicable requirements for a ''commercial packaged boiler'' under subpart K of this part; (2) if it was manufactured on or after January 28, 1998, and is a commercial packaged boiler, as defined in subpart K of this part, it must meet the requirements that apply to it under that subpart; (3) if it was manufactured on or after January 28, 1998, and is not a commercial packaged boiler, as defined in subpart K of this part, it must either meet the requirements listed in this section or the requirements for a ''commercial packaged boiler'' in subpart K of this part.

Federal Register

Wednesday,
August 9, 2000

Part III

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–20001]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA, ACF, DHHS).

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiians, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 2001 funds in three competitive areas:

Governance and social and economic development;

Governance and social and economic development for Alaska Native entities; and

(3) Environmental regulatory enhancement.

Financial assistance provided by ANA in support of projects in these three areas is intended to promote the goal of self-sufficiency for Native Americans.

Application Kit

Application kits are approved by the Office of Management and Budget (OMB) under control number 0980–0204, which expires August 31, 2002. The application kit contains the necessary forms and instructions to apply for a grant under this program announcement.

Application kits may be obtained from ANA training and technical assistance providers. ANA employs contractors to provide short-term training and technical assistance (T/TA) to eligible applicants. T/TA is available under these contracts for a wide range of needs, however, the contractors are not authorized to write applications. The T/TA is provided at no cost. To obtain an application kit and/or, training and technical assistance, applicants are encouraged to contact the appropriate T/TA provider within the appropriate service area. If you do not know the identity of the contractor currently serving the region you are located in, you may identify the contractor by calling: Administration for Native Americans, Applicant Help Desk, toll free at 1–877–922–9262; or visit ANA's web site listing of current providers at: www.acf.dhhs.gov/programs/ana/.

The ANA providers serve six areas divided as follows:

Area 1, Eastern serves federally recognized Tribes in AL, AR, CT, DC, DE, FL, GA, IL, IN, KY,LA, MA, MD, ME, MI, MN, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI and WV.

Area 2, Central federally recognized Tribes in AZ, CO, IA, KS, ND, NE, NE, NM, MO, MT, OK, SD, UT, WY, NV, ID and TX.

Area 3, Western serves federally recognized Tribes in CA, OR and WA.

Area 4, Alaska serves all eligible applicants in AK.

Area 5, Pacific serves all eligible applicants in Hawaii (HI) and the Pacific Islands of AS (American Samoa), GU (Guam), MP (Northern Mariana Islands) and PW (Palau).

Area 6, National serves all eligible applicants on the mainland United States not served by providers for areas 1 through 5. This includes non-federally recognized Tribes, Urban Indians, off-reservation rural Indian communities, Native Americans served through non-federally recognized urban and consortia arrangements and Organizations serving Native Hawaiians and Pacific Island Natives on the Mainland.

Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: www.acf.dhhs.gov/programs/ana/.

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 2001 funds, authorized under the Native American Programs Act of 1974 (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in three competitive areas. Funding authorization is provided under sections 803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b). The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Administration for Native Americans assists eligible applicants for the three competitive areas to undertake 12 to 36 month development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

In order to streamline the application process for eligible applicants under three competitive areas, ANA is issuing a single program announcement for fiscal year 2001 funds. Information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for all three competitive areas are included in this announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish an additional program for environmental regulatory enhancement.

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 2001 and the availability of funds for the three competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a grant in each of the three competitive areas, an applicant may only submit one application per competitive area and no applicant may receive more than one grant in each competitive area, including any existing ANA grant. Also, an Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the May closing date. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. All applicants are strongly encouraged to demonstrate a plan for an employee fringe benefit package that includes an employee retirement plan benefit, and new grantee recipients must fund travel for key personnel (such as the Financial Officer

or Project Director) to attend post-award grant management and administration training sponsored by ANA. This travel funding is optional for grantees that have had ANA grants in the past.

Before receiving a grant, every successful applicant will be encouraged to commit in writing to, and budget for an employee retirement fringe benefit that meets the standards found in the budget evaluation criteria within this announcement.

Continuing for fiscal year 2001, to foster goals under the Executive Order on tribally controlled colleges and universities (TCUs), TCUs may now independently apply for an ANA grant without impacting eligibility of the Tribe to apply. Previously, only one application was accepted, either from the Tribe or the TCU. Now both the Tribe and TCU may compete for and receive ANA grants at the same time, in the same program(s).

New for fiscal year 2001, are two White House Initiatives relating to Hawaiians and Pacific Islanders and People with Disabilities. In accordance with the Executive Order on Asian American and Pacific Islanders, ANA encourages greater participation from Hawaiian and Pacific Islander communities. The Executive Order on People with Disabilities encourages all communities to address the needs of people with disabilities in all programs in accordance with the Americans with Disabilities Act (ADA). ANA encourages all Native communities to address the needs of People with Disabilities in all aspects of their programs. ANA also encourages greater participation from Native organizations serving People with Disabilities.

This program announcement consists of three parts.

Part I. ANA Policy and Goals

Provides general information about ANA's policies and goals for the three competitive areas. This section contains information pertaining to all applicants.

Part II. ANA Competitive Areas

Describes the three competitive areas under which ANA is requesting applications:

- Area 1: Governance, Social and Economic Development (SEDS);
- Area 2: Governance, Social and Economic Development (SEDS)for Alaska Native entities;
- Area 3: Environmental Regulatory Enhancement.

Each competitive area includes the following sections which provide information to be used to develop an application:

A Purpose and Availability of Funds
B Background
C Proposed Projects To Be Funded
D Eligible Applicants
E Grantee Share of the Project
F Review Criteria
G Application Due Date(s)
H Contact Information

Part III. General Application Information and Guidance

Provides important information and guidance that applies to all three competitive areas and that must be taken into account in developing an application for any of the three areas.

A Definitions
B Activities That Cannot Be Funded
C Multi-Year Projects
D Intergovernmental Review of Federal Programs
E The Application Process
F The Review Process
G General Guidance to Applicants
H Paperwork Reduction Act of 1995
I Receipt of Applications

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. Governance: To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well being.

3. Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community in the spirit of respect for indigenous peoples' cultural and intellectual property rights.

Applicants must comply with certain of the following administrative policies:

- Current grantees whose grant project period extends beyond September 30, 2001, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current SEDS or Alaska-specific SEDS grantees with project periods beyond September 30, 2001, may not compete for additional SEDS or Alaska-specific SEDS grants. Current Indian Environmental Regulatory Enhancement grantees with project periods beyond September 30, 2001, may not compete for additional Indian Environmental Regulatory Enhancement grants.
- Applicants for any competitive area may propose 12 to 36 month projects.
- Applicants must describe a locally determined strategy to carry out a proposed project with fundable objectives and activities.
- Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (*e.g.,* a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other

applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

• An applicant may submit a separate application under any of the competitive areas, as long as the applicant meets the eligibility requirements. However, for the May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

• Under each competitive area, ANA will only accept one application, which serves or impacts a reservation, Tribe, or Native American community.

• Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

• Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.

• Grantees must provide at least 20 percent of the total approved cost of the project; *i.e.,* the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project; examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

• If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

• A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

• Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

Part II—ANA Competitive Areas

The three competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area promotes the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. ANA anticipates awarding approximately 120 competitive grants ranging from $20,000 to $1,000,000.

B. Background

ANA assists tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy uses the following definitions:

• ''Governmental infrastructure'' includes the constitutional, legal, and administrative development requisite for independent governance.

• ''Economic infrastructure'' includes the physical, commercial, technological, industrial and/or agricultural components necessary for a functioning local economy which supports the life-

style embraced by the Native American community.

• ''Social infrastructure'' includes those components through which health, economic well being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

ANA encourages the development and maintenance of comprehensive strategic plans, which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities, which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives. The types of projects which ANA may fund include, but are not limited to, the following:

Governance

• Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);

• Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);

• Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, of the United States;

• Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgment or in response to any obvious deficiencies cited by the Bureau of Acknowledgment and Research (BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and

• Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

• Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure;

• Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, energy development, light and/or heavy manufacturing, technology and Internet activities, fabrication and construction companies, housing and fisheries or aqua-culture

• Stabilizing and diversifying a Native community's economic base through business development and enterprise zone ventures.

Social Development

• Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;

• Developing local and intertribal models related to comprehensive planning and delivery of services;

• Developing programs or activities to preserve and enhance tribal heritage and culture; and

• Establishing programs, which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

• Address welfare reform initiatives such as moving families to work.

• Help ensure child support from both parents.

• Create access to affordable child care for low income working families.

• Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.

• Help enroll children in quality Head Start and prepare them to be ready to learn.

• Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

• Federally recognized Indian Tribes;

• Consortia of Indian Tribes; Incorporated non-federally recognized Tribes;

• Incorporated nonprofit multi-purpose community-based Indian organizations;

• Urban Indian Centers;

• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

• Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects;

• Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);

• Public and nonprofit private agencies serving native peoples from Guam, American Samoa, *the Republic* of Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and

• Tribally controlled community colleges, Tribally controlled cost-secondary vocational institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

• Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I,

ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees whose grant project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2001.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. Tribally controlled colleges need only to submit a resolution from their Board of Directors or similar. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area; include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).
- In discussing their community-based, long-range goals, and the objectives for the proposed projects, non-Federally recognized and off-reservation groups must include a description of what constitutes their specific community.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project except for those communities such as Hawaii and the Pacific Islands, where the systems of governance make such involvement inappropriate. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. Letters of commitment should document these resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional

funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives, for example; the chief financial officer or project director, from the applicant organization to travel to one post-award grant training and technical assistance conference. This expenditure is mandatory for new grant recipients and optional for grantees that have had ANA grants in the past. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit for grant-funded employees' salaries up to five (5) percent. ANA will solely fund these costs above and beyond the applicant project funding level.

ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum recommended standards for an acceptable retirement fringe benefit plan are:

- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

G. Application Due Dates

The closing dates for submission of applications under this competitive area are: October 13, 2000, January 26, 2001 and May 4, 2001.

H. Contact Information

Contact the ANA Applicant Help Desk toll free at 1–877–922–9262 for assistance.

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area funds Alaska Native social and economic development projects. Approximately $1.5 million amounts of financial assistance is anticipated to be available

for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 12–15 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

While the Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects To Be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);
- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional business infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of native-businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded by local communities or the private sector for continued operation after the ANA grant expires.
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees in Alaska whose project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2001.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the

State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community except that a tribally controlled college or university (TCU) may apply in addition to the Tribe. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution, which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that, the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use for-profit regional corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project except in those communities such as Hawaii and the Pacific Islands where systems of governance make such strategies inappropriate. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. Letters of commitment of should document these resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 Points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the

proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 Points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 Points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 Points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and
- Requests funds, which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit up to five (5) percent of grant-funded employees' salaries. ANA will solely fund these costs above and beyond the applicant project funding level. ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 11, 2001. Applicants are reminded that for this May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

H. Contact Information

Contact the ANA Applicant Help Desk toll free at 1–877–922–9262 for assistance.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

This competitive area funds environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality. As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these

activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups. ''Environmental regulatory enhancement'' includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Developments of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure that tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally and State recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.
- Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply based on the determination that they do not own or manage resources for which environmental regulatory projects are directed and therefore are not empowered to perform such projects:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the Republic of Palau;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA Indian Environmental Regulatory Enhancement project grantees whose grant project period ends on or before September 30, 2001 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application, which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications, which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources (15 Points)

(a) The application describes the long-range goals and strategy, including:

- How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The applicant's specific environmental regulatory needs; and
- A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described.

Letters of commitment should document these resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (15 Points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (40 Points)

The application proposes specific project objective work plans with activities that are related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

• Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. All applicants are expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.

• Includes and justifies sufficient cost and other necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project; and

• Requests funds, which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

• Where implemented, includes an employee fringe benefit budget that provides grant-funded employees with a retirement plan in addition to Social Security. The applicant is strongly encouraged to provide a retirement plan fringe benefit of up to five (5) percent of grant funded employees-salaries. ANA will solely fund these costs above and beyond the applicant project funding level. ANA supports a retirement plan as a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc.

G. Application Due Date

The closing date for submission of applications under this competitive area is February 23, 2001.

H. Contact Information

Contact the ANA Applicant Help Desk at 202–690–7776 for assistance.

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

• A ''multi-purpose community-based Native American organization'' is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

• A ''multi-year project'' is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

• ''Budget Period'' is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

• ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

• ''Environmental regulatory enhancement'' includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

• ''Real Property'' means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

• ''Construction'' is the term, which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

• ''Core administration'' is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

• Projects that operate indefinitely or require ANA funding on a recurring basis.

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• ANA will not fund the purchase of real property.

• ANA will not fund construction.

• Objectives or activities for the support of core administration of an organization.

• Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise

capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section G, General Guidance to Applicants, below.

C. Multi-Year Projects

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

E. The Application Process

1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, D.C. 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–001.

2. Application Submission by Courier

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024, Attention: Lois B. Hodge, ANA No. 93612–001.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

All applicants should take the following points into consideration:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review.
- ANA will notify applicants in writing of any such determination.
- An incomplete application is one that is:
- Missing Form SF 424.
- Does not have a signature on Form SF 424.
- Does not include proof of non-profit status, if applicable.
- The application (Form 424) must be signed by an individual authorized: (1) To act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.
- Each tribe, Native American organization, or other eligible applicant may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. Therefore, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both at the same time.
- If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).
- Applications subjected to the pre-review described above which fail to

satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific ''community.'' Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers that make specific reference to the proposed project submitted for funding.
- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.
- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.
- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.
- Supporting documentation, including letters of support, if available, or other specific testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.
- In the ANA Project Narrative, Section A of the application package, ''Resources Available to the Proposed Project,'' the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.
- Applicants proposing an Economic Development project should address the project's feasibility. A business plan describing the project's feasibility and approach for the implementation and marketing of the business is recommended. ANA has included sample business plans in the application kit. It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.
- Applications, which were not funded under a previous closing date and revised for resubmission, should make reference to the changes, or reasons for not making changes, in their current application.

2. Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- If other Federal funding sources could support a project, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.
- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes, which are not included on this list (e.g., those Tribes that have been recently recognized or restored by the United States Congress), are also eligible to apply for ANA funds.
- The Objective Work Plan proposed should be of sufficient detail to become

monthly staffs guide for project responsibilities if the applicant is funded.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. ''Equipment'' is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per ''unit.'' During negotiation, ANA may delete such expenditures from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents is provided. Simple tabbing of the sections of the application is also helpful.

• An application with an original signature and two additional copies are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.

• Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose a 17-month project period. However, the project period for the first year of a multi-year project may only be 12 months.

4. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding ''wish lists'' of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

• Project goals, which are not responsive to one or more of the funding competitive areas.

• Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members.

Proposals from consortia of tribes should have individual objectives, which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained. ''Self-sustaining'' means that a project will continue without outside resources. ''Supported by other than ANA funds'' means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Once a tribe has been denied federal recognition through the BIA Federal Acknowledgment Process, ANA will not fund objectives relating to the attainment of federal recognition, unless the objectives deal specifically and exclusively with the formal appeal of a denial.

• ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants whom provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

• Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002 Attention: Lois B. Hodge ANA No. 93612–001.

• Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 p.m. at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

• ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

• No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality)

Dated: August 2, 2000.

H. Gary Mounts,

Acting Commissioner, Administration for Native Americans.

[FR Doc. 00–20140 Filed 8–8–00; 8:45 am]

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S. 2327/P.L. 106–256

Oceans Act of 2000 (Aug. 7, 2000; 114 Stat. 644)

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