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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1753 and 1755

REA Telecommunications Software License Agreement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulations on telecommunications to add a uniform Telecommunications Software License Agreement that will be an Addendum to any REA financed central office equipment contract where the Borrower is required to execute a Software License Agreement. This action provides a single Telecommunications Software License Agreement instead of the present situation where each supplier uses its own form. This action reduces the review and approval time of equipment contracts and provides fair and equal treatment for all providers of central office equipment.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: John J. Schell, Chief, Central Office Equipment Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2836, South Building, USDA, Washington, DC 20250–1500, telephone number (202) 720–0671.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A notice of final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule:

(1) Will not preempt any state or local laws, regulations, or policies;

(2) Will not have any retroactive effect; or

(3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule provides for a uniform software license agreement which will reduce review and approval time and ensure fair and equal treatment for all providers of central office equipment.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been submitted to OMB for approval. Comments concerning these requirements should be directed to the Department of Agriculture, Clearance Office, Officer of Information Resources Management, room 404–W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Background

7 CFR part 1753, Telecommunications System Construction Policies and Procedures, contains guidelines for the preparation of Software License Agreements subject to approval by REA. Efforts to conclude satisfactory license agreements with individual equipment suppliers have been time consuming and in certain cases REA has been unable to reach an agreement that is acceptable to REA and the equipment suppliers. This agreement will permit all REA financed purchases of central office equipment and the suppliers to utilize a common uniform Software License Agreement. The agreement will be an Addendum to all REA financed central office equipment contracts and eliminates the present practice of using individual license agreements negotiated with separate equipment suppliers.

REA amends 7 CFR part 1753, by revising subpart A, § 1753.7, paragraph (f)(4), and subpart E, § 1753.38, paragraph (a)(2)(i)(J), to indicate that the software license agreement prepared by REA will be an addendum to the central office equipment contract, and to amend § 1753.38, paragraph (c), by revising the software license agreement. Additionally, it removes § 1753.38, paragraph (a)(2)(iii), which instructs the borrower to review the proposed software licensing agreement and obtain REA approval, if required. This final rule eliminates the need for instructions since the software agreement has been prepared by REA and approved by the Administrator prior to presentation to suppliers. It is also amended by adding a form to § 1755.93.

Comments

Public comments were received from Alcatel Network Systems, Inc., AT&T Network Systems, Commonwealth

Telephone Company, Hastad Engineering Co., Mitel Public Switching, Northern Telecom Inc., Redcom Laboratories, Inc., and Seimens Stromberg-Carlson. The comments, recommendations and responses are summarized as follows:

General Comments

One commenter felt REA should have one universal software license for all software controlled devices.

Response: The use of a universal software license has been considered by REA but is not viable at this time because of the large difference in types of equipment and the requirements of various REA contracts.

One commenter states that their switch uses firmware, which is hardware based and sold with the product, rather than software, therefore, they are not required to have a software agreement.

Response: REA does not require an executed software license agreement. If the vendor requires an executed software/firmware license agreement, then the only one acceptable to REA is the REA prepared Software License Agreement (Addendum 2).

One commenter feels that it is in the best interest of the Licensor and the REA Borrowers to use its existing standard form Software License, or failing that, to use the currently approved REA Negotiated License instead of the REA prepared Software License Agreement.

Response: REA believes one form of Software License to be used in all Software leasing situations involving the Forms 525 and 545 Contracts is in the best interests of the suppliers, the borrowers, and REA because a single uniform Software License presents a fair and equitable distribution of risk to all parties involved and assures borrowers that all manufacturers must meet the same requirements.

Two commenters felt that the term "Licensed Software" be used consistently throughout the Agreement.

Response: The Agreement has been revised to reflect the above comment.

Section (1)

One commenter suggested that the definition of Licensed Software and the associated documentation be more specific.

Response: The definition of Licensed Software and associated documentation has been revised to resolve this problem.

One commenter suggested that the definition of Licensee and Licensor be expanded to include sublicensors of the Licensor so that resellers or distributors could sign the Agreement.

Response: REA believes that there should be one party responsible for meeting the Licensee's obligations and one party responsible for meeting the Licensor's obligations so that the ultimately responsible entities can be easily ascertained. The language in this definition has not been changed.

Section (2)

Two commenters suggested that the last sentence of Section (2) be changed to more clearly define the use of the Licensed Software.

Response: REA has revised this sentence to clarify the intention that the Licensed Software can only be used with the System provided under the Contract.

One commenter suggested that section (2)(i) be changed to require the Licensee to notify the Licensor of any change in location of the equipment and Licensed Software so that the Licensor could track its software and assist in providing software support (e.g., change notices, etc).

Response: REA agrees. Section (2)(i) has been revised to incorporate the suggested change.

One commenter wanted additional language added to section (2)(ii) emphasizing territorial limits and the comparable technical application by transferee of the original License.

Response: REA has added language to sections (2)(ii) and (2)(iii) to further define the responsibilities of the transferee and the original License holder.

One commenter wanted language added to section (2)(ii) to restrict the transfer of the Licensed Software unless the transfer was authorized in writing by the Licensor.

It was also requested that the Licensor be allowed a 60 day period to raise any objections to the transfer.

In addition, it was suggested that if a Company's relationship to the Licensee changes such that it is no longer a subsidiary of the Licensee then a transfer of the License Agreement is required or the Licensor has the right to terminate the Agreement and revoke the right to use the Licensed Software.

Response: REA feels that the Licensee should have the right to transfer the Licensed Software to any party who acquires legal title to the System.

REA has added language to section (2)(ii) to specify that the Licensor should receive 30 days notice of any transfer.

The obligations of the Licensee and of the transferee who acquires legal title to the System are covered under section (2)(ii). In addition, REA has added language to section (2)(iii) to emphasize the responsibilities of the Licensee, therefore, REA does not feel that additional changes are advisable.

Two commenters felt that the word "reasonable" should be changed to "necessary" in the first sentence of section (2)(iii).

One commenter felt that the word "rightful" should be added to the last sentence before the word "acts".

One commenter requested that the following sentence be added to section (2)(iii): "The Licensee shall not make the Licensed Software available to any person except its employees on a need to know basis".

Response: REA feels the word "necessary" places too great a burden on the Licensee and that "reasonable" provides Licensor with adequate protection. This requested change has not been implemented.

The Licensee would not know if information or data that is available to the general public was rightfully released or not. This requested change has not been implemented.

REA has added language to restrict Software availability to a need to know basis, however, the words "its employees" have not been added. This would restrict the Licensee from obtaining assistance from other sources in the event section (2)(xi) required enforcement.

(i) In section (2)(iv), one commenter wanted additional language added to require the Licensee to follow the commenter's printed procedures for copying the Licensed Software. It was suggested that the phrase "pursuant to the Licensor's then current procedures and practices" be added to section (2)(iv).

(ii) One commenter wanted the words "In such reproduction," to begin the second sentence and the word "such" inserted between the words "all" and "copies" in the second sentence to further define the limitation of reproduction of the Licensed Software.

(iii) One commenter remarked that there was no need to copy the code since it was contained on non-volatile ROM on the switch.

Response: (i) REA feels the suggested language regarding current procedures and practices is too vague and could impose unknown restrictions on the Licensee. This language has not been added to the Software License.

(ii) The suggested language on limitation of reproduction has been added.

(iii) REA feels that it is appropriate to be able to copy any Licensed Software/Firmware that is furnished with the

System covered under the Contract for the reasons described in section (2)(iv) of the Software License Agreement.

One commenter remarked that in section (2)(v), activation of nonactivated program instruction steps is a process by which a non-enabled software feature may be enabled and that, in such cases, additional Right-To-Use fees may apply.

Response: REA agrees and has added language to that effect.

One commenter suggested that a new section (2)(vi) be added restricting decompiling or reverse assembly.

Response: Although REA has not added a new section, the suggested language has been added to section (2)(iii).

Four commenters replied on section (2)(vii)(A). Their comments are summarized below:

(i) Three would void the warranty if the Licensee made any changes.

(ii) Three wanted section (2)(vii)(A) removed.

(iii) One suggested extensively revising the language.

(iv) One suggested refusing to allow Licensee to make any changes to the Licensed Software to restore service.

Response: (i) REA feels the Borrower must be able to attempt to preserve or restore service to their subscribers without incurring a penalty if the Licensor is unable to preserve or restore service in a timely manner.

(ii), (iii) Section (2)(vii)(A) has not been removed but the language has been extensively revised to clarify REA's intention and protect the Licensor.

(iv) As stated previously, REA feels the Borrower must be able to attempt to preserve or restore service to their subscribers. However, this section has been revised to indicate that any changes made by Licensee can only be made if the Licensor is unable to preserve or restore service in a timely manner.

One commenter wanted to know who determines that the Licensor is unwilling or unable to furnish support for the Licensed Software under section (2)(vii)(C).

Response: The exception set forth in section (2)(vii)(c) applies only if section (2)(xi) is enforced. Section (2)(vii)(c) has been revised to indicate the above.

One commenter feels that all rights to any changes made under section (2)(vii) should remain the property of the Licensor.

Response: As indicated previously, section (2)(vii)(A) has been revised for clarification and any changes made under section (2)(vii)(C) are only allowed if section (2)(xi) is enforced. REA believes any changes should become the property of the Licensee because the changes are made only in the instance where the Licensor is unwilling or unable to support the Licensed Software.

Comments were received on section (2)(ix) as follows:

(i) Five commenters stated that some software problems cannot be corrected in thirty days and suggested that additional time be allowed in these cases.

(ii) Two commenters suggested a one (1) year warranty period.

(iii) One commenter felt that the Software warranty should begin at the Completion of Installation.

(iv) It was also felt that the Software should function according to the Specification and not to the technical material provided to explain the System and that the Licensor's sole obligation should be to repair the Software and correct any physical damage caused by the Software failure.

(v) One commenter wanted the phrase "free from errors and incompleteness" added to the first sentence of section (2)(ix) to reflect the requirement in 7 CFR 1753.38(c)(1)(v) and a definition of those terms added to the Agreement.

(vi) It was also suggested that a one (1) year warranty period be added for special equipment.

Response: (i) Section (2)(ix) already allows for an extension of time if the software problem cannot be corrected in thirty (30) days. This language has been further clarified.

(ii) REA requires a five (5) year warranty period because software is information based and defects in seldom used programs would not be detected until the program is used. REA believes that over a 5 year period even seldom used programs would be used and any defects corrected.

(iii) In order for the Licensee to realize a full five (5) year warranty the warranty period must start with the delivery of possession and control from the Licensor. If it began at the Completion of Installation, the warranty period would be diminishing while the equipment was still under control of the Licensor.

(iv) Performance of the software must be in accordance with both the Specification and Licensor documentation. The documentation is furnished to assist the Licensee in the operation, administration, and maintenance of the System. REA has made no change in the obligations of the Licensor as stated in the Contract.

(v) REA does not feel the term "free from errors and incompleteness" fully describes the intent of this section (2)(ix). This language has not been added to section (2)(ix).

(vi) This License was specifically designed for use with REA Forms 525 Central Office Equipment Contract (Including Installation) and 545 Central Office Equipment Contract (Not Including Installation) and does not apply to special equipment contracts, therefore, there is no need for a one (1) year warranty clause for special equipment.

Comments were received on section (2)(x) as follows:

(i) Two commenters wanted the ability to modify the Licensed Software or replace it with equivalent software at Licensor's option.

(ii) One commenter suggested that section (2)(x) disclaim any special, indirect or consequential damages in connection with the use or performance of the Licensed Software.

(iii) One commenter wanted the infringement clause to apply only to United States patents, copyrights and trademarks and the right to remove the enjoined Licensed Software and refund some of the Right-to-Use Fee if modification or replacement is not feasible.

(iv) One commenter wanted the Licensee to indemnify the Licensor in like manner for any claim, suit or proceeding brought against the Licensor for infringement caused by the Licensee. The commenter also wanted to remove the phrase "This shall be in addition to any other rights or claims which the Licensee may have" and suggested that section (2)(x) disclaim any liability for any settlement made without Licensee's consent.

Response: (i) The option of modifying or replacing the Licensed Software is in the current language.

(ii) REA's intent is to limit liability for special, indirect and consequential damages to provide the Licensor with reasonable protection against losses related to product failure; protect the government's loan security; and serve as a standard that bidders and owners alike can expect to see on all central office equipment contracts so competitive bidding can be facilitated. This language has not been changed.

(iii) REA feels that the Licensor should know what software can be legally licensed by the Licensor, and the Licensee should expect that the Licensed Software furnished with the System is not going to be subject to infringement challenges. Simply allowing the Licensor to refund some of the Right-to-Use Fee and remove the enjoined Licensed Software gives the Licensor the right to "buy back" equipment or software when a copyright problem is encountered. To the Licensee, this means that essential

features or capability could be lost and would remain unavailable for the entire useful life of the new switching equipment. The resulting reduction in value of the contract to the Licensee cannot be predicted, and certainly cannot be limited to the price of the infringing equipment or software less depreciation. These requirements have not been changed.

(iv) Section (2)(x) specifically exempts the Licensor from liability if the infringing software is of the Licensee's design or selection. REA feels that the existing language sufficiently protects the Licensor from unwarranted claims caused by the Licensee. REA also feels the Licensee should not have to relinquish its rights as covered in the Contract because the Licensor is involved in an infringement dispute. This language has not been changed. Also, the Licensee cannot commit the Licensor to any settlement, therefore, the suggested additional language is not required.

Comments were received on section (2)(xi) as follows:

(i) Two commenters suggested that software support after the warranty period should have a specific time period.

(ii) Two commenters suggested that they should not be required to support retired software when there is active equivalent or upgraded software available from the Licensor which it will support.

(iii) One commenter suggested that the language should be amended to exclude information that the Licensor does not have the legal right to turn over; e.g., third party Software.

(iv) One commenter suggested that the only support covered under this section (2)(xi) should be the support required by the Contract. The commenter also felt that the Licensee should be allowed to modify the Licensed Software for proper equipment operation but not for feature enhancements, and the Licensor should receive royalty-free rights to make, use and sell any modifications made by the Licensee under this section.

(v) One commenter remarked that the only time the Licensee should be able to modify the Licensed Software is in the event that the Licensor withdraws from the business of selling and supporting the Licensed Software.

Response: (i) REA agrees that support after the warranty period should have a specified time limit. This was addressed when REA published the Proposed Rule Form 525 Central Office Equipment Contract (Including Installation) in the **Federal Register.**

(ii) REA feels that the Licensee should reasonably expect to receive support for the Licensed Software without having to upgrade the System.

(iii) REA agrees in principle, however, this exclusion does not extend to any information or Software not specifically identified as "agreed excluded documentation" in an attachment to the Contract, and under no circumstance can it include the overall operating Software of the System. Section (2)(xi) has been revised to reflect the above.

(iv) REA agrees that the support referred to in section (2)(xi) is the support required by the Contract. The language has been changed to reflect this. However, REA does not agree that the Licensee should be restricted from making feature enhancements. The Licensee must be able to add enhancements to the System in order to offer current and future services to their subscribers. Due to the circumstances that would require enforcement of this section (2)(xi) any changes made under this section become the exclusive property of the Licensee.

(v) REA feels the Licensee should have the right to modify the Licensed Software in the event that the Licensor refuses to furnish support as required by the Contract.

One commenter felt that in section (2)(xii), the word Licensor should be Licensee. One commenter felt that this section should apply to both the Licensor and the Licensee.

Response: Section (2)(xii) refers specifically to the Licensor. Section (2)(xiii) refers to the Licensee and details the remedies available to the Licensor.

Five commenters remarked on section (2)(xiii). Their comments are summarized below:

(i) One commenter felt that damages of ten times the Contract price for a breach of the Software License was excessive and should be changed to the initial cost of the Software.

(ii) One commenter felt that damages of ten times the Contract price for a breach of the Software License was not a sufficient deterrent and sixty (60) days notice before termination may cause irreparable harm to the Licensor. It was suggested that section (2)(xiii) be eliminated in its entirety.

(iii) One commenter suggested that the sixty (60) day notice period for REA should be changed to thirty (30) days.

(iv) One commenter wanted section (2)(xiii) to apply to the Licensee and the Licensor and exclude from damages lost revenue or profits.

(v) One commenter wanted REA to agree that certain events would cause REA to recommend termination. One commenter wanted the right to terminate the Software License without REA approval.

(vi) One commenter suggested the word reasonable in the first sentence of section (2)(xiii) be changed to thirty (30) days.

Response: (i) REA feels that damages limited to the initial cost of the Software is not a sufficient deterrent to provide a reasonable amount of security against a breach of the Software License. However, after further evaluation, and in response to the comments, REA feels that ten times the Contract price could financially devastate the typical REA Borrower and consequently jeopardize REA loan security. Damages payable by the Licensee for breach of this License have been changed to not exceed the total Contract price

(ii) In order to protect the Borrower and REA loan security REA feels there must be a cap on damages against the Licensee for a breach of this License. REA also feels that there must be some restrictions on the termination of the Software License. This section (2)(xiii) remains.

(iii) REA feels that thirty (30) days is not sufficient time to thoroughly evaluate and arrive at a fair and equitable decision regarding the circumstances that might cause termination of the Software License.

(iv) As stated previously, section (2)(xii) refers specifically to the Licensor. Section (2)(xiii) refers to the Licensee and details the remedies available to the Licensor.

(v) Any event that would cause the Licensor to recommend termination of the Software License must be individually and thoroughly evaluated by REA prior to any recommendation by REA. In order to protect the loan security of REA and the Licensee's ability to repay that loan, REA must be included in any decision to terminate the Software License.

(vi) REA has evaluated the suggestion to change the word reasonable to thirty (30) days and agree that it would make the Software License more definitive. The language in section (2)(xiii) has been changed to reflect this.

The remainder of section (2)(xiii) has not been changed.

One commenter felt that section (2)(xv) was unnecessary because the Software License is an Addendum to the Contract and the Contract is subject to REA approval.

Response: Separate provisions for REA approval of the Software License Agreement makes the Agreement more prominent and helps ensure that arbitrary changes are not made to the Agreement without REA's knowledge or approval.

One commenter wanted four additional paragraphs added to section (2) of the Software License. One commenter wanted two additional paragraphs added to section (2) of the Software License. These six paragraphs are summarized here.

(i) One paragraph specified that the obligations of the Licensee under this agreement shall survive after the termination of this Agreement.

(ii) One paragraph specified that the Licensee shall not, without the prior written permission of the Licensor, use in advertising, publicity, or otherwise, any trade name, trademark, or any other identification owned by the Licensor.

(iii) One paragraph specified that the Software License Agreement shall prevail notwithstanding any conflicting terms or legends which may appear on or in the Licensed Software.

(iv) One paragraph specified that nothing contained herein shall be construed as conferring by implication or otherwise (1) any license or right to use any name, trade name, trademark or any other identification, or simulation thereof; (2) any obligation to furnish to any person, including Licensee, any assistance whatsoever, or any documentation other than Licensed Software and related documentation as specified in this Agreement; (3) a grant to sell, lease, or otherwise transfer or dispose of Licensed Software, except as specified.

(v) One paragraph specified that the Licensee shall not decompile or reverse assemble the Licensed Software.

(vi) One paragraph specified that the Licensee assumes sole responsibility for ensuring that the Billing Center can correctly read call records and risk of loss for any data, use, revenue or profit shall be the responsibility of Licensee.

Response: (i) REA agrees and has added the suggested language to the Software License Agreement in section (2)(xiv).

(ii) REA agrees that the Licensor and Licensee have a right to protect their trademarks, trade names and other forms of identification. Language has been added to the Software License to reflect this in section (2)(xv).

(iii) REA believes that this is the intent of the Software License Agreement and has added the suggested language to the Software License in section (2)(xvi).

(iv) REA believes that the language added to the Software License for paragraph (ii) covers part (1) of this paragraph. Part (2) of this paragraph has not been added as the Licensor must provide support and assistance as required by the Contract. REA has not added part (3) of this paragraph because section (2)(ii) of the Software License already states the requirements for sale of the System.

(v) Although REA has not added a new section, the suggested language has been added to section (2)(iii).

(vi) REA believes it is the responsibility of the Licensor to determine what format is required for the call records and react accordingly. This paragraph has not been added to the Software License.

List of Subjects

7 CFR Part 1753

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

1. The authority citation for part 1753 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1753.7 is amended by revising paragraph (f)(4) to read as follows:

§ 1753.7 Plans and specifications (P&S).

* * * * *

(f) * * *

(4) Telecommunications software license provision. If the borrower is required to enter into a software license agreement in order to use the equipment, the contract must contain the REA prepared Software License Agreement as an Addendum.

3. Section 1753.38 is amended by revising paragraph (a)(2)(i)(J), by removing paragraph (a)(2)(iii), by redesignating paragraphs (a)(2)(iv) through (a)(2)(vii) as paragraphs (a)(2)(iii) through (a)(2)(vi), respectively, and by revising newly designated paragraph (a)(2)(v) and paragraph (c) to read as follows:

§ 1753.38 Procurement procedures.

(a) * * *

(2) * * *

(i) * * *

(J) A software license agreement (if required by the manufacturer) in the form indicated in 1753.38(c).

* * * * *

(v) After evaluation of the technical proposals and REA approval of changes to the P&S, sealed bids shall be solicited from only those bidders whose technical proposals meet the P&S requirements. When fewer than three bidders are qualified to bid, REA approval must be obtained to proceed. Generally, REA will grant this approval only if all suppliers currently listed in the "List of Materials Acceptable for Use on Telephone Systems of REA Borrowers" were invited to submit technical proposals.

* * * * *

(c) *Software license agreement (Addendum 2).* The Addendum in this paragraph to REA Form 525, Central Office Equipment Contract (Including Installation), and REA Form 545, Central Office Equipment Contract (Not Including Installation), must be used with any central office equipment contract that requires a software license agreement and for which REA financial assistance is to be provided.

Addendum 2—Software License Agreement

(1) *Definitions.* For the purpose of this Software License Agreement—

Contract means the REA Form 525 Central Office Equipment Contract (Including Installation) or REA Form 545 Central Office Equipment Contract (Not Including Installation),

dated _____, between

_____

(the Licensee) and

_____

(the Licensor).

Days means calendar days.

Licensed Software means the computer programs, furnished for the operation of the System(s) provided under the Contract, whether contained on a tape, disc, semiconductor device, or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, administrative and maintenance functions; as well as Licensor's standard customer documentation, excluding source code, used to describe, maintain and use the programs provided under the Contract.

Licensee and *Licensor*, respectively, mean the parties signing the software license agreement as the licensee and licensor.

Right-to-Use Fee is defined in section (2).

Specifications means the REA Form 522, General Specification for Digital, Stored Program Controlled Central Office Equipment, which is part of the Contract.

System means the stored program controlled central office and associated remote switching terminal or terminals which use the Licensed Software covered by this License.

(2) *Software License Provisions.* The Licensor may charge a fee, herein referred to as a Right-to-Use Fee, for use of the Licensed Software. The Right-to-Use Fee shall be included in the Total Base Bid as defined in the Contract. In consideration of the Right-to-Use Fee, the Licensor hereby grants the Licensee the right to use all Licensed Software, solely in connection with the System provided under this Contract, so that the System performs in accordance with the Contract and the Specifications.

(i) The Licensee's right to use the Licensed Software is non-exclusive and limited to use or operation in the United States of America, including its Territories, the Federated States of Micronesia, the Marshall Islands, Palau and the Commonwealth of Puerto Rico, with the System for which the Licensed Software is provided by the Licensor. The Licensee may reuse the equipment and its accompanying Licensed Software at another location within the Licensee's System without obtaining additional approvals from Licensor, provided, however, that the Licensee notify the Licensor, within ten (10) days, of the change in location of the equipment and Licensed Software.

(ii) The Licensee and any successor to the Licensee's title in the System may, without further consent of the Licensor, transfer the Licensed Software and all of the Licensee's rights and interests under this Software License to any transferee who acquires legal title to the System, provided that such transferee first agrees in writing to the Licensor to abide by all of the terms and conditions of this License including, without limitation, the territorial limitation stated in section (2)(i) and the restrictions on decompiling or reverse assembly stated in section (2)(iii). Licensee shall give Licensor written notice thirty (30) days prior to any transfer. The Licensor shall not place any additional conditions on the transferee's use of the System or the Licensed Software. If the provisions of this section (2)(ii) are satisfied, thereafter the Licensee shall bear no responsibility for transferee's failure to abide by the terms and conditions of this License.

(iii) The Licensee shall take reasonable steps to protect the confidentiality of the Licensed Software and shall not decompile or reverse assemble all or any part of the Licensed Software to generate source code. The Licensee shall not make the Licensed Software available to any person except on a need to know basis. The obligations of the Licensee hereunder shall not extend to any information or data relating to the Licensed Software which is now available to the general public or becomes available by reason of the acts of the Licensor or third parties.

(iv) The Licensee may reproduce or copy the Licensed Software and related materials solely for the purpose of archival backup, in-house training and operating, maintaining, and administering the System provided under this Contract. In such reproduction, the Licensee shall include, upon all such copies of the Licensed Software, all proprietary notices, including the copyright notice within the Licensed Software program and related documentation in the form in which it is received from the Licensor.

(v) The Licensee acknowledges that the Licensed Software program is the property of the Licensor, and shall not do, or cause to be done, anything to activate any of the subsisting nonactivated computer instruction steps therein unless authorized in writing by the Licensor. The Licensor shall have the exclusive right to activate, or authorize the activation of, the subsisting nonactivated program instruction steps in the Licensed Software. In this event Licensee shall pay any additional Right-To-Use Fee(s) agreed to by Licensee and Licensor.

(vi) In the event the Licensor develops significant improvements to the Licensed Software, the Licensor may market the improvements as a separate offering requiring payment of an additional Right-to-Use Fee.

(vii) The Licensee shall not modify or otherwise change the Licensed Software other than at the direction of the Licensor. This provision shall not apply to:

(A) Changes to the Licensed Software which are necessary to preserve or restore service. Licensee shall use all reasonable efforts to contact Licensor before making any such changes. If the Licensor is unable to make the necessary changes promptly to the Licensed Software to preserve or restore service, then the Licensee may make only such changes to the Licensed Software as are necessary to preserve or restore service. In such event, Licensee shall promptly notify Licensor of the changes made by Licensee.

(B) Changes made by the Licensee to its own database; and

(C) Changes made by the Licensee in connection with the exercise of its rights under section (2)(xi).

(viii) Within thirty (30) days after written notice that a program or a release thereof has been discontinued and is no longer required for the operation of the System and the Licensor has furnished the Licensee with a new program that is fully satisfactory to the Licensee, the Licensee agrees to return the original and all copies of the discontinued program and specified related documents. If such return is impossible or impractical, the Licensee shall destroy said program and documents and provide the Licensor with a written notice of such destruction.

(ix) The Licensor warrants to the Licensee that any Software licensed under this Software License shall function for a period of five (5) years from the warranty start date defined in the Contract in accordance with the Specifications and any written or printed technical material provided by the Licensor to explain the operation of the Licensed Software and aid in its use. The Licensor shall correct all deficiencies within thirty (30) days from the date of receipt by the Licensor of written notice of such deficiencies from the Licensee. An extension of this thirty (30) day period may be allowed only if agreed upon by the Licensee and REA. It shall be the Licensor's obligation to insert and thoroughly test, at no charge to the Licensee, any software amendment or alteration provided to satisfy the obligations of this section (2)(ix). If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(x) The Licensor shall hold harmless and indemnify the Licensee from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark, or violation of trade secrets covering any Licensed Software used with the System, except for items of the Licensee's design or selection. If the Licensee's use of the Licensed Software is enjoined, the Licensor shall promptly, at its own expense, place the Licensee in a position where it is able to use the System in accordance with the Specifications, whether by:

(A) Modifying the Licensed Software or portion thereof so that it no longer infringes but remains functionally equivalent,

(B) Replacing the Licensed Software with noninfringing equivalent software,

(C) Obtaining for the Licensee a license or other right to use, or

(D) Such other actions as may be required. This shall be in addition to any other rights or claims which the Licensee may have. The Licensor shall, at its own expense, (and the Licensee agrees to permit the Licensor to do so) defend any suits which may be instituted by any party against the Licensee for alleged infringement of patents, copyright, trademark, or violation of trade secrets relative to the Licensor's performance hereunder. Either party shall notify the other promptly of any such claims, and the Licensee shall give to the Licensor full authority and opportunity to settle such claims, and shall reasonably cooperate with the Licensor in obtaining information relative to such claims.

(xi) In the event the Licensor becomes unwilling or unable to furnish support required by the Contract for the Licensed Software, the Licensor shall, upon written request of the Licensee, provide with the greatest possible dispatch all Licensed Software back-up documentation including proprietary information other than agreed excluded documentation. In this event, (1) the Licensee shall be permitted full use of all Licensed Software and documentation as long as the System is operational and (2) the Licensee may modify, or have modified, the Licensed Software for feature enhancement or proper equipment operation and becomes the owner of such modifications for all purposes, including patenting, copywriting, sale, or license thereof. Agreed excluded documentation is Licensed Software back-up documentation described in the first sentence of this section (2)(xi) which (A) is proprietary information of a third party, (B) was specifically described at the pre-bid technical session and individually identified in an attachment to the Bid, and (C) REA and the Licensee agree, before bids are opened, may be excluded from the requirements of this section (2)(xi). In the event the Licensor furnishes agreed excluded documentation and the Licensee exercises its rights under this section (2)(xi), the Licensor shall use its best efforts to provide such agreed excluded information to the Licensee, or obtain continuing support agreements from the parties retaining legal rights to the excluded documentation. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of this section (2)(xi) including, but not limited to, software, the

absence or improper operation of which would significantly impair the operation of the System, would significantly impair the ability of the Licensee to generate revenue, or would pose a risk to REA loan security.

(xii) A breach of this License by the Licensor is a breach of the Contract. Therefore, the remedies specified in the Contract shall apply.

(xiii) The Licensee shall have thirty (30) days after receipt of written notice from the Licensor to correct any breach of this License. Damages payable by the Licensee for its breach of this License shall not exceed the total Contract price. The Licensor shall not terminate this License unless:

(A) The Licensor has given REA sixty (60) days notice before termination; and

(B) REA agrees with the Licensor that termination is the only method available to prevent significant harm to the Licensor from additional Licensee defaults.

(xiv) The obligations of Licensee and Licensor and any successors in title under this Agreement shall survive the termination of this Agreement and continue after any termination of rights granted hereunder.

(xv) Licensee and Licensor agree that it will not, without the prior written permission of the other party, use in advertising, publicity, packaging, labeling, or otherwise, any trade name, trademark, trade device, service mark, symbol, or any other identification or any abbreviation, contraction, or simulation thereof owned by the other party or any of its affiliates or used by the other party or any of its affiliates to identify any of their products or services, unless otherwise agreed by the parties.

(xvi) This Software License Agreement shall prevail notwithstanding any conflicting terms or legends which may appear on or in the Licensed Software.

(xvii) If any Section or part thereof, in this Agreement shall be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, then the meaning of such section or part shall be construed so as to render it enforceable, to the extent feasible; and if no feasible interpretation would save such section or part, it shall be severed from this Agreement and the remainder shall remain in full force and effect. However, in the event such section or part is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement therefor.

(xviii) This Software License and any amendments thereto, or revisions thereof, are subject to REA approval.

Licensor

Company
Name _____
By _____
Title _____
Date _____

Licensee

Company
Name _____
By _____
Title _____
Date _____

[End of clause]

* * * * *

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

4. The authority citation for part 1755 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

5. Section 1755.93 is amended by adding a new entry at the end of the table and by revising footnote 1 at the end of table to read as follows:

1755.93 List of standard forms of telecommunications contracts.

* * * * *

REA form No.	Issue date	Title	Purpose	Source of copies
*	*	*	*	*
Addendum No. 2	May 16, 1994	Addendum to REA Forms 525 and 545 Central Office Equipment Contracts.	Incorporates the Software License Agreement into REA Forms 525 and 545.	REA.[1]

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publication Office is (202) 720–8674.

* * * * *

Dated: April 16, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–8834 Filed 4–13–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–141–AD; Amendment 39–8850; AD 94–06–02]

Airworthiness Directives; Short Brothers PLC Model SD3–30, SD3–60, and SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3–30, SD3–60, and SD3–SHERPA series airplanes, that currently requires an inspection to detect corrosion on the distance piece associated with the wing strut pick up on the stub wing, and repair of corroded parts. This amendment requires repetitive inspections to detect corrosion of repaired or reworked distance pieces and adjacent side plates; and provides a terminating action for the repetitive inspections. This amendment is prompted by reports of corrosion on the distance pieces and adjacent side plates of the wing strut pick up. The actions specified by this AD are intended to prevent failure of the distance piece and adjacent side plates, which could result in reduced strength of the wing strut attachment to the stub wing on the fuselage and, subsequently, reduced structural strength of the main wing.

DATES: Effective May 16, 1994.

The incorporation by reference of Shorts Service Bulletin SD3–SHERPA–53–1, Revision 1, dated May 1993; Shorts Service Bulletin SD360–53–38, Revision 1, dated May 1993; Shorts Service Bulletin SD330–53–65, Revision 1, dated May 1993; Shorts Service Bulletin SD3 SHERPA–53–2, dated July 1993; Shorts Service Bulletin SD360–53–39, dated June 11, 1993; and Shorts Service Bulletin SD330–53–66, dated July 1993; as listed in the regulations, is approved by the Director of the Federal Register as of May 16, 1994.

The incorporation by reference of certain other publications listed in the regulations was approved by the Director of the Federal Register as of May 27, 1993 (58 FR 27928, May 12, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–09–08, Amendment 39–8574 (58 FR 27928, May 12, 1993), which is applicable to certain Short Brothers PLC Model SD3–30, SD3–60, and SD3–SHERPA series airplanes, was published in the **Federal Register** on November 5, 1993 (58 FR 58992). The action proposed to supersede AD 93–09–08 to continue to require a one-time inspection to detect corrosion on the distance piece associated with the wing strut pick up on the stub wing, and repair or rework of corroded parts. The AD also proposed to require repetitive inspections to detect corrosion of repaired or reworked original equipment type distance pieces (with pockets) and adjacent side plates.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment 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 106 airplanes of U.S. registry will be affected by this AD. The currently required one-time inspection action requires approximately 5 work hours per airplane to accomplish the actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that action on U.S. operators is estimated to be $29,150, or $275 per airplane.

For operators who replace or repair a distance piece, this AD will require that repetitive inspections of that distance piece be performed. Such inspections will require approximately 5 work hours to accomplish, at an average labor charge of $55 per work hour. Based on these figures, the total cost impact of the repetitive inspections that will be required of these operators will be $275 per airplane per inspection cycle.

Should an operator elect to accomplish the optional terminating action that will be provided by this AD action, the number of hours required to accomplish it will be approximately 80 per airplane, at an average labor charge of $55 per work hour. The cost of required parts will be approximately $2,600 per airplane. Based on these figures, the total cost impact of the optional terminating action on U.S. operators will be $7,000 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8574 (58 FR 27928, May 12, 1993), and by adding a new airworthiness directive (AD), amendment 39-8850, to read as follows:

94–06–02 Short Brothers PLC: Amendment 39–8850. Docket 93–NM–141–AD. Supersedes AD 93–09–08, Amendment 39–8574.

Applicability: Model SD3–SHERPA series airplanes, serial numbers SH3201 through SH3216 inclusive; all Model SD3–60 series airplanes; and all Model SD3–30 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the distance piece and adjacent side plates, which could result in reduced strength of the wing strut attachment to the stub wing on the fuselage and, subsequently, reduced structural strength of the main wing, accomplish the following:

(a) Within 30 days after May 27, 1993 (the effective date of AD 93–09–08, Amendment 39–8574), perform a detailed visual inspection to detect corrosion in the pockets on the horizontal leg of the distance piece associated with the wing strut pick up on the left- and right-stub wings, in accordance with Shorts Service Bulletin SD3 SHERPA–53–1, dated March 29, 1993, or Revision 1, dated May 1993 (for Model SD3–SHERPA series airplanes); Shorts Service Bulletin SD360–53–38, dated March 25, 1993, or Revision 1, dated May 1993 (for Model SD3–60 series airplanes); or Shorts Service Bulletin SD330–53–65, dated March 29, 1993, or Revision 1, dated May 1993 (for Model SD3–30 series airplanes); as applicable.

(1) If any corrosion is detected that is within the limits specified in the applicable service bulletin, prior to further flight, repair or rework the corroded components in accordance with the applicable service bulletin.

(2) If any corrosion is detected that is outside the limits specified in the applicable service bulletin, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Replace any corroded distance piece with a new, improved distance piece (without pockets), and repair or replace the adjacent side plates, as necessary, in accordance with the applicable service bulletin. Or

(ii) Repair or rework the corroded components in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) If no corrosion is detected, accomplish the requirements of paragraph (b) of this AD.

(b) Within 10 days after accomplishing the initial inspection required by paragraph (a)(1) of this AD, submit a report of all inspection findings, including nil defects, to Short Brothers PLC. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) For those airplanes on which the distance piece has been reworked or repaired in accordance with the requirements of

paragraph (a) of this AD: Within 90 days after the effective date of this AD or within the next 600 hours time-in-service after the effective date of this AD, whichever occurs earlier, and thereafter at intervals not to exceed 90 days or 600 hours time-in-service, whichever occurs earlier, repeat the inspection of the distance piece and adjacent side plates in accordance with the requirements of paragraph (a) of this AD.

(d) Replacement of the existing distance piece and/or adjacent side plates with new distance pieces (without pockets) and/or adjacent side plates in accordance with Short Brothers Service Bulletins SD3 SHERPA–53–2, dated July 1993 (for Model SD3–SHERPA series airplanes); SD360–53–39, dated June 11, 1993 (for Model SD3–60 series airplanes); or SD330–53–66, dated July 1993 (for Model SD3–30 series airplanes); as applicable; constitutes terminating action for the repetitive inspection requirement of paragraph (c) of this AD.

(e) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardizaton Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits 1may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Shorts Service Bulletin SD3 SHERPA–53–1, Revision 1, dated May 1993; Shorts Service Bulletin SD360–53–38, Revision 1, dated May 1993; Shorts Service Bulletin SD330–53–65, Revision 1, dated May 1993; Shorts Service Bulletin SD3 SHERPA–53–2, dated July 1993; Shorts Service Bulletin SD360–53–39, dated June 11, 1993, or Shorts Service Bulletin SD330–53–66, dated July 1993, as applicable. The following Shorts service bulletins contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SD3 SHERPA–53–1, Revision 1, May 1993	1, 3–7	1	May 1993.
	2	Original	March 1993.
SD360–53–38, Revision 1, May 1993	1, 3–7	1	May 1993.
	2	Original	March 1993.

This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Certain other actions shall be done in accordance with Shorts Service Bulletin SD3 SHERPA–53–1, dated March 29, 1993; Shorts Service Bulletin SD360–53–38, dated March 25, 1993; and Shorts Service Bulletin SD330–53–65, dated March 29, 1993. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of May 27, 1993 (58 FR 27928, May 12, 1993). Copies may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 16, 1994.

Issued in Renton, Washington, on March 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5556 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–162–AD; Amendment 39–8859; AD 94–07–01]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that requires modification of the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity. This amendment is prompted by a report that the cavity vent tube, if not properly grounded, could act as an electrical path in the event of a lightning strike. The actions specified by this AD are intended to prevent arcing in the tank cavity and possible resulting fire.

DATES: Effective May 16, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, CA 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes was published in the **Federal Register** on November 4, 1993 (58 FR 58808). That action proposed to require modification of the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank.

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 supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its member operators, requests that the proposal be withdrawn. The commenter maintains that the proposed modification will allow some fuel leakage within specified limits into the lower auxiliary tank cavity. This commenter asserts that, if this modification is not mandated by the FAA, then fuel will not be permitted to leak into the cavity and, unless fuel/vapor is present, there is no risk of fire

in this cavity in the event of a lightning strike. The commenter also points out that a daily check to detect fuel leakage in the cavity drain valve is currently specified in the On Aircraft Maintenance Planning (OAMP) document for Model MD–11 series airplanes. The commenter concludes that, since these inspections are performed on a daily basis, and since fuel will not be permitted to leak into the cavity if the modification is not mandated, then a lightning strike will not pose a threat to an area containing fuel or fuel vapor.

The FAA does not concur that withdrawal of the proposal is appropriate. First, the FAA points out that the OAMP document is not a mandated, FAA-approved document; therefore, regardless of the number or types of inspections that are contained in it, there is no assurance that operators will strictly comply with those inspections or the indicated inspection intervals. Additionally, there is always the potential that a fuel leak could develop during flight between inspection intervals. Second, the FAA has determined that, since the required modification of the cavity vent drain tube assembly will prevent the possibility of a lightning strike traveling up the cavity vent tube, the possibility of arcing in the fuel tank cavity is thereby eliminated (regardless of whether or not fuel/vapor is present). Further, the FAA has determined that long term continued operational safety will be better assured by actual modification of the cavity vent drain tube assembly to remove the source of the problem, rather than by continuous inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The modification required by this AD is in consonance with these considerations.

The ATA also requests that the proposed compliance time of 12 months for the modification be extended to 18 months. Such an extension would permit accomplishment of the proposed modification during regularly scheduled maintenance visits for most affected operators and would preclude special scheduling at considerable expense. The FAA concurs. Upon consideration of the information provided by the commenter, and the fact that there have been no in-service incidents of arcing or fire in the tank cavity (related to grounding problems in the cavity vent drain tube assembly), the FAA has determined that extending the compliance time by 6 additional months will not adversely affect safety. Paragraph (a) of the final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 73 McDonnell Douglas Model MD–11 and MD–11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $120 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,265, or $285 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–07–01 McDonnell Douglas: Amendment 39–8859. Docket 93–NM–162–AD.

Applicability: Model MD–11 and MD–11F series airplanes; as listed in McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing in the tank cavity and possible resulting fire, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity in accordance with McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

(d) The modification shall be done in accordance with McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–

1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 16, 1994.

Issued in Renton, Washington, on March 18, 1994.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–6910 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–47–AD; Amendment 39–8882; AD 94–08–10]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 88–13–11, which currently requires repetitively inspecting both wing main spar lower cap angles for corrosion, and repairing or replacing any corroded part. This action retains these inspection and possible repair or replacement requirements, but eliminates the dual compliance time of both hours time-in-service (TIS) and calendar time. The Federal Aviation Administration (FAA) has determined that, since corrosion occurs regardless of whether the airplane is in service, the best compliance method for the proposed action is calendar time. The actions specified by this AD are intended to prevent failure of the wing structure because of corroded wing main spar lower cap angles.

DATES: Effective June 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain de Havilland DHC–6 series airplanes was published in the **Federal Register** on December 28, 1993 (58 FR 68575). The action proposed to supersede AD 88–13–11 with a new AD that would retain the requirement of repetitively inspecting both wing main spar lower cap angles for corrosion, but require these inspections with a compliance method based solely on calendar time. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of de Havilland Service Bulletin No. 6/492, Revision A, dated October 23, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in support of the proposed rule.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required initial inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $74,360. This figure does not account for repetitive inspections. The only difference between this AD and AD 88–13–11, which will be superseded by this required action, is limiting the compliance method to only calendar time instead of both calendar time and hours TIS. Therefore, the required action will not impose any additional cost impact upon the public than that which is already required by AD 88–13–11.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 88–13–11, Amendment 39–5960 (53 FR 23755, June 24, 1988), and by adding a new airworthiness directive to read as follows:

94–08–10 de Havilland: Amendment 39–8882; Docket No. 91–CE–47–AD. Supersedes AD 88–13–11, Amendment 39–5960.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required initially in accordance with whichever of the following is applicable, unless already accomplished, and thereafter at intervals not to exceed 60 calendar months:

• Upon the accumulation of 120 calendar months from the date of manufacture or within the next 3 calendar months after the effective date of this AD, whichever occurs later;

• Upon the accumulation of 120 calendar months after incorporating Wing Box Replacement Modification No. 6/1630 in accordance with de Havilland Service Bulletin (SB) No. 6/362, Revision 1, dated January 18, 1985, or within the next 3 calendar months after the effective date of this AD, whichever occurs later; or

• Upon the accumulation of 120 calendar months of original manufacture of wings if used wings have been installed on the airplane or within the next 3 calendar months after the effective date of this AD, whichever occurs later.

To prevent failure of the wing structure because of corroded wing main spar lower cap angles, accomplish the following:

(a) Visually inspect the wing main spar and lower spar cap extensions for corrosion using a high intensity light in accordance with paragraph A in the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987.

(b) If corrosion is found during the inspection required by paragraph (a) of this AD that exceeds the criteria specified in the COMPLIANCE section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987, prior to further flight, accomplish the following:

(1) Remove all surface corrosion and replace the cap angles in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/492, Revision A, dated October 23, 1987.

(2) Dye penetrant inspect all parts where corrosion was removed to ensure that the part is corrosion-free. Replace any parts that have corrosion damage and reprotect reworked areas utilizing information specified in de Havilland Technical Advisory Bulletin No. 626/1, dated November 1970.

(c) If any parts are reworked per the inspection result requirements of this AD, prior to further flight, accomplish the following:

(1) Submit the details of all reworked areas to the manufacturer through the New York Aircraft Certification Office (ACO) at the address specified in paragraph (e) of this AD; and

(2) Incorporate any additional instructions provided by the New York ACO as a condition for returning the airplane to service.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York ACO, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(f) The inspections and repair or replacement (as necessary) required by this AD shall be done in accordance with de Havilland Service Bulletin No. 6/492, Revision A, dated October 23, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment (39–8882) supersedes AD 88–13–11, Amendment 39–5960.

(h) This amendment (39–8882) becomes effective on June 13, 1994.

Issued in Kansas City, Missouri, on April 7, 1994.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8818 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–148–AD; Amendment 39–8871; AD 94–07–13]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Fokker Model F–28 Mark 0100 series airplanes, that requires inspection, necessary repair, and modification of the engine mount shear shelf webs. This amendment is prompted by reports of interference between the engine mount shear shelf web and the fixed cowl mid and aft hooks, which caused fatigue cracks to occur in the web. The actions specified by this AD are intended to prevent fatigue cracking and other damage to the structure of the shear shelf web, which subsequently could lead to loss of the engine mounting structure.

DATES: Effective May 16, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Fokker Model F–28 Mark 0100 series airplanes was published in the **Federal Register** on October 21, 1993 (58 FR 54312). That action proposed to require inspection, necessary repair, and modification of the engine mount shear shelf webs.

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 supports the proposal.

Two commenters request that proposed paragraph (a)(1) be deleted from the rule. That paragraph proposed to require that a detailed visual inspection be conducted to detect cracking or other damage of the engine mount shear shelf webs around the areas of the fixed cowl aft- and mid-hook centerlines. These commenters contend that, since the modification required by paragraph (a)(2) reinforces the web and eliminates the interference problems, the inspection of this area should not be required to be accomplished. The FAA concurs. Since the interference problem that prompted this AD action has been found only in the area that is to be modified, and since the modification will prevent the interference problem and remove any evidence of damage, the FAA has determined that the proposed inspection is not necessary. Further, if an operator has already performed the proposed modification, the FAA finds that it would be an undue burden to require that the operator disassemble the modified area to accomplish an inspection of it. Additionally, the manufacturer and the one affected U.S. operator have advised the FAA that inspection of this area at intervals of 1,000 flight hours is already specified in the manufacturer's recommended maintenance program. In light of all of these factors, the FAA has revised the

final rule to delete the requirement to inspect the subject area.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 120 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,390 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $179,800, or $8,990 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that all 20 affected U.S.-registered airplanes have been modified in accordance with the requirements of the AD as of December 1993. Therefore, there currently is no economic cost impact of this rule on U.S. operators.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–07–13 Fokker: Amendment 39–8871. Docket 93–NM–148–AD.

Applicability: Model F–28 Mark 0100 series airplanes; having serial numbers 11244 to 11308 inclusive, 11310, 11312, 11313, 11314, 11316, 11321, 11328, and 11329; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and other damage to the engine mount shear shelf web, which subsequently could lead to loss of the engine mounting structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight hours or within 90 days after the effective date of this AD, whichever occurs later, modify (reinforce) the engine mount shear shelf webs in accordance with Part 1 or Part 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–71–012, dated February 7, 1992.

(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, Standardization Branch, FAA, Transport Airplane Directorate, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–71–012, dated February 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 16, 1994.

Issued in Renton, Washington, on March 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8056 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–34–AD; Amendment 39–8880; AD 94–08–08]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires installation of fusible trunnion pins in the shock struts and drag braces of the main landing gear (MLG). This amendment is prompted by a report of incorrectly manufactured trunnion pins that may cause the MLG to compromise the structural integrity of the wing fuel tanks. The actions specified in this AD are intended to prevent damage to the wing fuel tanks and the resultant fuel spillage and fire hazard when the maximum intended design load limits are exceeded during landing.

DATES: Effective April 29, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1994.

Comments for inclusion in the Rules Docket must be received on or before June 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–34–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that certain trunnion pins in the shock struts and drag braces of the main landing gear (MLG) were manufactured incorrectly. The trunnion pins in these airplanes were designed to be fusible so that the MLG would break away from the airplane when landing loads exceed the intended design limits, such as those that may be encountered during emergency landing. However, the defective trunnion pins were not manufactured with this fusible characteristic. Therefore, these defective trunnion pins may cause the MLG to fail to break away from the airplane and, consequently, may compromise the structural integrity of the wing fuel tank. This condition, if not corrected, could result in damage to the wing fuel tanks and the resultant fuel spillage and fire hazard when the maximum intended design load limits are exceeded during landing.

Jetstream has issued Service Bulletin J41–32–017, dated February 7, 1994, that describes procedures for installation of new fusible trunnion pins in the shock struts and drag braces of the MLG. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent damage to the wing fuel tanks and the resultant fuel spillage and fire hazard. This AD requires installation of new trunnion pins in the shock struts and drag braces of the MLG. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 shall 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 comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–34–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–08–08 Jetstream Aircraft Limited: Amendment 39–8880. Docket 94–NM–34–AD.

Applicability: Model 4101 airplanes having constructors numbers 41004 through 41027 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wing fuel tanks and the resultant fuel spillage and fire hazard

when the maximum intended design load limits are exceeded during landing, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, install new trunnion pins in the shock struts and drag braces of the main landing gear in accordance with Jetstream Service Bulletin J41–32–017, dated February 7, 1994.

(b) As of the effective date of this AD, no person shall install any shock strut assembly having part number AIR83072–8, or drag brace assembly having part number AIR84352–2, on any airplane.

(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, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The installation shall be done in accordance with Jetstream Service Bulletin J41–32–017, dated February 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Incorporated, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 29, 1994.

Issued in Renton, Washington, on April 6, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8684 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090]

Evaporated Milk; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for evaporated milk by revising the minimum milkfat and total milk solids content requirements and establishing a minimum milk solids-not-fat content requirement. This action is in response to a petition filed by the American Dairy Products Institute (ADPI) and will promote honesty and fair dealing in the interest of consumers.

DATES: Effective June 13, 1994, written objections and requests for a hearing by May 16, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of July 22, 1992 (57 FR 32470), FDA published a proposal, based on a petition from ADPI, 130 North Franklin St., Chicago, IL 60606, to amend the standard of identity for evaporated milk (21 CFR 131.130) to: (1) Reduce the minimum milkfat content requirement from 7.5 percent to 6.5 percent by weight; (2) reduce the minimum total milk solids content requirement from 25 percent to 23 percent by weight; and (3) add a minimum milk solids-not-fat content requirement of 16.5 percent by weight. Interested persons were given until September 21, 1992, to submit comments.

II. Comments

The agency received seven responses, each containing one or more comments, from a consumer, a trade association, and several manufacturers. Six letters supported, and one opposed, the proposal. A summary of the opposing comments and the agency's responses follow.

1. The comment contended that the solids content of fluid milk (producers' milk) has probably increased over the last 20 years, and that the proposed reduction in the minimum required milkfat and total milk solids content of evaporated milk is inconsistent with the intent of the standard of identity for evaporated milk, as well as the intent of the subsequent amendments, that the milkfat and milk solids-not-fat contents be reasonably related to those of the milk used in the manufacture of evaporated milk.

The agency disagrees with the comment. According to data supplied by the U.S. Department of Agriculture (USDA) (Ref. 1), the composition of producers' milk has remained fairly constant through the 1970's and the 1980's. These data show that the yearly average milkfat content for all producers' milk, before standardization for beverage purposes, during the period 1970 to 1991 (Ref. 1) ranged between 3.64 percent and 3.68 percent, with an overall average of 3.66 percent.

The agency does not agree that the change in compositional requirements is inconsistent with the intent of the evaporated milk standard. Throughout the history of the evaporated milk standard, the labeling of evaporated milk products and the instructional materials pertaining to the use of the food supplied to consumers by food manufacturers, trade associations, and USDA (Ref. 2), as well as policy statements by FDA, have described the food as a 2 to 1 concentrate of milk. Instructions on the label or in labeling of evaporated milk frequently show that the food is to be diluted with an equivalent portion of water for use in preparation of beverages made using the food. In addition, recipes for other foods often state that a can of evaporated milk may be diluted with a can of water for use in recipes calling for the addition of milk (Ref. 2).

The standard of identity for milk in § 131.110 (21 CFR 131.110) defines minimum compositional requirements for the food of not less than 3.25 percent of milkfat and not less than 8.25 percent of milk solids not fat. The minimum compositional requirements for evaporated milk that FDA is adopting in this final rule (i.e., not less than 6.5 percent of milkfat, 16.5 percent of milk solids not fat, and 23 percent total milk solids) correspond to a twofold concentration of standardized milk and, thus, are directly related to those of milk. Because the change in compositional requirements accurately reflects the general understanding that evaporated milk is a twofold concentrate of milk, the agency finds that the change in the evaporated milk standard is consistent with the intent of the standard and, therefore, is revising the standard as proposed.

2. The comment disagreed that the test results that ADPI submitted from a monadic (i.e., single-product evaluation) in-home use test were a reliable indication of real consumer preferences. The comment stated that monadic ratings are not accepted by

organizations such as the National Advertising Division of the Better Business Bureau to support product comparative claims.

FDA acknowledges the comment's concern that ADPI's in-home use test was not a conclusive demonstration that consumers preferred the lower fat, lower solids evaporated milk over the traditional standardized evaporated milk. However, ADPI submitted information in its petition on a total of three industry research tests on consumer perceptions of traditional standardized evaporated milk compared to evaporated milk manufactured to conform to the parameters for which ADPI had petitioned. The monadic in-home use test was only one of these tests. In the other two tests, each participant was able to evaluate both products.

FDA has reviewed the studies that ADPI submitted (Ref. 3). The agency concludes that there was sufficient evidence to support ADPI's claim that consumers were unable to distinguish between the standardized evaporated milk and evaporated milk manufactured to conform to the petitioned parameters. Taken individually, the studies did not provide overwhelming data, but the combined weight of the three studies has convinced the agency that consumers' perceptions of the two products were not significantly different. Each test was performed under different circumstances (i.e., employing different evaluation techniques) and used a different representative sample of consumers. The studies examined a wide variety of possible consumer uses of evaporated milk in realistic, everyday situations. Additionally, these were separate studies employing within-subjects and between-subjects designs that came to identical conclusions. Based on all of the evidence in the petition, the agency finds that it can conclude that consumers are unable to discriminate between standardized evaporated milk and the evaporated milk manufactured to conform to the suggested parameters.

3. The comment stated that the overwhelming use of evaporated milk is in recipes, and that it was not aware of anyone reconstituting evaporated milk for beverage use in the United States. The comment questioned whether consumers consider evaporated milk to be a 2:1 concentrate of fluid milk, and whether the amendment would make reconstitution for beverage use more convenient.

The agency agrees that evaporated milk is used primarily as an ingredient of other foods. FDA notes that evaporated milk may be used in recipes, as manufactured, or in reconstituted form as a direct replacement for milk. Another significant use of evaporated milk is in coffee and tea (Ref. 4). Although the common consumption of reconstituted evaporated milk as a beverage is decreasing (Refs. 5 and 6), evaporated milk does replace fluid milk for beverage purposes in individual households as a result of commercial purchases, as well as through the USDA commodity distribution program; in institutions; and by participants in the USDA Supplemental Food Program for Women, Infants, and Children (Ref. 4). In fact, one comment from a consumer stated that he and his family have used evaporated milk regularly in food recipes, in coffee, and in the preparation of beverage milk.

Evaporated milk has been touted as a 2:1 concentration of milk for many years (Ref. 7). A 2:1 concentrate is easier for consumers to reconstitute than a 2.3:1 concentrate because it is in whole units. In addition, as noted above, a 2:1 concentrate, when diluted, results in a product whose composition is the same as that for beverage milk. Therefore, FDA concludes that providing for a 2:1 concentrate of milk under the standard of identity for evaporated milk is in the best interest of consumers, and that the concerns raised by the comment are without merit.

4. The comment argued that a change in the standard of identity for evaporated milk is unnecessary because consumers that want a lower fat, lower cholesterol evaporated milk can purchase evaporated lowfat milk or evaporated skimmed milk.

FDA notes that consumers may continue to purchase evaporated lowfat milk or evaporated skimmed milk. However, comments from a manufacturer of evaporated milk that were submitted in support of the proposal stated that many of its customers have expressed an interest in lower fat and lower calorie foods, and that the amendment would afford it (the commenting manufacturer) the opportunity to meet the demands of this segment of the public. Furthermore, the fat reduction, although modest, is consistent with "The Surgeon General's Report on Nutrition and Health" (Ref. 8) and the National Academy of Sciences' report on "Diet and Health, Implications for Reducing Chronic Disease Risk" (Ref. 9), which recommend that consumers reduce their consumption of fats and cholesterol. Therefore, FDA finds that the amended standard will benefit consumers.

FDA also notes that the nutritional benefit is only one of several bases that support the amended standard. Therefore, FDA concludes that the argument raised by the comment is without merit.

5. The comment noted that the proposed reduction in the minimum required milkfat content and milk solids content in evaporated milk would make the U.S. standard of identity for evaporated milk inconsistent with the International Codex standard for evaporated milk.

FDA acknowledges that the amended standard is not identical to the International Codex standard for evaporated milk. The Codex standard requires that evaporated milk contain not less than 7.5 percent of milkfat and not less than 25 percent of total milk solids. Because the new requirements in the standard that FDA is adopting will establish lower values for minimum milkfat and minimum total milk solids content than those of the Codex standard for evaporated milk, products complying with the Codex standard will meet FDA's standard of identity. U.S. exporters of evaporated milk may need to reformulate their products if they are to be shipped to countries that require that the food comply with the minimum requirements of the Codex standard, but this fact provides no basis for not making the proposed change in the standard.

Accordingly, after consideration of all comments, the agency is amending the standard of identity for evaporated milk in § 131.130(a) by reducing the minimum milkfat content requirement from 7.5 percent to 6.5 percent by weight, reducing the minimum total milk solids content requirement from 25 percent to 23 percent by weight, and establishing a minimum milk solids-not-fat content requirement of 16.5 percent by weight. FDA concludes that the amendments will promote honesty and fair dealing in the interest of consumers.

III. Economic Impact

FDA has examined the economic implications of this final rule to amend the standard of identity for evaporated milk in 21 CFR part 131 as required by Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). E.O. 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 effects; distributive impacts; and equity). The Regulatory Flexibility Act requires that the agency analyze options for regulatory relief for small businesses.

On July 22, 1992, FDA analyzed the economic impact of the requirements that the agency is adopting under the previous E.O. 12291 and found that they would not have a significant impact on small business. The agency noted in the proposed rule that manufacturers may continue to process evaporated milks using current formulations. Thus, no changes are required in formulations unless manufacturers wish to reformulate their products. In the proposal, the agency tentatively concluded that the regulation would have zero costs associated with it. FDA has received no information or comments that would alter the tentative finding that it set out in the proposed rule that there is no substantive economic issue in this rulemaking.

Thus, the agency finds that this final rule is not a significant regulatory action as defined in E.O. 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) 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. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 16, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rourke, J., Dairy Division , U.S. Department of Agriculture, facsimile of Summary Data on Milkfat Content of Producers' Milk, 1970 through 1991, to Shellee A. Davis, February 17, 1993.

2. Leighton, R. J., and R. F. Mann, letter to Fred R. Shank, FDA, May 4, 1993.

3. Heaton, A. W., FDA Division of Consumer Studies, memorandum to Shellee A. Davis, November 6, 1992.

4. Clark, W. S., letter to Dockets Management Branch, February, 25, 1992.

5. USDA Summary Data from the Nationwide Food Consumption Survey/ Individual, 1977–1978.

6. USDA Summary Data from the Nationwide Food Consumption Survey/ Individual, 1987–1988.

7. Jenness, R., and S. Patton, "Principles of Dairy Chemistry," p. 325, John Wiley & Sons, Inc., New York, NY, 1959.

8. U.S. Department of Health and Human Services, Public Health Service, "The Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–00465–1), pp. 9–11, U.S. Government Printing Office, Washington, DC, 1988.

9. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Sciences; Executive Summary from "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

List of Subjects in 21 CFR Part 131

Cream, Food grades and standards, Milk, Yogurt.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 131 is amended as follows:

PART 131—MILK AND CREAM

1. The authority citation for 21 CFR part 131 is revised to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

2. Section 131.130 is amended by revising paragraph (a) to read as follows:

§ 131.130 Evaporated milk.

(a) *Description.* Evaporated milk is the liquid food obtained by partial removal of water only from milk. It contains not less than 6.5 percent by weight of milkfat, not less than 16.5 percent by weight of milk solids not fat, and not less than 23 percent by weight of total milk solids. Evaporated milk contains added vitamin D as prescribed by paragraph (b) of this section. It is homogenized. It is sealed in a container and so processed by heat, either before or after sealing, as to prevent spoilage.

* * * * *

Dated: April 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–8979 Filed 4–11–94; 12:13 pm]

BILLING CODE 4160–01–F

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Tetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) for safe and effective use of tetracycline hydrochloride soluble powder. One supplemental NADA was filed by Wade Jones Co., Inc., and covers the use of the drug product in the drinking water of calves and swine for the control and treatment of certain bacterial diseases and in the drinking water of poultry for the control of certain bacterial diseases susceptible to the drug. The other supplemental NADA was filed by Pfizer, Inc., and also covers use of the drug in the drinking water of poultry for the control of certain susceptible bacterial diseases. Both approvals reflect compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. Additionally, the agency is technically amending the regulations to make other needed corrections.

EFFECTIVE DATE: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION:

I. Background

Wade Jones Co., Inc., 409 North Bloomington, Lowell, AR 72745 (Wade Jones), filed a supplement to approved NADA 65–140 for a soluble powder containing 324 grams (g) of tetracycline hydrochloride (TC HCl) activity per pound (lb). The drug is available in several product container sizes, 2 and 5 lb tubs and 2.53, 5, and 10 ounce (oz) packets. The drug is indicated for use in chickens at 200 to 400 milligrams per gallon (mg/gal) for control of infectious synovitis caused by *Mycoplasma synoviae* and at 400 to 800 mg/gal for control of chronic respiratory disease caused by *M. gallisepticum* and E. coli. The drug is indicated for use in turkeys at 400 mg/gal for control of infectious synovitis caused by *M. synoviae* and at 25 mg/lb of body weight for control of complicating bacterial organisms associated with bluecomb. It is also indicated for use in swine and calves at 10 mg/lb of body weight for control and treatment of bacterial enteritis (scours) and bacterial pneumonia. The NADA was originally approved July 5, 1966.

Pfizer, Inc., 235 East 42d St., New York, NY 10017 (Pfizer), filed supplemental NADA 65–123 for TC HCl soluble powder (6.4 ounce (oz) packet) to provide for use in chickens and turkeys under the same conditions of use expressed above for the Wade Jones application. The NADA was originally approved April 27, 1955.

II. The NAS/NRC DESI Evaluation

The drug products were subject to a NAS/NRC DESI evaluation of effectiveness (DESI 0012NV). The findings were published in the **Federal Register** of July 8, 1970 (35 FR 10966). NAS/NRC evaluated the products as "probably effective" for oral treatment of animal diseases when such diseases are caused by pathogenic microorganisms sensitive to tetracycline hydrochloride, diseases such as: (1) Enteric and respiratory diseases in poultry; (2) gastrointestinal and respiratory diseases in swine; (3) infected wounds, gastrointestinal and respiratory diseases in calves, sheep, and goats; (4) digestive system and respiratory diseases, pyelonephritis, peritonitis, infected wounds, abscesses, ulcers, and secondary bacterial invaders in dogs and cats; (5) coccidiosis in dogs; and (6) hexamitiasis in turkeys.

NAS/NRC reached the following conclusions applicable to the subject TC HCl drug products:

(1) Most of the dosage directions provide for a less than effective dose, and the recommended minimum oral dose for large animals is 10 mg/lb of body weight daily in divided doses and for small animals 25 mg/lb body weight daily in divided doses;

(2) claims for the treatment of viral diseases must be limited to microorganisms belonging to the psittacosis-lymphogranuloma group;

(3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease cannot be so qualified the claim must be dropped;

(4) claims made "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(5) as applicable, the manufacturer's label should warn that treated animals must consume enough medicated water or medicated feed to provide a therapeutic dose under the conditions that prevail—as a precaution, the label should state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water or feed.

FDA concurred with the NAS/NRC findings, interpreting the phrase "cannot be so qualified" in item (3) of the paragraph immediately above to mean "is not supported by adequate data." FDA proceeded to review all available data relating to the effectiveness of similar products to determine which label claims were supported by the requisite proof of effectiveness. The review resulted in the agency concluding that the data supported effectiveness only for the control and treatment of certain bacterial diseases susceptible to TC HCl in calves, swine, chickens, and turkeys.

Subsequently, Wade Jones and Pfizer complied with the NAS/NRC evaluation and FDA's conclusions by filing supplemental NADA's which revised the drug products' labeling as follows: (1) Adopting the dosage recommended by NAS/NRC; (2) dropping all claims for viral diseases; (3) properly qualifying disease claims; (4) revising prevention claims to read "Control of"; and (5) adding to the manufacturer's label the warning statement concerning factors influencing adequate consumption of medicated water.

The NAS/NRC evaluation is concerned only with the drugs' effectiveness and safety to the treated animal. It does not take into account the safety for human food use of food derived from drug-treated animals.

Wade Jones' supplemental NADA is approved as of September 15, 1993, and Pfizer's supplemental NADA is approved as of March 18, 1994. The regulations are amended by revising § 520.2345d (21 CFR 520.2345d) to reflect the approvals.

FDA's approval of the supplemental NADA's does not involve a reevaluation or reaffirmation of the human food safety data in the parent applications. Tolerances for residues of the drug and its metabolites in chickens, turkeys, swine, and calves of 0.25 part per million are currently codified in 21 CFR 556.720.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of approving the Wade Jones Supplement. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

With regard to approving the Pfizer supplement, the agency has determined under 21 CFR 25.24(d)(1)(i) 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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for exclusivity periods because their applications do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicants.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. The Technical Amendments

In conjunction with amending § 520.2345d to codify the NAS/NRC DESI finalization of Wade Jones' and

Pfizer's NADA's the agency is using this occasion to rewrite § 520.2345d to clarify the regulations. Section 520.2345d is the recodified version of section 546.180d(c). This latter section was one of many antibiotic drug sections affected by the final rule that published in the **Federal Register** of August 18, 1992 (57 FR 37318) for the purpose of: (1) Removing the technical regulations that included the requirements for certification and tests and methods of assay and (2) recodifying, based on route of administration, the remaining provisions concerning conditions of marketing. However, when § 546.180d was recodified, the agency did not include other technical changes to update changes in the approved conditions of marketing. Accordingly, FDA is revising § 520.2345d to codify the currently approved conditions of marketing and to make the following needed corrections: (1) The section heading is revised to fully identify the drug as the hydrochloride; (2) the "*Specifications*" paragraph is removed and information concerning drug concentrations is incorporated into the "*Sponsors*" paragraph; (3) the second sentence of the NAS/NRC status paragraph is removed because it has been superseded by enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988; (4) the drug labeler code for Upjohn Co. (000009) is removed because the firm was incorrectly listed as the sponsor of approvals for the use of TC HCl soluble powder in the drinking water of calves, swine, chickens, and turkeys; (5) the drug labeler code for Vetri-Tech, Inc. (058752), has been changed to that for Arkansas Micro Specialties, Inc. (047863), since Vetri-Tech, Inc., has transferred ownership of its NADA (use of drug in chickens) to Arkansas Micro Specialties, Inc., (57 FR 12711, April 13, 1992), and (6) in the calf and swine claims, the name of the causative agent, *Hemophilus* is changed to *Actinobacillus pleuropneumoniae*, the current scientific name.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2345d is revised to read as follows:

§ 520.2345d Tetracycline hydrochloride soluble powder.

(a) *Sponsors.* The following sponsors listed in § 510.600(c) of this chapter hold approvals for the drug concentrations (i.e., grams of tetracycline hydrochloride per pound) and conditions of use indicated:

(1) 047864 and 054273, 102.4 and 324 grams per pound as in paragraph (d) of this section.

(2) 000069, 25 grams per pound as in paragraphs (d)(3) and (d)(4) of this section.

(3) 010042, 102.4 and 324 grams per pound as in paragraphs (d)(1) and (d)(2) of this section.

(4) 047863, 102.4 and 324 grams per pound as in paragraph (d)(3) of this section.

(b) *Related tolerances.* See § 556.720 of this chapter.

(c) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions of use specified in paragraph (d) of this section were NAS/NRC reviewed and found effective.

(d) *Conditions of use in drinking water*—(1) *Calves*—(i) *Amount.* 10 milligrams per pound of body weight per day in divided doses.

(ii) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(iii) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 4 days of treatment for sponsor 010042 and within 5 days of treatment for sponsors 047864 and 054273; prepare a fresh solution daily; use as the sole source of tetracycline.

(2) *Swine*—(i) *Amount.* 10 milligrams per pound of body weight per day in divided doses.

(ii) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia associated with *Pasteurella* spp., *A. pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(iii) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 7 days of treatment for sponsor 010042 and within 4 days of treatment for sponsors 047864 and 054273; prepare a fresh solution daily; use as the sole source of tetracycline.

(3) *Chickens*—(i) *Amount.* Chronic respiratory disease: 400 to 800 milligrams per gallon. Infectious synovitis: 200 to 400 milligrams per gallon.

(ii) *Indications for use.* Control of chronic respiratory disease (CRD or air-sac disease) caused by *Mycoplasma gallisepticum* and *E. coli*; control of infectious synovitis caused by *M. synoviae* susceptible to tetracycline.

(iii) *Limitations.* Administer for 7 to 14 days; do not slaughter for food within 4 days of treatment; not for use in chickens producing eggs for human consumption; prepare a fresh solution daily; use as the sole source of tetracycline.

(4) *Turkeys*—(i) *Amount.* For infectious synovitis: 400 milligrams per gallon. For complicating bacterial organisms associated with bluecomb (transmissible enteritis or coronaviral enteritis): 25 milligrams per pound of body weight per day.

(ii) *Indications for use.* Control of infectious synovitis caused by *M. synoviae*; control of bluecomb complicated by organisms sensitive to tetracycline.

(iii) *Limitations.* Administer for 7 to 14 days; do not slaughter for food within 4 days of treatment; not for use in turkeys producing eggs for human consumption; prepare a fresh solution daily; use as the sole source of tetracycline.

Dated: April 7, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–9044 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 520

Oral Dosage Form New Animal Drugs; Enalapril Maleate Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the approval of a new animal drug application (NADA) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The NADA provides for the oral use of ENACARD™ (enalapril maleate) tablets for the treatment of heart failure in dogs.

EFFECTIVE DATE: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed NADA 141–015 which provides for the use of ENACARD™ containing 1, 2.5, 5, 10, or 20 milligrams (mg) of enalapril maleate per (/) tablet. ENACARD™ tablets are administered to dogs once daily at a dosage of 0.5 mg/kilogram (kg) or twice daily at 0.5 mg/kg for a total daily dose of 1.0 mg/kg for the treatment of mild, moderate, and severe (modified New York Heart Association Class II, III, IV) heart failure in dogs. The NADA is approved as of February 24, 1994, and the regulations are amended in part 558 (21 CFR part 558) by adding new § 520.804 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act provides a 5-year period of exclusivity to this original NADA beginning February 24, 1994, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.804 is added to read as follows:

§ 520.804 Enalapril tablets.

(a) *Specifications.* Each tablet contains either 1.0, 2.5, 5.0, 10.0, or 20.0 milligrams of enalapril maleate.

(b) *Sponsor.* See 000006 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) Dogs. (i) *Amount.* 0.5 to 1.0 milligram of enalapril maleate per kilogram of body weight per day.

(ii) *Indications for use.* Treatment of mild, moderate, and severe (modified New York Heart Association Class II, III, IV) heart failure in dogs.

(iii) *Limitations.* Use 0.5 milligram per kilogram once daily. In the absence of adequate clinical response within a 2-week period, use may be increased to twice daily (a total of 1.0 milligram per kilogram). Enalapril maleate is administered as conjunctive therapy with furosemide and digoxin in the treatment of dilated cardiomyopathy and furosemide with or without digoxin in the treatment of chronic valvular disease. The safety of enalapril for use in breeding dogs has not been established. Use in pregnant bitches is not recommended. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: April 8, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–9048 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2616, and 2617

Rules for Administrative Review of Agency Decisions; Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: On August 24, 1993, the Pension Benefit Guaranty Corporation ("PBGC") published an interim rule with request for comments amending certain of its regulations (Administrative Review of Agency Decisions and Standard Terminations of Single-Employer Plans) to permit the PBGC's Executive Director to grant relief from deadlines in the event of a major disaster. The PBGC is now adopting these amendments as a final rule and also is amending its distress termination regulation in order to give the Executive Director the authority to grant relief similar to that given in the interim rule for standard terminations.

EFFECTIVE DATE: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On August 24, 1993, the Pension Benefit Guaranty Corporation ("PBGC") published an interim rule with request for comments amending its regulations on Rules for Administrative Review of Agency Decisions and Standard Terminations of Single-Employer Plans (29 CFR parts 2606 and 2617, 58 FR 44738; as corrected, 58 FR 48680, September 17, 1993). The interim rule provided that, when the President of the United States declares, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster (such as the 1993 flood disaster in the midwestern United States) exists, the PBGC's Executive Director (or his or her designee) may grant relief from certain regulatory deadlines by which persons are to submit filings to the PBGC or take other actions. The PBGC received no comments and is adopting the interim rule as a final rule without change.

Before the interim rule was published, §§ 2606.33 and 2606.53 of the PBGC's administrative review regulation (29 CFR part 2606) provided deadlines for filing a request for reconsideration or appeal of an initial determination, and § 2606.4 provided for extensions of those deadlines for good cause shown and only if requested in writing by the applicable filing deadline. The PBGC concluded that, when a major disaster like the 1993 midwestern flood is declared, the above deadlines do not serve the agency's objective of making timely review available to aggrieved persons. As amended, § 2606.4 provides that the deadlines for filing a request for reconsideration or appeal may be extended by the Executive Director (or his or her designee) when a major disaster is declared. The extension may

be for a period of up to 180 days and applies to any aggrieved person who resides in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within a designated disaster area.

Similarly, as amended §§ 2617.25 and 2617.28 of the PBGC's standard termination regulation (29 CFR part 2617) include an exception to the deadlines (1) for filing the standard termination notice with the PBGC (§§ 2617.3(b)(2) and 2617.25(a)) and, consequently, for issuing notices of plan benefits to participants and beneficiaries (§§ 2617.3(b)(3) and 2617.23(a)) and (2) for completing the distribution of plan assets (§ 2617.28(a), (e), and (f)). As in the administrative review regulation, the Executive Director (or his or her designee) may extend these deadlines for a period of up to 180 days when a major disaster is declared. The extension applies to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator, or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to issue the notices of plan benefits or file the standard termination notice, or to complete the distribution of plan assets (as applicable), is within a designated disaster area.

The PBGC believes that similar relief should be available for plans terminating in distress terminations pursuant to section 4041(c) of the Employee Retirement Income Security Act of 1974, as amended, and the PBGC's distress termination regulation (29 CFR part 2616). Sections 2616.3(b), 2616.24, and 2616.25(c)(2) establish deadlines for filing a distress termination notice and related information with the PBGC. Section 2616.27(a)(1) establishes the deadline for issuing notices of benefit distribution in those few terminations where the plan is sufficient for at least guaranteed benefits and, accordingly, plan assets may be distributed to participants and beneficiaries in a manner similar to a standard termination distribution. (The notices of distribution are similar to the notices of plan benefits required in standard terminations under 29 CFR 2617.23.) Finally, § 2616.29(a)(1) contains distribution procedures and deadlines that are generally the same as those in standard terminations; that section cross-references 29 CFR 2617.28 (c), (e), and (f) and provides the same 180-day (unless extended) deadline for distribution.

The amendments in this final rule permit the PBGC's Executive Director (or his or her designee) to extend the above deadlines in the same circumstances as were provided for standard terminations in the interim rule. (The PBGC did not include distress terminations in the interim rule because the small number of distress terminations filed annually lessened the need for prompt action; however, these provisions are essentially procedural in that they establish alternative mechanisms for obtaining extensions of filing or other deadlines (5 U.S.C. 553(b)(A)), and the notice and public procedure and delayed effective date requirements of 5 U.S.C. 553 therefore do not apply.)

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Parts 2616 and 2617

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

In consideration of the foregoing, the interim final rule amending 29 CFR parts 2606 and 2617, as published on August 24, 1993, at 58 FR 44738 and corrected on September 17, 1993, at 58 FR 48600, is adopted as a final rule without change, and 29 CFR part 2616 is amended as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

§ 2616.3 [Amended]

2. Paragraph (b)(2) of § 2616.3 is amended by adding "or, if applicable, no later than the due date established in an extension notice issued under § 2616.10" after "date" and before the semicolon.

2a. Section 2616.10 is redesignated as § 2616.11.

3. A new § 2616.10 is added to subpart A to read as follows:

§ 2616.10 Disaster relief.

(a) Notwithstanding any other provision in this part, when the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing the distress termination notice pursuant to § 2616.24, for issuing the notices of benefit distribution pursuant to § 2616.27(a)(1), or for completing the distribution of plan assets pursuant to § 2616.29, by up to 180 days.

(b) The due date extension or extensions shall apply only to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator, or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the distress termination notice, to issue the notices of benefit distribution, or to complete the distribution of plan assets (as applicable), is within a designated disaster area.

(c) The distress termination notice filed pursuant to § 2616.24, or the post-distribution certification filed pursuant to § 2616.29(b) shall identify the distress termination notice filing or the distribution (as applicable) as being qualified for the due date extension.

4. Section 2616.24 is amended by adding paragraph (d) to read as follows:

§ 2616.24 Distress termination notice.

* * * * *

(d) *Due date extension.* Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the due date for filing PBGC Form 601 or other information required

under this section may be extended by a notice issued under § 2616.10.

§ 2616.25 [Amended]

5. Paragraph (c)(2) of § 2616.25 is amended by adding ", or, if applicable, no later than the due date established in an extension notice issued under § 2616.10" after "later" and before the period.

§ 2616.27 [Amended]

6. Paragraph (a)(1) of § 2616.27 is amended by adding "or, if applicable, no later than the due date established in an extension notice issued under § 2616.10" after "distribution notice" and before the comma.

§ 2616.29 [Amended]

7. Paragraph (a)(1) of § 2616.29 is amended by removing "2617.28 (c), (e) and (f)" and adding in its place "2617.28(c)" and by adding "(except as provided in § 2616.10 or 2617.28 (e) or (f))" after "61st day and" and before "no later than".

Issued in Washington, DC this 8th day of April 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–8886 Filed 4–13–94; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–55–1–6171; FRL–4855–9]

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on July 2, 1993. These revisions replace references to specific sources with references based on emissions or capacity.

DATES: This final rule will be effective June 13, 1994 unless notice is received by May 16, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

Copies of the material submitted by Alabama may be examined during normal business hours at the following locations:

Environmental Protection Agency, Air Docket, 6102, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, at 404/347–2864.

SUPPLEMENTARY INFORMATION:

On July 2, 1993, the FDEP submitted revisions to the Florida SIP to replace references to specific sources with references based on emissions or capacity. These revisions were made to Chapter 17–296 of the Florida Administrative Code and were adopted on June 9, 1993. The amendments to Rule 17–296, F.A.C., Stationary Sources–Emission Standards, specifically, sections 17–296.405, 17–296.406, and 17–296.701 were necessary to eliminate references to specific sources of air emissions.

EPA is approving the following revisions to the Florida SIP. These revisions are more fully discussed in the official SIP submittal that is available at the Region IV office listed under the "ADDRESSES" section of this document. The revisions were made to Section 17–296.405, Fossil Fuel Steam Generators with more than 250 million Btu per hour heat input, Section 17–296.406, Fossil Fuel Steam Generators with less than 250 million btu per hour heat input, and Section 17–296.701, Portland Cement Plants. The rules previously included air emissions and application of technologies for specifically named facilities. The amendments to the rule eliminate the references to those facilities by their specific name, and makes it a more general rule applicable for those facilities. It does not establish new emission standards, but merely precludes specific facility references.

Final Action

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective [Insert date 60 days from date of publication]. However, if notice is received by [Insert date 30 days from date of publication] hat someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive

Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 5, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(83) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(83) Revisions to Chapter 17–296 of the Florida Administrative Code (FAC) regarding Stationary Sources submitted on July 2, 1993.

(i) Incorporation by reference.

(A) Amendments to FAC 17–296.405 and 17–296.406, adopted June 9, 1993.

[FR Doc. 94–8816 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA 57–9–6292; FRL–4858–9]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 29, 1993. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from metal container, closure, and coil coating, from wood products coating, and from graphic arts operations. EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the requirements for non-attainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This final rule is effective on May 16, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket, 6102, 401 "M" Street, SW., Washington, DC 20460.

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

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1993 at 58 FR 50884, EPA proposed granting limited approval and limited disapproval of the following SCAQMD rules into the California SIP: Rule 1125, Metal Container, Closure, and Coil Coating Operations; Rule 1136, Wood Products Coatings; and Rule 1130, Graphic Arts. Rule 1125 and Rule 1136 were adopted by SCAQMD on August 2, 1991 and submitted by the California Air Resources Board (CARB) to EPA on May 13, 1993. Rule 1130 was adopted by SCAQMD on March 6, 1992 and submitted by CARB on September 14, 1992. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPR. EPA is finalizing the limited approval of these rules in

order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. These deficiencies are related to recordkeeping requirements, test method references, Executive Officer discretion, control device equivalency, VOC limits, and rule applicability. A detailed discussion of the rule provisions and evaluations has been provided in the NPR and in technical support documents (TSDs) available at EPA's Region IX office (TSDs for SCAQMD's Rule 1125, Rule 1136, and Rule 1130 dated April 30, 1993 and July 21, 1993).

Response to Public Comments

A 30-day public comment period was provided at 58 FR 50884. EPA received no comment letters on the NPR.

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. As stated in the NPR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this final rule have been adopted by the SCAQMD and are currently in effect in the Los Angeles–South Coast Air Basin. EPA's limited disapproval action in this final rule does not prevent SCAQMD or EPA from enforcing these rules.

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

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for the Office of Air and Radiation on October 4, 1993 (memorandum from Michael H. Shapiro, to the Regional Administrators). A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 25, 1994.

David P. Howekamp,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(189)(i)(A)(*4*) and (193)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(189) * * *

(i) * * *

(A) * * *

(*4*) Rules 1125 and 1136, adopted on August 2, 1991.

* * * * *

(193) * * *

(i) * * *

(A) * * *

(*2*) Rule 1130 adopted on March 6, 1992.

* * * * *

[FR Doc. 94–8963 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MD13–1–6145; FRL–4860–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland (Revisions to Air Pollution Emergency Episode Plan Requirements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision revises definitions and provisions to Maryland's air pollution emergency episode plan requirements. The intended effect of this action is to incorporate by reference into the federally-enforceable SIP revised State regulations which meet current Federal requirements. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule will become effective June 13, 1994 unless notice is received on or before May 16, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597- 1325.

SUPPLEMENTARY INFORMATION: On June 7, 1990, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to Code of Maryland Administrative Regulations (COMAR) 26.11.05 governing air pollution episode emergency plans. The amended provisions, which are applicable Statewide, are summarized below:

1. COMAR 26.11.05.01A.–Definition of "Air Stagnation Advisory (ASA)" (added)
2. COMAR 26.11.05.01B.–Definition of "Atmospheric stagnation" (modified)
3. COMAR 26.11.05.01H.–Definition of "Pollutant Standards Index (PSI)" (added)
4. COMAR 26.11.05.01J.–Definition of "Special Dispersion Statement (SDS)" (added)
5. Deletion of the definition of "Coefficient of haze."
6. COMAR 26.11.05.02B.,.02C.–Administrative changes making clear that the Maryland Department of the Environment (MDE) Secretary's designee is empowered to declare conditions of air pollution designated as Standby Watch, Health Advisory, Alert, Warning, or Emergency.
7. COMAR 26.11.05.03A.,B, D.–Air Pollution Episode CriteriaAdministrative changes similar to those made in COMAR 26.11.05.02B. and C. Replacement of forecast stage with a standby watch stage and a health advisory stage.
8. COMAR 26.11.05.05A.–Control Requirements and Standby Orders. Administrative changes. Replacement of forecast stage with a standby watch stage and a health advisory stage.
9. COMAR 26.11.05.05B. through D.–administrative changes to broaden the definition of "incineration" in that so that the specific term "refuse" is deleted.

The current SIP requires activation of episode plans either: (1) When air stagnations are forecasted; or (2) air pollutant concentrations reach Alert Stage levels. However, revisions are necessitated to correct situations where the applicable regulations did not require air pollution emergency episode plans to be activated, despite the fact that violations of the National ambient air quality standards (NAAQS) had been recorded, but neither of the above conditions were met.

To correct this situation, Maryland has instituted a revised system for activating air pollution episode plans before air quality actually becomes unhealthful. The Forecast Stage has been replaced: (1) A Standby Watch Stage which will be triggered when the PSI reaches a level of 83 (i.e., monitored air quality concentrations reach 83 percent of the applicable National Ambient Air Quality Standard (NAAQS); and (2) a Health Advisory Stage which will be treated whenever the PSI reaches a level of 100 (i.e., there is a monitored violation of the NAAQS). Maryland may also issue an SDS for situations where forecasted atmospheric stagnations are expected to last between 12 and 36 hours. Maryland may also issue an ASA where atmospheric stagnations are expected to last more than 36 hours, and is required to make a public announcement within two hours of such declaration. (COMAR 26.11.05.03B.(1)(c).)

The revisions to COMAR 26.11.05 have a limited impact on the attainment and maintenance of standards. The purpose of emergency episode plans is to ensure that in the event of unhealthy air quality, there are SIP-enforceable provisions which can be activated so as to minimize the exacerbation of unhealthy air quality levels (i.e., air quality levels in excess of the NAAQS) through the activation of emergency control measures. The removal of the term "refuse" in the context of incineration is consistent with requirements prescribed in 40 CFR part 51, appendix L regarding the curtailment of incinerator use when invoking air pollution emergency episode plans. The prescribed requirements in appendix L call for curtailment of all incinerator use regardless of the type of material being burned.

The revised requirements which replace the Forecast Stage still conform with the triggering levels and lengths of air stagnation episodes prescribed in 40 CFR part 51, appendix L. In addition, the revised threshold levels for NO_2, PM_{10}, and ozone also conform with those prescribed in 40 CFR part 51, appendix L. Similarly, the removal of the COH threshold levels is also consistent with EPA's view that COH measurements do not reflect the best means of measuring combined SO_2 and PM_{10} levels. Currently, there is no requirement in either 40 CFR part 51, subpart H or 40 CFR part 51, appendix L which requires States to have COH threshold levels in their respective air pollution emergency episode plans.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 13, 1994 unless, by May 16, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent documents. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 13, 1994.

Final Action

EPA is approving the amendments to COMAR 26.11.05 described above as a revision to the Maryland SIP. The Agency has also reviewed this SIP revision request for conformance with the provisions of the 1990 amendments enacted on November 15, 1990, and has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 3 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action regarding EPA's approval of revisions to Maryland's air pollution emerency episode requirements (COMAR 26.11.05) may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: March 21, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(100) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(100) Revisions to the Code of Maryland Administrative Regulations (COMAR) submitted on June 7, 1990 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 7, 1990 from the Maryland Department of the Environment transmitting revisions to the Maryland State Implementation Plan.

(B) The following revised regulations to COMAR 26.11.05 (Air Pollution Episode Plans), effective June 18, 1990: 26.11.05.01A., .01B., .01H., and .01J.; 26.11.05.02B., .02C.; 26.11.05.03A., 03B., 03D.; 26.11.05.05A., 05B., 05C., and .05D. Deletion of the definition "coefficient of haze."

(ii) Additional material.

(A) Remainder of the June 7, 1990 State submittal.

[FR Doc. 94–8964 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MT1–1–6311; FRL–4859–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan for Columbia Falls PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain Federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Columbia Falls. The State has committed to complete several actions for this SIP, including issues regarding its New Source Review and Prevention of Significant Deterioration regulations, test methods, emergency episode plan, operating permit program, and contingency measures. EPA will take separate action, as appropriate, on these rules when the State fulfills its related commitments.

EFFECTIVE DATE: This final rule will become effective on May 16, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and USEPA Air & Radiation Docket Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, Environmental Protection Agency, Region VIII, (303) 293–1764.

SUPPLEMENTARY INFORMATION:

I. Background

The Columbia Falls, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991); 40 CFR 81.327 (Flathead County; Columbia Falls and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.

The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM)

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM_{10} National Ambient Air Quality Standards (see Public Law No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended ("the Act"), 42 U.S.C. 7401, *et seq.*

(including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also were required to submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

On January 27, 1994, EPA announced its proposed approval of the Columbia Falls, Montana moderate nonattainment area PM^{10} SIP as meeting those moderate PM_{10} SIP requirements due on November 15, 1991 (59 FR 3804–3808). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Columbia Falls moderate nonattainment area PM_{10} SIP taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 59 FR 3808), and no comments were received during the comment period, which ended on February 28, 1994. This final action on the Columbia Falls moderate nonattainment area PM_{10} SIP is unchanged from the January 27, 1994 proposed approval action.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the January 27, 1994 proposed rule for a more in depth discussion of the action now being finalized.

II. Response to Comments

EPA did not receive any public comments regarding its January 27, 1994 proposed approval of the Columbia Falls moderate nonattainment area PM_{10} SIP (59 FR 3804–3808).

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Columbia Falls SIP consists of two submittals. The first contains the Flathead County Air Pollution Control Program and Air Pollution Plan regulations. Flathead County contains two PM_{10} nonattainment areas for which SIPs were due in November 1991: Columbia Falls and Kalispell. The Flathead County regulations apply to both areas and were submitted with the attainment demonstration for Kalispell on November 25, 1991, after being approved by the Montana Board of Health and Environmental Sciences (MBHES) on November 15, 1991. The Columbia Falls SIP and attainment demonstration were not submitted at that time since a permit necessary to the control strategy for the SIP was not finalized. The MBHES issued that permit and approved the SIP on January 24, 1992. This second submittal to EPA was made by the Governor on May 6, 1992. Final technical corrections to the SIP were received by EPA on June 15, 1993. The submittals were intended to satisfy those moderate PM_{10} SIP requirements due for Columbia Falls on November 15, 1991.

As described in EPA's proposed action on this SIP (59 FR 3804–3808, January 27, 1994), the Columbia Falls moderate nonattainment area PM_{10} plan includes, among other things, a comprehensive and accurate emissions inventory, control measures that satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by January 1, 1995[2], provisions for meeting the November 15, 1994 quantitative milestone and reasonable further progress, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Columbia Falls[3] Please refer to EPA's notice of proposed rulemaking (59 FR 3805) and the TSD for that action for a more detailed discussion of these elements of the Columbia Falls plan.

In this final rule, EPA is announcing its approval of those elements of the Columbia Falls moderate nonattainment area PM_{10} SIP that were due on November 15, 1991, and submitted by the Governor on November 25, 1991 and May 6, 1992, with technical corrections submitted in a letter dated June 15, 1993. Specifically, EPA is approving the Flathead County rules (with the exception of rules 501 through 506 which are specific to the city of Kalispell–EPA will take separate action on the Kalispell PM_{10} nonattainment area control plan) and the Columbia Falls PM_{10} nonattainment area control plan.

EPA finds that the State of Montana's PM_{10} SIP for the Columbia Falls moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Columbia Falls and, therefore, were targeted for control in the SIP. The State has demonstrated that by applying control measures to area sources (re-entrained road dust, residential wood combustion, prescribed burning, and motor vehicle exhaust), as well as reducing allowable emissions through air quality permit modifications for the Plum Creek sawmill and fiberboard plant, Columbia Falls will be in attainment by January 1, 1995 (see footnote # 2) and it does not appear that applying further control measures to these sources would expedite attainment.

EPA views the following measures as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Columbia Falls: (1) Flathead County Rules No. 601–606, which provide re-entrained road dust controls, including sanding and chip

[2] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment of the PM_{10} NAAQS by January 1, 1995. EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates.

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

sealing standards and street sweeping and flushing requirements; (2) Flathead County Rules No. 201–209, which regulate prescribed burning; (3) Flathead County Air Pollution Control Program, Chapter VIII, Sub-chapter 3, which contains a voluntary solid fuel burning device curtailment program, and Sub-chapter 4, which lists materials prohibited from burning in wood or coal residential stoves; (4) industry permit modifications made at Plum Creek to reduce allowable plant-wide emissions; and (5) the Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover. The RACM (including RACT) provisions in the SIP are described further in the technical support document associated with EPA's January 27, 1994 notice of proposed rulemaking on this SIP.

Further, although no credit was claimed in the SIP, EPA notes that the State has adopted, as part of the Columbia Falls SIP, the Montana Smoke Management Plan, which sets standards for the regulation of prescribed burning. EPA approved this plan in a separate rulemaking action. (59 FR 2988, January 20, 1994).

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Columbia Falls moderate PM_{10} nonattainment area SIP (59 FR 3804). EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Columbia Falls will result in the attainment of the PM_{10} NAAQS by January 1, 1995 (see footnote # 2). By this action EPA is approving the Columbia Falls PM_{10} plan's control measures as satisfying the RACM, including RACT, requirement.

As noted, EPA did not propose to approve some aspects of the Columbia Falls SIP, as explained in the notice of proposed rulemaking (59 FR 3804–3808) and associated TSD. To address deficiencies identified by EPA, the State adopted commitments after public hearings on November 15, 1991 and January 24, 1992, and submitted the commitments to EPA with the Governor's May 6, 1992 letter, as additional tasks to be completed to correct the deficiencies in the Columbia Falls and statewide SIP. The State has fulfilled commitments related to SIP requirements due November 15, 1991 for the Columbia Falls nonattainment area. Those items related to deficiencies in the statewide SIP will be addressed in a separate action. EPA has determined that the Columbia Falls SIP can be fully approved without the State fulfilling the remaining commitments. Therefore, EPA is tracking the State's efforts to meet these commitments, but approval of the SIP for the Columbia Falls nonattainment area is not contingent upon the State meeting them by the specified dates. Therefore, EPA will take separate action, as appropriate, when the remaining commitments are fulfilled by the State. A more detailed discussion of the State's commitments can be found in EPA's January 27, 1994 proposed approval of the Columbia Falls moderate nonattainment area PM_{10} SIP (59 FR 3804–3808) and the TSD for that action.

The State has made a separate commitment to testing and further dispersion modeling of emissions from the Columbia Falls Aluminum Company (CFAC) facility. This facility is located outside the nonattainment area and emissions from CFAC were not identified on the Chemical Mass Balance analysis of filters collected from the monitor in the Columbia Falls nonattainment area. Emissions from CFAC are a potential concern, however, since this source accounts for 20 percent of the emission inventory (at permitted allowable emissions). EPA will continue to monitor the testing and assist the State with any action required by the results.

Final Action

This document announces EPA's final action on the rulemaking proposed at 59 FR 3804. As noted elsewhere in this action, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory 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. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Executive Order (EO) 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 24, 1994.

William P. Yellowtail,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(31) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(31) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Columbia Falls, Montana with letters dated November 25, 1991 and May 6, 1992, with technical corrections dated June 15, 1993. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Columbia Falls on November 15, 1991.

(i) Incorporation by reference.

(A) Stipulation signed November 15, 1991 between the Montana Department of Health and Environmental Sciences, the Flathead County Commission, and the Kalispell City Council and the Columbia Falls City Council, which delineates responsibilities and authorities between the MDHES and Flathead County.

(B) Board order issued on November 15, 1991 by the Montana Board of Health and Environmental Sciences approving the Flathead County Air Pollution Control Program.

(C) Flathead County Board of Commissioners Resolution No. 867, adopting the Flathead County Air Pollution Control Program and Flathead County Air Pollution Control Regulations, with the exception of rules 501 through 506, signed October 3, 1991.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit # 2667-M, with a final modification date of January 24, 1992, for Plum Creek Manufacturing, Inc. Columbia Falls Operations.

(B) Montana Smoke Management Plan, effective April 28, 1988, which addresses prescribed burning requirements.

(C) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

[FR Doc. 94–8965 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MN12–1–6110; FRL–4858–4]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving revisions to Minnesota's State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Air Quality Control Region (AQCR) 131 area (excluding the Pine Bend area of Dakota County and the St. Paul Park/Ashland area), which were submitted to USEPA on May 29, 1992. These SIP revisions were submitted by the State of Minnesota as a means of demonstrating attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2. The USEPA proposed to disapprove the originally submitted SIP revisions on September 13, 1993. However, that notice of proposed rulemaking stated that if the issues identified within were satisfactorily addressed by the State by the end of the 30-day comment period, and if no other significant adverse comments were received, USEPA would proceed with a final approval. The issues were adequately addressed by the State and submitted to the USEPA on July 12, 1993. No comments were received on the September 13, 1993, proposed action. Consequently, the USEPA is fully approving the SO_2 SIP revisions for AQCR 131.

EFFECTIVE DATE: This final rule becomes effective on May 16, 1994.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Randy Robinson, (312) 353–6713, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Minnesota SIP is available for inspection at:

U.S. Environmental Protection Agency, Air Docket, 6102, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Background

On May 29, 1992, the Minnesota Pollution Control Agency (MPCA) submitted to the United States Environmental Protection Agency (USEPA), revisions to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) in Air Quality Control Region (AQCR) 131. The seven-county metropolitan area (AQCR 131) has been designated, by the USEPA, as nonattainment for SO_2. This submittal was intended to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2 in AQCR 131, excluding an area surrounding the SO_2 emission sources at Ashland Petroleum Company, and an area surrounding the SO_2 emission sources at and near Koch Refining Company, located in Dakota County. These two sources and the surrounding areas were subject to separate submittals and are addressed in separate rulemakings.

On September 13, 1993, a document was published in the **Federal Register** (58 FR 47840) which proposed disapproval of the SO_2 SIP revision for AQCR 131. The proposed notice discussed the State submittal, including background information, attainment demonstration, specific aspects of each administrative order, USEPA comments regarding the administrative orders, comparison of submittal with sections 110 and 172 requirements, and proposed rulemaking action. The disapproval was based on the issues which had been identified in the notice by the USEPA. However, the action also stated that if the issues were satisfactorily addressed by the end of the 30-day comment period, and if no adverse comments were received, the USEPA would proceed with a final approval. This final rule will present a brief summary of the State submittal, detail how the USEPA identified issues were addressed, and present our recommendation for final approval.

II. Submittal Summary

The SO_2 SIP revisions submitted by the MPCA for the AQCR 131 area consisted primarily of administrative orders issued to five facilities: (1) Minneapolis Energy Center, Inc.; (2) Northern States Power Company; (3) FMC and U.S. Navy (FMC has since changed its name to Armament Systems Division of United Defense, L.P.); (4) GAF Corporation; and (5) Federal-Hoffman, Incorporated. The administrative orders contained emission limits, operating restrictions, compliance methodologies, and reporting and recordkeeping requirements. Technical support was also submitted which justified the limits and restrictions in the administrative orders, as well as explained the methodology used to demonstrate attainment.

Attainment Demonstration

Section 172(c)(6) requires that revisions include enforceable emission limitations and other control measures, means or techniques, necessary to provide for attainment of the applicable NAAQS. The State submittal demonstrated attainment through the use of air dispersion modeling. The primary guidance for such demonstrations is the Guideline on Air Quality Models, which specifies the criteria for selection of dispersion models and for estimation of emissions and other model inputs. In accordance with that guidance, the dispersion modeling conducted for the five administrative orders in this submittal was performed using the Industrial Source Complex Short-term (ISCST) model (version 90346) for calculation of the 24-hour and 3-hour concentrations. The analysis used urban dispersion coefficients, five years of National Weather Service meteorological data (surface data from the Minneapolis/St. Paul airport and upper air data from St. Cloud), regulatory default parameters, and receptors spaced at 100 meter intervals at areas of maximum impact. The emissions used in the modeling demonstration were based on the maximum emissions allowed at each facility. The annual impacts were calculated in the original 1987 submittal using the Climatological Dispersion Model (CDM 2.0). The modeled concentrations, plus background concentrations and growth margins, showed attainment with the 3-hour, 24-hour, and annual NAAQS.

Compliance

The administrative orders for the five facilities each contain sections detailing how compliance is to be determined. The methods used include continuous emissions monitors (CEMS), stack testing conducted in accordance with Reference Methods 1 through 4, 6, 6a, or 6b, and regular fuel sampling and fuel supplier certification. The USEPA has determined, based on guidance in the "General Preamble for Future Proposed Rulemakings," published in the Federal Register on April 16, 1992 (57 FR 13498), that these compliance methods are adequate to provide for SO_2 compliance monitoring at the affected facilities.

III. State Responses to USEPA Comments

The following are the administrative order revisions made by the State and submitted to USEPA on July 12, 1993, in response to USEPA comments detailed in the notice of proposed rulemaking. In addition, the administrative order for FMC Corporation and U.S. Navy was again revised on March 26, 1993 and an official SIP revision package was sent to the USEPA at that time. Those revisions will also be discussed in this section.

Federal Hoffman, Inc.

(1) A formula was added to the administrative order which calculates an emission rate in pounds of sulfur dioxide per million British Thermal Units (lbs/mmBtu) from information on percent sulfur, density of the fuel oil, theoretical sulfur to sulfur dioxide availability, and the heating value.

(2) It was made clear in the administrative order that the emission limits on emission points 82, 83, and 84, apply to each point and not the group.

(3) The method used to determine the sulfur content of fuel oil is now clearly identified as an approved American Society for Testing and Materials (ASTM) method.

FMC and U.S. Navy

(1) In response to a concern about monthly analysis of fuel oil for waste oil or waste solvents, the administrative order was changed so that every time the Company adds waste oil or waste solvents to the fuel oil, the resulting fuel oil will be sampled and analyzed.

(2) The method used to determine sulfur content of the fuel oil is now clearly identified as an approved ASTM method.

(3) A formula was added to the administrative order which calculates an emission rate in lbs/mmBtu from information on percent sulfur, fuel oil coefficients for the type of fuel being burned, and the heating value.

Additional changes to the FMC and U.S. Navy order were requested in a March 26, 1993, SIP revision package submitted by the State. The changes included the addition, in Exhibit 1 of the administrative order, of distillate oil as a fuel type for boilers 1 through 13 (these boilers are also allowed to burn residual oil), three diesel generators were added as emission points to Exhibit 1 (these diesel generators were included in the modeled attainment demonstration), name changes for boilers 1A, 1B, and 2A, and associated changes to Part I.C.E of the administrative order which specifies operating restrictions during the decommission of boilers 1 through 17 and their replacement with three new boilers.

GAF Building Materials Corporation

(1) The administrative order increases the sampling and analyzing frequency of the mixture of No. 6 fuel oil and knockout oil (a petroleum based by-product) from a monthly to a weekly basis. If, after six months, the sulfur content of the mixture is less than 1.3 percent, monthly sampling will be considered sufficient.

(2) The administrative order now contains a formula for use in calculating an emission rate in lbs/mmBtu from the recorded sulfur content and heating value information.

(3) The method used to determine sulfur content of the fuel oil and asphalt are specifically identified as approved ASTM methods. A revision was also made to the recordkeeping section of the administrative order requiring the Company to keep records on the mixture of fuel oil and knockout oil.

Northern States Power

(1) The annual emission limit on emission point 13 has been revised and is now based on a daily, 365-day rolling average.

(2) Minor language changes were made to clarify that testing conditions and operating capacities may be specified by the MPCA and/or the USEPA, and that the company shall obtain a permit amendment if required by State or Federal regulation.

(3) A comment regarding the need for a formula in the order was addressed by the use of continuous emission monitors (CEMS) at the facility. The CEMS provide emissions data in lbs/mmBtu and lbs/hour. The section in the administrative order discussing the operation and maintenance of the CEMS was revised to reflect a new date for beginning stack flow monitoring. This was requested by the Company due to

equipment installation problems and subsequent delays.

(4) An additional revision was made to the administrative order limiting the types of fuel the Company is authorized to burn.

Minneapolis Energy Center, Inc.

(1) In response to an USEPA comment regarding emission limits on operating scenarios not included in the original administrative order, the State has revised the order to include limits on all possible operating scenarios at the facility. Dispersion modeling was submitted to support the additional limits. Also, information was included in the administrative order for determining compliance when an operating scenario changes in the middle of an averaging period.

(2) A formula was added to the administrative order to be used for calculating sulfur dioxide emissions in lbs/hr based on data regarding fuel flow, fuel density and percent sulfur.

(3) The administrative order was revised to require recordkeeping during periods of time when natural gas supplies are interrupted and the Facility is burning distillate oil.

(4) The emission units for emission point number 1 were changed to correctly reflect Boilers 1, 2, and 3.

(5) An emergency diesel generator was added to the emission units included in the administrative order. The generator is limited to 0.5 lbs of sulfur dioxide/mmBtu. The generator was included in the supplementary dispersion modeling attainment demonstration noted in 1) above.

IV. Public Comment/USEPA Response

There were no comments received on the notice of proposed rulemaking published on September 13, 1993.

V. Rulemaking Action

The SO_2 SIP revisions submitted to USEPA for AQCR 131 (except the Pine Bend area of Dakota County and the St. Paul Park/Ashland area) dated May 29, 1992, and the supplemental amendments dated, March 26, 1993, and July 12, 1993, satisfy the general requirements for implementation plans as detailed in section 110(a)(2) of the Clean Air Act and also the nonattainment area plan requirements listed in subpart 1 of part D of title I of the Clean Air Act. The July 12, 1993, submittal satisfactorily addressed the issues identified in the September 13, 1993, notice of proposed rulemaking. Consequently, given that no other comments on the proposed rulemaking were received, USEPA is taking final action to approve Minnesota's SO_2 SIP revision submittals for the above specified area of AQCR 131.

The enforceable element of the State's submittals are the administrative orders for five facilities in AQCR 131. The codification portion of this document identifies the effective dates of the administrative orders and the names and locations of the facilities covered. This final action incorporates into the SIP and makes federally enforceable the administrative orders for: (1) FMC Corporation and U.S. Navy; (2) Federal Hoffman, Incorporated; (3) Northern States Power–Riverside Plant; (4) GAF Corporation; and (5) Minneapolis Energy Center, Incorporated.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

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

This action makes final the action proposed at 58 FR 47840. As noted elsewhere in this action, USEPA received no adverse public comment on the proposed action. Consequently, this action has been reclassified from Table 2 to Table 3 by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superceded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

NOTE: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations,is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(30) to read asfollows.

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(30) On June 4, 1992, March 30, 1993, and July 15, 1993, the State of Minnesota submitted revisions to its State Implementation Plans (SIPs) for sulfur dioxide for Air Quality Control Region (AQCR) 131 (excluding the Dakota County Pine Bend area and an area around Ashland Refinery in St. Paul Park).

(i) Incorporation by reference.

(A) An administrative order, received on June 4, 1992, for FMC Corporation and U.S. Navy, located in Fridley, Anoka County, Minnesota. The administrative order became effective on May 27, 1992. Amendment One, which was received on March 30, 1993, became effective on March 5, 1993. Amendment Two, which was received on July 15, 1993, became effective on June 30, 1993.

(B) An administrative order, received on June 4, 1992, for Federal Hoffman, Incorporated, located in Anoka, Anoka County, Minnesota. The administrative order became effective on May 27, 1992. Amendment one, received on July 15, 1993, became effective on June 30, 1993.

(C) An administrative order, received on June 4, 1992, for GAF Building Materials Corporation (Asphalt Roofing Products Manufacturing Facility) located at 50 Lowry Avenue, Minneapolis, Hennepin County, Minnesota. The administrative order became effective on May 27, 1992. Amendment One, received on July 15, 1993, became effective on June 30, 1993.

(D) An administrative order, received on June 4, 1992, for Northern States Power Company–Riverside Generating Plant, located in Minneapolis, Hennepin County, Minnesota. The administrative order became effective on May 27, 1992. Amendment One, received on July 15, 1993, became effective on June 30, 1993.

(E) An administrative order for Minneapolis Energy Center, received on July 15, 1993, Inc.'s Main Plant, Baker Boiler Plant, and the Soo Line Boiler Plant all located in Minneapolis, Hennepin County, Minnesota. The administrative order became effective on June 30, 1993.

(ii) Additional material.

(A) A letter from Charles Williams to Valdas Adamkus dated May 29, 1992, with enclosures providing technical support (e.g., computer modeling) for the revisions to the administrative orders for five facilities.

(B) A letter from Charles Williams to Valdas Adamkus dated March 26, 1993, with enclosures providing technical support for an amendment to the administrative order for FMC Corporation and U.S. Navy.

(C) A letter from Charles Williams to Valdas Adamkus dated July 12, 1993, with enclosures providing technical support for amendments to administrative orders for four facilities and a reissuance of the administrative order to Minneapolis Energy Center, Inc.

[FR Doc. 94–8813 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MN22–2–6114; FRL–4859–1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving the removal of a transportation control measure (TCM) as a revision to Minnesota's State Implementation Plan (SIP) for carbon monoxide (CO). USEPA's action is based upon a revision request which was submitted by the State.

EFFECTIVE DATE: This final rule becomes effective on May 16, 1994.

ADDRESSES: Copies of the requested SIP revision, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Region 5, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection: Air Docket, 6102, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Jones, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: The CO SIP for the Duluth area was approved at 45 FR 40579 (June 18, 1980). The Duluth area was redesignated to attainment for CO, see 51 FR 45319 (December 18, 1986), and 52 FR 6548 (March 4, 1987). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(4)(A), the City of Duluth was designated nonattainment for CO as a result of monitored violations of the CO National Ambient Air Quality Standards (NAAQS) during the 1988–1989 time period, see 56 FR 56694, November 6, 1991. On October 30, 1992, the State of Minnesota requested the removal of a TCM from the CO State Implementation Plan for Duluth. This TCM is an improved truck turning radius. On September 24, 1993, USEPA proposed to approve the requested SIP revision, see 58 FR 49952. The State also requested on that date that a maintenance plan for the area be approved and that the area be redesignated to attainment of the CO NAAQS. Action on the maintenance plan and redesignation request is in a separate notice.

The State Implementation Plan Revision

The State submitted rollback modeling that shows that the revision would not interfere with attainment of the CO NAAQS.

USEPA believes that the State has shown through rollback modeling of concentrations, air quality trends, and information on the effect of the construction of I–35 on the amount of truck traffic that would be rerouted, that I–35 provides an equivalent or greater reduction in emissions than the improved truck turning radius TCM.

All of the transportation control measures with the exception of the improved truck turning radius have been implemented. This turning radius would have made it easier for trucks to turn at 14th Avenue and 3rd Street east (Trunk Highway 61). The City of Duluth discovered that enlarging the turning radius would require significant rerouting of utilities, which probably was not legally feasible, since utility companies have equal eminent domain authority. In some cases, trucks were using East 1st Street, which was not a designated truck route, to avoid the turn on 14th Avenue East and 3rd Street East. The City erected a sign on 1st Street directing through truck traffic to 3rd Street East so that trucks would not hamper movements on both 1st and 3rd Streets East.

Currently, a truck heading northeast from the southwestern part of Duluth would by pass Duluth's downtown on I–35 unless it had a delivery downtown. Construction on I–35 was completed on October 28, 1992. All through truck traffic will now use I–35, eliminating permanently any need to widen the turning radius at the intersection of 14th Avenue East and 3rd Street.[1] Truck

[1] Although I–35 is not a measure in the SIP, it is a completed measure that provides permanent emission reductions. Therefore, USEPA believes the

traffic will be able to access I–35 at Lake Avenue, 21st Avenue East, and 26th Avenue East. I–35 was designed to allow traffic out of the downtown area and a sign informs truckdrivers to use an alternate route to lead them out of the downtown area.

The State submits that I–35 provides reductions of traffic and CO by the rerouting of traffic. The Minnesota Department of Transportation (Mn/DOT) forecasts that 28 percent of overall downtown traffic is now carried on I–35, and more than 28 percent of overall downtown truck traffic is now carried on I–35. Mn/DOT forecasts that 42 percent of all downtown traffic and about 42 percent of all downtown truck traffic will use I–35 instead of downtown streets. The only trucks that will use Superior Street are the ones which are making local deliveries. Truck routes which divert truck traffic off Superior Street will be maintained for trucks making deliveries elsewhere in Duluth and for trucks carrying hazardous materials. All other trucks will use I–35.

The State has also shown that the completed I–35 will more than offset the reductions that would be obtained with a truck turning radius. The truck turning radius would only have lessened the amount of emissions from trucks and vehicles caught in traffic due to turning trucks. I–35 eliminated a substantial amount of emissions in the area around 14th Avenue East and 3rd Street, simply because trucks are taking I–35 instead.

The State will track the SIP's progress in maintaining the standard by reviewing data from the local metropolitan planning organization.

Public Comment/USEPA Response

No adverse comments were received on the September 24, 1993, notice of proposed rulemaking.

Rulemaking Action

USEPA approves the removal of the Improved Truck Turning Radius TCM from the SIP. The effect of I–35 as a permanent improvement has more than adequately replaced the Truck Turning Radius TCM.

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

measure may be used to fulfill the terms of section 193.

This action makes final the action proposed on September 24, 1993 (58 FR 49952) to approve Minnesota's requested SIP revision. This action has been reclassified from a Table 1 to a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12886 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filled in the United States Court of Appeals for the appropriate circuit by June 13, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Note Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulationsis amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding a new paragraph (c) (32) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(32) In a letter dated October 30, 1992, the MPCA submitted a revision to the Carbon Monoxide State Implementation Plan for Duluth, Minnesota. This revision removes a transportation control measure (TCM) from the State Implementation Plan. The TCM is an increased turning radius at 14th Avenue and 3rd Street East.

(i) Incorporation by reference.

(A) Letter dated October 30, 1992, from Charles Williams, Commissioner, Minnesota Pollution Control Agency to Valdas Adamkus, Regional Administrator, U.S. Environmental Protection Agency, Region 5 and its enclosure entitled Appendix D.

(ii) Additional information.

(A) Letter dated November 10, 1992, from Charles Williams, Commissioner, Minnesota Pollution Control Agency to Valdas Adamkus, Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 94–8815 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 52 and 81

[MN19–2–6115; FRL–4859–2]

Approval of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a redesignation request and maintenance plan for the City of Duluth as a revision to Minnesota's State Implementation Plan (SIP) for carbon monoxide.

The revision is based on a request from the State of Minnesota to redesignate this area, and approve its maintenance plan, and on the supporting data the State submitted. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This final rulemaking becomes effective on June 13, 1994.

ADDRESSES: Copies of the requested redesignation, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone William Jones at (312) 886–6058, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Region 5, Chicago, Illinois 60604.

A copy of this redesignation is available for inspection: Air Docket 6102 U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Jones, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the United States Environmental Protection Agency (USEPA) promulgated the carbon monoxide (CO) attainment status for each area of every State. For Minnesota the Duluth area was designated nonattainment for CO, see 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). The Duluth area was redesignated to attainment for CO, see 51 FR 45319 (December 18, 1986), and 52 FR 6548 (March 4, 1987). On November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Pubic Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(4)(A), the City of Duluth was designated nonattainment for CO as a result of monitored violations of the CO National Ambient Air Quality Standards (NAAQS) during the 1988–1989 time period, see 56 FR 56694, November 6, 1991. The City of Duluth was classified as a low moderate CO nonattainment area based on a design value below 12.7 ppm. On October 30, 1992, the Minnesota Pollution Control Agency (MPCA) submitted a maintenance plan and a request for the redesignation of the City of Duluth, Minnesota to attainment of the NAAQS for CO. The redesignation request was accompanied by a report containing information supporting the redesignation request. On November 10, 1993, the State of Minnesota transmitted the results of their public hearing and additional information. On December 22, 1993, the MPCA provided further detail on the schedule for implementing their maintenance plan.

USEPA has provided guidance on processing redesignation requests in a September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Redesignation Memorandum). This guidance memorandum was used in the evaluation of the submittal. The State of Minnesota has met all of the CAA requirements for redesignation pursuant to section 107(d)(3)(E). The State has included a copy of the base year 1990 emissions inventory as the attainment inventory. The attainment emissions inventory contained point, area, and mobile source carbon monoxide emissions in tons per year and for a typical winter day in Duluth.

TABLE 1.—CARBON MONOXIDE EMISSIONS FOR THE CITY OF DULUTH

Emissions rate	Mobile source emissions	Point source emissions	Area source emissions	Total emissions
Pounds/winter day in 1990	128,342	4,270	85,614	218,226
Tons/year in 1990	23,495	388	9,219	33,103

TABLE 2.—PROJECTED CARBON MONOXIDE EMISSIONS (KG/8-HOUR PERIOD DURING THE WINTER) FOR THE YEARS 1990, 1995 AND 2005

Intersection	1990	1995	2005
Superior Street and 3rd Avenue	192.09	122.00	85.48
Central entrance and Mesaba	130.65	81.14	55.24
Central entrance and Arlington	132.11	83.63	55.24
Central entrance and Trinity Road	121.41	76.42	51.23

Public Comment/USEPA Response

No adverse comments were received on the September 24, 1993, notice of proposed rulemaking.

Rulemaking Action

The amended Clean Air Act established a new submittal requirement with respect to various programs. Therefore, USEPA reviewed the State's submittal, to determine whether the State met the applicable requirements of the amended Act.

The redesignation request can now be approved as meeting conditions of the CAA in section 107(d)(3)(E) for redesignation, since the State has submitted a schedule for implementing the contingency plan. The State has also met the terms of the May 26, 1988, SIP call for the Minnesota portion of the Duluth Metropolitan Statistical Area (MSA) consisting of St. Louis County, Minnesota.

The applicable New Source Review (NSR) requirements for moderate CO areas are in section 172(c)(5) of the Act. Section 172(b) establishes a date no later than November 15, 1993, for submittal of the section 172(c) requirements. Since USEPA has not established an earlier date for submittal, the NSR

requirement did not become an applicable requirement until November 15, 1993. Since Minnesota submitted the redesignation request for Duluth prior to November 15, 1993, and the area is now designated attainment, there is no longer a requirement for nonattainment area CO NSR.

The amended Act also specifies new requirements—i.e., requirements not established under the pre-amended Act—for CO nonattainment areas. These include an oxygenated fuels program and an emissions inventory. These requirements were due on November 15, 1992. Since Minnesota submitted the redesignation request prior to November 15, 1992, the State was not required to submit these plan elements for purposes of redesignation. Further, since the area is now designated attainment for CO, the CO emissions inventory and oxygenated fuels SIPs are no longer required for the Duluth area.

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

This action makes final the action proposed on September 24, 1993 (58 FR 49956) to approve Minnesota's requested redesignation. USEPA received no public comment on the proposed rule. As a direct result, the Regional Administrator has reclassified this action from Table 1 to a Table 3 under the processing procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding a new paragraph (c)(31) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(31) In a letter dated October 30, 1992, the MPCA submitted a revision to the Carbon Monoxide State Implementation Plan for Duluth, Minnesota. This revision contains a maintenance plan that the area will use to maintain the CO NAAQS. The maintenance plan contains park and ride lots and an oxygenated fuels program as the contingency measure.

(i) Incorporation by reference.

(A) Letter dated October 30, 1992, from Charles Williams, Commissioner, Minnesota Pollution Control Agency to Valdas Adamkus, Regional Administrator, U.S. Environmental Protection Agency, Region 5 and its enclosures entitled Appendix E.

(ii) Additional information.

(A) Letter dated November 10, 1992, from Charles Williams, Commissioner, Minnesota Pollution Control Agency to Valdas Adamkus, Regional Administrator, U.S. Environmental Protection Agency, Region 5.

(B) Letter dated December 22, 1993, from Charles Williams, Commissioner, Minnesota Pollution Control Agency to Valdas Adamkus, Regional Administrator, U.S. Environmental Protection Agency, Region 5.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.324, the Carbon Monoxide table is amended by revising the entry the "City of Duluth" to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * * * * *				
Duluth area				
St. Louis County (part) City of Duluth	[Insert date: 60 days from publication]	Attainment.		
* * * * * * *				

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

[FR Doc. 94–8814 Filed 4–13–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300334; FRL–4768–9]

RIN No. 2070–AB78

Tolerance Exemption for Trimethylolpropane; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: This document makes a technical amendment to a regulation establishing an exemption from the requirement of a tolerance for residues of trimethylolpropane (CAS Registry No. 77-99-6) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. A limitation of 15% of the formulation that was inadvertently listed is changed to the intended 15% of the film limitation.

EFFECTIVE DATE: April 14, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Reregistration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 25, 1993 (58 FR 44766), EPA issued a regulation adding trimethylolpropane (CAS Reg. No. 77-99-6), a component in water-soluble film, to 40 CFR 180.1001(d) as an exemption from the requirement of a tolerance for pesticides under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). The exemption included with the limit "Not to exceed 5% by weight of the film." In the preamble to the final rule, EPA discussed a comment requesting that the 5% limit be raised and announced that it would be addressed in a separate notice.

A proposal to raise the limit to 15% was published in the **Federal Register** of November 24, 1993 (58 FR 62071), and the amendment was finalized on January 19, 1994 (59 FR 2751). Although the discussion in the preamble of the November 24th proposal indicated clearly that trimethylolpropane was used in water-soluble films at levels up to approximately 15%, all expressions of the limits in the proposed and final rules on the amendment to the exemption were as percentages "of the formulation." Even the previous final rule was incorrectly described in the November 24th proposal as having "a limitation that it will not exceed 5% of the pesticide formulation." This document corrects this error by delineating the appropriate limits so that the exemption will be correctly listed in the Code of Federal Regulations (CFR). EPA is issuing this technical amendment without notice and comment periods because it is merely a technical change which restores the scope of the exemption to what was intended by EPA, the original petitioner, the commenter who sought to raise the limit, and all other commenters on this exemption.

List of Subjects in 40 CFR Part 180

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

Dated: March 28, 1994.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. Section § 180.1001(d) is amended by revising the following entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Trimethylolpropane (CAS Reg. No. 77-99-6)	Not to exceed 15% by weight of the film.	Component in water-soluble film.
* * * * * * *		

* * * * *

[FR Doc. 94–9022 Filed 4–13–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA37

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This action finalizes a rule implementing for grants and cooperative agreements, the Secretarial Outreach Issue Paper Decision—Issue 4—Endorsement of Commercial Products or Services. Former Secretary Lujan determined that as a matter of Departmental policy, there should be a provision in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement (MOAs) which would prevent the nongovernmental party from using the arrangement to imply Government endorsement of a product, service or position which the recipient represents in its commercial advertising.

EFFECTIVE DATE: May 16. 1994.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208–6431.

SUPPLEMENTARY INFORMATION: The Department published a notice of proposed rulemaking in the August 6, 1992, **Federal Register** (57 FR 34755–34756). Bureaus and offices within the Department are entering into a variety of partnership agreements with profit and nonprofit organizations, through which the bureaus receive support of various kinds. This may include dissemination of information about programs, promotion of activities of mutual interest which further those programs, and generation of financial and other types of support, where authorized. These types of agreements are consistent with a Department emphasis on partnerships and cooperative efforts to accomplish public purposes, and therefore are encouraged. However, under these agreements, there is risk that certain promotional material produced under the agreement, such as publications, advertisements in newspapers, magazines, and on television, might improperly infer agency endorsement of a product, service, or position which the recipient represents. Following the consideration of several alternative policies and procedures to ensure compliance with these provisions in various types of contracts and agreements, the former Secretary decided to adopt the policy of including a provision that prohibits the recipient/contractor from using improper endorsements in promotional material in all contracts (exceeding $25,000), assistance agreements, and Memoranda of Understanding/Agreement.

Comments on the Proposed Rule

One public comment was received by the Department. The commenter stated that, as a private nonprofit organization, it serves as an adviser to the Federal Government and that their credibility is maximized by the recognized impartiality of the institution. In order to maintain this objectivity, it has been their long-standing policy not to accept contractual provisions that would permit a sponsor to control either the timing of the release or the information contained in their final reports. Copies of the reports are provided to sponsors up to fourteen days before release to the public, but there is no obligation on their part to accept comments or to incorporate suggested changes.

The commenter also stated that the proposed coverage in § 12.2(d)(2)(i) for non-research awards which would require prior Government approval for public information releases, would not be acceptable for work done by their organization and would require time consuming waivers on each instrument awarded by the Department prior to acceptance by them. The suggestion was made to include nonprofit organizations, in addition to * * * "a Sate or local government * * *," as an exception to the coverage in § 12.2(d)(2), or to authorize the use of the wording in paragraph (d)(2)(ii) for research awards in all of their agreements. The Department does not accept the suggestion to exclude nonprofit organizations from coverage, because this would be contrary to the basic intent of the policy to exclude only governmental parties.

The commenter stated that the proposed coverage for research awards was acceptable.

With the publication of the final rule, the Department is clarifying the scope of covered awards under this policy. The policy is limited to those grants/cooperative agreements that have as their principal purpose a relationship wherein the recipient/partner will contribute resources to promote agency programs, publicize agency activities, assist in fundraising, or provide assistance to the agency. Therefore, because of the unlikelihood of a research award meeting this criteria, we are eliminating the separate distinction and policy for research awards. In determining the applicability of the policy, the focus should be on the purpose of the award. For such an award, the Department's policy should apply whether the award is for research or not.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department has determined that this rule will not have a significant economic impact on a substantial number of small entities, since this rule merely implements a former Secretarial decision concerning the prohibition of recipients to use the Department's use of services and products provided as an endorsement. This revision to the rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having significant impact on the human environment under the National Environmental Policy Act of 1969.

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 2 (a) and 2 (b) of Executive Order No. 12778.

List of Subjects in 43 CFR Part 12

Accounting, Administrative practice and procedure, Drug abuse, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

Dated: April 6, 1994.

B.R. Cohen,

Assistant Secretary-Policy, Management and Budget.

Title 43, part 12 of the Code of Federal Regulations is amended as set forth below:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 7501; 41 U.S.C. 701 *et seq.*; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12674, 3 CFR, 1989 Comp., p. 215; E.O. 12731, 3 CFR, 1990 Comp., p. 306; OMB Circular A–102; OMB Circular A–110; OMB Circular A–128; and OMB Circular A–133.

Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

2. Section 12.2 is amended by adding paragraph (d) to read as follows:

§ 12.2 Policy.

* * * * *

(d)(1) Federal ethics and conduct regulations contained in 5 CFR part 2635 implement Executive Order 12674, 3 CFR, 1989 Comp., p. 215 (as modified by Executive Order 12731, 3 CFR, 1990 Comp., p. 306), "Principles of Ethical Conduct for Government Officers and Employees," by prohibiting employees from endorsing in an official capacity the proprietary products or processes of manufacturers or the services of commercial firms for advertising, publicity, or sales purposes. The Department's use of materials, products, or services does not constitute official endorsement.

(2) The policy in paragraph (d)(1) of this section applies to a grant/cooperative agreement whose principal purpose is a partnership where the recipient/partner contributes resources to promote agency programs, publicize agency activities, assists in fundraising, or provides assistance to the agency. In the event that such a grant/cooperative agreement is awarded to a recipient, other than a State government, a local government, or a federally-recognized Indian tribal government, and authorizes joint dissemination of information and promotion of activities being supported, the following provision shall be made a term and condition of the award:

Grant/Cooperative Agreement Provision

Recipient shall not publicize or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a product, service, or position which the recipient represents. No release of information relating to this award may state or imply that the Government approves of the recipient's work products, or considers the recipient's work product to be superior to other products or services.

All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer:

The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.

Recipient must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.

A recipient further agrees to include this provision in a subaward to any subrecipient, except for a subaward to a State government, a local government, or to a federally-recognized Indian tribal government.

[End of Provision]

(3) Recipient requests for clearance of public releases will be reviewed using existing public information mechanisms through the appropriate Public Affairs Office and with consultation with the cognizant Ethics Officer.

[FR Doc. 94–8977 Filed 4–13–94; 8:45 am]
BILLING CODE 4310–10–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated in the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Pinellas (FEMA Docket No. 7072).	City of Tarpon Springs	July 7, 1993, July 14, 1993, *Suncoast News.*	The Honorable Anita Protos, Mayor of the City of Tarpon Springs, Pinellas County, P.O. Box 5004, Tarpon Springs, Florida 34688–5004.	June 22, 1993	120259 B
Georgia: DeKalb (FEMA Docket No. 7074).	Unincorporated areas ..	July 16, 1993, July 23, 1993, *Atlanta Journal.*	Ms. Liane Levetan, Chief Executive Officer of DeKalb County, 1300 Commerce Drive, Decatur, Georgia 30030.	July 9, 1993	130065
Illinois: Cook (FEMA Docket No. 7072).	Village of Palos Park ...	June 3, 1993, June 11, 1993, *Daily Southtown.*	The Honorable Rosemary S. Kaptur, Mayor of the Village of Palos Park, 8901 W. 123rd Street, Palos Park, Illinois 60464.	May 21, 1993	170144 B
Illinois: Cook (FEMA Docket No. 7069).	City of Prospect Heights.	May 25, 1993, June 1, 1993, *Daily Herald.*	The Honorable Edward Rotchford, Mayor of the City of Prospect Heights, One North Elmhurst Road, Prospect Heights, Illinois 60070–1509.	May 20, 1993	170919 C
Illinois: DuPage (FEMA Docket No. 7079).	Village of Carol Stream	October 21, 1993, October 28, 1993, *Carol Stream Press.*	Mr. Ross Ferraro, President of the Village of Carol Stream, 500 N. Gary Avenue, Carol Stream, Illinois 60188–1899.	September 17, 1993	170202 C
Michigan: Macomb (FEMA Docket No. 7076).	Township of Macomb ..	August 20, 1993, August 27, 1993, *The Macomb Daily.*	Mr. Daniel S. Spatafora, Macomb Township Supervisor, 19925 23 Mile Road, Macomb Township, Michigan 48042.	August 12, 1993	260445
North Carolina: Wake (FEMA Docket No. 7074).	Town of Cary	August 4, 1993, August 11, 1993, *The Cary News.*	The Honorable Koka E. Booth, Mayor of the Town of Cary, P.O. Box 1147, Cary, North Carolina 27512–1147.	July 27, 1993	370238

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ohio: Cuyahoga (FEMA Docket No. 7079).	Village of Mayfield	September 27, 1993, October 4, 1993, *The News-Herald.*	The Honorable Bruce Rinker, Mayor of the Village of Mayfield, 6621 Wilson Mills Road, Mayfield, Ohio 44143.	September 14, 1993	390116 D
Ohio: Franklin and Fairfield (FEMA Docket No. 7072).	City of Columbus	June 22, 1993, June 29, 1993, *The Columbus Dispatch.*	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	June 17, 1993	390170
Ohio: Lorain (FEMA Docket No. 7069).	City of Avon	June 2, 1993, June 9, 1993, *The Press.*	The Honorable James A. Smith, Mayor of the City of Avon, Lorain County, Avon City Hall, 36774 Detroit Road, Avon, Ohio 44011.	May 25, 1993	390348 C
South Carolina: Greenville (FEMA Docket No. 7076).	Unincorporated areas ..	August 16, 1993, August 23, 1993, *The Greenville News.*	Mr. Gerald Seals, Greenville County Administrator, 301 University Ridge, Suite 100, Greenville, South Carolina 29601.	August 9, 1993	450089
Wisconsin: Washington (FEMA Docket No. 7079).	Unincorporated areas ..	September 13, 1993, September 20, 1993, *West Bend Daily News.*	Mr. Reuben J. Schmahl, Chairman of the Washington County Board of Supervisors, 432 East Washington Street, West Bend, Wisconsin 53095.	September 7, 1993	550471

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8705 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7092]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tennessee: Cheatham	Unincorporated areas ..	January 19, 1994, January 26, 1994, *Ashland City Times.*	Ms. Linda Fizer, Executive for Cheatham County, 100 Public Square, suite 105, Ashland City, Tennessee 37015.	December 17, 1993	470026

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8709 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7089]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Chandler	March 18, 1994, March 25, 1994, *Chandler Arizonan-Tribune.*	The Honorable Coy Payne, Mayor, City of Chandler, 25 South Arizona Place, Chandler, Arizona 85225.	February 7, 1994	040040
Colorado: El Paso	City of Colorado Springs.	March 24, 1994, March 31, 1994, *Gazette Telegraph.*	The Honorable Robert Isaac, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	February 15, 1994	280060
Texas: Bexar	City of San Antonio	February 17, 1994, February 24, 1994, *San Antonio Express News.*	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	February 2, 1994	480045
Texas: Bexar	Unincorporated areas	March 18, 1994, March 25, 1994, *San Antonio Express News.*	The Honorable Cyndi Krier, Bexar County Judge, Bexar County Courthouse, 100 Dolorosa, San Antonio, Texas 78205.	February 2, 1994	480035
Texas: Denton	Town of Flower Mound	February 18, 1994, February 25, 1994, *Denton Record Chronicle.*	The Honorable Larry Lipscomb, Mayor, Town of Flower Mound, 2121 Timbers Road, Flower Mound, Texas 75028.	January 4, 1994	480777
Texas: Denton	Town of Trophy Club	February 8, 1994, February 25, 1994, *The Keller Citizen.*	The Honorable Jim Carter, Mayor, Town of Trophy Club, 100 Municipal Drive, Trophy Club, Texas 76262.	January 25, 1994	481606
Texas: Harris	City of Houston	February 18, 1994, February 25, 1994, *The Houston Post.*	The Honorable Bob Lanier, Mayor, City of Houston, P.O. Box 1562, Houston, Texas 77251.	January 24, 1994	480296
Texas: Harris	City of Pasadena	February 18, 1994, February 25, 1994, *Pasadena Citizen.*	The Honorable Johnny Isbell, Mayor, City of Pasadena, P.O. Box 672, Pasadena, Texas 77501.	January 24, 1994	480307

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8710 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism.

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Bexar (FEMA Docket No. 7081).	City of San Antonio	November 23, 1993, November 30, 1993, *San Antonio Express News.*	The Honorable Nelson Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283.	October 21, 1993	480045
Texas: Collin (FEMA Docket No. 7081).	City of Allen	November 23, 1993, November 30, 1993, *Dallas Morning News.*	The Honorable Joe Farmer, Mayor, City of Allen, City Hall, One Butler Circle, Allen, Texas 75002.	September 27, 1993	480131

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8716 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
MARYLAND	
Deer Park (Town), Garrett County (FEMA Docket No. 7073)	
Little Youghiogheny River:	
Approximately 170 feet downstream of downstream corporate limits	*2,438
At upstream corporate limits	*2,455
Block Run:	
At confluence with Little Youghiogheny River	*2,443
At upstream corporate limits	*2,455
Maps available for inspection at the Garrett County Courthouse, room 307, 313 East Alder Street, Oakland, Maryland.	
Garrett County (Unincorporated Areas) (FEMA Docket No. 7073)	
Little Youghiogheny River:	
Approximately 700 feet upstream of the confluence with Youghiogheny River	*2,366
Approximately 1 mile upstream of Boiling Spring Road	*2,472
Maps available for inspection at the Planning and Zoning Office, 313 E. Adler Street, Oakland, Maryland.	
Loch Lynn Heights (Town), Garrett County (FEMA Docket No. 7073)	
Little Youghiogheny River:	
At downstream corporate limits	*2,390
At upstream corporate limits	*2,391
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.	
Mountain Lake Park (Town), Garrett County (FEMA Docket No. 7073)	
Little Youghiogheny River:	
Approximately 1,100 feet downstream of Chessie System	*2,390
At State Route 135	*2,403
Maps available for inspection at the Town Hall, Mountain Lake Park, Maryland.	
MINNESOTA	
Paynesville (City), Stearns County (FEMA Docket No. 7078)	
North Fork Crow River:	
Approximately 250 feet upstream of County Route 123 Bridge	*1,150
Approximately 2,700 feet upstream of Routes 4 and 55	*1,160
Maps available for inspection at the Paynesville City Hall, 221 Washburne Avenue, Paynesville, Minnesota.	
NEW YORK	
Clarence (Town), Erie County (FEMA Docket No. 7048)	
Ransom Creek:	
Downstream corporate limits at Transit Road	*585
Downstream of Conner Road	*603
Tonawanda Creek:	
Downstream corporate limits at State Route 78	*584
Upstream corporate limits	*594
Black Creek:	
Downstream corporate limits at State Route 78	*585
Downstream of Goodrich Road	*591
Gott Creek:	
At downstream corporate limits at Transit Road	*592
Upstream side of Harris Hill Road	*608
Maps available for inspection at the Clarence Town Building Department, 6185 Goodrich Road, Clarence Center, New York.	
Trenton (Town), Oneida County (FEMA Docket No. 7066)	
Nine Mile Creek:	
Approximately 150 feet downstream of CONRAIL Railroad	*542
Approximately 0.3 mile upstream of State Route 12 (southbound)	*786
West Canada Creek:	
At downstream corporate limits	*712
At Hinkley Dam	*1,202
Cincinnati Creek:	
At confluence with West Canada	*721
Approximately 2,375 feet of State Route 365	*968
Steuben Creek:	
At downstream corporate limits	*778
At upstream corporate limits	*794
Maps available for inspection at the Town Hall, Mappa Avenue, Barnveld, New York.	
NORTH CAROLINA	
Catawba County (Unincorporated Areas) (FEMA Docket No. 7073)	
Jacob Fork:	
At confluence with Henry Fork	*821
Approximately 250 feet upstream of S.R. 1116 bridge	*916
Maps available for inspection at the Government Catawba County Center, Planning and Development Office, 100–A Southwest Boulevard, Newton, North Carolina.	
Monroe (City), Union County (FEMA Docket No. 7073)	
Stewarts Creek:	
Approximately 0.8 mile upstream of U.S. Route 601	*529
Approximately 80 feet upstream of Secondary Road 1514 (Rocky River Road)	*625
Maps available for inspection at the Monroe City Hall, Engineering and Planning Department, 300 West Crowell Street, Monroe, North Carolina.	
OHIO	
Batavia (Village), Clermont County (FEMA Docket No. 7073)	
East Fork Little Miami River:	
Approximately 1.3 miles downstream of State Route 32	*554
Approximately 0.47 mile upstream of Norfolk & Western Railway	*576
Maps available for inspection at the Batavia Village Offices, 389 East Main Street, Batavia, Ohio.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8715 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the firm is available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
Augusta (city), Kennebec County (FEMA docket No. 7075)	
Kennebec River:	
Approximately 1.3 miles downstream of Memorial Bridge	*30
Approximately 4.2 miles upstream of Cushnoc Dam	*45
Bond Brook:	
At confluence with the Kennebec River	*36
Approximately 0.6 mile downstream of Dunn's Pit Road	*39
Maps available for inspection at the Code Enforcement Office, City Center Plaza, Augusta, Maine.	
Chelsea (town), Kennebec County (FEMA docket No. 7075)	
Kennebec River:	
At downstream corporate limits	*26
At upstream corporate limits	*30
Togus Stream:	
At downstream corporate limits	*81
Approximately 100 feet upstream of the downstream corporate limits	*82
Lower Togus Pond:	
Entire shoreline within the community	*184
Maps available for inspection at the Town Office, Route 226, Chelsea, Maine.	
Gardiner (city), Kennebec County (FEMA docket No. 7075)	
Kennebec River:	
At Gardiner-Richmond corporate limits	*20
At Gardiner-Farmingdale corporate limits	*25
Cobbosseecontee Stream:	
At confluence with Kennebec River	*25
Approximately 725 feet upstream of Winter Street	*33
Maps available for inspection at the Gardiner City Hall, 6 Church Street, Gardiner, Maine.	
Hallowell (city), Kennebec County (FEMA docket No. 7075)	
Kennebec River:	
At the downstream corporate limits	*28
At the upstream corporate limits	*30
Maps available for inspection at the Hallowell City Hall, 1 Winthrop Street, Hallowell, Maine.	
Hartford (town), Oxford County (FEMA docket No. 7070)	
Bear Pond Lake: Entire shoreline within community	*374
Lake Anasagunticook: Entire shoreline within community	*405
Little Bear Pond: Entire shoreline within community	*374
Maps available for inspection at the Hartford Municipal Building, Canton, Maine.	
Randolph (town), Kennebec County (FEMA docket No. 7071)	
Kennebec River:	
Approximately 0.8 mile downstream of Randolph-Gardiner bridge	*24
Approximately 0.9 mile upstream of Randolph-Gardiner bridge	*26
Togus Stream:	
At confluence with Kennebec River	*24
Approximately 0.9 mile upstream of confluence with Kennebec River	*29
Maps available for inspection at the Town Office, 116 Water Street, Randolph, Maine.	
Strong (town), Franklin County (FEMA docket No. 7075)	
Sandy River:	
At downstream corporate limits	*389
At upstream corporate limits	*467

Source of flooding location	# Depth in feet above ground. *Elevation in feet (NGVD)
Valley Brook:	
At confluence with Sandy River	*448
At upstream corporate limits	*582
Bean Brook:	
At confluence with Valley Brook	*491
At upstream corporate limits	*567
McLeary Brook:	
At confluence with Sandy River	*402
At upstream side of Spaulding Hill Road	*559
Doctor Brook:	
At confluence with Bean Brook	*508
At upstream side of Burbank Hill Road	*524
Porter Lake: Entire shoreline within community	*630
Maps available for inspection at the Town Office, Foster Memorial Building, Main Street, Strong, Maine.	
MINNESOTA	
Ada (city), Norman County (FEMA docket No. 7071)	
Judicial Ditch No. 51:	
Approximately 1,000 feet downstream of State Highway 9	*896
At upstream side of North 9th Street East	*902
Marsh River (Upper Reach):	
At downstream corporate limits	*897
At upstream corporate limits	*902
Maps available for inspection at the City Hall, 404 West Main Street, Ada, Minnesota.	
Hendrum (city), Norman County (FEMA docket No. 7073)	
Wild Rice River:	
At downstream corporate limits	*869
At upstream corporate limits	*870
Maps available for inspection at the City Hall, Hendrum, Minnesota.	
Norman County (unincorporated areas) (FEMA docket No. 7071)	
Marsh River (Upper Reach):	
At County State Aid Highway 8	*883
At divergence from Wild Rice River	*916
Judicial Ditch No. 51:	
At confluence with Marsh River	*886
At divergence from Wild Rice River	*927
Marsh River (Lower Reach):	
At confluence with Red River of the North	*860
Downstream side of U.S. Highway 75	*862
Red River of the North:	
At downstream county boundary	*858
At downstream side of County Road 119	*864
Wild Rice River:	
Approximately 2.0 miles upstream of County State Aid Highway 25	*870
Approximately 1,100 feet upstream of County State Aid Highway 24	*927
Maps available for inspection at the County Courthouse, 16 East 3rd Avenue North, Ada, Minnesota.	
Shelly (city), Norman County (FEMA docket No. 7071)	
Marsh River (Lower Reach):	
Approximately 100 feet downstream of U.S. Highway 75	*862
Approximately 50 feet upstream of Burlington Northern Railroad	*862
Maps available for inspection at the City Hall, McKinley Avenue, Shelly, Minnesota.	
PENNSYLVANIA	
Union (township), Huntingdon County (FEMA docket No. 7075)	
Juniata River:	
Approximately 300 feet upstream of State Route 829	*601
Approximately 0.4 mile upstream of State Route 829 at upstream corporate limits	*603
Maps available for inspection at the home of Mr. Robert E. Fisher, Sr., Union Township Secretary, Township Route 424, Mapleton Depot, Pennsylvania.	
VERMONT	
Barton (town), Orleans County (FEMA docket No. 7075)	
Barton River:	
Approximately 1,900 feet downstream of the most upstream crossing of the Canadian Pacific Railroad	*830
Approximately 550 feet downstream of Interstate Route 91	*862
Maps available for inspection at the Barton Town Clerk's Office, Howard Bank Building, Main Street, Barton, Vermont.	
Barton (village), Orleans County (FEMA docket No. 7075)	
Barton River:	
At downstream corporate limits	*856
Approximately 200 feet upstream of Roaring Brook Road	*860
Maps available for inspection at the Barton Town Clerk's Office, Howard Bank Building, Main Street, Barton, Vermont.	
VIRGINIA	
Bluefield (town), Tazewell County (FEMA docket No. 7078)	
Beaver Pond Creek:	
At confluence with Bluestone River	*2,368
Approximately 0.4 mile upstream of upstream crossing of State Route 102	*2,430
Maps available for inspection at the Municipal Building, 600 Virginia Avenue, Bluefield, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8713 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below. The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM

available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding location	# Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Tucson (City), Pima County (FEMA Docket No. 7063)	
Flowing Wells Wash and Navajo Wash:	
Approximately 350 feet downstream of Fort Lowell Road	*2,296
Just upstream of Fort Lowell Road	*2,301
Approximately 150 feet upstream of Oracle Road	*2,329
At Altos Avenue	*2,348
Approximately 800 feet downstream of Mountain Avenue	*2,368
Wilson Wash:.	
Approximately 200 feet upstream of East Fort Lowell Road	*2,369
At Olsen Avenue	*2,387
At Glenn Street	*2,401
Just upstream of Water Street	*2,416
Just downstream of East Grant Road	*2,419
Cemetery Wash:	
Approximately 70 feet upstream of Erma Avenue	*2,310
At Fairview Avenue	*2,316
Approximately 70 feet downstream of Oracle Road	*2,327
Just downstream of Stone Avenue	*2,335
Christmas Wash:	
Approximately 100 feet upstream of Roger Road	*2,351
Just downstream of East Prince Road	*2,373
Just downstream of Fort Lowell Road	*2,396
Just downstream of Country Club Road	*2,402
Columbus Wash and Midway Wash:	
Approximately 200 feet upstream of the confluence with Alvernon Wash	*2,412
At the intersection of Desert Avenue and Blacklidge Drive	*2,421
Approximately 50 feet upstream of Monte Vista Drive	*2,332
Just upstream of East Grant Road	*2,453
Approximately 70 feet downstream of East Pima Street	*2,472
At East Speedway Boulevard	*2,490
Just downstream of East Fifth Street	*2,505
Van Buren Wash:	
At the confluence with Alamo Wash	*2,490
Approximately 50 feet downstream of Waverly Place	*2,493
At East Pima Street	*2,500
Just downstream of Bellevue Street	*2,513
Just downstream of East Speedway Boulevard	*2,518
Sahuara Wash:	
At the confluence with Alamo Wash	*2,503
Just upstream of East Pima Street	*2,509
Approximately 50 feet downstream of Fairmount Street	*2,516
Just downstream of East Speedway Boulevard	*2,522
El Rio Wash:	
At the confluence with Silvercroft Wash	*2,309
Just downstream of El Rio Drive	*2,311
Approximately 100 feet upstream of Riverview Boulevard	*2,321
Just downstream of Speedway Boulevard	*2,325
Bronx Wash:	
At the confluence with Santa Cruz River	*2,318
Approximately 150 feet upstream of Interstate Highway 10	*2,333
Just downstream of Miracle Mile Road	*2,356
At Seventh Avenue	*2,373
Just downstream of North First Avenue	*2,399
High School Wash:	
At Second Avenue	*2,387
Just upstream of Martin Avenue	*2,425
At Wilson Avenue	*2,444
Approximately 150 feet upstream of Wilson Avenue	*2,446
Rolling Hills Wash:	
At the confluence with Pantano Wash	*2,618
Just downstream of Sarnoff Drive	*2,653
Just upstream of Olympic Club Drive	*2,702
At Cathy Avenue	*2,746
Approximately 300 feet upstream of Kevin Drive	*2,802
Este Wash:	
At the confluence with Tanque Verde Creek	*2,569
Just upstream of Bonanza Avenue	*2,614
Just downstream of Fifth Avenue	*2,656
0Approximately 40 feet upstream of East 22nd Street	*2,830
Just downstream of Houghton Road	*2,843
Maps are available for review at the Department of Transportation, Engineering Division, Floodplain Section, 201 North Stone Avenue, Tucson, Arizona.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 28, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–8711 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[FAC 90–20 Corrections]

Federal Acquisition Regulation; Technical Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical corrections to FAC 90–20.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are correcting a notice and several interim and final rules as part of Federal Acquisition Circular 90–20. The corrected documents were published on March 10, 1994, at 59 FR 11368, 11371,

11374, 11375, 11376, 11378, 11380, 11386 and 11387. The corrections read as follows:

1. On page 11368, in the Table, Item VI, the subject should correctly read "Clarify Increased Cost or Pricing Data Threshold".

2. On page 11369, first column under Item V, third paragraph, fifth line, remove the word "January"; same paragraph, sixth line, "FAR 52.214–37" should correctly read "FAR 52.214–27".

3. On page 11371, in the middle of the third column, the amendment to section 52.204–3 is corrected to read as follows:

52.204–3 [Corrected]

"Section 52.204–3 is amended by revising the date in the provision heading to read "(MAR 1994)"; and in the last sentence of paragraph (b) removing the figure "20" and inserting "31" in its place."

4. On page 11374, in the middle of the second column under Background, second line, "Public Law 101–150" should correctly read "Public Law 101–510".

5. On page 11374, third column, third paragraph of the Summary, fifth line, remove the word "January".

19.102 [Corrected]

6. On page 11376, first column, section 19.102, paragraph (f)(7), third line, remove "Procurement Assistance" and insert "Government Contracting".

7. On page 11376, second column, the last line under Background, "September 20, 1996" should correctly read "September 30, 1996".

8. On page 11378, second column, first line of instruction 1 under part 25, "4 CFR" should correctly read "48 CFR".

9. On page 11380, second column, 13th line from the bottom of the page, "33.210" should correctly read "33.201".

10. On page 11386, third column under Regulatory Flexibility Act, tenth line, "As" should correctly read "An".

11. On page 11387, third column, amendatory instruction 11 is corrected to read as follows:

52.210–1 [Corrected]

"11. Section 52.210–1 is amended by revising the date in the provision heading to read "(MAR 1994)"; and revising the heading and paragraph (a) of the provision to read as follows:".

12. On page 11388, first column, amendatory instruction 12 is corrected to read as follows:

52.210–2 [Corrected]

"12. Section 52.210–2 is amended by revising the date in the provision heading to read "(MAR 1994)"; and in the last paragraph of the provision by removing the entries "Telex Number", "Western Union Number", and "Telephone Number" and inserting "Facsimile No. 215–697–2978" in their place."

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, Office of Federal Acquisition Policy, GS Building, Washington, DC 20405, (202) 501–4755.

Dated: April 7, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 94–9067 Filed 4–13–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 940393–4093; I.D. 121393A]

RIN 0648–AG14

Atlantic Tuna Fisheries

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

ACTION: Interim final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this interim final rule to revise the regulations governing the Atlantic tuna fisheries to: Establish fishing category quota allocations for the 1994 fishing season; amend the specified amount of other species to be landed as a condition for landing an incidental bycatch of bluefin in the southern longline fishery; adjust the line that separates the northern and southern regulatory areas for vessels using longline gear and possessing an Incidental Catch permit for bluefin; and make technical corrections to clarify the regulatory text.

This action is necessary to implement the recently adopted quota recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT), to improve management and monitoring of the U.S. bluefin fisheries, to facilitate enforcement, and to enhance collection of data to improve assessment of the impacts of the fisheries.

EFFECTIVE DATE: April 16, 1994.

ADDRESSES: Copies of the Final Environmental Assessment/ Regulatory Impact Review, are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Richard H. Schaefer at the above address and to the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 implementing the recommendations of ICCAT and issued under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Purpose of Current Action

Background information about this action was provided in the proposed rule (59 FR 2813, January 19, 1994) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic tuna fisheries:

1. Quota Allocations

Quota allocations by permit category are maintained at the 1993 level. The required 1 percent overall reduction for the U.S. fishery is taken from the reserve category.

2. Boundary Adjustment

The line designating the northern and southern management areas for the Incidental category is adjusted south to 34° N. latitude.

3. Minimum Landings Requirement

The directed fishery minimum poundage requirement of landing one bluefin tuna in the southern management area for vessels permitted in the Incidental category is decreased to 1,500 pounds (680 kg) during the months of January through April, and is increased to 3,500 (1,588 kg) pounds during the months of May through December.

4. Technical Corrections

A number of technical corrections to the regulations at 50 CFR part 285 are made to: Add definitions for straight fork length and curved fork length; delete an obsolete reference to at-sea processing of bluefin tuna; adjust the conditions under which retention of small fish is authorized to account for the recently implemented Angling category permit and prohibit possession of small bluefin taken by unauthorized gear; clarify the catch limits which apply to vessels holding permits for both the Angling and General categories; define more clearly the biweekly reporting periods for bluefin tuna transactions; and instruct bluefin dealers to mail required reporting forms at the dealer's expense. These changes will not affect the conduct of the tuna fisheries except to facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

Comments and Responses

1. Quota Allocations

Comment: Given the need for stock-rebuilding, allocating 301 mt to the purse seine category is unjustified.

Response: Within limits and guidelines arising from recommendations of ICCAT, as required by U.S. law, NMFS allocated a limited resource to the various categories according to historical catch shares. This allocation based on historical share was established in 1992, following the 1991 ICCAT-recommended reductions in quota for the western Atlantic.

Comment: NMFS needs to establish a set-aside for the traditional NY Bight recreational fishery.

Response: The total quota of school bluefin tuna that NMFS has at its disposal (99 mt or 8 percent of its national quota) was determined by ICCAT at the November, 1993 meeting. Therefore, as required by the Atlantic Tunas Convention Act, NMFS has no discretion to raise or lower that amount. A 52.5 mt subquota of school bluefin tuna is reserved for recreational fishermen in the area from New Jersey north and is based on average catches from those areas in recent years. Given the difficulties of monitoring recreational catch and the interannual variability in bluefin migration patterns, a further fractioning of quotas would result in quota management areas that would be impossible to administer on a real-time basis.

Comment: Deducting 13 mt from the reserve to maintain fishing category quotas at 1993 levels does not reduce fishing mortality nor does it prepare the industry for future quota reductions.

Response: With respect to fishing mortality, maintaining allocations by reducing the reserve will achieve the same results as reducing all categories proportionally. The reserve is used only to make up for overharvest in any category. NMFS believes a reserve amount of 18 mt is sufficient for the intended purpose of maintaining total harvest within the U.S. quota. Recent improvements in quota monitoring procedures (e.g., faxing dealer reports) reduce the risk of commercial categories overharvesting the annual quota. Further, the industry is aware of the future quota reductions recommended by ICCAT in 1993.

2. Boundary Adjustment

Comment: Adjusting the boundary line between the northern and southern management areas will do little to reduce mortality.

Response: Since the quotas for the two Incidental category longline management areas would remain the same, there would be no adverse impact on the ICCAT stock recovery program.

3. Minimum Landings Requirement

Comment: The change in minimum landing requirement will not reduce bluefin mortality. Instead, NMFS should create an experimental fishery requiring specialized gear such as break-away leaders.

Response: Such an experimental fishery requires a substantial analysis of environmental and economic impacts and considerable research is needed to develop an enforceable definition or criteria for breakaway gear. Therefore, provisions for an experimental fishery could not be included into this interim final rule without violating notice and comment requirements. However, NMFS does plan to consider fully the management alternative of the suggested experimental fishery in the proposed rulemaking for the 1995 fishing season and will analyze this alternative in the Draft Environmental Impact Statement (DEIS) to be released in May 1994. In the interim, NMFS will continue to gather information (anecdotal and scientific) and encourage the use of specialized gear and fishing methods to reduce bluefin mortality. Fishermen are encouraged to contact NMFS to discuss alternative means of avoiding bluefin hook-ups. To the extent that bluefin discards are reduced through shorter trips, total fishing mortality may decrease.

Comment: The Mid-Atlantic Fishery Management Council recommended that NMFS require a minimum number of days between landings of bluefin tuna and that NMFS develop special break-away gear.

Response: A minimum number of days between landing a bluefin, in the absence of other restrictions, would allow for an intermittent directed fishery, contrary to the ICCAT recommendation. NMFS agrees with the industry that a minimum number of days between landings in conjunction with a minimum poundage requirement would be too restrictive for Gulf longliners and would only result in additional discards. NMFS will continue to research break-away gear.

4. Technical Corrections

Comment: Use of curved length measurements would allow the retention of illegal-sized fish so the measurement should be defined and its use prohibited.

Response: NMFS did not propose to allow use of curved length measurements to determine size classes of bluefin tuna. NMFS sought only to clarify the alternative measurement methods and to take comment on the feasibility of increasing the size class definitions to account for the curved length method. Once additional industry comments and field observations are made concerning the measurement techniques used by the industry for Atlantic bluefin tuna, NMFS will make a determination about what would be the appropriate method to use. If the curved length measurement were to become standard, the sizes would be adjusted accordingly. This adjustment would not allow retention of illegal-sized bluefin.

5. Request for Comments on Closure Notices

Comment: Timely notice of closures is commendable but closures should err on the side of conservation.

Response: NMFS attempts to keep harvests within allotted quota levels and has retained the reserve to account for overharvest in any category.

6. The Environmental Assessment's "Finding of No Significant Impact"

Comment: Without more effective conservation measures, the proposed rule is likely to have significant impacts on bluefin stock recovery.

Response: The proposed actions continue and facilitate implementation of ICCAT's long-term program for stock recovery. While the minor changes affecting the 1994 U.S. domestic fishery may not appear to significantly accelerate stock recovery, they are an integral part of an overall 15 percent ICCAT reduction for 1994. Analysis of

more far-reaching management alternatives will continue as NMFS prepares a DEIS for the 1995 fishery. As evidence of commitment to this long-term process of stock rebuilding, NMFS issues these regulatory changes as an interim final rule, rather than a final rule. This interim final rule will be superseded when regulatory actions are implemented for the 1995 fishery after completion of the 1994 ICCAT meeting and the public review process required under the National Environmental Policy Act.

Changes From the Proposed Rule

The following changes were made to the proposed rule: In § 285.22, the Angling category subquotas for school size tuna are indicated to one decimal place to reflect the total of 99 mt. In § 285.24, a paragraph has been added to clarify the catch limits that apply to vessels holding permits for both the Angling and General categories.

In § 285.29, language was added to instruct bluefin dealers to mail required reporting forms at the dealer's expense. This is necessary because the U.S. Department of Commerce can no longer provide postage and fees for the delivery of Dealer Landing Report forms to the NMFS Gloucester office, because the post office no longer accepts the previously issued government postage-paid envelope. Also in § 285.29, a clarification is made to define the biweekly reporting periods as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month.

At the request of NMFS enforcement staff, paragraph (a)(28) in § 285.31 is amended to prohibit possession of school, large school, and small medium bluefin tuna taken by unauthorized gear. Also, a correction to the regulatory text at § 285.31 is made to omit paragraph (c) relating to a prohibition on certain forms of at-sea processing of bluefin tuna. A prior rule change (see 58 FR 45286, August 27, 1993) affecting at-sea processing of tunas rendered this paragraph obsolete.

Classification

This interim final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has determined that this rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities because the fishing category quotas proposed for 1994 will remain the same as current quotas. Also, the changes to the Incidental Catch category will alleviate some of the restrictions imposed on fishermen landing bluefin taken incidental to longlining for swordfish, sharks, and other tunas. These changes will facilitate enforcement of bluefin regulations, will have a modest positive economic impact for some longline fishing trips and will help prevent waste of bluefin tuna which would otherwise be discarded dead. Since the changes made to the proposed rule are not such as would significantly affect a substantial number of small entities, a regulatory flexibility analysis was not prepared. This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

This interim final rule involves a clarification of an existing collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0239). This change, in reference to the daily dealer report, clarifies the requirement to indicate the type of measurement recorded for bluefin tuna weights and lengths. Public reporting burden for this collection-of-information is estimated to average 3 minutes per response for completing the requirement and faxing to NMFS. The requirements for the bi-weekly dealer report are also restated. The reporting burden is estimated to average 33 minutes per response. Send any comments regarding these burden estimates or any other aspect of these requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by Section 553(d) of the Administrative Procedure Act because reducing Atlantic bluefin tuna mortality in the incidental longline southern area fishery is necessary for compliance with international obligations. Since this fishery is underway, early implementation of the new target species minimum catch will better ensure that bluefin tuna incidental mortality is minimized. Early implementation of the other measures is important because the bluefin fishery is underway and these measures are necessary for effective implementation of the ICCAT recommendations.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: April 8, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 285 is amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, the definition of "fork length" is removed and definitions for "curved fork length" and "straight fork length" are added, in alphabetical order, to read as follows:

§ 285.2 Definitions.

* * * * *

Curved fork length means a measurement of the length of Atlantic bluefin tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the tip of the snout to the fork of the tail.

* * * * *

Straight fork length means a measurement of the length of Atlantic bluefin tuna taken in a straight line along the middle of the lateral surface from a line perpendicular to the tip of the snout to a line perpendicular to the fork of the tail.

* * * * *

3. Section 285.22 is amended as follows:

a. In paragraphs (a) and (i) change "AA" to read "Assistant Administrator" wherever it occurs.

b. In paragraph (d) introductory text, change "100 mt" to read "99 mt".

c. In paragraphs (d) (1) and (2), change "47 mt" and "53 mt" respectively to read "46.5 mt" and "52.5 mt" respectively.

d. In paragraph (e) introductory text, change "226 mt" to read "113 mt" and paragraph (e)(1) is revised to read as follows:

§ 285.22 Quotas.

* * * * *

(e) * * *

(1) 109 mt for longline vessels. No more than 86 mt may be caught, retained, possessed, or landed in the area south of 34°00′ N. latitude.

* * * * *

e. In paragraph (f) introductory text, change "31 mt" to read "18 mt".

4. Section 285.23 is amended by revising paragraphs (c) (1) and (2) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(c) * * *

(1) One fish per vessel per fishing trip landed south of 34°00′ N. latitude, provided that for the months of January through April at least 1,500 pounds (680 kg), and for the months of May through December at least 3,500 pounds (1,588 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 34°00′ N. latitude.

* * * * *

5. Section 285.24 is amended by adding paragraph (e) to read as follows:

§ 285.24 Catch limits.

* * * * *

(e) Vessels holding multiple permits. Anglers aboard vessels jointly permitted in the Angling category and the General category or Incidental (Rod and Reel) category may catch, retain, possess, or land each day the bag or boat limits for anglers specified in paragraphs (d)(1) through (d)(4) of this section. In addition to the Angling category catch limits, one of the following vessel limits apply: (1) The daily vessel limit for large medium or giant Atlantic bluefin tuna applicable to the General category as specified in paragraph (a) of this section, or

(2) The annual vessel limit for large medium or giant Atlantic bluefin tuna applicable to the Incidental (Rod and Reel) category as specified in paragraph (d) of section 285.23.

6. In § 285.26, the introductory text preceding the table is revised to read as follows:

§ 285.26 Size classes.

Straight fork length will be the sole criterion for determining the size class of Atlantic bluefin tuna. For any Atlantic bluefin tuna found with the head removed, it is deemed, for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following formula: Total straight fork length equals pectoral fin straight fork length multiplied by a factor of 1.35. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from a line perpendicular to the dorsal insertion of the pectoral fin of the beheaded fish to a line perpendicular to the fork of the tail (PF, see Figure 1). The pectoral fin straight fork length will be the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. Total straight fork length will be the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. Atlantic bluefin tuna are deemed to fall into a size class according to the following table; approximate round weights are given for illustrative purposes only.

* * * * *

7. Section 285.29 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the existing postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9135) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed at the dealer's expense within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round and/or dressed weight (indicating which weight(s) measured), the total or pectoral fin straight and/or curved fork length (indicating which length(s) measured), gear used, and area where the fish was caught.

(b) * * *

(1) Said report must be postmarked and mailed at the dealer's expense within 10 days after the end of each 2-week reporting period in which Atlantic bluefin tuna were purchased, received, or imported. The biweekly reporting periods are defined as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month. Each report must specify accurately and completely for each tuna purchased: Date of landing or import; vessel Atlantic Bluefin Tuna permit number (if appropriate); metal tail tag number; weight in pounds or kilograms (specify if round or dressed); nature of the sale (dockside or consignment); price per pound or kilogram (round or dressed weight); and destination of the fish (domestic or export). In addition, dealers may indicate the quality rating of their bluefin tuna: (A, B, or C) for four attributes (freshness, fat, color, and shape).

* * * * *

8. Section 285.31 is amended by removing paragraph (c) and by revising paragraphs (a)(28), (a)(30), and (a)(37) to read as follows:

§ 285.31 Prohibitions.

(a) * * *

* * * * *

(28) Fish for or catch school, large school or small medium Atlantic bluefin tuna with gear other than hook and line, which is held by hand or rod and reel made for this purpose, or to possess such fish taken with unauthorized gear;

* * * * *

(30) Fish for, catch, retain, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 285.23 (c), and (d);

* * * * *

(37) Fish for, catch, retain, possess or land any Atlantic bluefin tuna less than 178 cm from a vessel other than one issued an Angling Category permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

* * * * *

[FR Doc. 94–8943 Filed 4–11–94; 11:38 am]

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50 CFR Part 663

[Docket No. 940257–4105; I.D. 012494C]

RIN 0648–AF76

Pacific Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to establish requirements for combining two or more limited entry Pacific Coast groundfish fishery permits endorsed with vessel lengths from smaller vessels into a single limited entry permit endorsed with a larger length for use with a single fishing vessel. This rule is necessary to comply with regulations that require the Director, Northwest Region, NMFS (Regional Director), to develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements.

EFFECTIVE DATE: April 8, 1994.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) are available from J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Anneka W. Bane, Acting Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan (FMP) was prepared by the Pacific Fishery Management Council (Council), approved on September 4, 1992, and implemented by NMFS on November 16, 1992 (57 FR 54001), through regulations codified at 50 CFR part 663, subpart C. Amendment 6, also called the "Limited Entry Plan," is intended to control the harvesting capacity of the groundfish fishing fleet by:

(1) Limiting the overall number of vessels;

(2) Limiting the number of vessels using each of the three major gear types; and

(3) Limiting increases in vessel harvest capacity by limiting vessel length.

Amendment 6 requires that each limited entry fishing permit be endorsed with the length overall of the vessel that initially qualified for the permit (except for certain exceptions explained in the implementing regulations). A permit can only be used for a vessel that is no more than 5 ft (1.5 m) longer than the endorsed size on the permit or for a smaller vessel. Vessel owners may fish with larger vessels by combining permits for smaller vessels. Regulations at 50 CFR 663.33(g) require the Regional Director, with professional advice of marine architects and other qualified individuals, and after consultation with the Council, to develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements.

Amendment 6 bases the system for combining limited entry permits in the Pacific Coast groundfish limited entry fishery on overall length of the fishing vessel. The standard it sets is that the harvest capacity represented by the appropriate length endorsement for the combined permit not exceed the sum of the harvest capacities of the permits being combined. As provided by Amendment 6, the standard applies regardless of the target species being fished, and is applicable equally to trawl, longline, and fish trap (pot) vessels. As a practical matter, any system for combining permits must also provide the flexibility for vessel owners to mix and match permits with a variety of different length endorsements in order to achieve the desired length endorsement for a larger vessel. Once the relationship between length and harvesting capacity is established, a table can be generated that assigns a certain number of capacity rating points for each increment of vessel length. Such a table can be used by vessel owners to determine, at a glance, how many rating points are needed for any particular length of vessel. Under Amendment 6, only limited entry permits with "A" gear endorsements may be combined, and only permits for the same gear type (e.g., longline and longline, not trawl and longline) may be combined.

This final rule adds a table to the regulations implementing Amendment 6 that assigns a certain number of capacity rating points per foot of vessel length (see Table 1 added to § 663.33(g)). The table of capacity rating points per foot increment of vessel length up to a vessel length of 150 ft (45.7 m) is based on a curvilinear relationship described as length to the 2.5 power. For vessels larger than 150 ft (45.7 m), the relationship is a straight line (constant slope) increasing the number of 60-foot (18.3 m) permits required per increment of vessel length, so that a 200-foot (61.0 m) vessel would require twelve 60-foot (18.3 m) permits and a 400-foot (121.9 m) vessel would require twenty 60-foot (18.3 m) permits.

The preamble to the proposed regulations (59 FR 9171; February 25, 1994) contains a more complete explanation of the relationship between length and harvesting capacity for combining permits. Also described in the proposed rule is an explanation of the technical bases for the schedule chosen by NMFS (called the NMFS preferred approach in the proposed rule), as well as a description of two other alternatives, one initially proposed by NMFS (Initial Alternative I), the other by the Council (Initial Alternative II). The proposed rule requested public comments not only on the NMFS preferred approach, but on Initial Alternatives I and II as well. This rule implements the NMFS preferred approach, as described in the proposed rule. The final rule addresses what is primarily a technical issue with little or no conservation implications.

The relationship between vessel length and harvest capacity chosen in the final rule is conservative and treats vessels of all lengths equitably. It was chosen based on the recognition that smaller vessels appear to produce at a level closer to their harvesting capacity, while larger vessels, especially 200 ft (61.0 m) and larger, may currently produce considerably below their actual capacity. As a result, the chosen relationship reflects the expectation that the harvesting capacity for larger vessels is potentially greater than the actual amounts that vessels of that size have produced historically.

Initial Alternative I carried the curvilinear relationship only to 90 ft (27.4 m) and the straight line relationship to 200 ft (61.0 m) (ten 60-foot (18.3 m) permits), with no increase in capacity rating points for vessels larger than 200 ft (61.0 m). The Council's recommended formula, Initial Alternative II, was curvilinear to 200 ft (61.0 m) with the straight line relationship beginning with twenty 60-foot (18.3 m) permits at 200 ft (61.0 m) and ending with thirty-two 60-foot (18.3 m) permits for 400-foot (121.9 m) vessels. All three concepts are shown graphically in Figure 1.

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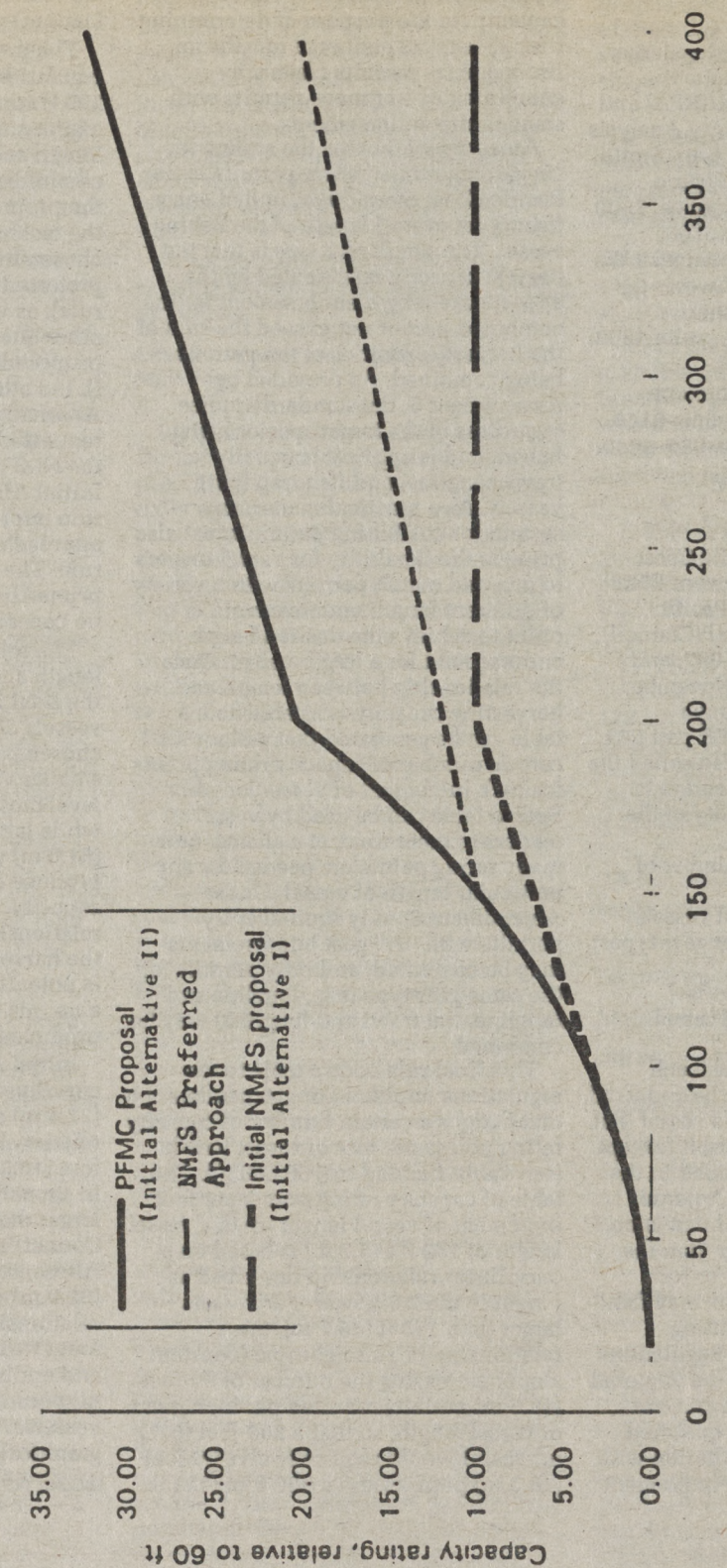


Figure 1. Comparison of 3 alternative capacity rating schedules for combining limited entry permits

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Comments and Responses

Written comments were submitted by 6 fishing vessel owners' associations (Coast Draggers Association, Fishermen's Marketing Association, United Catcher Boats, American Factory Trawlers Association, and 2 from Mid-Water Trawlers Cooperative), 6 seafood processing companies, the Astoria Chamber of Commerce, 48 individuals or corporations associated with individual catcher vessels primarily involved in the Pacific whiting fishery, 3 corporations owning catcher-processors (factory trawlers), and a corporation owning a mothership processor. Thirty of the comments received were from Newport, Oregon. The total number of comments received was 65, with 54 advocating adoption of the proposal recommended by the Council (Initial Alternative II), 5 advocating the NMFS initial proposal (Initial Alternative I), 3 supporting the NMFS preferred approach, and 3 offering comments but no preference.

Comment 1: Twenty-two commenters argued that the NMFS preferred approach would increase harvest capacity in the Pacific whiting fishery because large, efficient factory trawlers with a significant harvesting capacity would purchase permits issued to historically unproductive vessels, many with little or no historical catch of whiting, thus increasing the overall harvest capacity in the groundfish fishery, and particularly the whiting fishery.

Response: Most of the commenters favoring the Council's recommendation argued that the purchase of a permit with marginal historical production by the owner of a potential highline vessel would increase capacity in the fishery. Most of these commenters made no distinction between harvest capacity, fishing effort, and actual production (catch). Fishing effort is the actual intensity with which a vessel/permit is used. It represents an amount of fishing activity per time period, not an amount of catch. In the context of this rule, capacity refers to the potential amount of fish that can be caught and retained by a vessel of a given length. Since permits are transferable, it is important to note that the potential catch associated with capacity is not necessarily the historical catch of that vessel, but rather the potential of the permit when affixed to a successful vessel of the same size.

The Council in Amendment 6 specifically instructed NMFS to develop a schedule for combining permits that assured that harvest capacity, not fishing effort or catch, did not increase. The schedule chosen by NMFS is an attempt to keep the capacity represented by the sum of fishery permits from increasing. When permits are combined, the capacity of the resulting permit should not exceed the capacity of the group of permits that have been combined. The capacity of a permit is not defined by the level of fishing effort or production that its owner may have experienced over the preceding years, but by its potential for use by a highline vessel of the endorsed size.

The degree to which a permit is actually used may be referred to as effort. The goals and objectives of Amendment 6 clearly identify "capacity" of permits, not the effort with which they are applied, as being the focus for constraint in the limited entry program in general, and the formula for combining permits in particular. Thus, even though effort may increase as permits are transferred from less intensive to more intensive operations, in terms of fleet capacity, it makes no difference whether a vessel combines permits from ten 60-foot (18.3 m) vessels that each landed 1 mt the last 5 years, or from ten 60-foot (18.3 m) vessels that each landed 5,000 mt over the same period. The relevant question for determining capacity is what an individual could have caught with the permit, using a quality vessel of the same length, with a knowledgeable skipper and an efficient crew.

The fact that potential highliners will increase overall effort and production in the fishery by obtaining permits from individuals who are making little use of them is not surprising; this likelihood is addressed in the analysis for Amendment 6. The Council could have reduced the potential for increases in effort resulting from permit transfers by establishing more rigorous minimum landing requirements for initial qualification for permits, but the Council's final action did not include different minimum landing requirements for vessels of different length. Alternatively, Amendment 6 could have constrained outputs (landings) by, for example, attaching landing endorsements to the permits, rather than length endorsements. In order for a vessel to increase its landings, it would have had to buy a permit endorsed for an appropriate amount of tonnage. This would have prevented little-used vessels from being transformed, through permit sale, into highliners, without production having been reduced by someone else. However, in constraining inputs to the fishery (vessel length and gear) rather than outputs, the Council was aware that increases in effort and production might occur.

One example given by a commenter to justify concern about unproductive permits being transferred to a highline vessel was that, for example, a 300-foot (91.4 m) factory trawler, producing about 400 mt per day, could obtain a limited entry permit by obtaining 13 permits from thirteen 65-foot (19.8 m) shrimp vessels that historically caught an aggregate of less than 400 mt of whiting over a whole year. However, it is also true that, if each one of those 13 permits was sold to a highline 65-foot (19.8 m) vessel making at-sea deliveries of whiting, the 13 vessels could easily deliver an aggregate of more than 1,000 mt per day, based on data from the 1991 whiting fishery. As this example illustrates, the potential for increasing effort in the whiting fishery is not simply an issue that arises with regard to factory trawlers combining permits in order to enter the fishery. Quite the contrary, historically unproductive permits for vessels under 110 ft (35.5 m) could generate as much or more additional catch in the whiting fishery if they were transferred/combined to highline vessels within the same size range than if they were combined to accommodate the use of a factory trawler.

NMFS agrees that fishing effort will tend to increase with the combining of permits for factory trawlers in the whiting fishery. Likewise, the amount of capacity utilized in the whiting fishery will increase as permits issued for vessels with no historical whiting catch are transferred to vessels that fish for whiting. Those transfers represent a transfer of capacity from the non-whiting fishery, or alternatively the groundfish fishery as a whole, into the whiting fishery. However, it cannot be ignored that permits that are combined to support 100-foot (30.5 m) catcher boats, or even those that are transferred between vessels of the same size, will also lead to increases in effort, and, if transferred into the whiting fishery, to increases in capacity in the whiting fishery. Regardless of the size of her/his vessel, an entering highliner will always attempt to purchase permits as cheaply as possible, and that will involve seeking out permits that are generating the least amount of money for their current owners.

Comment 2: Nine commenters argued that NMFS' use of a 60-foot catcher vessel in the whiting fishery for comparison with factory trawlers was flawed, because the average length of catcher vessels delivering whiting is closer to 85 ft (25.9 m) or 90 ft (27.4 m) in length. They argued that, if the same

comparison were done using a 90-foot (27.4 m) vessel length for a catcher vessel, the results would show that the NMFS preferred approach was not conservative enough to prevent harvest capacity from increasing.

Response: The 2.5 exponential relationship for vessel length, explained in the proposed rule, which provided a good fit for the highline production data in the non-whiting sector of the groundfish fishery, does not characterize the length-production relationship observed in the whiting fishery. Because the relationship between production and vessel length departs dramatically from the exponential curve for all vessels in the whiting fishery, highline production data were determined to be the best way to illustrate the relationship of potential harvest capacity to vessel length for vessels in the whiting fishery. Although production data are used to illustrate relationships between vessels of different lengths, the potential harvest capacity of vessels larger than 150 ft (45.7 m) is presumed to be greater than the historical highline production for those vessels. The formula promulgated by this rule takes the difference between a vessel's highline production data and potential harvest capacity into account. Highline production is the average production for the top 25 percent of the vessels in each vessel class. For analytical purposes, highline production values are used to demonstrate trends and relationships between vessels of different lengths for vessels that participate substantially in the whiting fishery.

Because the increase in historical production per increment in vessel length for factory trawlers is less than the increase in production per increment demonstrated by smaller vessels in the groundfish (non-whiting) fishery, comparison of the highline catch amounts associated with number of permits needed for a factory trawler is affected by the size of vessel chosen for comparison. As an example, compare the number of 60-foot (18.3 m) and 90-foot (27.4 m) permits that would be required for a permit for a 300-foot (91.4 m) vessel. If a 300-foot (91.4 m) factory trawler were to obtain all of its permits from 60-foot (18.3 m) boats, under the NMFS preferred approach it would need about sixteen permits. Since the 1991 highline production data for 60-foot (18.3 m) vessels was estimated to be about 470 mt per week, these permits represent 7,500 (16 x 470) mt/week of catching capacity in the offshore whiting fishery. During the same year, the highline production data for factory trawlers around 300 ft (91.4 m) in length was in the 1,000–1,100 mt/week range. In 1992, highline factory trawler production went up, but was still generally less than 2,000 mt/week. Thus, the demonstrated capacity of the sixteen 60-foot (18.3 m) vessels is still greater than the 1992 factory trawler catch by a factor of at least three.

If, on the other hand, the factory trawler were to acquire all of its permits from 90-foot (27.4 m) trawlers, it would need a total of 6. A 90-foot (27.4 m) vessel's highline production data was 610 mt/week, which is only 30 percent higher than for a 60-foot (18.3 m) vessel. Thus, the demonstrated production of these six vessels combined amounts to slightly more than 3,500 mt/week. While this value is less than the amount a 300-foot (91.4 m) vessel might harvest occasionally in the pollock fishery, it is higher than any weekly catch observed by a factory trawler over recent years in the whiting fishery. This example illustrates that a reasonable safety factor still exists, even if 90-foot (27.4 m) vessels are used for comparison with factory trawlers.

Sixty-foot (18.3 m) vessels were selected for comparison with the factory trawlers in the whiting fishery for several reasons. First, that size of vessel was common among all three gear types (trawl, longline, and pot) and thus allows a comparison of harvest capacity and vessel length for all three gear types. Second, 60-foot (18.3 m) catcher vessels were assumed to be producing closer to their actual harvest capacity than 80- or 90-foot (24.4—27.4 m) catcher vessels. Therefore, 60-foot (18.3 m) vessel permits were used as a yardstick to compare the relationships between harvest capacity and vessel length for vessels using all three gear types and participating in the non-whiting sector of the fishery.

Finally, the appropriateness of choosing comparison values is not determined by the make-up of the current whiting fleet, but by the length composition of the permits that are actually assembled in order to license a factory trawler. Since permits may be acquired from across the groundfish/whiting complex for this purpose, it seems likely that any factory trawlers will acquire permits from a variety of vessel lengths. Regardless of the lengths of the size endorsements on the permits being combined, or whether the smaller vessels have fished primarily for other groundfish or shrimp, the appropriate measure of the catching capacity, relative to a factory trawler, is what these vessels could produce in the offshore whiting fishery.

Comment 3: Several commenters noted that the actual harvest capacity of larger (80–90-foot) (24.4—27.4 m) at-sea delivery vessels in the whiting fishery was greater than the 500 mt per week for catcher vessels used in the NMFS analysis for comparison with factory trawler production values. They noted that the larger at-sea delivery vessels often were constrained by production limits from motherships.

Response: NMFS agrees, and the NMFS analysis assumes that actual harvesting capacity is greater than the production values for all classes of vessels substantially involved in the whiting fishery. For example, if all 90-foot (27.4 m) vessels delivered 1,000–1,100 mt of whiting per week (equivalent to the largest single week of deliveries by any catcher vessel in the data examined) instead of the 610 mt observed production for the top 25 percent of delivery vessels, then if under the NMFS preferred approach, six 90-foot (27.4 m) vessel permits are combined, the harvest capacity retired would actually amount to 6,000 mt per week or more, almost triple any observed production from factory trawlers in the whiting fishery. At this point, neither the information regarding potential factory trawler performance submitted by commenters (addressed in the response to comment 4), nor any other information of which NMFS is aware, supports the assumption that the actual production of factory trawlers in the whiting fishery can be increased by a factor of 2.5 to 3.0 through the introduction of efficient offloading procedures at sea. Still, this is an emerging technology, and it is not impossible that factory trawler catch could be increased substantially if a factory trawler serves, in whole or in part, as a delivery vessel.

Comment 4: Some commenters have suggested that factory trawler catches have been restricted by the processing aspects of their operations and that supplemental at-sea transfers between factory trawlers, which are both harvesting and processing, could significantly increase factory trawler catch rates.

Response: NMFS agrees that production methods may be one factor limiting current harvest levels for factory trawlers. During 1991, for example, whiting factory trawlers had weekly levels of fish retention that were roughly half the amounts for comparably sized motherships, despite having roughly the same under-deck space available for production lines, freezing, and storage facilities. This indicates that processing limitations probably are not the sole factor constraining harvests. NMFS agrees that some potential exists for factory trawlers

to increase their production. Thus, the harvest capacity for vessels over 200 ft (61.0 m) in length, calculated by this rule, is greater than any historical level of factory trawler catch in the whiting fishery.

One reason offered for this difference between mothership and factory trawler production is the fact that mothership production benefits from having several vessels scouting for concentrations of whiting, as well as fishing. Factory trawler production might be increased if these vessels were able to benefit from some method of scouting for concentrations of fish, so that the factory ship was able to stay on productive grounds. One commenter provided a news article documenting the use of a new hose-transfer technology that might be used by factory trawlers to transfer fish between two or more vessels. The article reported that a 207-foot (63.1 m) trawler off-loaded 2,000 mt of pollock during a 1-week period using this methodology. Although the article did not say if 2,000 mt represented the trawler's catch of pollock for the entire week, this level of production is the same level demonstrated by larger than 200-foot (61.0 m) vessels in the whiting fishery.

This potential for factory trawlers to increase their harvest rates in the whiting fishery is the reason that the schedule for larger vessels requires more permits than is suggested by highliner production data, whereas the formula for smaller vessels, with less potential to increase production, closely tracks highline production data.

Comment 5. Several commenters believed that, under the NMFS preferred approach, factory trawlers would accumulate the necessary number of permits at a disproportionately low net cost per unit compared to the net cost, for example, to a 70-foot (21.3 m) vessel upgrading to a 90-foot (27.4 m) vessel.

Response. It should be noted that the analysis in the EA/RIR/IRFA of the potential cost of permits in support of the proposed rule was extremely speculative, since little information on the profitability of various sectors of the fleet was readily available. The analysis was never intended as a prediction of what prices would be, but only to illustrate what the range of prices might be given certain par values for 60-foot vessels. Since a working model of profitability in the groundfish and whiting fisheries was not available, no effort was directed at projecting what the actual cost of permits would be.

In anticipation of a permit combination rule becoming effective, some factory trawler owners have been purchasing permits. A comment received from representatives of a factory trawler indicates that the cost of securing the number of permits required by the NMFS preferred approach was, in fact, in excess of $1.5 million.

Although it is not clear what the commenters intended as a yardstick for a comparison of net cost per unit for smaller versus larger vessels, two potential yardsticks are the cost of entering the fishery relative to the amount of fish that can be caught, and the cost of entry relative to the existing capitalization of the fishing vessel. The following table illustrates the relationships between permit cost and production, assuming that permits cost roughly $6,000 per rating point, as asserted in the comments from the American Factory Trawlers Association. In terms of the dollar amount that must be spent per metric ton of catch, it is clear that factory trawlers will pay more than smaller vessels. Based on highline production levels, a 60-foot (18.3 m) vessel would pay one-sixth of what a factory trawler would per metric ton of catch per week. Ninety-foot (27.4 m) and 120-foot (36.6 m) vessels would pay about one-third to one-half of the cost per ton estimated for factory trawlers.

Vessel length (feet)	Rating points	Permit cost @ $6,000/pt	Highline production/wk	Permit cost per mt caught
60	15.59	$93,531	470	$199
90	42.96	257,741	610	423
120	88.18	529,091	770	687
250	217.15	1,302,897	1,100	1,184
375	296.03	1,776,164	1,600	1,110

However, it is also possible to view the cost question in the context of the existing capitalization of an operation. The cost of a permit for a 90-foot (27.4 m) catcher boat may represent an additional 50–100 percent of the existing capitalization of the operation. The amount a factory trawler would have to pay is likely to represent a far smaller percentage of the total amount that has been invested. In this regard, it may be easier for a factory trawler to increase its debt load to cover the cost of necessary permits. It should be noted, however, that factory trawlers were built primarily for the Alaska pollock fisheries, not the Pacific whiting fishery. Factory trawlers also have the ability to derive profit from processing fish, as well as catching them. This tends to give them a larger relative whiting income stream with which to repay the permit cost. On the other hand, those smaller catcher vessels with hold capacity also possess opportunities to offset permit costs with additional landings of other groundfish species during portions of the year when the whiting season is closed. Another consideration is that the vast majority of catcher boats that will be participating in this fishery in all likelihood initially qualified for limited entry permits and will not have to pay anything for the right to continue fishing.

Although the cost of permits will fluctuate based on supply and demand, permit cost does not appear to be a reasonable basis for estimating harvest capacity in the groundfish fishery.

Comment 6: One commenter provided an alternative analysis of the capacity differences between trawl vessels of different lengths, based on calculations of the area and volume of water capable of being swept by the trawl net per hour.

Response: While there may be a strong correlation between area swept and the catch of vessels of given sizes, it is not clear what that functional relationship is between the two variables. Whatever this relationship, it is almost certainly characterized by diminishing catches per area swept at some point, just as the increase in highline production values per increment of vessel length diminished in the NMFS analysis. Knowing only the ratio of the areas swept per hour by vessels of different lengths without knowing the functional relationship between the two variables is not helpful in identifying catching capacity. For example, if the ratios reflect a linear increase in capacity over a 46-fold increase in area swept, then the capacity of a 90-foot (27.4 m) and a 300-foot (91.4 m) vessel, relative to a 60-foot (18.3 m) vessel, would be 4.7:1 and 44.5:1, respectively, as noted in the comment. If, on the other hand, catch equals area swept to an exponential value, 0.75 for

example, then the capacity ratios that result are 3.2:1 and 17.2:1, respectively, for the 90- and 300-foot (27.4 and 91.4 m) vessels; these values are not substantially different from those in the NMFS preferred approach. Without considerable additional quantitative analysis, there appears to be no basis for presuming that one of these assumptions is any better than the other.

NMFS also evaluated the commenter's suggestion taking into account the target species in the fishery. NMFS agrees that the commenter's method might be appropriate when harvesting spawning Alaska pollock where the pollock are distributed in large dense aggregations that are as much as 50 to 100 meters thick. In that case, it might be appropriate to calculate the ratios on a volume-swept basis. Whiting stock assessment surveys have found that the typical dense schools of whiting in the summer are scattered in a relatively thin layer that may be only 5 to 10 meters thick. In this case it appears more appropriate to calculate the ratios for whiting on an area-swept (two dimensional) basis rather than on a volume-swept basis. This method also is independent of any limits induced by the market, processing capacity, or vessel hold capacity, all of which typically reduce vessel capacity by some unknown amount. Based on an analysis of the capacity ratios using an area-swept method, it appears that this rule offers reasonable certainty that the permit combining schedule does not allow the overall harvesting capacity of the groundfish trawl fleet to increase.

Comment 7: One commenter complained that, in the proposed rule, NMFS did not adequately explain why it deviated from its initial proposal to flatten the 2.5 exponential curve at a vessel length of 90 ft (27.4 m), and instead proposed to flatten the curve at a length of 150 ft (45.7 m).

Response: After evaluation of production values for the top 25 percent of the Alaska Freezer longline fleet (vessels up to 150 ft (45.7 m) in length), NMFS concluded that the actual production potential for longline vessels in the Pacific groundfish fishery also could be fairly represented by the 2.5 exponential curve initially used to describe harvest capacity and production for vessels 90 ft (27.4 m) in length and below. Consequently, NMFS revised its initial proposal (Initial Alternative I) to extend the 2.5 exponential curve describing harvest capacity from 90 ft (27.4 m) to 150 ft (45.7 m) (NMFS preferred approach).

Comment 8: Two commenters representing factory trawlers recommended that NMFS allow permits to be combined temporarily (leased) then broken again into individual permits at the end of the lease period.

Response: Amendment 6 specifically did not provide for aggregating leased permits to provide for the temporary entry of larger vessels into the Pacific groundfish fishery. Any such consideration is beyond the scope of this regulatory amendment, and would require an amendment to the FMP. The commenter should make this proposal to the Council for its consideration.

Comment 9: One commenter noted that the current regulations require that the size endorsement for a permit endorsed for trawl gear that is transferred to a smaller vessel be downgraded to the length overall of the smaller vessel. The commenter suggested that this regulation would prevent a larger trawl vessel from leasing his permit to a smaller vessel, thus restricting the number of people who might lease a trawl permit. He noted that leasing a 90-foot (27.4 m) trawl permit to a 60-foot (18.3 m) vessel would result in a temporary reduction in harvest capacity, which would be consistent with the objectives of the limited entry program. He recommended revising the limited entry regulations to allow leasing of trawl permits to smaller vessels without having the permit permanently downsized.

Response: NMFS agrees that leasing a trawl permit with a large size endorsement to a smaller trawl vessel would be consistent with the goals and objectives of the limited entry program. Amendment 6, however, specifically requires that, if a permit endorsed for trawl gear is registered to a trawl vessel more than 5 ft shorter than the size endorsed on the permit, the permit will be re-endorsed with the length overall of the smaller vessel. In a trip-limit fishery, for example, there may be greater profit from fishing with a smaller vessel. Taking advantage of this would require downsizing the permit. This is one of the means by which Amendment 6 intended to reduce harvest capacity in the groundfish fishery. This provision cannot be changed, except by further amending the FMP. The commenter should take his request to the Council for its consideration.

Comment 10: Two commenters who supported NMFS Initial Alternative I argued that, if the NMFS preferred approach were adopted, the schedule for vessels above 200 ft (61.0 m) in length should be modified slightly to increase the number of permits required for vessels between 200 and 250 ft (61.0 and 76.2 m) in length.

Response: Production data that NMFS examined for the top 25 percent of the factory trawler fleet showed a modest increase in production as vessel length increased. NMFS believes that the modest increase in the number of permits required by the NMFS preferred approach for vessels between 200 and 400 ft (61.0 and 121.9 m) in length fairly represents harvest capacity as suggested by the production data available from the fishery.

Comment 11: Two commenters noted that NMFS accepted either the documented length on the U.S. Coast Guard Documentation (CG–1270) or a marine survey as documentation of "length overall" to determine the appropriate size endorsement when initially issuing limited entry permits. They argued that NMFS should continue to accept either form of documentation when determining the "length overall" and the necessary size endorsement for a permit for a vessel that results from the combination of two or more smaller permits.

Response: The limited entry plan and the regulations require the use of "length overall" for permit size endorsements. This was done so there would be a standard length measure that would be comparable across all vessels and vessel sizes. Length overall was adopted because it is routinely used and is explained in Coast Guard regulations. When the NMFS Northwest Region Fisheries Permit Office began receiving permit applications for initial issuance of limited entry permits, applicants were not required to submit a marine survey showing "length overall." The first permits issued were endorsed with the length shown on the CG–1270. In most cases, the length shown on the CG–1270, if not the "length overall," was a shorter length derived from the U.S. Coast Guard "Standard" system of measurement. In these cases, the use of the length on the CG–1270 as "length overall" was to the detriment of the permit recipient because permits could have been endorsed for the larger "length overall" measurement. Initial permit recipients were notified of this discrepancy and offered the opportunity to submit a marine survey or builder's certificate showing "length overall" of the qualifying vessel. Upon receipt of these documents, NMFS issued new permits with the size endorsement showing true "length overall."

For transfers and permit combination (upgrades), use of the improper length measurement for the new vessel operates to the benefit of the individual applicant, but to the disadvantage of the limited entry program, by allowing increases in the overall fishing capacity

through granting permits based on length measurements that are not comparable to the measure required by the regulations. NMFS will continue to require either a marine survey or builder's certificate to document actual "length overall" of any vessel receiving a new permit through permit combination.

Comment 12: Three commenters favored the NMFS preferred approach. Two commenters noted that adoption of the NMFS preferred option would be less disruptive to the fishery for factory trawlers, since some had purchased permits using this option as a guideline, and because there would be little time between the issuance of this rule and the start of the whiting season, April 15, within which to obtain additional permits if NMFS issued a more restrictive schedule. One commenter favoring the NMFS preferred approach was concerned that, under a more restrictive alternative, more vessels would sell their permits and enter another fishery such as the shrimp fishery, resulting in over-capitalization of that fishery.

Response: Comments are noted. The NMFS preferred approach is being promulgated.

Comment 13: Fourteen commenters believed that implementation of the NMFS preferred approach would result in more factory trawlers purchasing permits and entering the whiting fishery than if the Council's recommendation, Initial Alternative II, were implemented. These commenters believed that more factory trawlers entering the whiting fishery would deprive coastal catcher boats of potential whiting markets with at-sea processors. As a result, many coastal catcher vessels would be forced to fish for traditional (non-whiting) groundfish species, adding additional capacity into an already overcapitalized fishery.

Response: NMFS has no information to indicate how many factory trawlers would purchase and combine permits in order to participate in the Pacific whiting fishery under any of the three alternatives. Some factory trawlers are likely to participate under any of the alternatives. It appears likely that the number of factory trawlers purchasing permits and participating in the whiting fishery will be considerably less than the number that have participated in the fishery under open access during the past 3 years. The availability of whiting markets for coastal catcher vessels will depend, to some degree, on the number of at-sea processors that offer markets and on the level of operation of shoreside processing plants in 1994. As a result of limited entry and the regulations that allocate the Pacific whiting harvest between the at-sea and shoreside sectors of the industry, whiting markets should support a larger number of catcher vessels in 1994 than at any time during the past 3 years. Whether fishing effort will increase for traditional non-whiting groundfish species is uncertain. It should be noted that much of the capacity represented by permits being purchased by factory trawlers for use in the whiting fishery, if not utilized for that purpose, is available for transfer and use to fish for other groundfish species. Any increase in harvest capacity in the whiting fishery is counterbalanced by decreasing capacity available to harvest other groundfish species. NMFS has no data to indicate whether the potential capacity that leaves the other groundfish sector will be any greater or less than the capacity that leaves the whiting fishery due to lack of markets.

Comment 14: Twenty-two commenters stated that NMFS, as a matter of policy, should defer to the expertise and judgment of the Council and implement Initial Alternative II.

Response: During the development and adoption of Amendment 6 (limited entry) to the Pacific Groundfish FMP, the Council decided to leave the task of developing a measure of harvest capacity and method for combining limited entry permits to NMFS, based on the standard set out in the FMP. NMFS was to develop and implement the system for combining permits in consultation with the Council and with the advice of a marine architect. None of the development documentation or analysis was undertaken by the Council. While the Council has made a recommendation to NMFS for a different method from that proposed by NMFS, it has not presented an analysis or administrative record supporting the recommendation. Although NMFS gives great weight to Council recommendations, they must be supported by an administrative record demonstrating they are based on the best available scientific information and are consistent with the Magnuson Act and other applicable Federal law.

Comment 15: Several commenters stated that the NMFS preferred approach ignores the goals and objectives of the Pacific groundfish FMP. These commenters believed only Initial Alternative II is consistent with the Council's goals.

Response: Amendment 6 to the FMP very narrowly defined the objectives for NMFS in developing a permit combination system. Regulations at 50 CFR 663.33(g) require the Regional Director, with advice of marine architects and other qualified individuals, and after consultation with the Council, to develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited entry permits created by combining two or more permits with smaller size endorsements. Amendment 6 bases the system for combining limited entry permits in the Pacific Coast groundfish limited entry fishery on the overall length of the fishing vessel. The standard set by Amendment 6 requires that the harvest capacity represented by the appropriate length endorsement for the combined permit not exceed the sum of the harvest capacities of the permits being combined. As provided by Amendment 6, the standard applies regardless of the target species being fished or the size of the vessels involved, and is equally applicable to trawl, longline, and fish trap (pot) vessels.

Amendment 6 did not authorize NMFS to modify parameters of the system to meet goals and objectives other than ensuring that the harvest capacity of a combined permit does not exceed the sum of the harvest capacities of the permits being combined.

Comment 16: Several commenters stated that NMFS has ignored the recommendations of the marine architect who provided professional advice to the Council's Groundfish Advisory Panel.

Response: The report of the Groundfish Advisory Subpanel provided at the Council's April 1993 meeting indicated that a marine architect, David Green, President of Jensen Maritime, advised the subpanel that any of the formulas initially proposed by NMFS will reduce fleet size over time, and that length cubed potentially reduced fleet size the most. All of these formulas included flattening the curve for vessels above about 120 ft (36.6 m) in length. Mr. Green stated that the length cubed function matches vessel fishing power relatively well, but the choice is primarily one of economics and social considerations. Although each formula will permanently reduce fleet size, Mr. Green believed none would prevent increased fishing capacity in the form of deeper, "beamier" vessels to be built in the future. The Council's Groundfish Advisory Subpanel recommended the 2.5 exponential factor, stating that it better matches the west coast fleet, and recommended that the curve be flattened at about 150 ft (45.7 m) in vessel length instead of the 120 feet shown in the formulas.

A letter from Mr. Green elaborated on his prior comments. Although Mr. Green states that exponents of 2.5 or less favor a fishery with increasing catch capability, he also comments that there is a reasonable correlation between hold capacity and length either to the 2.5 or 3.0 exponent, and that this correlation holds up reasonably well to about 150 ft (45.7 m) in length. These remarks tend to confirm that a 2.5 exponent is at least very close to the optimal value to prevent any increase in capacity and that the exponential relationship breaks down for vessels larger than 150 ft (45.7 m).

Mr. Green's only comments on the formula proposed for large vessels is that the flattened section favors the processor type vessel as a substitute for smaller catchers and would accelerate transition from today's fleet of individual owners to the corporate fleets of processors. His comments regarding fleet structure may be accurate if the standard for comparison is the structure of the fleet during the 1984–88 qualifying period for limited entry permits. They may not be as accurate, at least initially, if the standard of comparison is the 1991–93 fleet, which included as many as 20 large factory trawlers, and fewer than that number purchase permits to enter the fishery.

The make-up of the fishery, however, is not a relevant consideration in the formulation of these regulations. The relevant issue is a reasonable estimate of harvesting capacity. If the purpose of the limited entry program was to freeze the structure of the fleet as it was in 1984–87, the Council would not have provided for the entry of new and larger vessels. The FMP recognized the need to provide flexibility for the fleet to change.

Finally, Mr. Green seems to use the concepts of hold capacity and catching capacity interchangeably. While the ability to catch fish is undoubtedly tied to hold size (or under-deck volume), the relationship between these variables is not necessarily one to one, and the relationship may be different in different fisheries. NMFS' initial uncertainty regarding this relationship prompted examination of actual highliner production records and eventually led to modification of NMFS' initial proposal.

Comment 17: Several commenters representing the operators of factory trawlers favored the NMFS initial proposal (Initial Alternative I) because it was based on data from the highest producers and, of the three alternatives, best reflected actual historical production by factory trawlers. They argued that factors such as product quality and problems with flesh deterioration limited the ability of factory trawlers to increase production.

Response: In the NMFS Initial Alternative I proposal, the non-increasing (flat) part of the formula for vessels larger than 200 ft (61.0 m) exaggerated the fact that not very much increase was observed in this range. Actual production figures do indicate a modest increase in historical production as vessel size increases. In addition, the original analysis focused on assessing the conservatism of the formula by comparing a 60-foot (18.3 m) vessel's catch capacity with that of factory trawlers. Drawing on the example in the response to comment 2, under Initial Alternative I, a 300-foot (91.4 m) factory trawler would need ten 60-foot (18.3 m) permits or 3.6 90-foot (27.4 m) permits. The ten 60-foot (18.3 m) permits represent a whiting capacity of about 4,700 mt per week, a reasonable amount of conservatism compared to a factory trawler's historical production of about 2,000 mt per week. However, the 3.6 90-foot (27.4 m) permits would represent a minimum of 2,200 mt per week, which is not only below some of the peak weeks observed for factory trawlers, but also provides no protection for the possibility of factory trawlers improving their production in the future. Since NMFS cannot rule out the possibility that factory trawlers will increase production in the future through effective scouting or other operational changes, a reasonable amount of conservatism is justified. NMFS believes that conservatism is supplied by the schedule promulgated by this rule (NMFS preferred approach).

Changes From the Proposed Rule

The proposed rule did not indicate how NMFS would determine the number of rating points for vessels for which the length overall is in fractions of feet (e.g., 70.39 ft (21.4 m) length overall). NMFS will calculate the number of rating points for fractions of a foot by multiplying the fraction by the difference in the rating points assigned to the lengths (in whole feet) immediately above and below the length overall measurement of the vessel, and adding the resulting number of rating points to the number of rating points for the nearest integer below the length overall measurement. For example, the total number of capacity rating points for a vessel with a length overall of 70.39 ft (21.4 m) would be 22.92 (the capacity rating for a 70-foot vessel) plus 0.39 × the difference between 23.74 (71 ft; 21.6 m) and 22.92 (70 ft; 21.3 m), or 0.39 § 0.82=0.32. Thus, the total number of rating points for a vessel with length overall of 70.39 ft (21.4 m) is 22.92+0.32=23.24.

Minor editorial changes are made to § 663.33(g) for clarity.

Classification

This final rule has been determined to be "significant" for purposes of E.O. 12866.

This final rule is published under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

At the proposed rule stage, NMFS certified to the Small Business Administration that the NMFS preferred approach or Initial Alternative I or II, if adopted, could have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Although the cost to a vessel owner of purchasing additional permits to combine for use on a larger vessel would be offset by the greater fishing effectiveness and larger profit potential represented by the larger vessel, vessel owners may be adversely affected by not being able to obtain the appropriate combination of permits or by having increased permit costs due to the possible absence of permits for sale endorsed with the appropriate vessel lengths. As a result, an initial regulatory flexibility analysis was prepared. After the close of the public comment period, a final regulatory flexibility analysis (FRFA) was prepared. Based on information contained in the FRFA, NMFS concluded that this action will have a significant economic impact on a substantial number of fishermen.

The Assistant Administrator finds good cause under section 553(d)(3) of the Administrative Procedure Act to make this rule effective upon filing at the Office of the Federal Register. If this rule is not effective by April 15, 1994, some fishing vessels will have to cease fishing until such time as the rule is effective, because the regulation that requires each vessel to have a limited entry permit with a size endorsement no more than 5 ft (1.5 m) shorter than the vessel's length overall will take effect. Immediate effectiveness is necessary to prevent a hiatus in the fishery for some vessels. Therefore, delaying the effective date of this rule is contrary to the public interest.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 8, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. Section 663.33(g) is revised to read as follows:

§ 663.33 Limited entry fishery—General.

* * * * *

(g) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 1 of this paragraph for the length overall (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 1, the length rating shall be the higher length.

TABLE 1 OF § 663.33(g): HARVEST CAPACITY RATINGS FOR 1-FOOT INCREMENTS OF VESSEL LENGTH OVERALL

Vessel length	Capacity rating
≤20	1.00
21	1.13
22	1.27
23	1.42
24	1.58
25	1.75
26	1.93
27	2.12
28	2.32
29	2.53
30	2.76
31	2.99
32	3.24
33	3.50
34	3.77
35	4.05
36	4.35
37	4.66
38	4.98
39	5.31
40	5.66
41	6.02
42	6.39
43	6.78
44	7.18
45	7.59
46	8.02
47	8.47
48	8.92
49	9.40
50	9.88
51	10.38
52	10.90
53	11.43
54	11.98
55	12.54
56	13.12
57	13.71
58	14.32
59	14.95
60	15.59
61	16.25
62	16.92
63	17.61
64	18.32
65	19.04
66	19.78
67	20.54
68	21.32
69	22.11
70	22.92
71	23.74
72	24.59
73	25.45
74	26.33
75	27.23
76	28.15
77	29.08
78	30.04
79	31.01
80	32.00
81	33.01
82	34.04
83	35.08
84	36.15
85	37.24
86	38.34
87	39.47
88	40.61
89	41.77
90	42.96
91	44.16
92	45.38
93	46.63
94	47.89
95	49.17
96	50.48
97	51.80
98	53.15
99	54.51
100	55.90
101	57.31
102	58.74
103	60.19
104	61.66
105	63.15
106	64.67
107	66.20
108	67.76
109	69.34
110	70.94
111	72.57
112	74.21
113	75.88
114	77.57
115	79.28
116	81.02
117	82.77
118	84.55
119	86.36
120	88.18
121	90.03
122	91.90
123	93.80
124	95.72
125	97.66
126	99.62
127	101.61
128	103.62
129	105.66
130	107.72
131	109.80
132	111.91
133	114.04
134	116.20
135	118.38
136	120.58
137	122.81
138	125.06
139	127.34
140	129.64
141	131.97
142	134.32
143	136.70
144	139.10
145	141.53
146	143.98
147	146.46
148	148.96
149	151.49
150	154.05
151	154.68
152	155.31
153	155.94
154	156.57
155	157.20
156	157.83
157	158.46
158	159.10
159	159.73
160	160.36
161	160.99
162	161.62
163	162.25
164	162.88
165	163.51
166	164.14
167	164.77
168	165.41

TABLE 1 OF § 663.33(g): HARVEST CAPACITY RATINGS FOR 1-FOOT INCREMENTS OF VESSEL LENGTH OVERALL—Continued

Vessel length	Capacity rating
169	166.04
170	166.67
171	167.30
172	167.93
173	168.56
174	169.19
175	169.82
176	170.45
177	171.08
178	171.72
179	172.35
180	172.98
181	173.61
182	174.24
183	174.87
184	175.50
185	176.13
186	176.76
187	177.40
188	178.03
189	178.66
190	179.29
191	179.92
192	180.55
193	181.18
194	181.81
195	182.44
196	183.07
197	183.71
198	184.34
199	184.97
200	185.60
201	186.23
202	186.86
203	187.49
204	188.12
205	188.75
206	189.38
207	190.02
208	190.65
209	191.28
210	191.91
211	192.54
212	193.17
213	193.80
214	194.43
215	195.06
216	195.69
217	196.33
218	196.96
219	197.59
220	198.22
221	198.85
222	199.48
223	200.11
224	200.74
225	201.37
226	202.01
227	202.64
228	203.27
229	203.90
230	204.53
231	205.16
232	205.79
233	206.42
234	207.05
235	207.68

TABLE 1 OF § 663.33(g): HARVEST CAPACITY RATINGS FOR 1-FOOT INCREMENTS OF VESSEL LENGTH OVERALL—Continued

Vessel length	Capacity rating
236	208.32
237	208.95
238	209.58
239	210.21
240	210.84
241	211.47
242	212.10
243	212.73
244	213.36
245	213.99
246	214.63
247	215.26
248	215.89
249	216.52
250	217.15
251	217.78
252	218.41
253	219.04
254	219.67
255	220.30
256	220.94
257	221.57
258	222.20
259	222.83
260	223.46
261	224.09
262	224.72
263	225.35
264	225.98
265	226.61
266	227.25
267	227.88
268	228.51
269	229.14
270	229.77
271	230.40
272	231.03
273	231.66
274	232.29
275	232.93
276	233.56
277	234.19
278	234.82
279	235.45
280	236.08
281	236.71
282	237.34
283	237.97
284	238.60
285	239.24
286	239.87
287	240.50
288	241.13
289	241.76
290	242.39
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96

TABLE 1 OF § 663.33(g): HARVEST CAPACITY RATINGS FOR 1-FOOT INCREMENTS OF VESSEL LENGTH OVERALL—Continued

Vessel length	Capacity rating
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93
360	286.56
361	287.19
362	287.82
363	288.46
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24

TABLE 1 OF § 663.33(g): HARVEST CAPACITY RATINGS FOR 1-FOOT INCREMENTS OF VESSEL LENGTH OVERALL—Continued

Vessel length	Capacity rating
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
≥400	311.80

* * * * *

[FR Doc. 94–8924 Filed 4–8–94; 4:44 pm]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 040894B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catches of Pacific cod by these vessels in the Central Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of Pacific cod specified for the inshore component in this area has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 9, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod Total Allowable Catch (TAC) for the inshore component in the Central Regulatory Area, GOA, was established by the final 1994 groundfish specifications (59 FR 7647, February 16, 1994), as 28,125 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the allocation of Pacific cod TAC specified for the inshore component in the Central Regulatory Area, GOA, has been reached. Therefore, NMFS is requiring that further catches of Pacific cod by operators of vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area in the GOA, be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., April 9, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–8945 Filed 4–8–94; 5:01 pm]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 040594C]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish (DSR) in the Southeast Outside district, by vessels using hook-and-line gear in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear in the GOA.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 28, 1994, through 12 noon, A.l.t., August 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(f)(2), the 1994 Pacific halibut prohibited species catch limit for hook-and-line gear for groundfish fisheries, other than DSR in the Southeast Outside district, in the GOA was established by the final 1994 groundfish specifications (59 FR 7647, February 16, 1994), as 740 metric tons (mt). NMFS apportioned 500 mt to the second season, the period May 18 through August 31, 1994.

Due to the short duration of the hook-and-line sablefish fishery, observer data will not be available in time to monitor bycatch during the second season of the 1994 Pacific halibut prohibited species catch limit for hook-and-line gear for groundfish fisheries. Therefore, based on the 1993 bycatch rates, the Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(ii)(A), that operators of vessels engaged in directed fishing for groundfish, other than DSR in the Southeast Outside district, with hook-and-line gear in the GOA will reach the second seasonal bycatch allowance of Pacific halibut by May 28, 1994. NMFS is prohibiting directed fishing for

groundfish, other than DSR in the Southeast Outside district, by vessels using hook-and-line gear in the GOA from 12 noon, A.l.t., May 28, 1994, until 12 noon, A.l.t., August 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–9027 Filed 4–13–94; 8:45 am]

BILLING CODE 3510–22–P

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50 CFR Part 675

[Docket No. 93110–4043; I.D. 040894A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands (BSAI) management area. NMFS is requiring that catches of Atka mackerel in these areas be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) in the Eastern Aleutian District and Bering Sea subarea in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 9, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(2), the TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) as 11,454 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that TAC for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention effective from 12 noon A.l.t., April 9, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under 50 CFR 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: April 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–8944 Filed 4–8–94; 5:01 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 72
Thursday, April 14, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV-93-706PR]

RIN 0581-AB21

Watermelon Research and Promotion Plan; Proposed Amendments to the Plan, Rules and Regulations, Referendum Procedures, and Rules of Practice for Petitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document gives notice of proposed amendments to the Watermelon Research and Promotion Plan (Plan) to: Eliminate refunds of assessments; assess watermelon imports and add one or more importer members to the National Watermelon Promotion Board (Board); exempt from assessments producers with less than 10 acres of watermelons rather than 5 acres and importers of less than 150,000 pounds; cover all 50 States by the Plan; and revise the criteria for determining the eligibility of producers to serve on the Board. In addition, conforming changes would be made to the rules and regulations issued under the Plan and the rules of practice for petitions, and the rules of practice for referenda on the Plan would be revised to provide for referenda to be conducted by mail ballot. These actions are necessary to implement amendments to the Watermelon Research and Promotion Act.

DATES: Comments must be received by May 16, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456. Three copies of all written materials should be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular working hours. All comments should reference the docket number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Watermelon Research and Promotion Plan [7 CFR Part 1210], hereinafter referred as the Plan. The Plan is effective under the Watermelon Research and Promotion Act, as amended by the Watermelon Research and Promotion Improvement Act of 1993, [7 U.S.C. 4901–4916] hereinafter referred as the Act.

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 750 watermelon handlers and 5,000 watermelon producers in the contiguous 48 States of the United States who are subject to the Plan. There are approximately 140 importers of watermelons. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers, producers, and importers may be classified as small entities.

The changes proposed to the Plan, rules and regulations, rules of practice for petitions, and procedures for conduct of referenda are as a result of amendments to the Act. The overall economic impact of these proposed changes is not expected to be significant. Including all 50 States and the District of Columbia under the Plan would have little impact. The producer exemption from assessments would be increased from 5 acres to 10 acres. This change would benefit small producers because it will increase the exemption level, and small producers would not have to pay the assessment. Neither the eligibility criteria for determining if a person is a handler or a producer nor the change to voting by mail ballot would have any economic impact. The elimination of refunds may have some impact on a small amount of producers and handlers who are currently entitled to refunds. There would also be a new burden on importers caused by the assessment of imports, but importers are currently benefiting from the activities which promote watermelons without paying assessments. The research and promotion program is expected to benefit producers, handlers, and importers subject to the plan by expanding and maintaining new and existing markets. Accordingly, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 [40 U.S.C. chapter 35], the information collection requirements contained in the Plan have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093. There would be a new reporting burden on importers but the burden has been already approved by the OMB and assigned OMB control number 0581–0093. Therefore, this action adds no additional reporting burden.

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for domestic watermelons. This program is financed by assessments on all producers, except those persons engaged in the growing of less than five acres of watermelons, and handlers of watermelons. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting.

U.S. production of watermelons is estimated through the use of U.S. shipment statistics. Shipments of U.S.-produced watermelons totaled about 1,895.6 million pounds in 1993, 7 percent less than in 1992. Imports of watermelons in 1993 totalled 343.5 million pounds, an increase of 12 percent. Therefore, domestic production is about six times as great as the volume of imports.

This proposed rule invites comments on changes to the Plan, the rules and regulations issued thereunder, the rules of practice for petitions, and the procedures for the conduct of referenda. The changes are proposed in accordance with amendments to the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916] as made in the Watermelon Research and Promotion Improvement Act of 1993.

The amendments to the Act authorize an assessment on watermelons imported into the United States by importers, and the addition of importer members to the Board if approved by watermelon producers, handlers, and importers in a referendum. Watermelon imports enter the country primarily during the winter season. Imports of watermelons in 1993 totalled 343.5 million pounds. The assessment rate for imports would be the combined total assessment rate paid by producers and handlers of domestic watermelons. The current assessment rate for producers is 2 cents per hundredweight and for handlers is 2 cents per hundredweight. The combined assessment rate for importers, therefore, would be 4 cents per hundredweight. Assessments would be paid at the time the watermelons enter the country. The collection of assessments on imported watermelons would be expected to generate an additional $137,400 per year in revenue to the Board. In order to make these changes, this rule would amend §§ 1210.200, 1210.201, 1210.202, and 1210.204 of the referendum procedures; §§ 1210.305, 1210.320, 1210.321, 1210.328, 1210.341, 1210.350, 1210.351, 1210.352, 1210.363, and 1210.364 of the Plan; §§ 1210.402 and 1210.405 of the nomination procedures; and §§ 1210.515, 1210.518, 1210.519, 1210.521, 1210.530, 1210.531, and 1210.532 of the rules and regulations. In addition, a new § 1210.314 would be added to the Plan.

To facilitate the collection of assessments on imported watermelons, the Secretary proposes that the United States Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collecting these watermelon assessments. An agreement between the USDA and the Customs Service would be entered into to implement this action. In order to make this change, this rule would amend section 1210.518 of the Rules and Regulations.

The importer representation on the Board would be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers would serve on the Board if importers are subject to the Plan. This representation would enable importers to participate in developing the Board's programs, plans, and projects, and express their views and concerns on how Board funds are used if imports are assessed under the Plan. Importers would nominate individuals to serve as importer members on the Board, and as required for other members of the Board, two nominees would be submitted to the Secretary for each vacancy. The Act requires the number of importers members to be proportionate to the assessments paid by importers. However, it is necessary to calculate the number of initial importer members on the volume of imports because imports are not currently being assessed. There are currently 14 producers and 14 handlers on the Board. This is the equivalent of one domestic industry member for every 67.7 million pounds of domestic production. Based on the average annual volume of imports during the last 3-year period (323.1 hundredweight), four importers would be added to the current Board. In order to make this change, this rule would amend §§ 1210.202, 1210.203, 1210.320, 1210.321, and 1210.401.

The Act provides for the elimination of refunds of assessments if the producers, handlers, and importers vote to eliminate refunds. The refund provision has been in effect since the beginning of the program. Refunds have been increasing every year from 9 percent in 1990 to almost 29 percent in 1993. If the refund provision is eliminated, it would provide the Board with an estimated additional $250,000 per year for research and promotion activities. In order to make this change, this rule would amend §§ 1210.343 and 1210.520.

If the refund provision remains in the Plan, and importers are subject to the Plan, then importers would be entitled to a refund of all assessments paid on watermelons imported into the United States.

The Act increases the acreage for exempt producers from "less than 5 acres" to "less than 10 acres" of watermelons. Importers of less than 150,000 pounds of watermelons per year would be entitled to apply for a refund which would be the producer equivalent of the import assessments. The 150,000-pound exemption level for importers is the level determined to be equivalent to 10 acres of watermelons for domestic producers. In addition, the Act provides that the Board has the authority to establish rules for producers to certify whether they are exempt from the assessments. In order to make these changes, this rule would amend §§ 1210.201, 1210.341, 1210.342, 1210.518, and 1210.521.

The Act also increases applicability of the law from the 48 contiguous States to the 50 States and the District of Columbia. This amendment would expand the Plan to cover producers, handlers, and importers in Hawaii, Alaska, and the District of Columbia. In order to make these changes, this rule would amend §§ 1210.201 and 1210.305 and would add a new § 1210.315.

Section 1647(f) of the Act permits changes in the assessment rate through notice and comment rulemaking. No change to the Plan would be necessary to implement this amendment to the Act because § 1210.341 of the Plan states

that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act.

The Act provides that a producer is eligible to serve on the Board as a representative of handlers (1) if a producer purchases watermelons from other producers in a combined total volume that is equal to 25 percent or more of the producer's own production or (2) if the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. This provision facilitates the eligibility of producers and handlers to serve on the Board as representatives of their specific group. In order to make these changes, this rule would amend §§ 1210.202, 1210.321, 1210.363, 1210.368, and 1210.402.

The Act also provides that all future referenda do not have to be conducted at Extension Service county offices. This procedure proved to be expensive and difficult to administer. The Act would now allow referenda to be conducted by mail ballot which would reduce the costs involved in conducting referenda and facilitate a more timely tabulation of the results. In order to make this change, this rule would amend §§ 1210.203, 1210.204, and 1210.363.

In addition, the Act changes the criteria for determining the outcome of referenda. The Act previously provided that the Plan should not be effective unless approved by not less than two-thirds of the producers and handlers voting in the referendum, or producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in the referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum. The Act now specifies that the determination of the results of a referendum should be on the basis of a simple majority of the producers, handlers, and, if covered by the Plan, importers voting in the referendum. In order to make this change, this rule would amend § 1210.363.

Furthermore, § 1210.252 would be revised to correct a wording error made during the promulgation of the Plan and § 1210.322 would be revised to delete obsolete language.

In addition, § 1210.325 would be changed to reflect a change in the number of Board members that constitute a majority. This revision would reflect the addition of importer members to the Board.

Section 1210.505 would be amended to reflect the fact that the Department issues user fee bills to the Board monthly rather than quarterly.

In addition, miscellaneous conforming changes would be made to §§ 1210.201, 1210.251, 1210.302, 1210.328, 1210.340, and 1210.362.

Interested persons are encouraged to comment on the proposed amendments included in this rule. All written comments received by the date specified herein will be considered.

After all comments have been reviewed and any necessary changes made to these proposed amendments to the Plan, the proposals will be published together with a referendum order. The referendum order will set the dates for eligible producers, handlers, and importers to vote on whether or not they favor (1) eliminating the provisions for assessment refunds and (2) implementing assessments on imported watermelons and adding importer members to the Board.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, Chapter XI of title 7 is proposed to be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

Subpart—Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan

2. Section 1210.200 is revised to read as follows:

§ 1210.200 General.

Referenda to determine whether producers, handlers, and importers favor issuance, suspension or termination of a Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

3. Section 1210.201 is amended in paragraph (a) to add at the end of the paragraph ", as amended."; in paragraph (g) by removing the phrase "and handling" and adding in its place ", handling, and importing"; in paragraph (h) introductory text by removing the phrase "five" and adding in its place "10"; and adding new paragraphs (j) and (k) to read as follows:

§ 1210.201 Definitions.

* * * * *

(j) *Importer* means any person who imports watermelons into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States.

(k) *United States* means each of the several States and the District of Columbia.

4. Section 1210.202 is revised to read as follows:

§ 1210.202 Voting.

(a) Each person who is a producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to only one vote in the Referendum: Provided, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership; Provided further, That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; Provided further, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, handler, or importer, or an administrator, executor or trustee of a producing, handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that individual is an officer or employee of the producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity and that individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) Each producer, handler, or importer shall be entitled to cast only one ballot in the referendum.

5. Section 1210.203 is amended by revising paragraphs (b), (d)(2), and (d)(3) and adding a new paragraph (d)(4) to read as follows:

§ 1210.203 Instructions.

* * * * *

(b) Determine procedures for casting ballots.

* * * * *

(d) * * *

(2) The acreage and volume in pounds of watermelons produced by the voting producer during the representative period;

(3) The volume in pounds of watermelons handled by the voting handler during the representative period; and

(4) The volume in pounds of watermelons imported by the voting importer during the representative period.

* * * * *

6. Section 1210.204 is amended by revising the section heading and paragraph (a)(1); removing paragraph (b); redesignating paragraph (c) as paragraph (b); removing in new paragraph (b) the phrase "and handlers" and adding in its place ", handlers, and importers"; adding new paragraph (c), and revising paragraphs (d) and (e) to read as follows:

§ 1210.204 Agent.

* * * * *

(a) * * *

(1) Utilizing, without advertising expense, available media or public information sources (including, but not limited to, press and radio facilities serving the production area) to announce the dates of the referendum as well as the methods of voting, the eligibility requirements for voting, and other pertinent information regarding the referendum.

* * * * *

(c) Preside at a meeting where ballots are to be cast.

(d) Distribute ballots and the aforesaid texts to producers, handlers, and importers and receive any ballots which are cast.

(e) Record the name and address of each person receiving a ballot from, or casting a ballot with, said agent and inquire into the eligibility of such person to vote in the referendum.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

§ 1210.25 [Amended]

7. In § 1210.251, paragraph (a) is amended by removing ";" and adding in its place ", as amended;".

§ 1210.252 [Amended]

8. In § 1210.252, paragraph (b)(3) is amended by removing the word "order" and adding in its place "Plan".

Subpart—Watermelon Research and Promotion Plan

§ 1210.302 [Amended]

9. Section 1210.302 is amended by adding ", as amended" at the end of the sentence.

10. Section 1210.305 is revised to read as follows:

§ 1210.305 Watermelon.

Watermelon means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

§ 1210.306 [Amended]

11. Section 1210.306 is amended by removing the word "five" and adding in its place "10".

12. A new section 1210.314 is added to read as follows:

§ 1210.314 Importer.

Importer means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

13. A new section 1210.315 is added to read as follows:

§ 1210.315 United States.

United States means each of the several States and the District of Columbia.

14. Section 1210.320 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board." The Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324.

* * * * *

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

15. Section 1210.321 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c), and (e) respectively; redesignating paragraph (d) as paragraph (f); removing new paragraph (f)(1) and redesignating new paragraphs (f)(2) and (f)(3) as paragraphs (f)(1) and (f)(2); revising new paragraphs (b) introductory text, (b)(1), (b)(4), (e), (f) introductory text, and (f)(1); removing in new paragraph (c) the word "positions" and adding in its place the phrase "producer and handler positions"; and adding new paragraphs (a) and (d) to read as follows:

§ 1210.321 Nominations and selection.

* * * * *

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

* * * * *

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler

associations, importers, and district conventions, if any.

* * * * *

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: Provided, That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: Provided, That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and provided further, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in section 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

* * * * *

16. Section 1210.322 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

* * * * *

(d) No person shall serve more than two successive terms of office.

17. Section 1210.325 is amended by revising paragraph (a) to read as follows:

§ 1210.325 Procedure.

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

* * * * *

§ 1210.328 [Amended]

18. Section 1210.328 is amended by removing in paragraphs (d) and (g) the word "collected" and adding in its place "received"; removing in paragraphs (g), (i), and (m) the phrase "and handlers" and adding in its place ", handlers, and importers"; removing in paragraph (k) the phrase "or handler" and adding in its place ", handler or importer"; and removing in paragraph (n) the word "handlers" and adding in its place "handlers, importers,".

§ 1210.340 [Amended]

19. Section 1210.340 is amended by removing in paragraph (b) the word "collected" and adding in its place "received".

20. Section 1210.341 is amended by revising paragraphs (a), and (b); redesignating paragraphs (d) through (i) as (e) through (j); revising redesignated paragraph (e); adding a new paragraph (d); removing in redesignated paragraphs (f) and (g) the word "handler" and adding in its place "handler or importer"; removing in paragraph (h) the word "handlers" and adding in its place "handlers and importers"; and removing in paragraph (f) the letter "(d)" and adding in its place "(e)" to read as follows:

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

* * * * *

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

* * * * *

21. Section 1210.342 is amended by designating the existing text as paragraph (a) and adding new paragraphs (b), (c), and (d) to read as follows:

§ 1210.342 Exemption from assessment.

* * * * *

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying whether a person meets the definition of a producer under § 1210.306.

§ 1210.343 [Removed and Reserved]

22. Section 1210.343 is removed and reserved.

23. Section 1210.350 is amended by redesignating paragraphs (a) through (d) as (1) through (4); designating the introductory paragraph as paragraph (a);

and adding new paragraphs (b) and (c) to read as follows:

§ 1210.350 Reports.

* * * * *

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) The total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) The total quantity of watermelons that are exempt from the Plan; and

(3) Such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

§ 1210.351 [Amended]

24. Section 1210.351 is amended by removing the word "handler" and adding in its place "handler and importer" and removing the word "two" and adding in its place "2".

§ 1210.352 [Amended]

25. Section 1210.352 is amended by removing in paragraph (a)(1) the word "handlers" and adding in its place "handlers or importers".

§ 1210.362 [Amended]

26. Section 1210.362 is amended by removing the word "collected" and adding in its place "received"; and removing the word "plan" and adding in its place "Plan".

27. Section 1210.363 is amended by revising paragraph (b) to read as follows:

§ 1210.363 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. Provided, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

§ 1210.364 [Amended]

28. Section 1210.364 is amended by removing in paragraph (d) the phrase "and handlers" and adding in its place ", handlers and importers".

29. The subpart heading "Subpart—Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board" is revised; and a new undesignated center heading is added after the subpart heading to read as follows:

Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

Producer and Handler Members

30. In Section 1210.401, paragraph (b) is revised to read as follows:

§ 1210.401 District conventions.

* * * * *

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district is entitled to two producer and two handler members on the Board.

* * * * *

31. Section 1210.402 is amended by revising paragraph (a); removing in paragraph (b) the phrase "or first handling" and adding in its place ", first handling or importing"; and removing in paragraph (b) the phrase "§ 1210.403" and adding in its place "§ 1210.403 and § 1210.404" to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: Provided, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and Provided further, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

* * * * *

32. A new undesignated center heading and Section 1210.404 are added to read as follows:

Importer Members

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the

production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in section 1210.404(e)(1) of this subpart.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

33. Section 1210.503 is redesignated as § 1210.405, paragraph (a) is revised, and new undesignated center heading is added to read as follows:

Public Member

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. * * *

* * * * *

Subpart—Rules and Regulations

§ 1210.505 [Amended]

34. Section 1210.505 is amended by removing the word "quarterly" and adding in its place "monthly".

35. Section 1210.515 is amended by revising paragraph (a); redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of four cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.10.30007 and 0807.10.40005 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food.

* * * * *

36. Section 1210.518 is amended by revising paragraphs (a) and (b); removing in paragraph (c)(1) the letter "(e)" and adding in its place "(b) and (e)" and removing the word "handler" and adding in its place "handler and importer"; removing in paragraph (c)(2)(viii) the word "five" and adding in its place "10"; and removing in paragraph (d)(1) the word "handler" and adding in its place "handler and importer" to read as follows:

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) *Responsibility for payment.*

(1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

* * * * *

§ 1210.519 [Amended]

37. Section 1210.519 is amended by removing in the introductory paragraph the word "handler" and adding in its place "handler and importer"; by removing in paragraph (a) the word "handler's" and adding in its place "handler's and importer's"; and removing the word "Watermelon" from the introductory paragraph and paragraphs (a) and (b).

38. Section 1210.520 is revised to read as follows:

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) *Application form.* The Board shall make available to all importers a refund application form.

(b) *Submission of refund application to the Board.* The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund

application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) *Payment of refund.* Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

39. Section 1210.521 is revised to read as follows:

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

§ 1210.530 [Amended]

40. Section 1210.530 is amended by removing the word "handler" from the introductory text and adding in its place "handler and importer".

§ 1210.531 [Amended]

41. Section 1210.531 is amended by removing the word "handler" and adding in its place "handler and importer".

42. Section 1210.532 is revised to read as follows:

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Dated: April 6, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8857 Filed 4–13–94; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–23]

Steve Gannis; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated January 8, 1994, which was filed with the Commission by Steve Gannis. The petition was docketed by the NRC on February 8, 1994, and has been assigned Docket No. PRM–20–23. The petitioner requests that the NRC amend its regulations to limit the annual dose of ionizing radiation that is received by the general public from 100 millirems annually to under 1 millirem annually. The petitioner also requests that if the NRC does not establish a limit of 1 millirem annually, it establish a substantially lower limit than the current 100 millirems annually.

DATES: Submit comments by June 28, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The NRC has established standards for protection against ionizing radiation resulting from activities conducted under licensees and has issued these standards in the regulations codified in 10 CFR part 20. These regulations are intended to control the receipt, possession, use, transfer, and disposal of licensed material by its licensees. Licensed material is any source, byproduct, or special nuclear material received, possessed, used, transferred, or disposed of under a general or specific license issued by the NRC.

The Petition

The petitioner believes that it is vital to the public interest and public health that a lower radiation dose limit be established because the higher dose limit is a possible source of an unacceptable number of additional cancers. The petitioner indicates that the NRC stated in its "Below Regulatory Concern" policy statement (issued July 3, 1990; 55 FR 27522, and withdrawn August 24, 1993; 58 FR 44610) that if the public is exposed to 100 millirems of radiation annually over a lifetime, 1 person out of every 285 people would get fatal cancer. The petitioner states that this number does not include the nonfatal cancers that would be caused. Furthermore, the petitioner states that the 100 millirems is in addition to the approximately 90 millirems of radiation the average person receives annually from natural background radiation sources.

The petitioner states that the Federal Government standards on how much cancer can be caused among the public by cancer-causing pollutants and contaminants generally permit, at most, approximately 1 cancer per million people. The petitioner therefore requests that a lower radiation dose limit be established.

Specifically, the petitioner requests that the NRC issue a regulation that would limit to under 1 millirem the annual dose of ionizing radiation received by any member of the public. The petitioner's requested limit would include the exposure received from the combined sources of radiation exposure resulting from activities regulated by the NRC. The petitioner also requests that in the event the NRC does not establish an exposure limit of under 1 millirem, the NRC establish a substantially lower limit than the current 100-millirem limit.

Dated at Rockville, Maryland, this 8th day of April, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–8915 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

[Docket No. 93N–0164]

RIN 0905–AA06

Antacid Drug Products for Over-The-Counter Human Use; Proposed Amendment of Final Monograph; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to May 4, 1994, the comment period on the notice of proposed rulemaking that would require specific indication, warning, and direction statements in the labeling of over-the-counter (OTC) antacid drug products containing sodium bicarbonate as an active ingredient (February 2, 1994, 59 FR 5060). FDA is taking this action in response to a request to extend the comment period for an additional 30 days to allow more time to comment on this proposal. The comment period for these issues closed on April 4, 1994. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by May 4, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 1994 (59 FR 5060), FDA issued a notice of proposed rulemaking to amend the final monograph for OTC antacid drug products to require specific indication, warning, and direction statements in the labeling of products containing sodium bicarbonate as an active ingredient (hereinafter referred to as the February 1994, proposal). The new labeling would be required only for oral dosage forms intended to be dissolved in liquid prior to administration, such as powders and effervescent granules or tablets. As proposed, no such oral dosage forms containing sodium bicarbonate as an active ingredient would be allowed to make a claim for "relief of overindulgence in food and drink." The proposed warnings would alert consumers to avoid antacid drug products containing sodium bicarbonate when the stomach is overly full from eating and drinking. The proposed directions would inform consumers that sodium bicarbonate should be completely dissolved before drinking and that the recommended dose should not be exceeded. FDA issued the February 1994, proposal after receiving reports of gastric (stomach) rupture following ingestion of sodium bicarbonate to relieve gastrointestinal distress. Interested persons were given until April 4, 1994, to submit comments on the proposal.

On March 28, 1994, the Nonprescription Drug Manufacturers Association (NDMA), a trade association representing the manufacturers and distributors of OTC medicines, requested that the comment period be extended for at least 30 days. NDMA stated that the extension is necessary to provide sufficient time to develop comprehensive comments to submit to the agency. NDMA explained that most companies that distribute OTC drug products containing sodium bicarbonate as an active ingredient were not anticipating changes in the antacid final monograph and the February 1994, proposal provided the first opportunity for many affected parties to become aware of the agency's concerns and intentions for amending the monograph. NDMA stated that interested parties have had insufficient time to acquire the reference materials cited by FDA, to retrieve relevant product experience reports, and to research thoroughly the issues raised in FDA's February 1994, proposal. NDMA also mentioned that the time period for the comments includes several days on which many company employees will not be working because of religious holidays.

FDA has carefully considered the request and believes that this additional time for comment is in the public interest. Accordingly, the comment period is reopened to May 4, 1994.

Interested persons may, on or before May 4, 1994, submit to the Dockets Management Branch (address above) written comments regarding OTC antacid drug products containing sodium bicarbonate as an active ingredient. Three 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–9045 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–106–91]

RIN 1545–AQ41

State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations concerning the low-income housing credit.

DATES: The public hearing originally scheduled for Tuesday, April 26, 1994, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 42 of the Internal Revenue Code of 1986. A notice of proposed rulemaking, and public hearing appearing in the **Federal Register** for Wednesday, December 29, 1993 (58 FR 68799), announced that a public hearing on the proposed regulations would be held on Tuesday, April 26, 1994, beginning at 10 a.m., in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, DC.

The public hearing scheduled for Tuesday, April 26, 1994, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–8936 Filed 4–13–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a request from the Hopi Tribe regarding its AMLR plan (hereinafter, the "Hopi Tribe plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Tribe has requested the concurrence of the Secretary of the Department of the Interior with its certification of completion of coal reclamation under the Hopi Tribe plan. If the Secretary concurs with the certification, the Hopi Tribe intends to request AMLR funds for construction of public facilities in areas of the Hopi Reservation impacted by coal development, mining, or processing.

DATES: Written comments must be received by 4 p.m., m.d.t. on May 16, 1994. If requested, a public hearing on the Tribe's request will be held on May 9, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on April 29, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Hopi Tribe plan, the Tribe's request, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the Tribe's request by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Hopi Abandoned Mine Land Program, The Hopi Tribe, Hopi Tribal Complex, Kykotsmovi, Arizona 86039.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA.
II. Background on the Hopi Tribe Plan.
III. Discussion of Proposed Action.
IV. Public Comment Procedures.
V. Procedural Determinations.
VI. List of Subjects in 30 CFR Part 756.

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and waters eligible for reclamation under title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations in 30 CFR parts 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program and granted the State or Tribe exclusive authority to administer its approved plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow, Navajo, and Hopi Tribes to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR Part 886.

II. Background on the Hopi Tribe Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan. General background information on the Hopi Tribe plan, including the Secretary's findings, the disposition of comments, and the approval of the Hopi Tribe plan can be found in the June 28, 1988, **Federal Register** (53 FR 24262). Approval of the Hopi Tribe plan is codified at 30 CFR 756.15.

III. Discussion of Proposed Action

By letter dated February 2, 1994, the Chairman and Chief Executive Officer of the Hopi Tribe notified the Secretary of the Interior that the Tribe had satisfied the requirements of SMCRA in regard to abandoned coal mine reclamation and was, therefore, requesting the Secretary's concurrence with certification of completion of all known coal-related problems (administrative record No. HO–002–FOR).

IV. Public Comment Procedures

In accordance with section 411 of SMCRA, OSM is seeking public comments and information concerning any known or suspected unreclaimed lands and water resources on Hopi lands that may have been adversely affected by coal mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal Tribal, or other laws.

Should the Secretary concur with the certification, the Tribe intends to request, in accordance with 30 CFR part 886, AMLR funding for the construction of public facilities as provided under sections 411 (e) and (f) of SMCRA.

If no past coal mining problems eligible for funding under section 404 of SMCRA are identified through this process, the Secretary intends to concur with the Tribe's certification. If, after the Secretary's concurrence, a coal problem occurs or is identified, the Tribe would have to seek immediate funding for reclaiming the coal-related problem.

1. Written Comments

Written comments should be specific, pertain only to the Hopi Tribe's request for certification of completion of coal reclamation, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the

person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on April 29, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the Tribe's request may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

V. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal that is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 756

Indian lands, Abandoned Mine Land Reclamation Program.

Dated: April 7, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–8917 Filed 4–13–94; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 266

Revision of Regulations To Exempt Privacy Act Systems of Records

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Postal Service regulations exempt certain systems of records that it maintains from certain provisions of the Privacy Act. This proposed rule would supplement those regulations to include an explanation of the reasons for applying specific exemptions.

DATES: Comments must be received on or before May 16, 1994.

ADDRESSES: Written comments should be addressed to USPS Records Office, US Postal Service, 475 L'Enfant Plaza SW room 8831, Washington DC 20260–5240. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–2924.

SUPPLEMENTARY INFORMATION:

The Postal Service has exempted certain systems of records that it maintains from specific provisions of the Privacy Act. At the time it adopted the exemptions contained in its Privacy Act regulations (39 CFR 266.9), the Postal Service stated its reasons for each exemption in the preamble of the notice of proposed rulemaking (40 FR 37227, dated August 26, 1975). This proposed rule does not change the current application of exemptions, but merely incorporates into § 266.9 the reasons for applying each exemption to a particular system.

List of Subjects in 39 CFR Part 266

Privacy.

For the reasons set out in the preamble, the Postal Service proposes to amend part 266 of 39 CFR as follows:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Section 266.9 is revised to read as follows:

§ 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of Title 5, U.S.C., empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of section 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of section 552a from which those systems have been exempted.

(b) At paragraph (b)(1) of this section is a summary of the Act's provisions for which exemption is claimed pursuant to, and to the extent permitted by, subsection 552a (j) and (k) of Title 5, U.S.C., for some systems of records.

Paragraphs (b) (2) through (6) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) Explanation of Act's provisions for which an exemption is claimed in the systems discussed below:

(i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute it has made to the record in accordance with subsection (d) of the Act.

(iii) Subsection (d), paragraphs (1)–(4) require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, the purposes for which the information will be used, the routine uses that may be made of the information, whether disclosure is mandatory or voluntary, and the effects of not providing the information.

(vii) Subsection (e)(4), paragraphs (G) and (H) require an agency to publish a **Federal Register** notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(viii) Subsection (e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(ix) Subsection (e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(x) Subsection (f) requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(xi) Subsection (g) provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(xii) Subsection (m) requires an agency to cause the requirements of the Act to be applied to a contractor operating a system of records to accomplish an agency function.

(2) Inspection Requirements—Investigative File System, USPS 080.010 and Inspection Requirements—Mail Cover Program, USPS 080.020. These systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4), (d)(1)–(4), (e)(1)–3, (e)(4)(G) and (H), (e)(5) and (8), (f), (g), and (m). The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to (c)(3), (c)(4), or (d)(1)–(d)(4) could (A) alert subjects that they are targets of an investigation or mail cover; (B) alert subjects of the nature and scope of the investigation, and of evidence obtained; (C) enable the subject of an investigation to avoid detection or apprehension; (D) subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation; (E) constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation; (F) intimidate potential witnesses and cause them to be reluctant to offer information; (G) lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and (H) seriously impede or compromise law enforcement, mail cover, or background investigations which may involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information may be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Service investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity which may relate to the jurisdiction of the Postal Inspection Service and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation or mail cover, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsection (e)(4) (G) and (H) and (f) do not apply because this system is exempt from the individual access and amendment provisions of subsection d. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures since access may be appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce (d) inapplicable.

(3) Personnel Records—Preemployment Investigation Records, USPS 120.110 and Personnel Records—Postmaster Selection Program Records, USPS 120.130. These systems of records are exempt from 5 U.S.C. 552a, (d)(1)–(4) and (e)(1) to the extent that information in the system is subject to exemption under 5 U.S.C. 552a(k)(5) as relating to the identity of a source who furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment. The reasons for exemption follow.

(i) In the course of its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to (d)(1)–(d)(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his position.

(ii) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information may be of assistance in determining the qualifications and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual which assists in determining whether that individual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(4) USPS 120.120, Personnel Records—Personnel Research and Test Validation Records; and USPS 120.152, Personnel Records—Career Development and Training Records. These systems of records are exempt from 5 U.S.C. 552a (d)(1)–(4), (e)(4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process. The reasons for exemption follow.

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4) (G) and (H) and (f) do not apply to these systems for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures since access to system records that do not compromise the objectivity or fairness of the testing examination process may be appropriate in some cases.

(5) USPS 120.151, Personnel Records—Recruiting, Examining, and Appointment Records. This system is exempt from 5 U.S.C. 552a (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5) as relating to the identity of a source who has furnished information to the Government in confidence as part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment and (k)(6) as relating to the compromise of the objectivity or fairness of the testing or examination process. The reasons for exemption follow.

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5), application of the provisions at (d)(1)–(4) would reveal to the applicant whose suitability is being investigated the identity of individuals who supplied information under a promise of anonymity. As a result, the Postal Service's promise of confidentiality would be breached, its ability to obtain information in the future would be diminished, and the information source could be subjected to harassment by the applicant. To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(6), the requirements of the exemption at (d)(1)–(4) and the reasons for exemption information relating to the compromise of the objectivity or fairness of the testing or examination process are the same as those given in paragraph (b)(5)(i) of this section.

(ii) The reasons for exempting this system of records from subsection (e)(1) are the same as those given in paragraph (b)(4)(ii) of this section.

(iii) The requirements of subsections (e)(4) (G) and (H) and (f) do not apply to this system for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures since access to system records that do not compromise the objectivity or fairness of the testing or examination process or reveal the identity of a confidential source may be appropriate in some cases.

(6) USPS 030.010, Equal Employment Opportunity—EEO Discrimination Complaint Investigations. This system is exempt from 5 U.S.C. 552a (d)(1)–(4), (e)(4) (G) and (H), and (f) to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2) as material compiled for law enforcement purposes and (k)(5) as relating to the identity of a source who has furnished information to the Government in confidence as a part of an investigation conducted solely for the purpose of determining suitability, eligibility, or qualifications of an individual for employment. The reasons for exemption follow.

(i) To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2), application of the requirements of the exemption at (d) (1)–(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). To the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5), application of the provisions at (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(ii) The requirements of subsections (e)(4) (G) and (H) and (f) do not apply to this system for which exemption from subsection (d) of the Act has been claimed. Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures since access to system records that do not compromise the investigative process or reveal the identify of confidential sources may be appropriate in some cases.

An appropriate revision of 39 CFR 266.9 to reflect the proposed change will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94–8718 Filed 4–13–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1F3961 and 1F3962/P578; FRL–4759–4]

RIN No. 2070–AC18

Pesticide Tolerances for Thifensulfuron Methyl and Tribenuron Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule sets tolerances for residues of the herbicides thifensulfuron methyl and tribenuron methyl on the raw agricultural commodities (RAC) oat grain at 0.05 part per million (ppm) and oat straw at 0.1 ppm. E.I. DuPont de Nemours & Co., Inc., requested this regulation.

DATES: Comments, identified by the document control number, [PP 1F3961 and 1F3962/P578], or requests for a hearing must be received on or before May 16, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: This proposal announces that E.I. DuPont de Nemours & Co., Inc., Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, has submitted pesticide petitions (PP) 1F3961 and 1F3962 to EPA proposing that 40 CFR part 180 be amended under section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, by establishing tolerances for the herbicides thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-2-thiophene carboxylate) and tribenuron methyl (methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino]carbonyl] amino]sulfonyl] benzoate), each on the raw agricultural commodities (RAC) oat grain at 0.05 part per million (ppm) and oat straw at 0.1 ppm.

EPA has evaluated the data submitted in the petition and other relevant material. The data and other relevant material are listed below:

Thifensulfuron methyl:

1. *Acute oral LD_{50}.* Rats, LD_{50} greater than 5,000 mg/kg, Toxicity Category IV.
2. *Acute dermal LD_{50}.* Rabbit, LD_{50} greater than 2,000 mg/kg, Toxicity Category III.
3. *Acute inhalation LC_{50}.* Rat, LC_{50} equals 7.9 mg/L/4 hr, Toxicity Category III.
4. *Primary eye irritation study.* Rabbits, the mean eye irritation score was 9.8 (range of 4 to 39), Toxicity Category IV.
5. *Primary dermal irritation study.* Rabbits, under the conditions of the study, test material (thifensulfuron methyl) was a slight dermal irritant, Toxicity Category IV.
6. *Ninety-day feeding.* Rat, systemic NOEL equals 100 ppm (5mg/kg), LEL equals 2,500 ppm (125 mg/kg), based on a decrease in body weight, clinical pathology.
7. *Thirteen-week subchronic feeding.* Dog, NOEL equals 1,500 ppm (37.5 mg/kg). LEL equals 7,500 ppm (187.5 mg/kg), based on a decrease in body and adrenal weights in males.
8. *Developmental toxicity.* Rat, maternal NOEL equals 725 mg/kg HDT, developmental toxicity NOEL equals 159 mg/kg, LEL equals 725 mg/kg, based on an increased incidence of small renal papillae or absence of renal papillae.
9. *Developmental toxicity.* Rabbit, maternal NOEL equals 158 mg/kg, LEL equals 511 mg/kg, based on a decrease in body-weight gain; developmental NOEL equals 511 mg/kg HDT.
10. *Chronic toxicity.* Dog, NOEL equals 750 ppm (18.75 mg/kg), LEL equals 7,500 ppm (187.5 mg/kg), based on a decrease in body weight/body-weight gain in males and an increase in liver weight.
11. *Two-generation reproduction.* Rat, systemic NOEL equals 2,500 ppm (125 mg/kg) HDT, reproductive NOEL equals 2,500 ppm (125 mg/kg).
12. *Chronic toxicity/carcinogenicity.* Rat, systemic NOEL equals 25 ppm (1.25 mg/kg), LEL equals 500 ppm (25 mg/kg), based on a decrease in sodium levels, body weight/ body weight gains; negative for carcinogenicity.
13. *Carcinogenicity.* Mouse, systemic NOEL equals 25 ppm (3.75 mg/kg), LEL equals 750 ppm (112.5 mg/kg), based on a decrease in body-weight gains, negative for carcinogenicity.
14. *Mutagenicity.* Category I, not mutagenic with/without metabolic activation. Category II, negative for clastogenic response at 5,000 mg/kg. Category III, did not induce significant increase in UDS in primary rat hepatocytes.
15. *Metabolism.* Excretion, mainly as parent, mostly in urine/feces; No apparent tissue accumulation, although the majority is not eliminated until 48 hours post dose; metabolites: triazine amine, *O*-demethyl thifensuluron, thiophene sulfonamide, thifensulfuron acid, 2-acid-3-sulfonamide.

Tribenuron methyl:

1. *Acute oral LD_{50}.* Rat, LD_{50} greater than 5,000 mg/kg, Toxicity Category IV.
2. *Acute dermal LD_{50}.* Rabbit, LD_{50} greater than 2,000 mg/kg, Toxicity Category III.
3. *Acute inhalation LD_{50}.* Rat, LC_{50} greater than 6.7 mg/L/4hr, Toxicity Category III.
4. *Primary eye irritation.* Rabbit, opacity/irritation clear within 72 hrs., Toxicity Category III.
5. *Primary dermal irritation.* Rabbit, irritation cleared by 72 hrs, Toxicity Category IV.
6. *Dermal sensitization.* Guinea pig, nonsensitizing.
7. *Ninety-day feeding.* Rat, systemic NOEL equals 100 ppm (5 mg/kg), LEL equals 1,750 ppm (87.5 mg/kg), based on a decrease in body weight gain and food consumption/food elimination, absolute heart/brain/liver/kidney weights; increased relative organ weights; a decreased in glucose and cholesterol.
8. *Thirteen-week subchronic.* Dog, NOEL greater than 2,500 ppm HDT (62.5 mg/kg).
9. *Developmental toxicity.* Rat, maternal NOEL equals 20 mg/kg, LEL= 125 mg/kg, based on a decrease in body weight gain and food consumption; developmental toxicity NOEL equals 20 mg/kg, LEL equals 125 mg/kg, based on a decrease in body weight; at highest dose, an increase in resorption and fetal death, incomplete ossification; doses tested: 20, 125, 500 mg/kg.
10. *Developmental toxicity.* Rabbit, maternal NOEL equals 20 mg/kg, LEL equals 80 mg/kg highest dose tested, based on a decrease food consumption, an increase in abortions; developmental toxicity NOEL equals 20 mg/kg, LEL equals 80 mg/kg HDT, 10% decrease in body weight; nonteratogen; doses 5, 20, 80 mg/kg.
11. *Chronic toxicity.* Dog, NOEL equals 25 ppm (0.79 mg/kg), LEL equals 250 ppm (7.90 mg/kg), based on

increase in male/female bilirubin and AST levels, increase in urinary volume for males, increase in globulin and decrease in body weight gain for females.

12. *Two-generation reproduction.* Rat, paternal systemic NOEL equals 25 (1.25 mg/kg), LEL equals 250 ppm (12.5 mg/kg), based on a decrease in body weight gains in F1 females; reproductive NOEL equals 25 ppm (1.25 mg/kg), LEL equals 250 ppm (12.5 mg/kg), based on a decrease in body weight gains during lactation for F1b and F2b pups; developmental NOEL equals 25 ppm (1.25 mg/kg), LEL equals 250 ppm (12.5 mg/kg), based on decreased spleen weight in F2b pups.

13. *Chronic toxicity/carcinogenicity.* Rat, systemic NOEL equals 25 ppm (1.25 mg/kg), LEL equals 250 ppm (12.5 mg/kg), based on a decrease in body weight gains in both males and females; positive for carcinogenicity; increase in mammary gland adenocarcinomas in females; dose: 25, 250, 1,250 ppm (1.25 mg/kg, 12.5 mg/kg, 62.5 mg/kg); Health Effects Division Peer Review committee classified tribenuron methyl a Category C (possible human carcinogen) under EPA's cancer assessment guidelines.

14. *Carcinogenicity.* Mouse; systemic NOEL equals 20 ppm (3 mg/kg), LEL equals 200 ppm (30 mg/kg), based on an increased incidence of seminiferous degeneration and oligospermia, 10% decrease in body weight gain at 90 days; negative for carcinogenicity.

15. *Mutagenicity.* Category I, not mutagenic. Category II, not mutagenic. Category III, not mutagenic.

16. *Metabolism.* Readily absorbed; major route of excretion-urine; no apparent accumulation; major metabolites: metsulfuron, saccharin, *O*-demethyl triazine amine.

The Dietary Risk Evaluation System (DRES) chronic analysis for thifensulfuron methyl used a Reference Dose (RfD) of 0.013 mg/kg body weight/day, based on a no-observed-effect level (NOEL) of 1.25 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is taken from a 2-year feeding study in rats which demonstrated as an effect lower body weight gains in males. Serum sodium in males and females was sporadically lower throughout the study. This RfD has been approved by both the HED (2/25/88) and Agency RfD (3/23/88) committees. Food uses evaluated in this analysis for thifensulfuron methyl were the published tolerances (barley, soybeans, and wheat) found in 40 CFR 180.439 and the Tolerance Index System (TIS), plus a pending tolerance on corn.

This chronic exposure analysis was performed for thifensulfuron methyl using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 population subgroups. The TMRC for the general population from all published tolerances is 1.1 X 10^{-4} mg/kg bwt/day, representing 1% of the RfD. The tolerances proposed for the oat grain contributes 5 X 10^{-6} mg/kg bwt/day, or less than 1% of the RfD (*viz.* 0.03). If proposed new tolerances and the pending tolerance on corn are considered, the resulting TMRC would be 1.3 X 10^{-4} mg/kg bwt/day, representing 1% of the RfD. The highest exposed subgroups are nonnursing infants (less than a year) and children (1 to 6 years). The TMRC for all uses, including the pending tolerance on corn and the proposed tolerance on oats, for the non-nursing infants subgroup would be 3.1 X 10^{-4} mg/kg bwt/day, or 2% of the RfD. Using the same exposure assumptions, the subgroup for children would result in a TMRC of 2.8 x 10^{-4} mg/kg bwt/day, also 2% of the RfD.

The DRES chronic analysis for tribenuron methyl used a RfD of 0.008 mg/kg bwt/day, based on a NOEL of 0.79 mg/kg bwt/day and an uncertainty factor of 100. The NOEL is taken from a 1-year feeding study in dogs which demonstrated as an effect elevated serum bilirubin and AST levels. Tribenuron methyl is considered a class C carcinogen with no Q^* established for quantification of potency. EPA considers the cancer risk from tribenuron methyl to be negligible. Food uses evaluated in this analysis for tribenuron methyl were the published tolerances (barley and wheat) found in 40 CFR 180.451 and TIS. Currently there are no other pending tolerances for tribenuron methyl.

The chronic exposure analysis performed for tribenuron methyl used tolerance level residues and 100-percent crop treated information to estimate the TMRC for the same 22 subgroups as thifensulfuron methyl. The TMRC for the general population from all published tolerances is 7.4 X 10^{-5} mg/kg bwt/day, representing 1% of the RfD (*viz.* 0.92). The proposed tolerance on oats contributes an additional 5.0 X 10^{-6} mg/kg bwt/day, which represents less than 1% of the RfD. If the new tolerance is established the total TMRC would equal 7.8 X 10^{-5} mg/kg bwt/day, or 1% of the RfD (*viz.* 0.97). The highest exposed subgroups are children (1 to 6 years) and children (7 to 12 years). If the proposed tolerance on oats is established the resultant TMRC, from all uses, would be 1.7 X 10^{-4} mg/kg bwt/day, comprising 2% of the RfD for children (1 to 6 years). If the tolerance on oats is established the TMRC from all uses would be 1.2 X 10^{-4} mg/kg bwt/day for children (7 to 12 years), also 2% of the RfD.

DRES considers the dietary risks from thifensulfuron methyl and tribenuron methyl on oats to be of minimal concern. Also, considering that the proposed uses are given at tolerance level and 100% crop treated values were used there is likely an overestimation of exposures. Exposure from residues for thifensulfuron methyl through oats represents less then 1% of the RfD for the U.S. population. Similarly, exposure from residues for tribenuron methyl through oats represents less then 1% of the RfD for the U.S. population. Based on these values, EPA concludes that the chronic dietary risk for residues of thifensulfuron methyl and tribenuron methyl through the proposed use on oat grain is minimal.

Section 409 tolerances for thifensulfuron methyl and tribenuron methyl on oat processed commodities are not needed because residues are not expected to concentrate on processing.

There are no pending regulatory actions against the registration of these pesticides. These pesticides are useful for the purpose for which these tolerances are sought. Adequate analytical methodology is available for enforcement purposes. The method is not yet published in the Pesticide Analytical Manual, Vol. II (PAM II), but can be obtained in the interim period as follows: By mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5805.

Based on the information cited above, the Agency has determined the tolerances established by amending 40 CFR 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: April 5, 1994.

Stephen L. Johnson,

Acting Director, Registration Divison, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.439, to read as follows:

§ 180.439 Thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]amino] sulfonyl]-2-thiophene carboxylate); tolerances for residues.

Tolerances are established for residues of the herbicide thifensulfuron methyl (methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl] amino] sulfonyl]-2-thiophene carboxylate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.05
Barley, straw	0.1
Oat, grain	0.05
Oat, straw	0.10
Soybeans	0.1
Wheat, grain	0.05
Wheat, straw	0.1

3. By revising § 180.451, to read as follows:

§ 180.451 Tribenuron methyl (methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]carbonyl] amino]sulfonyl]benzoate); tolerances for residues.

Tolerances are established for residues of the herbicide tribenuron methyl (methyl-2-[[[[*N*-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]carbonyl] amino]sulfonyl]benzoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.05
Barley, straw	0.10
Oat, grain	0.05
Oat, straw	0.10
Wheat, grain	0.05
Wheat, straw	0.10

[FR Doc. 94–9020 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[OPP–300328; FRL–4762–2]

RIN 2070–AC18

Pesticide Chemicals; Various Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke tolerances and food additive and feed additive regulations established for residues of 17 pesticide chemicals in or on certain raw agricultural commodities (RACs), processed foods, and animal feeds. EPA is initiating this action for those pesticides which have no food use registrations. The applicable registrations for these pesticides have been canceled because of nonpayment of maintenance fees or by registrant request.

DATES: Written comments, identified by the document control number [OPP-300328], must be received on or before June 13, 1994.

ADDRESSES: By mail, submit comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Owen F. Beeder, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8351.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of all tolerances and food additive and feed additive regulations ("tolerances") established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a and 348) for residues of the herbicides tributylphosphorotrithioite, 2-chloroallyldiethyldithiocarbamate, norea, barban, sodium trichloroacetate, dinitramine, dipropetryn and bifenox; the plant regulators 1,2,4,5-tetrachloro-3-nitrobenzene and cycloheximide; the insecticides *O,O*-dimethyl *O*-*p*-(dimethylsulfamoyl) phenyl phosphorothioate (including its oxygen analog), crotoxyphos, pirimiphos-ethyl, chlorfenvinphos, phenothiazine, and flucythrinate; and the fungicide hexachlorophene in or on raw agricultural commodities (RACs), processed foods, and feeds. EPA is initiating this action because all registered uses of these pesticide chemicals in or on RACs and processed foods have been canceled. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee, or the registrant voluntarily canceled all registered uses of the pesticide.

Because there are no current food use registrations for any of these 17 pesticide chemicals, EPA proposes to revoke the tolerances and food additive and feed additive regulations for these pesticide chemicals. A tolerance, food additive, or feed additive regulation is generally not necessary for a pesticide chemical which is not registered for a particular food use. The Agency is not recommending the establishment of action levels in place of these regulations. Since there are no food use registrations of these products, and

hence no legal use in the United States, and since these pesticides are either not persistent, or sufficient time has elapsed since the prior use for residues to dissipate, residues should not appear in any domestically produced commodities.

The tolerances and food and feed additive regulations listed in 40 CFR parts 180, 185, and 186 being proposed for revocation are as follows: § 180.186 (tributylphosphorotrithioite), § 180.203 (1,2,4,5-tetrachloro-3-nitrobenzene), § 180.233 (*O,O*-dimethyl *O-p*-(dimethylsulfamoyl) phenyl phosphorothioate (including its oxygen analog)), § 180.247 (2-chloroallyldiethyldithiocarbamate), § 180.260 (norea), § 180.268 (barban), § 180.280 (dimethyl phosphate of *alpha*-methylbenzyl-3-hydroxy *cis*-crotonate (crotoxyphos)), § 180.302 (hexachlorophene), § 180.308 (pirimiphos-ethyl), § 180.310 (sodium trichloroacetate), § 180.319 (phenothiazine), § 180.322 (2-chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate (chlorfenvinphos)), § 180.327 (dinitramine), § 180.329 (dipropetryn), § 180.336 (cycloheximide), § 180.351 (bifenox), § 180.400 (flucythrinate), § 185.3300 (flucythrinate), and § 186.3300 (flucythrinate).

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of these 17 pesticide chemicals may request, within 30 days after publication of this document in the **Federal Register**, that the proposal to revoke the RAC tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation revoking the RAC tolerances and processed food and feed additive regulations. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances and food and feed additive regulations. EPA requests that any person adversely affected by these revocations submit information providing the following specific information:

1. Are there any existing stocks of the chemical?
2. If so, how much?
3. When will the stocks be depleted?
4. How long would the commodities treated with these chemicals be in the channels of trade?

Comments must bear a notation indicating the document control number, [OPP-300328]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

The Agency has conducted an analysis in order to satisfy requirements as specified by Executive Order 12866 and the Regulatory Flexibility Act. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

Executive Order 12866

Executive Order 12866 requires the Agency initially to determine whether a proposed regulatory action being proposed or issued is a "significant" rule and therefore subject to the requirements of the Executive Order (i.e. Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have an economic impact on small businesses, small organizations, or small governmental jurisdictions.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Since all domestic registrations for use of these 17 pesticide chemicals have been canceled, it is anticipated that no economic impact would occur at any level of business enterprises if these tolerances and food and feed additive regulations are revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: March 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR parts 180, 185 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 346a and 371.

§ 180.186 [Removed]

b. By removing § 180.186 *Tributylphosphorotrithioite; tolerance for residues.*

§ 180.203 [Removed]

c. By removing § 180.203 *1,2,4,5-Tetrachloro-3-nitrobenzene; tolerances for residues.*

§ 180.233 [Removed]

d. By removing § 180.233 *O,O-Dimethyl O-p-(dimethylsulfamoyl) phenyl phosphorothioate including its oxygen analog; tolerances for residues.*

§ 180.247 [Removed]

e. By removing § 180.247 *2-Chloroallyldiethyldithiocarbamate; tolerances for residues.*

§ 180.260 [Removed]

f. By removing § 180.260 *Norea; tolerances for residues.*

§ 180.268 [Removed]

g. By removing § 180.268 *Barban; tolerances for residues.*

§ 180.280 [Removed]

h. By removing § 180.280 *Dimethyl phosphate of alpha-methylbenzyl-3-hydroxy-cis-crotonate; tolerances for residues.*

§ 180.302 [Removed]

i. By removing § 180.302 *Hexachlorophene; tolerance for residues.*

§ 180.308 [Removed]

j. By removing § 180.308 *Pirimiphos-ethyl; tolerances for residues.*

§ 180.310 [Removed]

k. By removing § 180.310 *Sodium trichloroacetate; tolerances for residues.*

§ 180.319 [Amended]

l. By amending § 180.319 *Interim tolerances* by removing the entry for phenothiazine from the table of pesticide chemicals therein.

§ 180.322 [Removed]

m. By removing § 180.322 *2-Chloro-1-(2,4-dichlorophenyl) vinyl diethyl phosphate; tolerances for residues.*

§ 180.327 [Removed]

n. By removing § 180.327 *Dinitramine; tolerances for residues.*

§ 180.329 [Removed]

o. By removing § 180.329 *Dipropetryn; tolerance for residues.*

§ 180.336 [Removed]

p. By removing § 180.336 *Cycloheximide; tolerances for residues.*

§ 180.351 [Removed]

q. By removing § 180.351 *Bifenox; tolerances for residues.*

§ 180.400 [Removed]

r. By removing § 180.400 *Flucythrinate; tolerances for residues.*

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3300 [Removed]

b. By removing § 185.3300 *Flucythrinate.*

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.3300 [Removed]

b. By removing § 186.3300 *Flucythrinate.*

[FR Doc. 94–9019 Filed 4–13–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; Offset Administrative Costs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Department of Defense is proposing amendment of the Defense FAR Supplement to change the criteria for contractor recovery under foreign military sale contracts of the contractor's offset administrative costs.

DATES: Comments on the proposed DFARS rule should be submitted in writing to the address shown below on or before June 13, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, Attn: Ms. Alyce Sullivan, OUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 604–5971. Please cite DFARS Case 93–D004 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Alyce Sullivan, (703) 604–5930.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 225.7303–2(a) is amended to revise the language on offset administrative costs. The revision originated based on a Defense Security Assistance Agency (DSAA) procedural change. DSAA will issue a corresponding revision to the Security Assistance Management Manual. In addition to the revision of offset administrative costs, the language currently in 225.7303–2(a) (1) and (2) has been combined to make it more clear and all subparagraphs under 225.7303–2(a) have been renumbered accordingly.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it eliminates a procedural requirement for contractor recovery of offset administrative costs, under foreign military sale contracts. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 94–610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR part 225 be amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR part 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303–2 is amended by revising paragraph (a) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) In pricing FMS contracts where non-U.S. Government prices as described in 225.7303–1 do not exist, recognize the reasonable and allocable costs of doing business with a foreign government or international organization, even though such costs might not be recognized in the same amounts in pricing other defense contracts. Examples of such costs include, but are no limited to—

(1) Selling expenses (not otherwise limited by FAR part 31), e.g.—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121) may require Government approval for these costs to be allowable. If Government approval is required for promotion or demonstration costs to be allowable, the approval must be obtained.

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(2) Product support and post-delivery service expenses, such as—

(i) Operations or maintenance training, training or tactics films, manuals, or other related data; and

(ii) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(3) Offset administrative costs.

(i) A U.S. defense contractor may recover costs incurred to administer specific requirements of its offset agreement with a foreign government or international organization if the foreign military sale Letter of Offer and Acceptance is financed wholly with customer cash or repayable foreign military finance credits.

(ii) The U.S. Government assumes no obligation to satisfy or administer the offset requirement or to bear any of the associated costs.

(iii) Some examples of offset administrative costs are—

(A) In-house and/or purchased: organizational, administrative and technical support, including offset staffing; quality assurance, manufacturing, purchasing support; data acquisition; proposal, transaction and report preparation; broker/trading services; legal support; and similar support activities;

(B) Off-shore operations for technical representative and consultant activities, office operations, customer and industry interface, capability surveys;

(C) Marketing assistance and related technical assistance, transfer of technical information and relating training;

(D) Employee travel and subsistence costs; and

(E) Taxes and duties.

(4) Costs that are the subject of advance agreement under the appropriate provisions of FAR part 31; or where the advance understanding places a limit on the amounts of cost that will be recognized as allowable in defense contract pricing, and the agreement contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

* * * * *

[FR Doc. 94–8988 Filed 4–13–94; 8:45 am]
BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 59, No. 72
Thursday, April 14, 1994

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

Forms Under Review by Office of Management and Budget

April 8, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- National Agricultural Statistics Service

List Sampling Frame Survey
On occasion
Farms; 205,000 responses; 17,083 hours
Larry Gambrell, (202) 720–5778.

- Forest Service

Timber Sale Operating Plans
On occasion
Businesses or other for-profits; small businesses or organizations; 5,250 responses; 14,250 hours
Fred Walk, (202) 205–0858.

- National Agricultural Statistics Service

Aquaculture Surveys
Monthly; quarterly; semi-annually; annually
Farms; 5,536 responses; 1,442 hours
Larry Gambrell, (202) 720–5778.

- Agricultural Stabilization and Conservation Service

7 CFR Part 1430, Milk Marketing Assessments and Dairy Refund Payments Program
CCC–140, CCC–140 Continuation, CCC–141, CCC–141 Continuation, CCC–310
Monthly; annually
Individuals or households; farms; businesses or other for-profit; 209,000 responses; 92,323 hours
Raellen Erickson, (202) 720–3561.

- Forest Service

Interpretive Association Annual Report
FS–2300–5
Annually
Non-profit institutions; 60 responses; 60 hours
Neil Hagadorn, (202) 205–1228.

Reinstatement

- Economic Research Service

Cotton Distribution Survey
On occasion
Businesses or other for-profit; 344 responses; 172 hours
Edward H. Glade, Jr., (202) 219–0840.

New Collection

- Foreign Agricultural Service

Foreign Donation of Agricultural Commodities
Monthly; semi-annually; annually
Non-profit institutions; small businesses or organizations; 118 responses; 2,719 hours
James Keefer, (202) 720–5263.

- Food Safety and Inspection Service

Labeling—Addendum 2, Nutrition Labeling, Use of "Healthy" and Similar Terms on Meat and Poultry Produce Labeling
FSIS Form 7234–1
On occasion
Businesses or other for-profit; Federal agencies or employees; small businesses or organizations; 4,800 responses; 1,200 hours
Peggy Gonter, (202) 720–7163.

- Food and Nutrition Service

WIC Nutrition Education Assessment Study
One time study
Individuals or households; non-profit institutions; 6,582 responses; 3,835 hours
Janet Tognetti Schiller, (703) 305–2118.

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 94–9028 Filed 4–13–94; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Use of Bait in Hunting

AGENCY: Forest Service, USDA.

ACTION: Notice of withdrawal of interim policy, notice of proposed policy; and request for public comment.

SUMMARY: On March 14, 1994, the Forest Service published an interim policy, with a request for public comment, on the agency's role in regulating the placement of bait on National Forest System lands (59 FR 11765). This notice withdraws the interim policy and republishes it as a proposed policy. The intended effect of the proposed policy is to clarify the agency's role in relation to the role of the States and, thus, to provide a consistent approach to the regulation of baiting resident game. Public comment is invited and will be considered in the adoption of a final policy, notice of which will be published in the **Federal Register**.

DATES: Comments must be received in writing by June 13, 1994.

ADDRESSES: Send written comments to Director, Wildlife, Fish, and Rare Plants (2640), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Wildlife, Fish, and Rare Plants, 4th floor Southwest Wing, Auditors Building, 205 14th Street SW., Washington, DC. Those wishing to inspect comments should call ahead at (202) 205–1159 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Darden, Wildlife, Fish, and Rare Plants Staff, (202) 205–1206.

SUPPLEMENTARY INFORMATION:

Background

State fish and wildlife agencies have the primary responsibility for protection and management of wildlife populations on National Forest System lands, including adoption of State fish and wildlife laws and regulations affecting the taking of resident game animals. The Forest Service enters into a

Memorandum of Understanding (MOU) with each State which governs Forest Service/State cooperation on matters of Statewide fish and wildlife policy or procedure affecting the National Forest System (FSM 2611.1). The States issue regulations regarding hunting licenses, methods, seasons, locations, and bag limits for resident game and have the primary responsibility for enforcement of fish and wildlife laws and regulations on National Forest System lands.

Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife; see the National Forest System Organic Administration Act at 16 U.S.C. 480, the Multiple Use-Sustained Yield Act at 16 U.S.C. 528, the Sikes Act at 16 U.S.C. 670h, and the Federal Land Policy and Management Act, at 43 U.S.C. 1732. The Forest Service, therefore, is generally reluctant to override State fish and wildlife regulation, except where federal interests, such as protection of forest land, resources, and users, require federal intervention.

The practice of placing bait (food or scent to attract wildlife) is a hunting activity subject to State laws and regulations. The baiting of bears is particularly controversial. While the total number of States allowing bear baiting has declined, State fish and wildlife agencies permit the baiting of black bear as a hunting activity in Alaska, Idaho, Oregon, Maine, Michigan, Minnesota, New Hampshire, Utah, Washington, Wisconsin,and Wyoming. The Forest Service intends to work diligently through its ongoing cooperative efforts to encourage the States to evaluate their regulation of the practice of baiting bears. In the meantime, the agency is issuing proposed policy regarding the use of bait on National Forest System lands.

In the past, some national forests have regulated the placement of bear baits by requiring hunters and commercial guides to obtain special use authorizations in order to prevent conflicts with other users or other problems associated with the location and removal of bait. Additionally, some Forest Service Regions have issued orders under 36 CFR part 261 to control litter, as well as to close certain areas to bear baiting where the practice would create unacceptable adverse effects on other resources or forest users. Special use authorizations for bear baiting had been issued on a number of national forests in Wyoming. Typically, those special use authorizations included conditions with which the holder had to comply to minimize adverse effects created by placement of bear bait. In early 1992, the Forest Service's role in the regulation of bear baiting on the national forests in Wyoming became an issue.

In March 1992, the Regional Foresters for the Rocky Mountain and Intermountain Regions issued a joint closure order prohibiting bear baiting in the national forests in Wyoming, unless the baiting activity was conducted in compliance with the requirements of the order pertaining to the placement and disposal of baits. Like the conditions that previously had been included in special use authorizations, the requirements of the order were intended to minimize adverse effects on forest resources and users.

The Fund for Animals and the Friends of the Bow brought suit to challenge the Forest Service's closure order and to challenge what Plaintiffs considered a shift in established policy, that is, no longer requiring special use authorizations for bear bait placement and using closure orders instead (*The Fund for Animals* v. *Robertson* (D.D.C. Civ. No.92–1694–TPJ)). These groups perceived this shift in method as a diminution in the level of Forest Service regulation and wildlife protection. The parties settled the case upon the Forest Service's decision to rescind the closure order and, in compliance with the National Environmental Policy Act, to analyze the effects of eliminating the practice of issuing special use authorizations for the placement of bear bait on National Forest System lands in Wyoming. The Regions then prepared an Environmental Assessment to disclose effects of the proposed action and alternatives to that proposal.

Upon completion of the Environmental Assessment and issuance of a Decision Notice by the Rocky Mountain and Intermountain Regional Foresters in April 1993, there were new challenges to the agency's position. Subsequently, the Deputy Chief for the National Forest System decided that national direction was needed to end the conflict and controversy. Accordingly, the Decision Notice was rescinded, and bear baiting in national forests in Wyoming was prohibited pending issuance of national direction.

An interim policy was issued by the Forest Service, on March 4, 1994, and published in the **Federal Register** on March 14, 1994.

On March 28, 1994, a lawsuit was filed by the fund for Animals and others, in the U.S. District Court for the District of Columbia challenging, in part, the absence of a public comment period prior to issuance of the interim policy. In a stipulation to stay proceedings in the suit, the agency agreed to withdraw the interim policy and republish it as proposed with a 60-day public comment period prior to issuance of a final policy. As a result, effective March 30, 1994, the Forest Service policy on bear baiting reverted to that which was in effect prior to the interim policy of March 14.

Proposed Policy

The Forest Service special use authorization regulations at 36 CFR 251.50 exempt noncommercial use and occupancy, including "hunting," from the special use authorization requirement. Since hunting methods subject to State regulation are included within the term "hunting," the proposed policy makes explicit that, where State regulations permit baiting, the Forest Service would prohibit the practice of issuing a special use authorization for the practice of baiting connected with hunting on National Forest System lands. However, outfitter and guide activities still require special use authorization and, as a condition of that authorization, outfitters and guides must comply with applicable State laws and regulations as well as any applicable Forest Service closure orders.

However, if the placement of bait should become a land or resource management issue and if it is determined that the State regulations governing baiting would not protect resources in an area adequately or would otherwise be inconsistent with the applicable forest plan or conflict with federal laws such as the Endangered Species Act, then, under the proposed policy, the authorized officer would issue an order to close the area to baiting. The authorized officer also could close an area to baiting after considering the likely impact on a site-specific basis on water quality, public health and sanitation, or the potential threat to the viability of wildlife. Finally, the proposed policy would explicitly prohibit the practice of issuing a special use authorization to individuals for the specific act of placing bait on National Forest system lands for hunting purposes.

The approach contemplated in the proposed policy maintains protection of national forest resources. First, under the terms of the Memorandums of Understanding with the State fish and wildlife or game agencies, the Forest Service continuously participates in the review and adoption of State game regulations as they affect National Forest System land or resources. Second, the proposed policy would provide the Regional Forester or Forest Supervisor with the flexibility and discretion to determine if baiting should

be prohibited in a specific location. Finally, if a hunter, in placing bait to attract resident game creates litter through improper placement or untimely removal of bait in violation of State regulations or Forest Service closure orders, the agency has the authority under its regulations at 36 CFR 261.11 to cite the hunter for violating the prohibition on litter. If such bait results in violation of State regulations, the agency also has authority to cite the hunter for violation of 36 CFR 261.8, and agency employees routinely do so where such violations occur. In short, the agency's proposed approach (1) relies on existing relationships with each State, (2) prevents duplicative regulation by Federal and State agencies, and (3) provide site-specific environmental safeguards to address those situations where baiting would have an adverse site-specific effect on National Forest System land or resources.

The proposed baiting policy would be an amendment to the Forest Service Manual. Accordingly, pursuant to 36 CFR part 216, the text of the proposed policy is set out at the end of this notice. Public comment is invited and will be considered in adoption of a final policy.

Environmental Impact

Publication of this proposed policy is an integral part of the agency's scoping process by which it determines the scope and level of any environmental effects of proposed actions. According to the agency NEPA procedures, scoping is required for all proposed actions, including those that might be categorically excluded. Section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." This proposed policy would provide administrative instructions to Forest Service field offices on the procedures and processes to follow in the case of placing bait for resident game. Accordingly, the agency's preliminary assessment is that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. The agency particularly invites comment on this preliminary finding. Following consideration of public comments, the Forest Service will make a final determination regarding the level of environmental analysis.

Controlling Paperwork Burden on the Public

This policy will not result in addition paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant policy.

Dated: April 7, 1994.

Mark A. Reimers,

Acting Chief.

Proposed Policy—Forest Service Manual Chapter 2640

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual including policy direction that are the subject of this notice are set out here. The proposed policy includes minor revisions to existing codes and subject headings. The audience for this direction is Forest Service employees responsible for coordinating wildlife management on National Forest System lands with State fish and wildlife agencies.

2643—Applicability of State Fish and Wildlife laws and Regulations

The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations and may assist in the enforcement of State fish and wildlife laws on National Forest System lands. Pursuant to FSM 2610, Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations, especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.

2643.1—Hunting, Fishing, and Trapping Regulations

Hunting, fishing, and trapping of fish and wildlife and associated practices are permitted on National Forest System lands subject to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with federal laws; or

2. State laws and regulations would permit activities that conflict with the land and resource management responsibilities of the Forest Service or that are inconsistent with forest plans.

2643.12—Use of Bait for Resident Game Hunting

The use of bait as a lure or attractant for the purpose of taking resident game on National Forest System lands is considered a hunting practice subject to State regulation.

Where State hunting regulations prohibit the use of bait, the practice is prohibited on National Forest System lands.

Where States permit the use of bait for attracting resident game, this activity is allowed on National Forest System lands, subject to State hunting laws and regulations, unless the authorized officer determines on a site-specific basis that there is a need to prohibit or restrict the practice of baiting because one or more of the following circumstances exist:

1. The State laws and regulations on placement of bait are inadequate to protect forest land or other resources or users in a particular location and/or to prevent trespass or litter;

2. Baiting is inconsistent with the applicable forest plan; or

3. The State laws and regulations conflict with Federal law, such as the Endangered Species Act.

In addition to the mandatory causes for prohibiting or restricting baiting, the authorized officer also may prohibit baiting, regardless of the adequacy of State regulations, based on consideration of the likely impact of baiting on such matters as water quality, public health and sanitation, the potential for litter, or the potential to threaten the viability of wildlife.

Where the authorized officer determines that baiting is a significant problem and should be restricted or prohibited:

1. The officer shall notify State fish and wildlife officials and provide them the opportunity to resolve the issue through further restrictions or the prohibition through State regulation rather than for the Forest Service to issue the restriction or prohibition.

2. If the State does not revise its regulations to adequately regulate or restrict baiting, the Forest Service authorized officer shall, time permitting close the area or otherwise restrict baiting by issuing an order pursuant to 36 CFR part 261.

Where time does not permit closure of an area to baiting because the hunting season is underway and it would be impracticable to issue a closure order, the Regional Forester or Forest Supervisor shall take such mitigation and/or enforcement measures as are appropriate and practicable to ensure consistency with forest plan

management direction and compliance with Federal laws, orders, and regulations, and protection for forest users and resources. For example, the agency may close a road or gate, or cite violations of other State or Forest Service regulations.

Closure is not the only way to address the practice of baiting. It is expected that land managers as part of their day-to-day management of National Forest System lands and resources will be cognizant of the effects of hunting activities and take such proactive measures, after consultation with the responsible fish and wildlife agency, such as hunter education, as may be necessary to ensure resource protection consistent with forest plan management direction.

This policy, in and of itself, does not compel an authorized officer to undertake a specific decision or to make a determination of whether baiting is allowed in the those States where the practice is permitted.

Special use authorization shall not be issued for placing bait on National Forest System lands for hunting purposes (36 CFR 251.50(c)).

For the purposes of this section and to assure consistency in coordination of national forest wildlife matters with State agencies, the authorized officer is the Regional Forester or Forest Supervisor responsible for executing memorandums of understanding with the State wildlife agency.

[FR Doc. 94–9014 Filed 4–13–94; 8:45 am]
BILLING CODE 3410–11–M

RIN 0596–AA33

Financial Security of National Forest System Timber Sale Contracts; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; correction of final policy.

SUMMARY: This notice corrects incomplete information contained in the notice of adoption of final policy and procedure related to timber sale contract financial security, which was published February 2, 1994 at 59 FR 4901. In column 1 of page 4901, in the last sentence of the Summary, the agency failed to provide the actual amendment numbers used to issue the final policy and procedure through the Forest Service directive system, and referenced Amendment No. 2400–93–_____ to the Forest Service Manual (FSM) chapter 2430, Amendment No. 2400–93–_____ to FSM chapter 2450, and Amendment No. 2409.18–93–_____ to chapter 50 of FSH 2409.18, the Timber Sale Preparation Handbook. These should have read: Amendment No. 2400–94–2 to the Forest Service Manual (FSM) chapter 2430, Amendment No. 2400–94–3 to FSM chapter 2450, and Amendment No. 2400–94–2 to chapter 50 of Forest Service Handbook 2409.18, the Timber Sale Preparation Handbook. These amendments were effective February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Fred Walk, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–0858.

Dated: March 31, 1994.

David G. Unger,

Associate Chief.

[FR Doc. 94–9015 Filed 4–13–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID. 033194A]

Pacific Coast Groundfish Fishery

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

ACTION: Notice; incorporation of Newport Beach dory fleet into limited-entry fishery.

SUMMARY: NMFS announces that the Director, Northwest Region, NMFS (Regional Director) has incorporated the Newport Beach dory fleet into the limited-entry fishery of the Pacific Coast Groundfish Fishery. This action is authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP) and is consistent with the objectives of Amendment 6 to the FMP.

EFFECTIVE DATE: Effective from 0001 hours (local time) March 30, 1994, until modified, superseded, or rescinded.

ADDRESSES: Submit comments to J. Gary Smith, Acting Director, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN-C15700, Seattle, WA 98115–0070; or Anneka W. Bane, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: Amendment 6 to the FMP was prepared by the Pacific Fishery Management Council (Council) and approved and implemented by NMFS on November 16, 1992 (57 FR 54001), through regulations codified at 50 CFR part 663, subpart C. Amendment 6, also called the "Limited-Entry Plan", is intended to control the harvesting capacity of the groundfish fishing fleet by:

(1) Limiting the overall number of vessels,

(2) Limiting the number of vessels using each of the three major gear types, and

(3) Limiting increases in vessel harvest capacity by limiting vessel length.

Section 663.34(a)(3) of the implementing regulations provides that small limited-entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the objectives of Amendment 6 and incorporated into the limited-entry fishery. If a fleet is certified and incorporated into the limited-entry fishery, vessels in the fleet at the time of incorporation will be issued limited-entry permits with "A" endorsements for the appropriate gear. A permit issued to a vessel in a certified fleet is only valid when the vessel is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet, provided the total number of vessels in the fleet does not increase. If more vessels are added to a fleet in a certified limited-entry program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of vessels, and the larger fleet incorporated into the limited-entry fishery.

Upon application by a representative of a small limited-entry fleet, the Regional Director, after receiving a recommendation from the Council, may incorporate the fleet into the limited-entry fishery, if the Regional Director:

(1) Determines that the fleet has a negligible impact on the groundfish resource, and

(2) Certifies the activities of the fleet as consistent with the objectives of Amendment 6.

On May 27, 1993, a representative of the Newport Beach dory fishing fleet of southern California requested that the Regional Director incorporate the small, local dory fleet of 15 vessels into the limited-entry fishery. The Newport Beach dory fishermen's fleet was founded in 1891 and is recognized as a historical landmark by the Newport Beach Historical Society. The City of

Newport Beach, CA, has reserved an area west of the Newport Pier exclusively for the dory fleet operations. Dory fishermen provide fresh fish each day to a market run by the dory fleet. The City of Newport Beach adopted policy guidelines on November 23, 1987, that serve to limit the size of the fleet and the size of the vessels that belong to the fleet. The size of the fleet is limited by the city by restricting the number of storage sheds permitted on the beach to 19, and by limiting the number of vessels to one per shed. Currently 15 sheds are utilized by longline groundfish fishermen; 2 sheds by net, crab, and lobster fishermen; and 2 sheds are used as offices. Any new entrant to the fleet must buy out one of the current shed owners in order to join the fleet. Vessel size is limited to about 20 ft (6.1 m) in length or less by the requirement that the vessels be launched and landed from the beach.

Based on its recognition by the Newport Beach Historical Society and the policy guidelines adopted November 23, 1987, by the City of Newport Beach, the Regional Director has determined that the Newport Beach dory fleet is "controlled by a local government," and was "in existence as of July 11, 1991." The Regional Director also concluded that the fleet has unique cultural and social importance and is dependent on the Pacific groundfish fishery.

On June 18, 1993, NMFS submitted the request for incorporation of the dory fleet to the Council for its review and recommendation. At its September, 1993, meeting, the Council tentatively approved incorporation of the Newport Beach dory fleet under the groundfish license limited-entry program, pending the provision of information to NMFS from the City of Newport Beach that confirms an effective local limited-entry program is in place and the provision of other information necessary to complete the fleet's application (e.g., identification numbers for vessels included in the fleet). NMFS has received the information requested by the Council and is satisfied that the City of Newport Beach adequately controls both the number and size of the vessels that participate in the fishery.

Examination of California landing records for 1990 indicated that the Newport Beach dory fleet landed about 152,000 pounds (68.9 mt) of sablefish. Given that the total West Coast nontrawl sablefish landings were in excess of 3,600 mt (nearly 8 million pounds), the Regional Director has determined that the Newport Beach dory fleet harvest, which represents less than 2 percent of the total nontrawl harvest, has a negligible impact on the groundfish resource. Based on the factors described above, the Regional Director certifies that the operation of the Newport Beach dory fleet is consistent with the objectives of Amendment 6 and has incorporated the dory fleet into the limited-entry fishery. NMFS will issue limited-entry permits to the current members of the Newport Beach dory fleet. Such permits can only be used by vessels operating in the dory fleet.

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours.

This action is taken under the authority of 50 CFR 663.34(a)(3).

List of Subjects

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

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

Dated: April 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–8940 Filed 4–13–94; 8:45 am]

BILLING CODE 3510–22–P

Intent to Conduct a Public Meeting on the Preparation of a Draft Environmental Impact Statement for the Proposed Mullica River-Great Bay National Estuarine Research Reserve, New Jersey

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of public meetings and intent to prepare a draft environmental impact statement.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of New Jersey and the National Oceanic and Atmospheric Administration (NOAA) intends to conduct public scoping meetings to present a preliminary draft management plan outline for the proposed Mullica River-Great Bay National Estuarine Research Reserve and to solicit comments on significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS) and Draft Management Plan (DMP). THe DEIS and DMP will address research, monitoring, education and resource protection needs for the Reserve.

In October 1993, NOAA approved the nomination of Mullica River-Great Bay in New Jersey as a proposed research reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance basis scientific understanding of the coastal environment and aid in resource management decision making.

The Mullica River-Great Bay Reserve is proposed to be managed by the Rutgers University, Institute of Marine and Coastal Science (IMCS) in cooperation with the Department of Environmental Protection and Energy's (DEPE) Office of Land and Water Planning. Since the 1970's, the Institute's marine field station at Tuckerton has been the site of some of the earliest east coast research on estuarine systems and continues to provide research and education opportunities for investigators from universities throughout the country to study coastal system dynamics. These research activities have generated biological and geological data that will be of immense value to furthering the long-term research and education goals of the Reserve.

The Institute has developed a preliminary draft management plan outline for the Reserve which identifies specific needs and priorities related to research, monitoring, education, and resource protection at the approved site. It also outlines an administration plan, volunteer program and facilities development needs; public access, and visitor use policies.

At the public meetings, DEPE, IMCS, and NOAA will provide a synopsis of the process for developing a DMP and will solicit comments on significant environmental issues that will be incorporated into a DEIS.

The public meetings will be held from 2 p.m.–4 p.m. and from 6 p.m.–8 p.m. on Monday, May 2, 1994, at the Little Egg Harbor Township Hall, 7 Gifford Road, Little Egg Harbor, New Jersey 08087.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of the proposed DEIS/DMP are invited to attend either of the above meetings. Parties who wish to respond in writing should do so by May 16, 1994, to Ms. Dolores Washington, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA,

SSMC4, suite 12155, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ms. Dolores Washington, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, SSMC4, 12155, Silver Spring, MD 20910, (Telephone 301/713–3132).

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: April 11, 1994.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–9034 Filed 4–13–94; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and OMB Control Number: Procurement Technical Assistance Cooperative Agreement Performance Report; DLA Form 1806; OMB Control Number 0704–0320

Type of Request: Expedited processing—approval date requested: 30 days following publication in **Federal Register.**

Average Burden per Response: 14 Hours

Responses per Respondent: 4

Number of Respondents: 100

Annual Burden Hours: 5,600

Annual Responses: 400

Needs and Uses: The report is the principal instrument used in measuring, on a quarterly basis, Cooperative Agreement recipients' (State and local governments, private non-profit organizations, Indian tribal organizations and Indian Economic enterprises) performance against the goals and objectives as established in their proposals for which the award was made.

Affected Public: State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer of DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: April 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PERFORMANCE REPORT

Form Approved OMB NO. 0704-0320 Expires

Public reporting burden for this collection of information is estimated to average 14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to OMB, Paperwork Reduction Project 0704-0320, Washington, D.C. 20503. Please DO NOT RETURN your form to either of these addresses. SEND YOUR COMPLETED FORM TO THE COGNIZANT POSTAWARD ADMINISTRATION ACTIVITY.

1. COOPERATIVE AGREEMENT RECIPIENT	2. DATE REPORT PREPARED

3. REPORT NUMBER	4. PERIOD COVERED BY REPORT *(Current Quarter)*
☐ 1ST QUARTER ☐ 2ND QUARTER ☐ 3RD QUARTER ☐ 4TH QUARTER ☐ FINAL ☐ 4TH QUARTER & FINAL REPORT	FROM: _____ TO: _____

5. AWARD INFORMATION	6. BUDGET DATA	
a. COOPERATIVE AGREEMENT REFERENCE NUMBER	a. TOTAL PROGRAM COST	
	b. TOTAL FUNDS EXPENDED *(Cumulative)*	
b. EFFECTIVE PERIOD OF COOPERATIVE AGREEMENT	c. DoD FUNDS OBLIGATED	
FROM: TO:	d. TOTAL DoD FUNDS EXPENDED *(Cumulative)*	
	e. TOTAL FUNDS BUDGETED *(Cumulative)*	

7. PERFORMANCE DATA *(*Not applicable to American Indian Program)* — a. STATE

b. DATA ELEMENTS	c. DATA ENTRY COLUMNS			
	CURRENT PERIOD (1)	CUMULATIVE PERFORMANCE TO DATE (2)	GOAL (3)	PERCENTAGE OF COMPLETION OF GOAL (4)
(1) PROCUREMENT OUTREACH CONFERENCES				
(a) Number Sponsored				
(b) Number of Attendees				
(c) Number Participated in other than as Sponsor				
(d) Number of Attendees				
Total No. Procurement Outreach Conferences Sponsored/Participated				
(2) INITIAL COUNSELING SESSIONS				
(a) Small Business				
*1. Small Disadvantaged Business				
*2. Women-Owned Small Business				
*3. Other Small Business				
Total Small Business				
(b) Other than Small Business				
Total Number of Initial Counseling Sessions				
(c) Distressed Area				
(3) FOLLOW-UP COUNSELING SESSIONS				
(a) Small Business				
*1. Small Disadvantaged Business				
*2. Women-Owned Small Business				
*3. Other Small Business				
Total Small Business				
(b) Other than Small Business				
Total Number of Follow-Up Counseling Sessions				
(c) Distressed Area				

DLA FORM 1806, PREVIOUS EDITION IS OBSOLETE.

7. PERFORMANCE DATA (*Not applicable to American Indian Program)	c. DATA ENTRY COLUMNS			
b. DATA ELEMENTS	CURRENT PERIOD (1)	CUMULATIVE PERFORMANCE TO DATE (2)	GOAL (3)	PERCENTAGE OF COMPLETION OF GOAL (4)
(4) CLIENT APPLICATIONS SUBMITTED TO MAILING LIST(S)				
(a) DoD Activities				
(b) Other Federal Agencies				
(c) PASS				
(d) MBDA Profile Business System				
(e) Other				
Total No. of Client Applications Submitted to Mailing List(s)				
(5) PRIME CONTRACT AWARDS RECEIVED BY CLIENT(S)				
(a) DoD Awards				
1. Small Business				
*a. Small Disadvantaged Business				
*b. Women-Owned Small Business				
*c. Other Small Business				
Total Small Business				
2. Other than Small Business				
Total Number of DoD Awards				
(b) Dollar Value of DoD Awards				
1. Small Business				
*a. Small Disadvantaged Business				
*b. Women-Owned Small Business				
*c. Other Small Business				
Total Small Business				
2. Other than Small Business				
Total Dollar Value of DoD Awards				
(c) Number of Other Federal Agency Awards				
(d) Dollar Value of Other Federal Agency Awards				
(e) Number of State and/or Local Government Awards				
(f) Dollar Value of State and/or Local Government Awards				
(6) SUBCONTRACT AWARDS RECEIVED BY CLIENT(S)				
(a) DoD Awards				
1. Small Business				
*a. Small Disadvantaged Business				
*b. Women-Owned Small Business				
*c. Other Small Business				
Total Small Business				
2. Other than Small Business				
Total Number of DoD Awards				
(b) Dollar Value of DoD Awards				
1. Small Business				
*a. Small Disadvantaged Business				
*b. Women-Owned Small Business				
*c. Other Small Business				
Total Small Business				
2. Other than Small Business				
Total Dollar Value of DoD Awards				

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7. PERFORMANCE DATA (*Not applicable to American Indian Program)	c. DATA ENTRY COLUMNS			
(c) Number of Other Federal Agency Awards				
(d) Dollar Value of Other Federal Agency Awards				
(e) Number of State and/or Local Government Awards				
(f) Dollar Value of State and/or Local Government Awards				

8. Describe any problem(s) encountered by clients in marketing or performing on DoD contracts which cannot be resolved.

9. Describe any DoD unique problem(s) resolved due to assistance provided by your outreach center.

10. Describe any DoD significant success stories attributable, in whole or in part, to assistance provided by your outreach center.

11. Describe any small disadvantaged business unique actions, if any, taken by your center to assist them in entering the DoD industrial base.

12. Identify the point of contact and DoD procurement office(s) and prime contractor(s) that your outreach center representative(s) has visited to discuss procurement opportunities.

13. PREPARER OF REPORT	14. INDIVIDUAL AUTHORIZED TO SIGN REPORT
a. TYPED NAME	a. TYPED NAME
	b. TYPED TITLE
b. TITLE	c. SIGNATURE

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PROCUREMENT TECHNICAL ASSISTANCE
COOPERATIVE AGREEMENT PERFORMANCE DATA REPORT

A. GENERAL REPORT PREPARATION INSTRUCTIONS

1. Recipients must submit two *(2)* copies of the Procurement Technical Assistance *(PTA)* Cooperative Agreement Performance Data Report not later than 30 calendar days after the end of each quarter to the cognizant postaward administration activity. The first quarter report is due three *(3)* months after the beginning of the cooperative agreement's effective period.

2. A final report, in duplicate, must be prepared and submitted not later than 90 days after the expiration date of the PTA Cooperative Agreement's effective period. If the effective period expires concurrently with the quarter ending date, the quarterly report and the final report may be submitted as one and the same not later than 30 days after the expiration date of the PTA Cooperative Agreement's effective period. The recipient's records must provide an audit trail that will substantiate all data reported.

LINE REQUIREMENT

B. DETAILED REPORT PREPARATION INSTRUCTIONS. The explanations provided below, pertaining to collecting and submitting report data, are keyed to the numbers assigned to each information element contained in the PTA Cooperative Agreement Performance Report.

1. Enter the name of the entity that received the award.

2. Enter the date the report is prepared.

3. "X" the appropriate box for the quarter that represents the period being covered by the report or "FINAL" for the final report. The beginning date for the cooperative agreement effective period is the base date for determining when the quarterly reports are due *(see paragraph 5.b. below)*. If the fourth quarter and final reports are being submitted as one and the same, "X" the box "4TH QUARTER & FINAL REPORT."

4. Enter the dates covered by the report, the current quarter.

5. AWARD INFORMATION

a. Enter the Cooperative Agreement Reference Number from the cooperative agreement award document.

b. Enter the effective period specified by the cooperative agreement award document or as changed by any modifications issued thereto.

6. BUDGET DATA

a. Enter total program cost, as stated in the award document, or as changed by any modifications issued thereto.

b. Enter the cumulative amount of all funds expended as of the ending date *(paragraph 4 above)* of the reporting period.

c. Enter the total DoD funds obligated, as stated in the award document, or as changed by any modifications issued thereto.

d. Enter the cumulative amount of DoD funds expended as of the ending date *(paragraph 4 above)* of the reporting period.

e. Enter the cumulative amount of all funds budgeted to be expended as of the ending date *(paragraph 4 above)* of the reporting period. The dollar amount should be the same as the 1st quarter amount *(for the 1st quarter report)*, or the sum of the 1st quarter and applicable quarter*(s)* shown on the Standard Form *(SF)* 424a, Section D-Forcasted Cash Needs. For example, for the 1st quarter report, the total should be the same as the amount shown for the "1st Quarter," the 2nd quarter report will be the sum of the 1st and 2nd Quarter of the SF 424a, Section D, etc.

7. PERFORMANCE DATA

a. STATE. Enter the name of the state in which performance is accomplished. If the recipient performs services in more than one state, complete separate pages for each state serviced and attach same as an enclosure to this report.

b. DATA ELEMENTS

(1) PROCUREMENT OUTREACH CONFERENCES

(a) The number of procurement outreach conference*(s)* that were sponsored by the cooperative agreement recipient.

(b) The number of attendees for the conference*(s)* identified by 7.b.(1)(a).

(c) The number of procurement outreach conference*(s)* that the recipient participated in as other than a sponsor, i.e., guest speaker, etc. NOTE: Attendance at a conference without active participation, as a speaker or providing formal counseling, should not be reported.

(d) The number of attendees for the conference*(s)* identified by 7.b.(1)(c).

Total No. Procurement Outreach Conferences Sponsored/Participated. The sum of 7.b.(1)(a) and 7.b.(1)(c).

(2) INITIAL COUNSELING SESSIONS

(a) Small Business

1. Of the small business initial counseling sessions, identify those that were held with small disadvantaged business clients.

2. Of the small business initial counseling sessions, identify those that were with women-owned small business clients.

3. Of the small business initial counseling sessions, identify those that were held with other small business clients *(clients not identified as small disadvantaged or women-owned small businesses.)*

Total Small Business. The sum of 7.b.(2)(a)1., 7.b.(2)(a)2., and 7.b.(2)(a)3.. For paragraphs 7.b.(2)(a)1. and 7.b.(2)(a)2., if the session was conducted with a client that is both a small disadvantaged business and a woman-owned small business, identify the appropriate number of initial counseling sessions under 7.b.(2)(a)1., Small Disadvantaged Business.

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(b) Of the initial counseling sessions identified by 7.b.(2), the number that were held with other than small business clients.

Total Number of Initial Counseling Sessions. The sum of Total Small Business and 7.b.(2)(b) Other than Small Business.

(c) Of the initial counseling session*(s)* in 7.b.(2), identify those that were held with clients that are located in distressed areas *(labor surplus areas)*. The number of initial counseling sessions conducted with clients located in distressed areas should not exceed the Total Number of Initial Counseling Session*(s)*.

(3) FOLLOW-UP COUNSELING SESSIONS

(a) Small Business

1. Of the small business follow-up counseling sessions, identify those that were held with small disadvantaged business clients.

2. Of the small business follow-up counseling sessions, identify those that were held with women-owned small business clients.

3. Of the small business follow-up counseling sessions, identify those that were held with other small business clients *(clients not identified as small disadvantaged or women-owned small businesses)*.

Total Small Business. The sum of 7.b.(3)(a)1., 7.b.(3)(a)2., and 7.b.(3)(a)3.. For paragraphs 7.b.(3)(a)1. and 7.b.(3)(a)2., if the session was conducted with a client that is both a small disadvantaged business and a woman-owned small business, identify the appropriate number of initial counseling sessions under 7.b.(3)(a)1., Small Disadvantaged Business.

(b) Of the follow-up counseling sessions identified by 7.b.(3), the number that were held with other than small business clients.

Total Number of Follow-Up Counseling Sessions. The sum of Total Small Business and 7.b.(3)(b) Other than Small Business.

(c) Of the follow-up counseling session*(s)* in 7.b.(3), identify those that were held with clients that are located in distressed areas *(labor surplus areas)*.

(4) CLIENT APPLICATIONS SUBMITTED TO MAILING LIST(S)

(a) The number of applications submitted by clients for addition to DoD Solicitation Mailing List*(s)*.

(b)-(d) The number of applications submitted by clients for addition to Solicitation Mailing List*(s)* for Federal Agencies other than DoD, as appropriate.

(e) The number of applications submitted by clients for addition to other Solicitation Mailing List*(s)* to include state and local government lists and other special programs *(similar to the Profile or PASS)* .

Total No. of Client Applications Submitted to Mailing List*(s)*. The sums of 7.b.(4)(a) through 7.b.(4)(e).

(5) PRIME CONTRACT AWARDS RECEIVED BY CLIENT*(S)*

(a) DoD Awards

1. Small Business

a. The total number of DoD prime contract awards received by small disadvantaged business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(5)(b)1.a. must also be completed if this item is completed.

b. The total number of DoD prime contract awards received by women-owned small business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(5)(b)1.b. must also be completed if this item is completed.

c. The total number of DoD prime contract awards received by other small business clients *(clients not identified as small disadvantaged or woman-owned small business)* as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(5)(b)1.c. must also be completed if this item is completed.

Total Small Business. The sum of 7.b.(5)(a)1.a., 7.b.(5)(a)1.b., and 7.b.(5)(a)1.c.. For paragraph 7.b.(5)(a)1.a. and 7.b.(5)(a)1.b., if the client is both a small disadvantaged business and a woman-owned small business, identify the appropriate number of DoD prime contract awards under 7.b.(5)(a)1.a., Small Disadvantaged Business.

2. The total number of DoD prime contract awards received by other than small business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(5)(b)2. must also be completed if this item is completed.

Total Number of DoD Awards. The sum of Total Small Business and 7.b.(5)(a)2. Other than Small Business. Total Dollar Value of DoD Awards must be completed if this entry is completed.

(b) Dollar Value of DoD Awards

1. Small Business

a. The dollar value of the DoD prime contract awards identified by 7.b.(5)(a)1.a. that were awarded to Small Disadvantaged Businesses.

b. The dollar value of the DoD prime contract awards identified by 7.b.(5)(a)1.b. that were awarded to Women-Owned Small Businesses.

c. The dollar value of the DoD prime contract awards identified by 7.b.(5)(a)1.c. that were awarded to Other Small Businesses.

Total Small Business. The sum of 7.b.(5)(b)1.a., 7.b.(5)(b)1.b., and 7.b.(5)(b)1.c.. For paragraph 7.b.(5)(b)1.a. and 7.b.(5)(b)1.b., if the client is both a small disadvantaged business and a woman-owned small business, identify the dollar value of the awards under 7.b.(5)(b)1.a., Small Disadvantaged Business.

2. The dollar value of DoD prime contract awards identified by 7.b.(5)(a)2. that were awarded to other than small business clients.

Total Dollar Value of DoD Awards. The sum of Total Small Business and 7.b.(5)(b)2. Other than Small Business.

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(c) The total number of prime contract awards received by clients from other Federal agencies *(non-DoD)* as a result of assistance provided by the cooperative agreement recipient. Item 7.b.(5)(d) must be completed if this item is completed.

(d) The total dollar value of the other Federal agency *(non-DoD)* prime contract awards identified by 7.b.(5)(c).

(e) The total number of prime contract awards received by clients from state and local governments as a result of assistance provided by the cooperative agreement recipient. Item 7.b.(5)(f) must be completed if this item is completed.

(f) The total dollar value of state and local government awards identified in 7.b.(5)(e).

(6) SUBCONTRACT AWARDS RECEIVED BY CLIENT*(S)*

(a) DoD Awards

1. Small Business

a. The total number of DoD subcontract awards received by small disadvantaged business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7b.(6)(b)1.a. must also be completed if this area is completed.

b. The total number of DoD subcontract awards received by women-owned small business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(6)(b)1.b. must also be completed if this item is completed.

c. The total number of DoD subcontract awards received by other small business clients *(clients not identified as small disadvantaged or women-owned small business)* as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(6)(b)1.c. must also be completed if this item is completed.

Total Small Business. The sum of 7.b.(6)(a)1.a., 7.b.(6)(a)1.b., and 7.b.(6)(a)1.c.. For paragraph 7.b.(6)(a)1.a. and 7.b.(6)(a)1.b., if the client is both a small disadvantaged business and a woman-owned small business, identify the appropriate number of DoD subcontract awards under 7.b.(6)(a)1.a., Small Disadvantaged Business.

2. The total number of DoD subcontract awards received by other than small business clients as a result of assistance rendered by the cooperative agreement recipient. Item 7.b.(6)(b)2. must be completed if this item is completed.

Total Number of DoD Awards. The sum of Total Small Business and 7.b.(6)(a)2., Other than Small Business. Total Dollar Value of DoD Awards must be completed if this entry is completed.

(b) Dollar Value of DoD Awards

1. Small Business

a. The dollar value of the DoD subcontract awards identified by 7.b.(6)(a)1.a. that were awarded to Small Disadvantaged Business.

b. The dollar value of the DoD subcontract awards identified by 7.b.(6)(a)1.b. that were awarded to Women-Owned Small Businesses.

c. The dollar value of the DoD subcontract awards identified by 7.b.(6)(a)1.c. that were awarded to Other Small Businesses.

Total Small Business. The sum of 7.b.(6)(b)1.a., 7.b.*(6)*(b)1.b., and 7.b.(6)(b)1.c.. For paragraph 7.b.(6)(b)1.a. and 7.b.(6)(b)1.b., if the client is both a small disadvantaged business and a woman-owned small business, identify the dollar value of the awards under 7.b.(6)(b)1.a., Small Disadvantaged Business.

2. The dollar value of the DoD subcontract awards identified by 7.b.(6)(a)2. that were awarded to other than small business clients.

Total Dollar Value of DoD Awards. The sum of Total Small Business and 7.b.(6)(b)2., Other than Small Business.

(c) The total number of subcontract awards received by clients from other Federal agencies *(non-DoD)* as a result of assistance provided by the cooperative agreement recipient. Item 7.b.(6)(d) must be completed if this item is completed.

(d) The total dollar value of the other Federal agency *(non-DoD)* subcontract awards identified in 7.b.(6)(c).

(e) The total number of subcontract awards received by clients from state and local governments as a result of assistance provided by the cooperative agreement recipient. Item 7.b.(6)(f) must be completed if this item is completed.

(f) The total dollar value of state and local government awards identified in 7.b.(6)(e).

c. DATA ENTRY COLUMNS

(1) Current Period Column. Enter data for the current quarter in the Current Period column for each Data Element identified.

(2) Cumulative Performance To Date. Enter cumulative data under the Cumulative Performance To Date column for each Data Element identified. The cumulative data is the sum of the Current Period column plus the Current Period column for all previous reports. NOTE: Cumulative data entries are required if paragraph 3 above indicates that more than one report has been submitted.

(3) Goal. Enter the annual numerical goal for each data element identified under item 7.b. Extract Goal data from the recipient proposal response to the SCAP included as part of the award document *(paragraph 5.a. above)* and as amended by any modifications issued thereto.

(4) Percentage of Completion of Goal. Determine the percentage of the goal completion by dividing the Data Entry under the Cumulative Performance To Date column by the Data Entry under the Goal column. Enter the resulting percentage from the above calculation under the Percentage of Completion of Goal column. NOTE: A calculation is to be performed for each Data Element identified.

8. Item 8 - 12: Self explanatory. These items must be provided on a cumulative basis. Provide information on a separate page and attach as an enclosure.

9. Item 13: Enter the name and title of the person who prepared the report.

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10. Item 14: Enter the name, title and signature of the person authorized to sign the report. The report must be signed by either the individual who signed the award agreement or the program manager/program director designated in the proposal. No other signatories are acceptable.

C. REPORT PREPARATION INSTRUCTIONS FOR PARTICIPANTS IN THE AMERICAN INDIAN PROGRAM. General and detailed report preparation instructions provided above are applicable to cooperative agreement recipients under the American Indian Program with the exception of the following:

Reservation. Provide the name of the reservation*(s)* on which performance is accomplished, by state, for the reservation*(s)* serviced during the current reporting period. Attach same as an enclosure to this report.

7.b.(2)(a)1., 7.b.(2)(a)2., and 7.b.(2)(a)3. - Not applicable to the American Indian Program.
7.b.(3)(a)1., 7.b.(3)(a)2., and 7.b.(3)(a)3. - Not applicable to the American Indian Program.
7.b.(3)(c) - Not applicable to the American Indian Program.
7.b.(5)(a)1.a., 7.b.(5)(a)1.b., and 7.b.(5)(a)1.c. - Not applicable to the American Indian Program.
7.b.(5)(b)1.a., 7.b.(5)(b)1.b., and 7.b.(5)(b)1.c. - Not applicable to the American Indian Program.
7.b.(6)(a)1.a., 7.b.(6)(a)1.b., and 7.b.(6)(a)1.c. - Not applicable to the American Indian Program.
7.b.(6)(b)1.a., 7.b.(6)(b)1.b., and 7.b.(6)(b)1.c. - Not applicable to the American Indian Program.

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[FR Doc. 94–8937 Filed 4–13–94; 8:45 am]
BILLING CODE 5000–04–C

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, 12586, 12708, and 12888. The proposed changes are part of the 1994 annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon", May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Courts-Martial", January 23, 1985. This notice is intended only to improve the internal management of the Federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

The proposed changes follow in their entirety:

R.C.M. 1110(g)(1) be amended to read as follows:

"(1) *In general.* A waiver or withdrawal of appellate review under this rule shall bar review by the Judge Advocate General under R.C.M. 1201(b)(1) or R.C.M. 1201(b)(3) and by the Court of Military Review. Once submitted, a waiver or withdrawal in compliance with this rule may not be revoked."

R.C.M. 1201(b)(3)(A) be amended to read as follows:

"(A) *In general.* Notwithstanding R.C.M. 1209, the Judge Advocate General may, *sua sponte* or, except when the accused has waived or withdrawn the right to appellate review under R.C.M. 1110, upon application of the accused or a person with authority to act for the accused, vacate or modify, in whole or in part, the findings, sentence, or both of a court-martial which has been finally reviewed, but has not been reviewed either by a Court of Military Review or by the Judge Advocate General under subsection (b)(1) of this rule, on the ground of newly discovered evidence, fraud on the court-martial, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence."

Part IV, paragraph 4c, be amended by adding a new subparagraph (4) as follows:

"(4) *Voluntary abandonment.* It is a defense to an attempt offense that the person voluntarily and completely abandoned the intended crime, because of a genuine change of heart, prior to the completion of the crime. Voluntary abandonment because of a "genuine change of heart" means that the attempted crime was abandoned solely because of the person's own sense that it was wrong. The voluntary abandonment defense is not allowed if the abandonment results, in whole or in part, from other reasons, for example, the person feared detection or apprehension, decided to await a better opportunity for success, was unable to complete the crime, or encountered unanticipated difficulties or unexpected resistance. A person who is entitled to the defense of voluntary abandonment may nonetheless be guilty of a lesser included, completed offense. For example, a person who voluntarily abandoned an attempted armed robbery may nonetheless be guilty of assault with a dangerous weapon."

Part IV of the Manual for Courts-Martial, United States, 1984, be amended by inserting the following new paragraph after paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

a. *Text. See* paragraph 60.

b. *Elements.*

(1) That the accused intentionally inflicted injury upon himself or herself;

(2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element)

(3) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* This offense differs from malingering (see paragraph 40) in that for this offense, the accused need not have harbored a design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. This offense is characterized by intentional self-injury under such circumstances as prejudice good order and discipline or discredit the armed forces. It is not required that the accused be unable to perform duties, or that the accused actually be absent from his or her place or duty as a result of the injury. For example, the accused may inflict the injury while on leave or pass. The circumstances and extent of injury, however, are relevant to a determination that the accused's conduct was prejudicial to good order and discipline, or service-discrediting.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission which produces, prolongs, or aggravates a sickness or disability. Thus, voluntary starvation which results is debility is a self-inflicted injury. Similarly, the injury may be inflicted by another at the accused's request.

d. *Lesser included offense.* Article 80—attempts.

e. *Maximum punishment.*

(1) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(2) *Intentional self-inflicted injury in time of war or in a hostile fire pay zone.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) on or about _____ 19____, (a time of war,) intentionally injure himself/herself by _____ (nature and circumstances of injury)."

These amendments would take effect upon approval by the President, subject to the following:

a. The amendments to Rules for Courts-Martial 1110(g)(1) and 1201(b)(3)(A) would apply only to cases in which a waiver is entered on or after (effective date).

b. The amendments made to paragraph 4c of Part IV would apply only to cases convened on or after (effective date).

The Discussion to R.C.M. 1201(b)(3)(A) be amended to read as follows:

"When an accused has previously waived or withdrawn appellate review under R.C.M. 1110, the accused may not file an application for relief under this rule. An accused may file only one application for relief within the two-year filing period."

Appendix 12, the Maximum Punishment Chart, to the Manual for Courts-Martial, United States, 1984 be amended by adding after Art. 134 (Seizure, destruction, removal, or disposal of property to prevent) the following:

"Self-injury without intent to avoid service in time of war, or while receiving special pay under 37 U.S.C. 310.	DD	5 yrs	Total
Other	DD	2 yrs	Total"

The Analysis accompanying R.C.M. 1110(g) be amended as follows:

"g. *Effect of waiver of withdrawal, substantial compliance required.* Subsection (1) is based on Article 61(c). Subsections (2) and (3) are based on Article 64. Subsection

(3) also recognizes that, once an appeal is filed (i.e., not waived in a timely manner) there may be a point at which it may not be withdrawn as of right. Cf. Sup. Ct. R. 53; Fed.R.App.P. 42; *Hammett* v. *Texas*, 448 U.S. 725 (1974); *Shellman* v. *U.S. Lines, Inc.*, 528 F. 2d 675 (9th Cir. 1975), *cert. denied*, 425 U.S. 936 (1976). Subsection (4) is intended to protect the integrity of the waiver or withdrawal procedure by ensuring compliance with this rule. The accused should be notified promptly if a purported waiver or withdrawal if defective."

The Analysis accompanying R.C.M. 1110(g) be amended by inserting the following at the end thereof:

"_____ Amendment. An accused who waives or withdraws appellate review under this rule may no longer file an application for relief to the Judge Advocate General under R.C.M. 1201(b)(3). This promotes judicial efficiency and economy, as most issues are best resolved through the normal appellate process rather than through special application to the Judge Advocate General."

The Analysis accompanying R.C.M. 1201(b) be amended by inserting the following at the end thereof:

"_____ Amendment. Subsection (b) was amended to limit an accused to the filing of only one application for relief within the two-year filing period. Under R.C.M. 1110(g)(1), an accused who has previously waived or withdrawn appellate review may no longer file an application for relief under this rule. These changes ensure that all potential issues are resolved at the earliest opportunity and do not prohibit an accused from filing a petition for new trial under R.C.M. 1210 or restrict the ability of the Judge Advocate General to review the case, *sua sponte*."

The Analysis to paragraph 4c be amended as follows:

"_____ Amendment. Subparagraph (4) is new. It recognizes a limited defense of voluntary abandonment. It is based on case law. *United States* v. *Schoof*, 37 M.J. 96 (C.M.A. 1993); *United States* v. *Rios*, 33 M.J. 436 (C.M.A. 1991); *United States* v. *Byrd*, 24 M.J. 286 (C.M.A. 1987); *Rios* 32 M.J. 501 (A.C.M.R. 1990); *United States* v. *Miller*, 30 M.J. 999 (N.M.C.M.R. 1990); *United States* v. *Walther*, 30 M.J. 829 (N.M.C.M.R. 1990). The prior subparagraphs (4)–(6) have been redesignated (5)–(7), respectively."

Insert the following after the analysis of paragraph 103:

"103a. Article 134 (Self-injury without intent to avoid service)

c. *Explanation.* This offense is based on paragraph 183*a* of MCM, U.S. Army, 1949; *United States* v. *Taylor*, 38 C.M.R. 393 (C.M.A. 1968); *United States* v. *Ramsey*, 35 M.J. 733 (A.C.M.R. 1992), *pet. granted*, C.M.A., 37 M.J. 25 (1993); *see* generally TJAGSA Practice Note, Confusion About Malingering and Attempted Suicide, The Army Lawyer, Jun. 1992, at 38.

e. *Maximum punishment.* The maximum punishment for subsection (1) reflects the serious effect that this offense may have on readiness and morale. The maximum punishment reflected the range of the effects of the injury, both in degree and duration, on the ability of the accused to perform work, duty, or service. The maximum punishment for subsection (1) is equivalent to that for offenses of desertion, missing movement through design, and certain violations of orders. The maximum punishment for subsection (2) is less than the maximum punishment for the offense of malingering under the same circumstances because of the absence of the specific intent to avoid work, duty, or service. The maximum punishment for subsection (2) is equivalent to that for nonaggravated offenses of desertion, willfully disobeying a superior commissioned officer, and nonaggravated malingering by intentional self-inflicted injury.

f. *Sample specification.* See appendix 4, paragraph 177 of MCM, U.S. Army, 1949. Since incapacitation to perform duties is not an element of the offense, language relating to "unfitting himself for the full performance of military service" from the 1949 MCM has been omitted. The phrase "willfully injure" has been changed to read "intentionally injure" to parallel the language contained in the malingering specification under Article 115."

ADDRESSES: Copies of the proposed changes may be examined at Officer of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111. A copy of the proposed changes may be obtained by mail upon request from the foregoing address, ATTN: LCDR L. Lynn Jowers.

DATES: Comments on the proposed changes must be received no later than 1 August 1994 for consideration by the Joint Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: LCDR L. Lynn Jowers, JAGC, USN, Executive Secretary, Joint Service Committee on Military Justice, Officer of the Judge Advocate General, Criminal Law Division, Building 111, Washington Navy Yard, Washington, DC 20374–1111; (202) 433–5895.

Dated: April 8, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8939 Filed 4–13–94; 8:45 am]

BILLING CODE 5000–04–M

Joint Service Committee on Military Justice: Public Meeting

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the JSC. This notice also describes the functions of the JSC.

DATES: Thursday, May 5, 1994, 10 a.m. to 12 p.m.

ADDRESSES: Building 111, Washington Navy Yard, Washington, DC.

FUNCTION: The JSC was established by the Judge Advocates General in 1972. The JSC currently operates under Department of Defense Directive 5500.17 of January 23, 1985. It is the function of the JSC to improve Military Justice through the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial.

AGENDA: The JSC will receive public comment concerning its 1994 Annual Review of *Manual for Courts-Martial, United States, 1984*, as published on April 14, 1994.

FOR FURTHER INFORMATION CONTACT: LCDR L. Lynn Jowers, JAGC, USN, Executive Secretary, Joint Services Committee on Military Justice, Building 111, Washington Navy Yard, Washington, DC, 20374–1111; (202) 433–5895.

Dated: April 8, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8938 Filed 4–13–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113]

Clearance Request for Acquisition of Helium

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0113).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), 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 Acquisition of Helium.

FOR FURTHER INFORMATION CONTACT:

Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Mines, Department of the Interior.

It has been the Department of the Interior's policy, consistent with Congressional intent that Government helium be used in Government contracts, and that all Government contracts involving the use of significant amounts of helium require that Government helium be used in performing the contract. The appropriate vehicle for the establishment of requirements pertaining to Government procurement is the Federal Acquisition Regulation (FAR).

Current FAR coverage on the subject references 30 CFR parts 601 and 602. These are Department of the Interior regulations dealing with helium sales and helium distribution. However, the FAR contains no substantive guidance on procurement of helium and does not require submission of information that will permit the Bureau of Mines to ascertain whether Federal agencies are using Government helium and are requiring in their contracts that Government helium be used in contracted-for work.

The new FAR coverage provides an appropriate level of guidance on the subject, including a requirement that offerors responding to contract solicitations provide information as to their forecast of helium required for performance of the contract.

Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors, in that it will permit corrective action to be taken if the Bureau of Mines, after comparing helium sales data against helium requirement forecasts, discovers apparent serious discrepancies.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, *50;* responses per respondent, *1;* total annual responses, *50;* preparation hours per response, *.5;* and total response burden hours, *25.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 50; hours per recordkeeper, .5; and total recordkeeping burden hours, 25.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0113; Acquisition of Helium, in all correspondence.

Dated: April 7, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–9056 Filed 4–13–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF ENERGY

Economic Development with The Enterprise Corporation of Tampa Bay

AGENCY: Pinellas Area Office, Albuquerque Operations Office.

ACTION: Notice of intent.

SUMMARY: The Pinellas Area Office (PAO) awarded an organizational planning grant to The Enterprise Corporation of Tampa Bay (TEC) in August 19, 1993. Under the grant, the TEC defined thirteen (13) separate support projects to accomplish economic development goals for the Tampa Bay, Florida area. Under the follow on cooperative agreement awarded on February 28, 1994, the TEC will complete development of, implement, and administer these projects. Most of these projects will be funded as subawards by TEC based on established award criteria. These awards will provide community impact assistance funding to mitigate defense downsizing and eventual plant closure of the DOE's Pinellas Plant in Largo, Florida. The projects will attempt to maximize reuse of the existing Pinellas Plant facilities to (1) create jobs that will employ dislocated Pinellas plant employees and subcontractors, (2) stimulate local economic growth, (3) promote the commercialization of site-developed technology, and (4) reuse DOE facilities compatibly with the site's continuing mission in a manner consistent with environmental requirements.

The projects to be implemented under the current cooperative agreement with TEC will cover many facets necessary for economic development, including but not limited to the following: Small business incubator sites, small business Research & Development awards, Challenge awards for small to medium-sized businesses, a proposal assistance center, an outrearch program, a Manufacturing Technology Center, a Technology Deployment Center, plant personnel economic development incentives, a Technology Training Center, the Center for International Enterprise Development, a Small Business Development Center, an enterprise investment fund, and facility refurbishment projects.

The intent is to provide this financial assistance primarily through TEC, as the single best source. Total efforts may reach $50M over the next several years. For information on any of the projects listed above and evaluation criteria for award projects please contact the individual listed below.

DATES: This document is effective April 14, 1994.

FOR FURTHER INFORMATION PLEASE CONTACT: To express interest in a program and to be placed on a mailing list, please write to: Mr. Lewis C. Attardo, Director, Tampa Bay Defense Transition Task Force, 7381–114th Avenue N., suite 403A, Largo, FL 34643.

SUPPLEMENTARY INFORMATION: TEC is the agent for the Tampa Bay Defense Transition Task Force which has been designated the Community Reuse Organization by the DOE. The projects are to be awarded under the DOE's Technical Integration Program (Catalogue of Federal Domestic Assistance No. 81.103). These projects are authorized under the DOE Organizational Act, Public Law 95–91 as

amended, and Public Law 102–484, Section 3161.

Issued in Albuquerque, New Mexico on April 4, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–9026 Filed 4–13–94; 8:45 am]

BILLING CODE 6450–01–M

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet April 21–22, 1994, at the offices of the Organization for Economic Cooperation and Development (OECD) in Paris, France, to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions on the same date at the OECD offices.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on April 21–22, 1994, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning on April 21 at 3 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD on these dates, including a preparatory session for company representatives from 2:40 p.m. to 3 p.m. on April 21. The agenda for the preparatory session for company representatives is to elicit views regarding items on the agenda for the SEQ meeting and in particular paragraph 6 thereof ("Emergency Management Manual; Emergency Operations Team Reference Guide"). The agenda for the meeting of the SEQ is under the control of the SEQ. It is expected that the following draft agenda will be followed:

April 21, 1994

Explanation and discussion of the new draft of the Emergency Management Manual

April 22, 1994

1. Adoption of the Agenda
2. Approval of Summary Record of the 80th Meeting
3. IEA Workshop on Stockdraw and Emergency Response Management
   —Proceedings of the workshop
4. Emergency Reserve Situation of IEA Countries
   —SEQ report to the Governing Board on the emergency reserve situation of IEA countries
   —Emergency reserve and net import situation of IEA countries as of October 1, 1993
   —Emergency reserve and net import situation of IEA countries as of January 1, 1994
5. IAB Meeting of February 21, 1994
6. Emergency Management Manual; Emergency Operations Team Reference Guide
   —The Emergency Management Manual
   —The Emergency Operations Team Reference Guide
7. Implementation of SEQ Work Program for 1994
   —SEQ tentative work program for 1995
8. Emergency Response Reviews
   —The emergency response potential of IEA countries
9. Issues Related to Residual Oils
   —Implications for IEA emergency stock policy
10. Update of the IEA World Energy Outlook
11. Emergency Data System and Related Questions
   —Monthly Oil Statistics (MOS) to end November 1993
   —MOS to end December 1993
   —MOS to end January 1994
   —Base Period Final Consumption (BPFC) Q392 - Q293
   —BPFC Q492 - Q393
   —BPFC Q193 - Q493
   —Revision of the MOS Questionnaire
   —Quarterly Oil Forecast
12. Governing Board Meeting and IEA 20th Anniversary
   —Seminar in Kyoto on April 13–14, 1994
13. Energy Policy and Conservation Act
14. IEA Dispute Settlement Centre: Panel of Arbitrators
15. IEA Secretariat Mission to Korea
16. Any Other Business

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A(ii), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, DC, April 8, 1994.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 94–9036 Filed 4–13–94; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories

AGENCY: Department of Energy.

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of the following open public meeting of the Task Force:

Name: Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories.

Date and Time: Thursday, April 21, 1994, 8:30 a.m.-3:30 p.m.

Place: Sheraton Washington Hotel, The Nathan Hale Room, 2660 Woodley Road NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Dr. Michele Donovan, Task Force Director, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Task Force: The Secretary of Energy Advisory Board Task Force on Alternative Futures of the DOE National Laboratories was established to serve as the Secretary of Energy's primary mechanism for examining options for change within the laboratories and proposing specific alternatives for directing the scientific and engineering resources of the laboratories toward the economic, environmental, defense, scientific and energy needs of the Nation. The Task Force was established under the Secretary of Energy Advisory Board Charter and consists of 21 members, including Board members and outside experts. The Task Force is expected to report in February 1995.

Tentative Agenda

8:30 a.m. Opening Remarks by Chairman Bob Galvin
8:45 a.m. Round-Table Discussion of Alternative Futures for the DOE Labs
9:45 a.m. Break
10 a.m. Group Discussion Continues
12 p.m. Break for Lunch
1 p.m. Task Force Discussion
3:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation: The Task Force welcomes the public's input and written representations. If business permits, members of the public may be heard in the order in which their requests are received and the five minute rule will ordinarily apply. The Task Force will make every effort to hear the view of interested parties. Written comments addressed to the Task Force are urged, and may be submitted to Dr. Michele Donovan, Task Force Director, Secretary of Energy of Advisory Board, 1000 Independence Avenue SW., 7B–198/HR–2, Washington, DC 20585. Written comments received by Monday, April 18, 1994, will be made available to Task Force members prior to the meeting. This notice is published less than 15 days prior to the meeting date due to difficulty in locating appropriate meeting facilities.

Minutes: Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Department of Energy Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m. Monday through Friday.

Issued at Washington, DC, on April 11, 1994.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–9035 Filed 4–13–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2390–002, et al.]

Hydroelectric Applications (Northern States Power Co.—Wisconsin, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2390–002.

c. *Date filed:* December 16, 1991.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Big Falls.

f. *Location:* On the Flambeau River near Big Falls in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2621.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 22-foot-high earth embankment dam; (2) a 320-foot concrete spillway; (3) a reservoir with a surface area of 370 acres at surface elevation 1,234 feet m.s.l. and a storage area of 6,500 acre-feet; (4) a powerhouse containing three generating units with a total rated capacity of 7.78 MW; and, appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 37,318,036 kWh. The applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company-Wisconsin, 100 Barstow Street Eau Claire, WI 54702, or by calling (715) 839–2621.

p. *Scoping Process:* In gathering background information for preparation of an environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues narrowing the scope of the environmental document as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implementation of fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not be limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state and local agencies.

Comments concerning the scope of the environmental document should be filed by deadline date.

2a. *Type of Application*: Subsequent License.

b. *Project No.*: 2550–002.

c. *Date filed*: August 16, 1993.

d. *Applicant*: N.E.W. Hydro, Incorporated.

e. *Name of Project*: Weyauwega Hydroelectric Project.

f. *Location:* On the Waupaca River, in Waupaca County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Loyal Gake, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960 (414) 293–4628.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline for Interventions and Protests, and also for Comments, Recommendations, Terms & Conditions, and Prescriptions:* May 31, 1994.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The constructed project consists of the following features: (1) An existing dam 240 feet long and 20 feet high; (2) an existing reservoir with a surface area of 250 acres and a gross storage capacity of 1,259 acre-feet; (3) an existing powerhouse containing one turbine-generator unit having a total generating capacity of 400 kilowatts; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 853,000 kilowatthours. The dam is owned by the Wisconsin Electric Power Company.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to a local utility.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Loyal Gake, P.O. Box 167, Neshkoro, Wisconsin 54960, at (414) 293–4628.

p. *Scoping Process:* In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not limited to: How the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental assessment should be filed by the deadline date.

3a. *Type of Application:* Minor License.

b. *Project No.:* 11346–001.

c. *Date filed:* December 21, 1992.

d. *Applicant:* FORIA Hydro Corporation.

e. *Name of Project:* Fort Dodge Mill Dam Project.

f. *Location:* on the Des Moines River, in Webster County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas J. Wilkinson, Jr., President, Lincolnway Development Company, 300 American Building, Cedar Rapids, Iowa 52401–1219, (319) 366–4990.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing concrete dam 372 feet long and 18 feet high; (2) an existing reservoir with a surface area of 90 acres, a negligible storage capacity, and a normal surface elevation of approximately 990 feet above mean sea level; (3) an existing powerhouse containing two new turbine-generator units at a total installed capacity of 1,260 kilowatts; (4) a proposed 13.8-kilovolt transmission line 2,400 feet long; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 8,168,352 kilowatthours. The dam is owned by the City of Fort Dodge.

m. *Purpose of the Project:* All project energy generated would be sold by the applicant.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also

available for inspection and reproduction at Mr. Thomas J. Wilkinson, Jr., Lincoln Development Company, 300 American Building, Cedar Rapids, Iowa, 52401–1219, (319) 366–4990.

p. *Scoping Process:* In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental assessment should be filed by the deadline date.

4a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–40–000.

c. *Date Filed:* February 25, 1994.

d. *Applicant:* Frank and Mary Jane Spain.

e. *Name of Project:* Spain Hydro Project (MT).

f. *Location:* Romy Lake in Madison County, MT.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* John E. Bloomquist, 310 East Sebree Street, Box 1418, Dillon, MT 59725, (406) 683–4301.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* May 9, 1994.

k. *Description of Project:* The proposed Spain Hydro Project will consist of: (1) A 2600-foot-long, 8-to-10-inch diameter penstock, supplying water from Romy Lake; (2) a 8-foot by 8-foot powerhouse, containing a 10-kilowatt turbine/generator; (3) a tailrace discharging into Warm Springs Creek; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy on site in a single-family home. No other power source is available.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–46–000.

c. *Date Filed:* March 16, 1994.

d. *Applicant:* Georgia J. Ure.

e. *Name of Project:* Locustville Pond Hydro Project.

f. *Location:* Brushy Brook in Washington County, RI.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Georgia J. Ure, Prospect Square, P.O. Box 123, Wyoming, RI 02898, (401) 539–2160.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* May 18, 1994.

k. *Description of Project:* The Hydro Project consists of: (1) An impoundment with a storage capacity of 132 acre-feet; (2) an existing 18-foot-high, 320-foot-long earth-filled dam; (3) an existing 124-foot-long, 8-foot-wide sluiceway; (4) a rebuilt 45-kilowatt turbine/generator, to be reinstalled in an existing weatherproof enclosure; (5) a 45-foot-long transmission line; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy on site, replacing an oil furnace with an electric furnace. Applicant states the project

will not be connected to an interstate grid.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. *Type of Application:* Surrender of License.

b. *Project No:* 8142–024.

c. *Date Filed:* March 14, 1994.

d. *Applicant:* Henwood Associates, Inc.

e. *Name of Project:* Dynamo Pond.

f. *Location:* On Green Creek, in Mono County, California, near Bridgeport.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Henwood, Henwood Associates, Inc., 2555 Third Street, suite 110, Sacramento, CA 95818, (916) 447–3497.

i. *FERC Contact:* Mr. Mark R. Hooper, (202) 219–2680.

j. *Comment Date:* May 16, 1994.

k. *Description of Project:* Delays and uncertainties associated with the environmental permits impaired the applicant's ability to meet the terms of the power purchase agreement, and ultimately made it impossible to finance and construct the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7a. *Type of Application:* New License.

b. *Project No.:* 1999–004.

c. *Date filed:* June 24, 1993.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Wausau Hydroelectric Project.

f. *Location:* on the Wisconsin River, in Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. T.P. Meinz, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams, P.O. Box 19002, Green Bay, WI 54307, (414) 433–1293.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Deadline Date:* See paragraph D5.

k. *Status of Environmental Analysis:* This application is accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D5.

l. *Description of Project:* The project facilities would consist of: (1) A main dam, located on the west channel, having a total length of about 1,230 feet and a maximum height of about 30 feet, and which is comprised of (a) a concrete wing wall on the right bank comprised of three sections totaling 118 feet; (b) a powerhouse with a length of 132 feet, of which about 91 feet is a water retaining structure; (c) a 35-foot-long concrete gravity section between the powerhouse and spillway; (d) a spillway section which has an overall length of 214 feet and an effective spillway length of 180 feet with 4.43-foot-high flashboards mounted on the crest; (e) a 217-foot long Taintor gate section containing seven gates, each 27 feet wide by 18 feet high; (f) a 44-foot-long concrete gravity section between the Taintor gate and the needle spillway sections; (g) a needle spillway section 207.7 feet long containing 17 bays, each 10 feet wide; (h) a concrete gravity nonoverflow section 104 feet long by about 28 feet high; and (i) a concrete wing wall on the left bank comprised of two sections totaling 199.3 feet;

(2) An auxiliary guard locks dam, located on the east channel, having a total length of about 339 feet and a height of about 22 feet, and which is comprised of (a) one Taintor gate 20.75 feet wide by 12 feet high; (b) a second Taintor gate 20.5 feet wide by 16 feet high; (c) one bottom-hinged collapsible gate 20 feet wide by 14 feet high; and (d) nonoverflow sections and piers with a combined length of about 278 feet;

(3) A reservoir with a surface area of 284 acres and a total volume of 3,550 acre-feet at a maximum pool elevation of 1,188.4 feet National Geodetic Vertical Datum (NGVD);

(4) An existing concrete and brick powerhouse, measuring 132 feet by 60 feet in plan, located at the right bank and containing three vertical-shaft turbine-generator units rated at 1,800 kilowatts (Kw) each for a total installed capacity of 5,400 Kw;

(5) A substation adjacent to the powerhouse; and

(6) Appurtenant facilities and equipment.

There is no primary transmission line included in the project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1, and D5.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams, Green Bay, WI or calling (414) 433–1268.

8a. *Type of application:* Major License.

b. *Project No.:* 10942–001.

c. *Date filed:* March 8, 1994.

d. *Applicant:* Skykomish River Hydro.

e. *Name of Project:* Martin Creek.

f. *Location:* In Mt. Baker-Snoqualmie National Forest, on Martin Creek, in King County, Washington. Township 26S Rang 12E, Sections 13, 24 and 25.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Lon G. Covin, 1442 130th Avenue NE., Bellevue, WA 98005, (206) 455–0234.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The proposed project would consist of: (1) A diversion dam on Kelley Creek with negligible impoundment; (2) a diversion dam on Martin Creek with Negligible impoundment; (3) a 44-inch-diameter, 810-foot-long penstock from the Martin Creek dam to a confluence; (4) a 38-inch-diameter, 590-foot-long penstock from the Kelley Creek dam to a confluence; (5) a 10,436-foot-long penstock from the confluence to; (6) a powerhouse containing a generating unit with a capacity of 10.2 MW and an estimated average annual generation of 39.44 Gwh; (7) a 2.3-mile-long underground transmission line connecting to Puget Sound Power Light Company's Skykomish substation; and (8) appurtenant facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is May 7, 1994.

9a. *Type of Application:* Small Conduit Exemption (Notice of Tendering).

b. *Project No.:* 11459–001.

c. *Date filed:* March 18, 1994.

d. *Applicant:* Washington County Water Conservation District.

e. *Name of Project:* Quail Creek No. 2 Hydroelectric Facility.

f. *Location:* On the existing Quail Creek irrigation and water supply

project on the Virgin River and Quail Creek in Washington County, Utah. Section 36, Township 41 South, Range 14 West, Salt Lake Base and Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Morgan S. Jensen, Planning and Environmental Coordinator, Washington County, Water Conservancy District, 136 North 100 East, suite 1, St. George, UT 84770, (801) 673–3617.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Brief Description of Project:* The proposed project will consist of a penstock connecting to the existing Quail Creek Reservoir supply pipeline, a powerhouse with an installed capacity of 3.6 megawatts, and a tailrace discharging flows to Shannon Reservoir, a part of the water supply project.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

10a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL94–55–000.

c. *Date Filed:* March 24, 1994.

d. *Applicant:* Scurvey Creek Fishery Enhancement Inc.

e. *Name of Project:* Scurvey Creek Hydro.

f. *Location:* Scurvey Lake and Scurvey Creek, T 11 S, R 13 W, SW ¼ section 3 Kenai Peninsula, Alaska.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Lawrence R. McCubbins Scurvey Creek Fishery Enhancement Inc., P.O. Box 1656, Homer, AK 99603, (907) 235–5312.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* May 25, 1994.

k. *Description of Project:* The proposed project will consist of: (1) A 15,000-foot-long, 18-to-24-inch diameter pipeline from Scurvey Lake; (2) a powerhouse enclosed in a fish hatchery building; (3) a 12-kilowatt pendelton wheel or cross-over turbine; (4) a tailrace, returning water to Scurvey Creek; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to use all energy produced on site.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

11a. *Type of Application:* Clarification of License Article 20.

b. *Project No.:* 7883–009.

c. *Dated Filed:* February 15, 1994.

d. *Applicant:* Powerhouse Systems, Inc.

e. *Name of Project:* Weston Dam Project.

f. *Location:* The project is located in the State of New Hampshire, on the Upper Ammonoosuc River in Coos County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Greg Cloutier, Powerhouse Systems, Inc., RR 1, Box 2, Jefferson, NH 03583, (603) 586–4506.

i. *FERC Contact:* David T. Tran, (202) 219–2674.

j. *Comment Date:* May 2, 1994.

k. *Description of Proposed Action:* The State of New Hampshire Department of Transportation (NHDOT), in cooperation with Powerhouse Systems, Inc., owner of the Weston Dam Project, proposes to lower the project impoundment to replace a single span bridge, located just upstream of the Weston dam, with a double span structure.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

12a. *Type of Application:* Transfer of License.

b. *Project No.:* 10228–006.

c. *Date filed:* February 7, 1994.

d. *Applicant:* W.V. Hydro, Inc. and Cannelton Hydroelectric Project, L.P.

e. *Name of Project:* Cannelton Dam.

f. *Location:* On the Ohio River in Hancock County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* James B. Price, President, W.V. Hydro, Inc., 120 Calumet Ct., Aiken, SC 29803–5220, (803) 642–2749.

i. *FERC contact:* Etta Foster (202) 219–2679.

j. *Comment Date:* May 19, 1994.

k. *Description of Proposed Action:* W.V. Hydro, Inc., and Cannelton Hydroelectric Project, L.P., seek Commission approval to transfer the license for the Cannelton Dam Project from W.V. Hydro, Inc., to Cannelton Hydroelectric Project, L.P., in order to expedite project financing.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D5. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 31, 1994 for Project No. 1999–004). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 14, 1994 for Project No. 1999- 004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 31, 1994 for Project Nos. 2390–002 and 2550–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 12, 1994 for Project Nos. 2390–002 and 2550–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (May 31, 1994 for Project No. 11346–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (July 12, 1994 for Project No. 11346–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An

additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: April 7, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8978 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–204–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 8, 1994.

Take notice that on April 6, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of May 1, 1994:

Original Sheet No. 98C,
Eighth Revised Sheet No. 20A.

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover Account No.858 stranded costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent that may be necessary to place these tariff sheets into effect as requested.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 15, 1994. 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 this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8993 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–171–001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 8, 1994.

Take notice that on April 5, 1994, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with an effective date of April 1, 1994:

Substitute Original Sheet No. 9B.

Carnegie states that it is filing the above tariff sheet in compliance with the Commission's Order Accepting and Suspending Tariff Sheet, Subject to Refund and Conditions, and Consolidating Dockets For Hearing 67 FERC 61,003 (1994), issued April 1, 1994. (April 1 Order). Carnegie states that it is making this filing pursuant to § 31.3(b) of the General Terms and Conditions of its FERC Gas Tariff, and as a limited application under section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former bundled firm sales customers CAP costs direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (TETCO), pursuant to TETCO's filing in Docket No. RP94–16–000. Carnegie states that by the Commission's April 1 Order, the tariff sheet is to be effective April 1, 1994.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be billed on or before April 15, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8991 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–35–004]

Colorado Interstate Gas Co.; Compliance Filing

April 8, 1994.

Take notice that on April 5, 1994, in compliance with the Federal Energy Regulatory Commission's (Commission) order issued March 21, 1994 in Docket No. RP94–35–003 et al. Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 338, First Revised Sheet No. 339, and Substitute First Revised Sheet No. 14. CIG requests that these proposed tariff sheets be made effective on March 21, 1994 and December 6, 1993 respectively.

CIG states that copies of this filing have been served on parties to the proceeding, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211). All such protests should be filed on or before April 15, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8990 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–8–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 8, 1994.

Take notice that on April 5, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 53, with an effective date of April 1, 1994.

Northern states that it is filing Ninth Revised Sheet No. 53 to establish the March 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 15, 1994. Protests will be considered by the Commission in determiing the appropriate action to be taken, but will not serve to make protestant 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–8989 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–335–000]

Transcontinental Pipe Line Corp.; Application For Abandonment

April 8, 1994

Take notice that on April 5, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations for an order permitting and approving the abandonment of certain minor gas pipeline facilities owned and operated by TGPL at South Marsh Island Block 23, Offshore Louisiana, as follows:

- Approximately 1.18 miles of 10-inch pipeline lateral [1] extending from Pennzoil Petroleum Company's (Pennzoil) South Marsh Island (SMI) Block 23A Platform to Pennzoil's SMI 23B–D Platform;
- A metering station [2] on the SMI Block 23A Platform;
- Approximately 0.57 miles of 12-inch pipeline lateral [2] extending from Pennzoil's SMI Block 23B–D Platform to Pennzoil's SMI Block 23D-Auxiliary Platform; and
- Approximately 0.31 miles of 4-inch pipeline laterial [2] extending from Pennzoil's SMI Block 23B–P Platform to TGPL's underwater tap value no. LE653 on a separate pipeline lateral owned and operated by TGPL.

TGPL states that Pennzoil, the sole operator of natural gas production being transported by the subject facilities, recently constructed a new pipeline to re-route the existing SMI Block 23 gas (and other Pennzoil gas production) to the system of Sea Robin Pipeline Company. Pennzoil has informed TGPL that, as a result of this re-routing, Pennzoil will no longer ship any gas through the subject facilities and that, commencing July 7, 1994, Pennzoil will abandon by removal its SMI Block 23A, 23B–D and 23B–P Platforms. TGPL states that it will be required to disconnect and remove its facilities from these platforms before they are abandoned by Pennzoil. TGPL states that it must commence work on or about June 15, 1994, in order to complete the disconnecting and removal of its facilities. Therefore, TGPL requests the Commission take appropriate action to grant this authority on an expedited basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 15, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–8992 Filed 4–13–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Authorized in Docket No. CP61–221, Transcontinental Gas Pipe Line Corporation, 25 FPC 1011 (1961).

[2] Authorized in Docket No. CP72–16, Transcontinental Gas Pipe Line Corporation, 46 FPC 743 (1971).

ENVIRONMENTAL PROTECTION AGENCY

[WH–FLR–4863–3]

State and Local Assistance: Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of recision.

SUMMARY: This notice sets forth the recision of $22,000,000 in funding to capitalize State Revolving Fund (SRF) programs authorized by (Title VI) of the Clean Water Act (CWA) as announced in the **Federal Register** notice Vol. 59, No. 38, of February 25, 1994. In the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1994 Public Law 103–124, Congress appropriated $1,218,000,000 for the SRF program (Title VI). The Emergency Supplemental Appropriations Act of 1994 Public Law 103–211 rescinded $22,000,000 of the funds made available under Public Law 103–124. Through promulgation of this notice, the public is notified of the revised fiscal year 1994 allotment of funds available to the States for their SRF programs.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance (202) 260–5858.

SUPPLEMENTARY INFORMATION: The allotments of funds announced in the **Federal Register** notice on February 25, 1994, as available to States and Territories and Indian Tribes will be reduced $22,000,000. The reduction will be taken proportionally to the funds made available.

The single exception is that Public Law 95–348 contains a provision preserving funds appropriated for use by the Northern Mariana Islands (NMI).

Section 3(a)(2) provides that any funds made available to the NMI by the Congress after March 24, 1976, "* * * are hereby authorized to remain available until expended." Accordingly, Title VI funds allotted to the NMI under the authority of Public Law 103–124 are not subject to the recision of funds under the provisions of Public law 103–211. The table at the end of this notice lists the revised amount of funding made available to each State to capitalize SRF programs authorized by Title VI of the CWA. Grants from this allotment may be awarded as of the date of this notice.

Dated: April 8, 1994.

Carol M. Browner,

Administrator.

State	Revised FY 94 Title VI state allotments
Alabama	$13,470,300
Alaska	7,209,800
Arizona	8,136,400
Arkansas	7,880,300
California	86,157,000
Colorado	9,636,100
Connecticut	14,757,900
Delaware	5,913,800
Dist. of Columbia	5,913,800
Florida	40,663,500
Georgia	20,368,000
Hawaii	9,330,000
Idaho	5,913,800
Illinois	54,482,900
Indiana	29,032,300
Iowa	16,304,000
Kansas	10,873,700
Kentucky	15,332,100
Louisiana	13,242,800
Maine	9,325,300
Maryland	29,136,000
Massachusetts	40,900,500
Michigan	51,798,100
Minnesota	22,141,600
Mississippi	10,853,500
Missouri	33,395,300
Montana	5,913,800
Nebraska	6,161,600
Nevada	5,913,800
New Hampshire	12,038,700
New Jersey	49,227,700
New Mexico	5,913,800
New York	132,967,800
North Carolina	21,741,400
North Dakota	5,913,800
Ohio	67,817,400
Oklahoma	9,732,600
Oregon	13,608,500
Pennsylvania	47,718,400
Rhode Island	8,088,800
South Carolina	12,341,200
South Dakota	5,913,800
Tennessee	17,499,900
Texas	55,060,600
Utah	6,347,400
Vermont	5,913,800
Virginia	24,653,700
Washington	20,949,300
West Virginia	18,779,100
Wisconsin	32,567,400
Wyoming	5,913,800
American Samoa	1,081,500
Guam	782,600
N. Mariana	511,900
Puerto Rico	15,712,100
T T of Palau	437,200
Virgin Islands	627,800
Sub-total	1,190,020,000
Indian set-aside	5,980,000
Total	1,196,000,000

[FR Doc. 94–9023 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30363; FRL–4775–6]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by May 16, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30363] and the registration/file number, attention Product Manager (PM) 18, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 53871–O. Applicant: Fermone Corporation Inc., 2620 N. 37th Drive, Phoenix, AZ 85009. Product name: Naturalis-L 225. The fungal entomopathogen *Beauvaria bassiana* is being considered for registration as a biological insecticide. Naturalis-L 225 would be used to control aphids, thrips, mites, white flies, leaf-feeding caterpillars, Lygus bugs, flea beetles, cucumber beetles, elm leaf, leaf hoppers, strawberry root weevils, obscure root weevils, blackvine root weevils, chinch bugs, crickets, grasshoppers, and psyllids on specified indoor (including greenhouses) and/or outdoor trees, lawns, and ornamentals. (PM 18)

2. File Symbol: 52991–L. Applicant: Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT 06810. Product name: Bedoukian Tufted Apple Bud Moth Technical Pheromone. Biochemical Insecticide. The active ingredient, an insect pheromone, e-11-tetradecenyl acetate and e-11-tetradecenol, would attract the tufted apple bud moth *Platynota idaeusalis* and be used in apple orchards and other crop fields. The product is for manufacturing use only. (PM18)

3. File Symbol: 65626–R. Applicant: Mycotech Corporation, 630 Utah Avenue, Butte, MT 69701. Product name: Mycotrol GH-OF. Biological Insecticide. The fungal entomopathogen, *Beauvaria bassiana*, Strain GHA, would be used to control grasshoppers, mormon crickets, and locusts on rangeland and improved pastures. (PM18)

4. File Symbol: 65626–G. Applicant: Mycotech Corp. Product name: Mycotrol GH OF. Biological Insecticide. The product, containing the fungal entomopathogen, *Beauvaria bassiana*, Strain GHA, would be for manufacturing use only. (PM18)

5. File Symbol: 65626–U. Applicant: Mycotech Corp. Product name: Mycotrol

GH ES. Biological Insecticide. The product, containing the fungal entomopathogen, *Beauvaria bassiana*, Strain GHA, would control grasshoppers, mormon crickets, and locusts in rangeland and improved pastures. (PM18)

6. File Symbol: 65626–E. Applicant: Mycotech Corp. Product name: Mycotrol GH OF. Biological Insecticide. The fungal entomopathogen, Beauvaria bassiana, Strain GHA, would be used to control grasshoppers, mormon crickets, and locusts on alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, and sunflower. (PM18)

7. File Symbol: 65626–L. Applicant: Mycotech Corp. Product name: Mycotrol GH ES. Biological Insecticide. The product, containing the fungal entomopathogen, *Beauvaria bassiana*, Strain GHA, would control grasshoppers, mormon crickets, and locusts in alfalfa, corn, cotton, potatoes, rapeseed, safflower, small grain crops, soybeans, sugarbeets, and sunflower. (PM18)

8. File Symbol: 65626–A. Applicant: Mycotech Corp. Product name: Mycotrol GH ES. Biological Insecticide. The product, containing the fungal entomopathogen, *Beauvaria bassiana*, Strain GHA, would be for manufacturing use only. (PM18)

9. File Symbol: 55638–EU. Applicant: Ecogen Inc., 2005 Cabot Boulevard West, Langhorne, PA 19047. Product name: NoMate TABM Spiral. Biochemical Insecticide. The insect pheromone, e-11-tetradecenyl acetate and e-11-tetradecenol, would attract the tufted apple bud moth, *Platynota idaeusalis*, and be used in apple orchards and other crop fields. (PM18)

10. File Symbol: 53871–I. Applicant: Fermone Corporation Inc., 2620 N. 37th Drive, Phoenix, AZ 85009. Product name: Fermone Boverin. The fungal entomopathogen *Beauvaria bassiana* is being considered for registration as a biological Insecticide. Fermone Boverin would be used for manufacturing use only for ornamentals. (PM18)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 7, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9021 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Monday, April 18, 1994, at 10 a.m. The meeting will be held at Eximbank in room 1141, 811 Vermont Avenue NW., Washington, DC 20571. (Continuation of 4/11/94 meeting.)

AGENDA: 1. Reinventing Eximbank: Working Capital Guarantee Program Additionality; 2. Option 1: Additionality, Small Business, and the Working Capital Guarantee Program; 3. Option 2: Additionality Accepted; 4. Reinventing Eximbank: Working Capital Guarantee Program Changes.

PUBLIC PARTICIPATION: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8893, not later than Friday, April 15, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to April 15, 1994, Loretta Carrier, room 1112, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FOR FURTHER INFORMATION CONTACT: For further information, contact Loretta Carrier, room 1112, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8893.

Tamzen C. Reitan,

Vice President, Management Services and Human Resources.

[FR Doc. 94–9010 Filed 4–13–94; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 94–311]

Comments Invited on Iowa Public Safety Plan Amendment

April 7, 1994.

On February 10, 1993, the Commission accepted the Public Safety Plan for Iowa (Region 15). On February 3, 1994, Region 15 submitted a proposed amendment to its plan that would reserve all unassigned channels for the State of Iowa. Because the proposed amendment is a major change to the Region 15 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before May 16, 1994 and reply comments on or before May 31, 1994. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92–288 Iowa-Public Safety Region 15.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–9000 Filed 4–13–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1019–DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1019–DR), dated

March 30, 1994, and related determinations.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama dated March 30, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 30, 1994.

Marion County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–9030 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1019–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1019–DR), dated March 30, 1994, and related determinations.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 30, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms, tornadoes, and flooding on March 27, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Calhoun, DeKalb, Marshall, Cherokee, St. Clair, and Shelby Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–9031 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1020–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1020–DR), dated March 31, 1994, and related determinations.

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia dated march 31, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 31, 1994:

Cherokee County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–9032 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1018–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1018–DR), dated March 16, 1994, and related determinations.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky dated March 16, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 16, 1994:

Fayette, Floyd, Letcher and Livingston Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–9033 Filed 4–13–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Ito El Paso, International Transport Organization, Inc.

9601 Carnegie Ave.
El Paso, TX 79925
Officers:
Georg Koenigsman, President/Director
Dieter Schmekel, Vice President/Director
Horst Dieter Lange, Vice President/Director
Berndt E. Becker, Vice President/Treasurer/Manager
Eva H. Martin, Secretary

Rail Van, Inc. dba Multi Modal, Division of Rail Van, Inc.
400 West Wilson Bridge Road
Worthington, OH 43085
Officers:
Jeffrey R. Brashares, President/Secretary
Denis M. Bruncak, Vice President
William D. McCubbin, Vice President
William R. Lee, Exec. Vice President/Treasurer/Secre.

A & A International Shipping
14310 Dartwood Drive
Houston, TX 77049
Sole Proprietor
Angelita Ojeda

Cedar Development and Investment Corporation dba Atlanta Motor Export
2120 Skyland Cove Lane
Snellville, GA 30278
Officers:
Najati Omar Masseoud, President
Nabla Salibi Masseoud, Secretary/Stockholder
Dania Najati Masseoud, Vice President

Airmar Global International, Inc.
7551 Sheridan Street
Hollywood, FL 33024
Officers:
Andres A. Indacoches, President
Germanine E. Indacoches, Vice President

Boat Shipping International, Inc.
3660 N. Milton Road
Ft. Pierce, FL 34946
Officers:
Donna Griffin, President/Director
Patrick Griffin, Vice President/Director

World Freight International, Inc.
103 Lake Street
Rouses Point, NY 12979
Officers:
Kevin C. O'Shea, President/Stockholder
John C. Rouse, Chairman/Stockholder
Nicholas Jacomides, Vice President/Stockholder
Phillip Kaisharis, Secretary/Stockholder

K.V. Mark Corp.
5220 NW. 72nd Ave.
Unit 25
Miami, FL 33166
Officer:
Priscilla F. Garcia, General Manager

Basic Supply Exports, Inc.
1200 Alaskan Way, Pier 56 Upper Floor
Seattle, WA 98101
Officers:
Daniel McClary, President/Director
Diane McClary, Director

Dated: April 8, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–8995 Filed 4–13–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N–0133]

Drug Export; Aristospan® Sterile Triamcinolone Hexacetonide Suspension 5 mg/mL and 20 mg/mL in 1 mL Vials and 5 mL Vials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lederle Laboratories has filed an application requesting approval for the export of the human drug Aristospan® Sterile Triamcinolone Hexacetonide Suspension 5 mg and 20 mg/mL in 1 mL and 5 mL vials to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lederle Laboratories, 401 N. Middletown Rd., Pearl River, NY 10965–1299, has filed an application requesting approval for the export of the human drug Sterile Triamcinolone Hexacetonide Suspension 5 mg/mL and 20 mg/mL in 1 mL and 5 mL vials to Canada. The firm has approval for these products using a different sterilization process in the United States. This product is indicated as an adjunctive therapy for short-term administration for the treatment of synovitis of asteoarthritis, acute and subacute bursitis, rheumatoid arthritis, acute gouty arthritis, etc. The application was received and filed in the Center for Drug Evaluation and Research on November 5, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 25, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 4, 1994.

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–9046 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0112]

Drug Export; PHOTOPLEX Plus™ Broad Spectrum Sunscreen Lotion; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of March 29, 1994 (59 FR 14627). The document announced that Allergan Herbert, Division of Allergan, Inc., had filed an application requesting approval for the export of the human drug PHOTOPLEX Plus™ Broad Spectrum Sunscreen lotion to Canada.

The document was published with an inadvertent typographical error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–313), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

In FR Doc. 94–7246, appearing on page 14627, in the **Federal Register** of Tuesday, March 29, 1994, the following correction is made:

On page 14627, in the third column, in the title of the document, the word "PHOTOLEX" is corrected to read "PHOTOPLEX".

Dated: April 8, 1994.

David B. Barr,

Deputy Director, Office of Compliance, Center for Drug Evaluation Research.

[FR Doc. 94–9043 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92E–0133]

Determination of Regulatory Review Period for Purposes of Patent Extension; Supprelin®; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 2, 1992 (57 FR 23237), that announced its determination of the regulatory review period for purposes of patent extension for Supprelin® (histrelin acetate). The document was published with some mathematical errors. The document incorrectly stated, "FDA has determined that the applicable regulatory review period for Supprelin® is 2,876 days. Of this time, 1,930 days occurred during the testing phase of the regulatory review period, while 946 days occurred during the approval phase." It should have stated, "FDA has determined that the applicable regulatory review period for Supprelin® is 2,878 days. Of this time, 1,931 days occurred during the testing phase of the regulatory review period, while 947 days occurred during the approval phase." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

In FR Doc. 92–12846, appearing on page 23237 in the **Federal Register** of June 2, 1992, the following corrections are made: On the same page, in the second column, in the second line from the bottom, "2,876" is corrected to read "2,878"; and in the last line, "1,930" is corrected to read "1,931"; and in the third column, in line 2, "946" is corrected to read "947".

Dated: April 6, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–9047 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

The Ryan White Comprehensive AIDS Resources Emergency Act of 1990—Early Intervention Services

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of pre-application technical assistance workshops.

SUMMARY: The Health Resources and Services Administration will hold pre-application technical assistance workshops for competing applicants under Title III(b), HIV Early Intervention Services, of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381.

Eligible applicants are Migrant and Community Health Centers under sections 329 and 330 of the Public Health Service (PHS) Act; Health Care for the Homeless Program grantees under section 340 of the PHS Act; Comprehensive Hemophilia Diagnostic and Treatment Centers; family planning grantees under section 1001 of the PHS Act (other than States); Federally Qualified Health Centers under section 1905(l)(2)(B) of the Social Security Act and other public and private nonprofit entities that provide comprehensive primary care services to populations at risk of HIV disease.

PURPOSE: The purpose of each technical assistance workshop is to disseminate relevant program information and review HIV Early Intervention Services program expectations. Eligible entities will have an opportunity to review the program guidance and to receive technical assistance pertaining to all aspects of writing and implementing grant applications under Title III(b), HIV Early Intervention Services.

CONTACT: Anyone interested in attending the meeting should contact Ms. Eugenia F. Adams, Division of Programs for Special Populations, Bureau of Primary Health Care, room 9–8D3, 4350 East-West Highway, Bethesda, Maryland 20814. Telephone: (301) 594–4443. Costs of attending are to be borne by prospective applicants.

Date and Time: April 20, 1994, 10 a.m. to 5 p.m.

Place: PHS Regional Office II, room 305C, 26 Federal Plaza, New York, NY. Enter building on Duane St.

Date and Time: April 25, 1994, 9 a.m. to 5 p.m.

Place: Los Angeles Airport Hilton Towers Hotel, 5711 West Century Blvd., Los Angeles, CA.

Date and Time: April 25, 1994, 10 a.m.–5 p.m.

Place: PHS Regional Office V, room 328, 77 W Jackson Blvd., West Jackson Blvd. and Clark St., Metcalf Building, Chicago, IL.

Date and Time: April 28, 1994, 9 a.m.–5 p.m.

Place: PHS Regional Office VI, room 1230, 1200 Main Tower, Dallas, TX.

Dated: April 8, 1994.

Ciro Sumaya,

Administrator.

[FR Doc. 94–8996 Filed 4–13–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Notice of Meeting (Board of Scientific Counselors, Division of Cancer Treatment)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Treatment, National Cancer Institute, National Institutes of Health, April 26, 1994, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on April 26 from 1 p.m. to approximately 5 p.m., to discuss the recent events surrounding the data falsification in the National Surgical Adjuvant Breast and Bowel Project (NSABP) study in Montreal, Canada. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Dr. Bruce Chabner (301–496–4291) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficultly of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–8974 Filed 4–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting of the Board of Scientific Counselors (BSC), Division of Cancer Prevention and Control (DCPC) and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Division of Cancer Prevention and Control, Board of Scientific Counselors, National Cancer Institute, and its Subcommittees on May 5–6, 1994, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the times and places listed below. The meetings of the Board and its Subcommittees will address issues relating to Board business as indicated in the notice. All meetings will be open to the public. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 232, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–8526), upon request.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control

Dates of Meeting: May 5–6, 1994

Place of Meeting: Conference Room 10

Open: May 5—10:45 am to 5 pm, May 6—8:30 am to adjournment

Agenda: Review progress of programs within the Division and review of concepts being considered for funding

Name of Committee: Surveillance Subcommittee

Dates of Meeting: May 5, 1994

Place of Meeting: Conference Room 8

Open: 8:30 am to 10:30 am

Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding

Name of Committee: Early Detection and Community Oncology Subcommittee

Dates of Meeting: May 5, 1994

Place of Meeting: Conference Room 10

Open: 8:30 am to 10:30 am

Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee and review of concepts being considered for funding

Name of Committee: Cancer Control Science Subcommittee

Dates of Meeting: May 5, 1994

Place of Meeting: Conference Room 7

Open: 8:30 am to 10:30 am

Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding

Name of Committee: Cancer Prevention Research Subcommittee

Dates of Meeting: May 5, 1994

Place of Meeting: Conference Room 9

Open: 8:30 am to 10:30 am

Agenda: Discuss current and future programs of Cancer Prevention Research Subcommittee and review of concepts being considered for funding.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda Bremerman, (301) 496–8526 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 7, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–8957 Filed 4–13–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Treatment of Dopaminergic Neurodegenerative Disorders

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Applications SN 07/401,141 and 07/892,485, both entitled "A Method for the Treatment of Dopaminergic Neurodegenerative Disorders" to Phoenix: Regenerative Technologies, Inc. of Peoria, Illinois. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent applications disclose a novel surgical implantation method, which comprises implantation, into the brain, of suitable histocompatible leukocytes activates by such agents as plant mitogens, lymphokines, and cytokines. The claimed process offers an improved method of treating Parkinson's disease and other diseases that affect the dopaminergic system. This therapy can reduce or totally eliminate L–Dopa therapy, which has significant toxic side effects, and also presents an alternative to fetal implantation therapy. Use of the patient's own autologous leukocytes is also convenient and reduces the chance of host rejection.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Arthur J. Cohn, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive a copy of the patent application. Applications for a license in the indicated exclusive fields filed in response to this notice will be treated as objections to the grant of the

contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: March 31, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–8975 Filed 4–13–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4210–05; C–068346, C–069951]

Order Providing For Opening of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 723.92 acres of reconveyed lands to surface entry and to entry under the general mining laws. The lands have been and continue to be open to mineral leasing.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew J. Senti, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, (303) 239–3713.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended and supplemented (43 U.S.C. 869 *et seq.*), the following described lands have been voluntarily reconveyed to the United States:

Sixth Principal Meridian, Colorado

T. 23 S., R. 55 W.,
Sec. 23, S½;
Sec. 26, lot 4;
Sec. 27, N½;
Sec. 34, N½NE¼.

Containing 723.92 acres in Otero County.

1. At 9 a.m. on May 31, 1994, the lands described above will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, segregations of record, and the requirements of applicable law.

2. All valid applications received at or prior to 9 a.m. on May 31, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on May 31, 1994, the lands described above will be open to location and entry under the United States mining laws, subject to the provisions of existing withdrawals.

Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 1716, section 38, shall vest no right against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 4, 1994.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 94–8958 Filed 4–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[OR–130–4830–01; GP4–112]

Spokane District Office; Relocation and Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the relocation of the Bureau of Land Management (BLM), Spokane District Office, temporary closure during that relocation, and information on mail delivery.

FOR FURTHER INFORMATION CONTACT: Pearl E. Lee, BLM, Spokane District Office, E. 4217 Main Avenue, Spokane, Washington, 99202; 509–353–2570.

SUPPLEMENTARY INFORMATION: Effective at the close of business on April 28, 1994, the Spokane District Office will close for the purpose of relocating to 1103 North Fancher, Spokane, Washington 99212–1275. The District Office will reopen at 7:45 a.m. on May 3, 1994. The mailing address for delivery by the U.S. Post Office will be 1103 North Fancher, Spokane, Washington, 99212–1275. The telephone number will be 509–536–1200.

Dated: April 5, 1994.

Joseph K. Buesing,

District Manager.

[FR Doc. 94–8962 Filed 4–13–94; 8:45 am]

BILLING CODE 4310–33–M

[MT–020–04–4333–01–P; MTM–82700]

Realty Action—Intent to Exchange or Sell Lands in Yellowstone County, MT

AGENCY: Bureau of Land Management, Montana, Miles City District Office, Billings Resource Area, Interior.

ACTION: Designation of public lands in Yellowstone County, Montana, for transfer out of Federal ownership through sale or exchange.

SUMMARY: BLM proposes to dispose of these small, isolated tracts of public land through sale or exchange in order to achieve more efficient ecosystem management for the valuable resources on the remaining larger blocks of public land.

The following public land is being considered for disposal pursuant to sections 203 OR 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713, 1716.

Principal Meridian, Montana

T.2N., R.27E.,
Sec 35, lots 21 and 22;
Sec 36, lot 5.

The areas described aggregate 20.78 acres of public land.

DATES: Interested parties may submit comments by May 31, 1994 to the Bureau of Land Management, District Manager, Miles City District, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Information related to this disposal action is available at the Miles City District, Billings Resource Area Office, 810 E. Main, Billings, Montana 59105.

SUPPLEMENTARY INFORMATION: Subject to valid existing rights, the Federal lands were segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of notation on the public land records. The segregative effect will terminate upon issuance of patent, upon publication in the Federal Register of termination of the segregation, or 5 years from the date of notation on the public land records, whichever comes first.

The tracts are presently vacant.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Exchange Proposal or a Notice of Realty Action shall be published specifying the disposal action and associated information.

This disposal action is consistent with Bureau of Land Management policies and the Billings Resource Management

Plan/Environmental Impact Statement, 1984.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 94–8982 Filed 4–13–94; 8:45 am]

BILLING CODE 4310–DN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–699 (Preliminary)]

Stainless Steel Angles From Japan; Preliminary Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–699 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel angles,[1] provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 23, 1994.

For further information concerning the conduct of this investigation 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 B (19 CFR part 207).

EFFECTIVE DATE: April 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), 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. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 8, 1994, by Slater Steels Corp., Fort Wayne, IN.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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 this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on April 29, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than April 27, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 4, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: April 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9105 Filed 4–13–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–1 (Sub-No. 254X)]

Chicago & North Western Transportation Co.—Discontinuance of Trackage Rights and Abandonment Exemption—in the City of Omaha, Douglas County, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the discontinuance of trackage rights by Chicago and North Western Transportation Company (CNW) over approximately 1.5 miles of Union Pacific Railroad (UP) line from the connection with CNW's grain terminal trackage near the foot of Castelar Street to the Tenth Street overcrossing, and the abandonment of approximately 0.6

[1] For purposes of this investigation, "stainless steel angles" are defined as L-shaped, hot-rolled, stainless steel products that are not otherwise advanced.

miles of associated CNW tracks and appurtenances from the end of the track south of Vinton Street to the UP connection near the foot of Castelar Street, for a total distance of 2.1 miles in Omaha, Douglas County, NE. The exemption is subject to public use, historic preservation, and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on May 14, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by April 25, 1994, petitions to stay must be filed by April 29, 1994, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by May 4, 1994, and petitions to reopen must be filed by May 9, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–1 (Sub-No. 254X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Thomas F. Flanagan, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: April 1, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–8987 Filed 4–13–94; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exemp. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert W. May, M.D.; Denial of Application

On April 16, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert W. May, Jr., M.D., of 200 South Tennessee Street, Cartersville, Georgia 30120. The Order to Show Cause sought to deny Dr. May's pending application for a DEA Certificate of Registration. The Order to Show Cause was sent to Dr. May by registered mail. The return receipt was never forwarded to DEA.

In an effort to ensure that Dr. May was aware of the Order to Show Cause, two DEA Diversion Investigators traveled to Dr. May's address in Cartersville on July 1, 1993. A DEA Diversion Investigator handed Dr. May another copy of the Order to Show Cause and explained its significance to him. Dr. May replied that he had indeed received the original Order to Show Cause but had thrown it in the trash because he did not want to fight the Federal bureaucracy. As of March 1, 1994, Dr. May had not requested a hearing nor had he filed any statement on his behalf. Consequently, pursuant to 21 CFR 1301.54(d), Dr. May is deemed to have waived his opportunity for a hearing. The Administrator now enters his final order in this matter without a hearing and based on the investigative file as is provided for in 21 CFR 1301.54(e) and 1301.57.

The Order to Show Cause alleged that Dr. May's registration with the DEA would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The investigative file reveals that on December 19, 1986, in the United States District Court for the Northern District of Georgia, Dr. May was convicted of fifteen counts of distributing and dispensing controlled substances for other than legitimate medical purposes in violation of 21 U.S.C. 841(a)(1), and forty counts of aiding and abetting the same in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2. Dr. May was placed on probation for a period of five years and was prohibited from prescribing Schedule II and III controlled substances during the probation period.

The investigative file further reveals that the Composite Board of Medical Examiners (Board) issued a Consent Order, effective February 16, 1988, suspending Dr. May's medical license for thirty days. The Consent Order also placed his medical license on probation for a period of five years, to run concurrently with the probation imposed by the United States District Court, required Dr. May to provide at least 500 hours of free medical services to the community and ordered Dr. May to partake in 250 hours of continuing education.

Additionally, the Consent Order precluded Dr. May from applying for renewal of his DEA Certificate of Registration without the prior written approval of the Board. The Board stipulated that such approval would not be granted until Dr. May had complied with all the conditions of his probations, including specified continuing education requirements. As of February 1994, Dr. May had not received such approval from the Board.

Section 823(f) of the Controlled Substances Act lists five factors which are to be considered when making a determination as to whether a registration would be in the public interest. These factors include: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing, or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) compliance with applicable State, Federal or local laws relating to controlled substances; and, (5) such other conduct which may threaten the public health and safety. The Administrator may rely on any one or any combination of these factors when determining whether an application should be denied or a registration revoked. See Neveille H. Williams, D.D.S., 51 FR 17556 (1986); Anne L. Hendricks, M.D., 52 FR 41030 (1986).

Pursuant to 21 U.S.C. 823(f), the Administrator concludes that Dr. May's registration would be inconsistent with the public interest. The Administrator finds that due to Dr. May's past practice of distributing and dispensing controlled substances in the absence of a legitimate medical purpose, Dr. May cannot be entrusted with a DEA Certificate of Registration. His criminal conviction for this conduct and the action taken against his state medical license by the Board provide ample foundation for this conclusion. Dr. May's failure to respond to the Order to Show Cause, either by requesting a hearing or by submitting a written statement, indicates that he is either unwilling or unable to proffer support for his application.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), hereby orders that Dr. May's application for registration with the DEA as a practitioner be, and it hereby is, denied.

This order is effective April 14, 1994.

Dated: April 8, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–9025 Filed 4–13–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–55]

Michael D. Lawton, M.D.; Revocation of Registration

On April 16, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael D. Lawton, M.D., 1751 West Romneya, Suite C, Anaheim, California 92801. The Order to Show Cause sought to revoke Dr. Lawton's (Respondent) DEA Certificate of Registration, BL2125068, and deny any pending applications for registration as a practitioner. The Order to Show Cause alleged that such action was proper in light of the fact that on June 19, 1992, the Medical Board of California, Division of Medical Quality (Board), revoked Respondent's state medical license. Respondent, therefore, was no longer authorized by the State of California to handle controlled substances.

On July 2, 1993, Respondent filed a request for a hearing on the matter. The matter was placed on the docket of Administrative Law Judge Paul A. Tenney. On August 2, 1993, the Government filed a motion for summary disposition. Attached to and in support of its motion, the Government filed a copy of the Board's Decision ordering the revocation of Respondent's California Physician and Surgeon's license effective July 19, 1992. The Board revoked Respondent's license based on its finding that Respondent was guilty of, *inter alia*, gross negligence in his treatment of patients, furnishing controlled substances without a prior good faith examination and without medical indication, prescribing and administering excessive amounts of controlled substances and gross negligence and unprofessional conduct arising from sexual relations with patients. On August 23, 1993, the administrative law judge issued his opinion and recommended decision granting the Government's motion for summary disposition and recommending that the Respondent's DEA Certificate of Registration, BL2125068, be revoked.

On August 31, 1993, Respondent filed a request for reconsideration of the administrative law judge's recommendation alleging, *inter alia*, that the Board's decision was an "obvious forgery." Respondent denied that the Board had ever revoked his medical license. Respondent further stated that the Board "has never initiated any discipline of [my] license." In response, on September 15, 1993, the Government filed certified copies of the Board's decision, dated June 19, 1992, and of the Board's accusations, dated January 23, 1992, and April 14, 1992, all relating to Respondent's California Physician and Surgeon's Certificate.

By order and recommendation dated September 16, 1993, the administrative law judge noted that Respondent's allegation of falsity of the Board's decision was a collateral attack and was not a matter appropriate for consideration in the Federal proceeding. The administrative law judge added that Respondent failed to offer even a "scintilla" of evidence to support his argument that the Board's order had been forged. The administrative law judge therefore ruled that his prior recommended ruling granting summary disposition would remain unchanged.

It is well established that the Drug Enforcement Administration cannot register a practitioner who is not duly authorized to handle controlled substances in the state in which he does business. See 21 U.S.C. 823(f). The DEA Administrators have consistently held that practitioners who lack state authorization to handle controlled substances cannot be registered with the Drug Enforcement Administration. See Ramon Pla, M.D., 51 FR 41168 (1986); George S. Heath, M.D., 51 FR 26610 (1986); Dale D. Shahan, D.D.S., 51 FR 23481 (1986). Consequently, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked based on lack of state authorization.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BL2125068, issued to Michael D. Lawton, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied.

This order is effective May 16, 1994.

Dated: April 7, 1994.

Thomas A. Constantine,

Administrator.

[FR Doc. 94–9024 Filed 4–13–94; 8:45 am]

BILLING CODE 4410–09–M

Lodging of Joint Stipulation and Order of Dismissal Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Joint Stipulation and Order of Dismissal in *United States* v. *A. P. Green Industries, Inc.*, Civil Action No. 93–C 804B, was lodged on March 11, 1994 with the United States District Court for the Northern District of Oklahoma.

On September 7, 1993, the United States filed a Complaint pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, against A.P. Green Industries, Inc., for discharging pollutants to the waters of the United States without a National Pollutant Discharge Elimination System ("NPDES") permit in violation of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a). Subsequently, the United States and A.P. Green Industries, Inc. reached a settlement which resolves the issues set forth in the Complaint. The settlement includes the payment of $450,000 in civil penalties by A.P. Green Industries, Inc. and is embodied in a Joint Stipulation and Order of Dismissal.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Joint Stipulation and Order of Dismissal. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *A.P. Green Industries, Inc.*, DOJ Ref. No. 90–5–1–1–3956.

The proposed Joint Stipulation and Order of Dismissal may be examined at the office of the United States Attorney, U.S. Courthouse, room 3900, 333 West Fourth Street, Tulsa, Oklahoma 74103; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Joint Stipulation and Order of Dismissal may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction

costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–8959 Filed 4–13–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Beech Aircraft Corporation*, Civil Action No. *94–1121–FGT*, was lodged on March 31, 1994 with the United States District Court for the District of Kansas. The consent decree resolves claims against Beech Aircraft Corporation arising out of Beech's failure to timely comply with sections 301 and 307 of the Clean Water Act, 33 U.S.C. 1311 and 1317, and the Categorical Pretreatment Standards for Electroplating and Metal Finishing, 40 CFR parts 413 and 433.

In settlement of this matter, Beech has agreed to pay a civil penalty of $521,000. In addition, Beech will perform a supplemental environmental project which will reduce the total volume and toxicity of sludge introduced into the pretreatment system. This project is valued at over $250,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Beech Aircraft Corporation*, DOJ Reference No. 90–5–1–1–3314.

The proposed consent decree may be examined at the office of the United States Attorney, 401 N. Market Street, Wichita, Kansas 67202; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–8960 Filed 4–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consol Pennsylvania Coal Company

[Docket No. M–94–33–C]

Consol Pennsylvania Coal Company, P.O. Box 138, Garysville, Pennsylvania 15337 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (escapeways; bituminous and lignite mines) to its Bailey Mine (I.D. No. 36–07230) located in Greene County, Pennsylvania. The petitioner proposes the adoption of provisions of variance dated July 28, 1989. In addition, the petitioner would maintain a minimum clearance of 48 inches along the development and retreat section equipment located in the primary escapeway; remove all extraneous material from the area to allow for safe travel; post and maintain "tight clearance" signs at the inby end of the affected areas; and instruct all employees required to work in sections inby the affected areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M–94–34–C]

Consolidation Coal Company, P.O. Box 100, Osage, West Virginia 26543 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Arkwright No. 1 Mine (I.D. No. 46–01452) located in Monongalia County, West Virginia. The petitioner proposes to make mine ventilation changes after obtaining District Manager approval that will make certain check points established by granted petition M–91–35–C unnecessary. The petitioner states that the mine's 1 South/2 South longwall panel will intersect and utilize certain entries for ventilation of this panel when production starts. In addition, the petitioner states that the operator will rehabilitate this short stretch of air course to make it safe to travel prior to start of production, eliminating the need for check points 19A and 19B; that the proposed ventilation changes would result in certain air courses becoming common with the track entry, which is traveled and examined, eliminating the need for the associated check points. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Mountain Coal Company

[Docket No. M–94–35–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use 2/0 and 4/0 Anaconda SHD+GC and 2/0 and 4/0 Pirelli SHD-Center-GC type flame resistant cables with a flexible No. 16 A.W.G ground check conductor for the ground continuity check circuit on high voltage longwall system(s). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Drummond Company, Inc.

[Docket No. M–94–36–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wire, trolley feeder wire, high-voltage cable and transformers) to its Mary Lee No. 1 Mine (I.D. No. 01–00515) located in Walker County, Alabama. The petitioner proposes to use 2,400 volt circuits to power longwall mining equipment. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Golden Oak Mining Company, L.P.

[Docket No. M–94–37–C]

Golden Oak Mining Company, L.P., HC 85, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies and cabs; self-propelled electric face equipment; installation requirements) to its Tango Mine (I.D. No. 15–13294) located in Letcher County, Kentucky. The petitioner requests a waiver from the use of cabs and/or canopies on Joy 21 shuttle cars. The petitioner states that application of

the standard would result in a diminution of safety to the miners.

6. Peabody Coal Company

[Docket No. M–94–38–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.500(b) (permissible electric equipment) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to use non-permissible, handheld, battery-operated drills of not more than 15 volts inby the last open crosscut for drilling quarter-inch holes in the mine roof in order to install sight spads. The petitioner states that to protect against hazards related to the use of the drills, methane checks will be performed at each drilling site prior to operating the drills; that the drills would not be used if methane levels of 1.0 percent or greater are detected; and that no battery or battery packs would be changed in the drill in the face area or return air. The petitioner asserts that the alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Peabody Coal Company

[Docket No. M–94–39–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.500(b) (permissible electric equipment) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to use non-permissible, handheld, battery-operated drills of not more than 15 volts inby the last open crosscut for drilling quarter-inch holes in the mine roof in order to install sight spads. The petitioner states that to protect against hazards related to the use of the drills, methane checks will be performed at each drilling site prior to operating the drills; that the drills would not be used if methane levels of 1.0 percent methane levels or greater are detected; and that no battery or battery packs would be changed in the drill in the face area or return air. The petitioner asserts that the alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Peabody Coal Company

[Docket No. M–94–40–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.507–1(a) (electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to use non-permissible, handheld, battery-operated drills of not more than 15 volts in return air outby the last open crosscut for drilling quarter-inch holes in the mine roof in order to install sight spads. The petitioner states that to protect against hazards related to the use of the drills, methane checks will be performed at each drilling site prior to operating the drills; that the drills would not be used if methane levels of 1.0 percent methane levels or greater are detected; and that no battery or battery packs would be changed in the drill in the face area or return air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Peabody Coal Company

[Docket No. M–94–41–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420–1990 has filed a petition to modify the application of 30 CFR 75.507–1(a) (electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to use non-permissible, handheld, battery-operated drills of not more than 15 volts in return air outby the last open crosscut for drilling quarter-inch holes in the mine roof in order to install sight spads. The petitioner states that to protect against hazards related to the use of the drills, methane checks will be performed at each drilling site prior to operating the drills; that the drills would not be used if methane levels of 1.0 percent methane levels or greater are detected; and that no battery or battery packs would be changed in the drill in the face area or return air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Lehigh Portland Cement Company

[Docket No. M–94–20–M]

Lehigh Portland Cement Company, Buffington Station, Gary, Indiana 40401 has filed a petition to modify the application of 30 CFR 56.14112(b) (construction and maintenance of guards) to its Buffington Plant (I.D. No. 12–00424) located in Lake County, Indiana. The petitioner has a MSK Shrink-Wrap Machine which is used to seal pallets of bagged cement in plastic and is surrounded by a fence which limits access to moving parts of the machine. The petitioner requests a variance to allow kill switches on 2 door openings to de-energize the equipment when the doors are opened; to allow a conveying system that is guarded by light beam monitors with switches that de-energize the equipment in other than normal operating conditions; and to allow rollers of the conveying system that are motorized to operate only under load. The petitioner asserts that proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 16, 1994. Copies of these petitions are available for inspection at that address.

Dated: April 6, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–8961 Filed 4–13–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Ave, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 26, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in Politics and Society, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

2. *Date:* April 27, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in English and American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

3. *Date:* April 28, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in History, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

4. *Date:* April 29, 1994.
Time: 8 a.m. to 5:30 p.m.
Room: M–14.
Program: This meeting will review Summer Seminars for College Teachers applications for directing seminars in 1995 in Philosophy and Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1995.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–8973 Filed 4–13–94; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.
Date and Time: May 6, 1994, 8:30 a.m. to 5 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., suite 1105 #1, Arlington, VA 22203.
Type of Meeting: Closed.
Contact Person: Dr. Michael McGrath, Program Director, Centers Program, suite 1122, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22203.
Telephone: (703) 306–1970.
Purpose of Meeting: To provide advice and recommendations concerning Research Initiation Awards submitted to NSF for financial support.
Agenda: To review and evaluate Research Initiation Award proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. There matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.
Dated: April 8, 1994.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 94–8953 Filed 4–13–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences.
Date and Time: May 5–6, 1994 from 8:30–6:00.
Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Part-Open.
Contact Person: Dr. Gerald Selzer, Program Director, Division of Biological Instrumentation and Resources (BIR), Room 615, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1469.
Minutes: May be obtained from Contact Person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for proposals submitted to the NSF for financial support.
Agenda: Closed sessions: May 5, 1994, 8:30 a.m. to 6 p.m.; May 6, 1994 8:30 a.m. to 12:30 p.m. and 1:30 p.m. to 6 p.m. To review and evaluate Research Training Groups full proposals as part of the selection process for awards. Open Session: May 6, 1994, 12:30 p.m. to 1:30 p.m. for a discussion with Dr. Susan Stafford, Division Director of BIR and Dr. Mary Clutter, Assistant Director for Biological Sciences, on research training trends and opportunities in the Biological Sciences.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.
Dated: April 8, 1994.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 94–8950 Filed 4–13–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences.
Date and Time: May 8–10, 1994.
Place: National Science Foundation, 4201 Wilson Boulevard, room 390, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. Mark W. Courtney Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Doctoral Dissertation Research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.
Dated: April 8, 1994.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 94–8952 Filed 4–13–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the Following meeting:

Name: Special Emphasis Panel in Biological Sciences.

Date and Time: May 2 & May 3, 1994; 8 a.m. to 5 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Machi F. Dilworth, Program Director, National Science Foundation Arlington VA. 22230, Telephone (703) 306–1466.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate DOE/NSF/USDA Interagency Collaborative Research in Plant Biology proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (d), and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8955 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Advisory Panel for Cell Biology:

Name: Advisory Panel for Cell Biology.

Date and Time: May 2–4, 1994; 8:30 a.m. to 6 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 340, Arlington, VA 22230.

Type of Meeting: Part open.

Contact Persons: Dr. Eve Ida Barak, Program Director and Dr. Geza Hrazdina Program Director for Cellular Organization Program, Division of Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, room 655, Arlington, VA 22230, (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to the Cell Biology Program of the Division of Molecular and Cellular Biosciences at NSF for financial support.

Agenda: Open session: Monday, May 2, 1994, 8:30 am to 9:15 a.m.—General discussion of current status, future plans, and goals and assessments of the Cellular Organization Program.

Closed session: Monday, May 2, 1994; 9:15 to 6 p.m.—To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8956 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Cross Disciplinary Activities, Panel Meeting (1193).

Date and Time: May 2–4, 1994; 8:30 a.m. to 5 p.m.

Place: The Virginian, 1500 Arlington Boulevard, Arlington, VA 22209.

Type of Meeting: Closed.

Contact Person(s): Forbes Lewis, Program Director, CISE/CDA, room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate National Young Investigator proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8949 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L, 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communications Systems

Date and Time: May 3, 1994, 8 a.m. to 5 p.m.

Place: NSF, room 365, 4201 Wilson Blvd., Arlington, VA.

Contact: Dr. Albert B. Harvey, Program Director, ECS, room 675, National Science Foundation (703) 306–1361.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate applications of Research Initiation and Research Equipment proposals.

Reason For Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8942 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrica and Communications Systems.

Date and Time: May 4–5, 1994; 8:30 a.m. to 5 p.m.

Place: Room 390, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William H. Carter, Program Director, Quantum Electronics Waves, and Beams, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Initiation and Research Equipment Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c) (4) and (6) the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8947 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communications Systems.

Date and Time: May 5–6, 1994, 8 a.m. to 5 p.m.

Place: NSF, room 580, 4201 Wilson Blvd., Arlington, VA.

Contact: Dr. Lawrence S. Goldberg, Acting Division Director, ECS, room 675, National Science Foundation (703) 306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate applications of Research Initiation and Research Equipment proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8951 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics & Nucleic Acids; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Genetics & Nucleic Acids.

Date and Time: May 4–6, 1994 from 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., room 370, Arlington, VA 22230.

Type of Meeting: Closed, except for open session on May 5th from 12 p.m. until 2 p.m. The discussion will concern goals and assessments for the Genetics Cluster.

Contact Person: Dr. DeLill Nasser, Program Director for Genetics, Division of Molecular and Cellular Biosciences, room 655, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: May 5, 1994—12 p.m. to 2 p.m.

Closed Session: May 5, 1994—9 a.m. to 12 p.m. and 2 p.m. to 5 p.m. Also, on May 4th and 5th, 1994—9 a.m. to 5 p.m. To review and evaluate proposals submitted to the Genetics Program in the Division of Molecular & Cellular Biosciences at NSF as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8954 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Neuroscience (1193).

Date and Time: May 2 & 3, 1994; 9 a.m.–5 p.m.

Place: National Science Foundation, room 370, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Dr. Karen Sigvardt, Program Director, Neuroendocrinology, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Closed session May 2 & 3, 1994; 9 a.m.–5 p.m., except where noted below. To review and evaluate Neuroendocrinology proposals as part of the selection process for awards.

Open Session: May 3rd, 1994 10 a.m.–11:30 a.m.; To discuss research trends and opportunities in Neuroscience.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8946 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Dissemination.

Date and Time: May 3, 1994, 8:30 a.m. to 5 p.m., May 4, 1994, 8:30 a.m. to 5 p.m.

Place: Holiday Inn, 4601 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Larry Suter, Program Director, 4201 Wilson Boulevard, room 855, Arlington, VA 22230. Telephone (703) 306–1656.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted for Systemic and Education Indicators to the Studies and Indicators Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8941 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social and Political Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Political Sciences (#1761).

Date and Time: May 2–3, 1994, 8:30 a.m. to 5 p.m.

Place: Room 310, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed

Contact Person: Cheryl Eavey, Program Director, Division of Social, Behavioral, and Economic Research, Room 980 National Science Foundation, 4201 Wilson Boulevard,

Arlington, VA 22230. Telephone: (703) 306–1760.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Methodology, Measurement, and Statistic proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 8, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8948 Filed 4–13–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report Section, 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 16, No. 3).

Under the Energy Reorganization Act of 1974, which created NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1993. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

This report discusses two abnormal occurrences at NRC-licensed facilities. One involved a medical sodium iodide misadministration and one involved a 1981 fatal radiation exposure of a radiographer. One industrial radiographer overexposure event and four medical misadministrations that were reported by the Agreement States are also discussed, based on information provided by the Agreement States as of November 1, 1993. The report also contains information updating four previously reported abnormal occurrences at NRC-licensed facilities and three reported by the Agreement States, and includes information on two other events of interest.

Appendix D has been added to this report which includes events submitted by Agreement States that are likely to be categorized as abnormal occurrences. For these events, insufficient information was available as of November 1, 1993, to positively identify them as abnormal occurrences.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 16, No. 3 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 8th day of April, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 94–9007 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 63rd meeting on Wednesday and Thursday, April 20 and 21, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows: Wednesday, April 20, 1994—8:30 a.m. until 6 p.m.; Thursday, April 21, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Volcanism Studies Underway in the Characterization of the Yucca Mountain Site*—Discuss site characterization studies related to volcanism with the DOE staff and gain additional insights into the NRC staff's volcanology research program.

B. *Nuclear Waste Technical Review Board Meeting on Saturated Zone Hydrology*—Hear a report from ACNW members and staff that attended this meeting.

C. *Multi-Purpose Canister (MPC) Concept*—Discuss with the DOE and NRC staffs the MPC concept which utilizes a single canister for spent fuel storage, transportation and disposal.

D. *Meet with the Director of the Waste Management Divisions, NMSS*—Discuss the status of staff progress in resolving the "important to safety" issue as related to the DOE petition to revise the design basis accident for a high-level waste repository and other items of possible interest.

E. *Future Activities*—Discuss topics proposed for consideration by the full Committee and working groups.

F. *New Members*—Discuss matters related to the appointment of new members, and organizational and personnel matters related to the ACNW members and ACNW staff. Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

G. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The ACRS Office is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the ACRS Office as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during

this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: April 8, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–8913 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensee), for operation of the Perry Nuclear Power Plant, Unit No.1, located in Lake County, Ohio.

The proposed amendment, requested by the licensee by letter of December 16, 1993, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1434, "Improved BWR/6 Technical Specifications," Revision O, September 1992. NUREG–1434 has been developed through working groups composed of both NRC staff members and the BWR/6 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Final NRC Policy Statement on Technical Specification Improvements to the current Perry Nuclear Power Plant Technical Specifications utilizing BWR Owners' Group (BWROG) report NEDO–31466, "Technical Specification Screening Criteria Application and Risk Assessment," (and Supplement 1) as incorporated in NUREG–1434.

The licensee has categorized the proposed changes into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve reformatting, renumbering and rewording of the existing TS. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1434 and do not involve technical changes to the existing TS. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria of inclusion in TS as identified in the Application of Selection Criteria to the Perry TS. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59 and subject to the change control provision in the Administrative Controls Section of the TS. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis.

Changes characterized as less restrictive have been subdivided into four additional subcategories. They include:

(A) *Relocating details to TS Bases, the Updated Safety Analysis Report (USAR), or procedures.* The requirements to be transposed from the TS to the Bases, USAR or procedures are the same as those currently included in the existing TS. The TS Bases, USAR and procedures containing the relocated information are subject to 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS.

(B) *Extension of instrumentation surveillance test intervals (STIs) and allowed outage times (AOTs).* The proposed changes affect only the STIs and AOTs and will not impact the function of monitoring system variables over the anticipated ranges for normal operation, anticipated operational occurrences, or accident conditions. However, the changes are expected to reduce the test related plant scrams and test induced wear on the equipment. General Electric topical reports GENE–770–06–1 and GENE–770–06–2 showed that the effects of these extensions of STIs and AOTs, which produced negligible impact, are bounded by previous analyses. Further, the NRC has reviewed these reports and approved the conclusions on a generic basis.

(C) *Relocation of instrumentation only requirements (which provide no post-accident function).* These requirements are part of routine operational monitoring and are not considered in the safety analysis. Changes made to the Bases, USAR and procedures containing the relocated information will be made in accordance with 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS. These proposed changes will not impose or eliminate any requirements.

(D) *Other less restrictive changes.* Additional changes that result in less restrictions in the TS are discussed individually in the licensee's submittal.

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.

By May 16, 1994, 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 petitions 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 20555 and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. 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 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 fifteen (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 fifteen (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 material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments 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.

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, 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. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esq., Shaw, Pittman, Potts & 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753, Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 13th day of April 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9008 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–M

Illinois Power Co., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

[Docket No. 50–461]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to Illinois Power Company (the licensee), for operation of the Clinton Power Station, Unit 1, located in Dewitt County, Illinois.

The proposed amendment, requested by the licensee by letter of October 26, 1993, would represent a full conversion from the current Technical Specifications (TS) to a set of TS based on NUREG–1434, "Improved BWR/6 Technical Specifications," Revision 0, September 1992. NUREG–1434 has been developed through working groups composed of both NRC staff members and the BWR/6 owners and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TS. As part of this submittal, the licensee has applied the criteria contained in the Final NRC Policy Statement on Technical Specification Improvements to the current Clinton Power Station Technical Specifications utilizing BWR Owners' Group (BWROG) report NEDO–31466, "Technical Specification Screening Criteria Application and Risk Assessment," (and Supplement 1) as incorporated in NUREG–1434.

The licensee has categorized the proposed changes into four general groupings. These groupings are characterized as administrative changes,

relocated changes, more restrictive changes, and less restrictive changes.

Administrative changes are those that involve reformatting, renumbering and rewording of the existing TS. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1434 and do not involve technical changes to the existing TS. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components or variables that do not meet the criteria of inclusion in TS as identified in the Application of Selection Criteria to the Clinton Power Station TS. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the TS to administratively controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59 and subject to the change control provision in the Administrative Controls Section of the TS. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems and components are maintained consistent with the safety analyses and licensing basis.

Changes characterized as less restrictive have been subdivided into four additional subcategories. They include:

(A) *Relocating details to TS Bases, the Updated Safety Analysis Report (USAR), or procedures.* The requirements to be transposed from the TS to the Bases, USAR or procedures are the same as those currently included in the existing TS. The TS Bases, USAR and procedures containing the relocated information are subject to 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS.

(B) *Extension of instrumentation surveillance test intervals and allowed outage times.* The proposed changes affect only the STIs and AOTs and will not impact the function of monitoring system variables over the anticipated ranges for normal operation, anticipated operational occurrences, or accident conditions. However, the changes are expected to reduce the test related plant scrams and test induced wear on the equipment. General Electric Topical Reports GENE–770–06–1 and GENE–770–06–2 showed that the effects of these extensions of STIs and AOTs, which produced negligible impact, are bounded by previous analyses. Further, the NRC has reviewed these reports and approved the conclusions on a generic basis.

(C) *Relocation of instrumentation only requirements (which provide no post-accident function).* These requirements are part of routine operational monitoring and are not considered in the safety analysis. Changes made to the Bases, USAR and procedures containing the relocated information will be made in accordance with 10 CFR 50.59 and are subject to the change control provisions in the Administrative Controls section of the TS. These proposed changes will not impose or eliminate any requirements.

(D) *Other less restrictive changes.* Additional changes that result in less restrictions in the TS are discussed individually in the licensee's submittal.

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.

By May 16, 1994, 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 petitions 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 20555 and at the local public document room located at the Vespasian Warner Public Libary, 120 West Johnson Street, Clinton, Illinois 61727. 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 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 fifteen (15) days prior to the first prehearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (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 material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments 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.

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, 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. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 26, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Vespasian Warner Public Library, 120 Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 7th day of April 1994.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–9009 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–3070–ML; ASLBP Docket No. 91–641–02–ML]

Louisiana Energy Services, L.P.; Claiborne Enrichment Center (Special Nuclear Materials License; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), with the above-identified Docket No., is hereby reconstituted by appointing Administrative Judge Thomas S. Moore as Chairman of the Licensing Board in place of Administrative Law Judge Morton B. Margulies who is unavailable to serve to the end of the case.

As reconstituted, the Board is comprised of the following Administrative Judges:

Thomas S. Moore, Chairman, Richard F. Cole, Frederick J. Shon.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Chairman is:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 7th day of April 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–8914 Filed 4–13–94; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of Collection of Information Under the Paperwork Reduction Act; Requests for PBGC Approval of Multiemployer Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR part 2677) (OMB control number 1212–0031; expires May 31, 1994). The effect of this notice is to advise the public of the PBGC's request and solicit public comment on this collection of information.

ADDRESSES: All written comments (at least three copies) should be addressed to Office of Management and Budget, Paperwork Reduction Project (1212–0040), Washington, DC 20503. The PBGC's request for extension will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1001 *et seq.*). Section 4220 of ERISA (29 U.S.C. 1400) requires the plan sponsor of a multiemployer pension plan covered by Title IV of ERISA to submit for PBGC review certain plan amendments authorized by ERISA sections 4201 through 4219 (29 U.S.C. 1381–1399). These amendments deal with modification of the statutory provisions regarding when a withdrawal from a multiemployer plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such amendment is effective only if the PBGC approves it or, within 90 days after

receiving notice and a copy of the amendment, fails to disapprove it. The PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC.

Part 2677 of the PBGC's regulations (29 CFR part 2677), Procedures for PBGC Approval of Plan Amendments, includes, in § 2677.2, rules for plan sponsor requests for agency approval of multiemployer plan amendments. Paragraph (d) of § 2677.2 requires the submission of information that the PBGC needs to identify a plan and evaluate the risk of loss, if any, posed by the amendment (and, hence, determine whether it should disapprove the amendment). The regulation also permits submission of other information the plan sponsor believes to be pertinent to its requests.

The PBGC is requesting that the Office of Management and Budget ("OMB") extend approval of this collection of information (OMB control number 1212–0031; expires May 31, 1994) for another three years. The agency estimates that it will receive three requests annually and that each request will take two hours to prepare, for a total annual burden of six hours.

Issued in Washington, DC this 8th day of April, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–8885 Filed 4–13–94; 8:45 am]

BILLING CODE 7708–01–M

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer That Contributes to a Multiemployer Plan; San Francisco Baseball Associates, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the San Francisco Baseball Associates, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before May 31, 1994.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, NW., Washington, DC 20005–4026, or hand-delivered to suite 340 at the above address between 9 a.m. and 4 p.m., Monday through Friday. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, at the above address, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4125 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the San Francisco Baseball Associates, L.P. (the "Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the San Francisco Giants (the "Seller") on November 20, 1992. In the request, the Buyer represents among other things that:

1. The Major League Baseball Players Benefit Plan (the "Plan") was established and is maintained pursuant to a collective bargaining agreement between professional major league baseball teams and the Major League Baseball Players Association.

2. The Seller was a participating employer in the Plan.

3. The major league clubs have established the Major Leagues Central Fund (the "Central Fund") pursuant to the "Major League Agreement in re Major Leagues Central Fund." Under this agreement, contributions to the Plan for all participating employers are paid by the Office of the Commissioner of Baseball from the Central Fund on behalf of each participating employer in satisfaction of the employer's pension liability under the Plan's funding agreement. The monies in the Central Fund are derived directly from (i) gate receipts from All-Star games, (ii) radio and television revenues from World Series, League Championships, intradivision play-offs and All-Star games, and (iii) certain other radio and television revenues, including revenues from foreign broadcasts, of regular and exhibition games.

4. During the 1992 Plan year, approximately $34.1 million was paid into the Plan on behalf of all major league clubs. In that year revenues to the Central Fund exceeded expenses, including contributions to the Plan, by approximately $354 million.

5. The amount of the bond/escrow required under section 4204 (a)(1)(B) of ERISA is $1,412,077, and the estimated amount of the withdrawal liability that the Seller would incur if not for section 4204 is $4,796,483.

6. The contract of sale between the Buyer and the Seller was effective November 20, 1992, and the final closing occurred on January 14, 1993.

7. The contract of sale provides that the Buyer agrees "to contribute to the Plan substantially the same number of contribution base units which the Seller had an obligation to contribute to the Plan."

8. The contract of sale further provides that "[i]f the Buyer thereafter, but prior to the end of the fifth plan year commencing after the closing, partially or completely withdraws from the Plan, the Seller will be secondarily liable for any withdrawal liability it would have had to the Plan * * *."

9. In support of the waiver request, the requestor asserts that:

"[B]ecause the Plan is funded directly from the Revenues which are paid from the Central Fund directly to the [Plan's] Trust without first passing through the hands of any of the Employers, the Plan enjoys adequate security * * *. A change in ownership of an Employer does not in any way affect the obligation to fund the Plan * * * nor create the possibility that there will be difficulty in collecting Plan contributions due from any new owner * * *."

10. A complete copy of the non-confidential portions of the request has been sent to the Plan and the Union by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 7th day of April 1994.

Martin Slate,

Executive Director.

[FR Doc. 94–8994 Filed 4–13–94; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33872; File No. SR–CBOE–94–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Options on the CBOE Real Estate Investment Trust Index

April 7, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1994, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade cash-settled, European-style options on the CBOE Real Estate Investment Trust Index ("REIT Index").

The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the Exchange to list and trade cash-settled, European-style options on an industry index, the CBOE REIT Index, in accordance with CBOE Rule 24.2.

The REIT Index will reflect a segment of the U.S. equity securities market that currently is not represented in the

derivatives markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward, or away from, real estate investments. The REIT Index will provide retail and institutional investors with a means to benefit from forecasts about the financial performance of real estate investment trusts ("REITs") and their underlying real estate assets. Options on the index also may be used by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed REITs, and may serve as a means of hedging the risks of investing in real estate generally, and REIT stocks in particular.

The REIT Index is based on twenty-five REIT stocks. Twenty-three of those stocks currently trade on the New York Stock Exchange, and two currently trade on the American Stock Exchange. The REIT Index is price-weighted and will be calculated on a real-time basis using last-sale prices of the securities underlying the index.

The REIT Index is composed of stocks that ranged in market capitalization from $220.2 million to $1.1 billion as of February 14, 1994. The median capitalization as of that date was $518.7 million. The stock with the largest weight in the index accounted for 6.5 percent of the total weighting, while the smallest weighted stock accounted for 1.1 percent. Four of the component stocks are currently the subject of trading in equity options, and the balance of the component stocks meet the criteria for listing as equity options under CBOE Rule 5.3. All component stocks are "reported securities" under Rule 11Aa3–1 of the Act.

The REIT Index will be calculated continuously by the CBOE or its designee, and the index value will be disseminated by the CBOE every 15 seconds. If a component stock currently is not being traded, the most recently traded price will be used.

As is the case with other industry indices that have been approved for trading on the Exchange, the REIT Index is price-weighted, reflecting changes in the prices of the component stocks in relation to the base date of the index, January 3, 1994. The REIT Index is calculated by summing the prices of the component stocks and then dividing by a divisor that yielded an index value of 200.00 as of the base date.

The REIT Index will be maintained by the CBOE. To assure continuity in the index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, removal and replacement of one component stock, component stock splits, and financial restructuring of a component REIT.

The REIT Index will be reviewed approximately on a monthly basis by the CBOE staff. The CBOE may change the composition of the REIT Index at any time to reflect conditions in REIT markets. At present, all twenty-five REITs represented in the index invest a preponderance of their assets (in most cases, at least 75 percent) in real property. If a REIT that is included as a component stock becomes unrepresentative of REIT markets, the stock will be removed from the index. Whenever removal is necessary, every effort will be made to replace the removed stock with a stock that is suitably representative. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock.

The CBOE most likely will maintain twenty-five stocks in the index at all times. Absent prior approval by the Commission, the CBOE will not increase to more then thirty-three nor reduce to fewer than seventeen the number of stocks in the REIT Index, nor will it make any change in the composition of the index that would cause less than ninety percent of the REIT Index, by weight, to be composed of stocks that are eligible for listing as equity options under CBOE Rule 5.3.

The Exchange proposes to base trading in options on the REIT Index on the full value of the index. The Exchange may list long-term index option series ("LEAPS"), as provided in CBOE Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, the underlying value of which will be calculated at one-tenth the REIT Index value. The current and closing index value of any such reduced-value LEAPS, after the initial computation, will be rounded to the nearest one-hundredth. Strike price intervals will be no less than $5.00 for every series of REIT Index options, except that reduced-value LEAPS will have stock price intervals that are no less than $2.50.

REIT Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV, including CBOE Rule 24.9, which is being amended to refer specifically to REIT Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

As modified in this proposed rule change, the Rules in Chapter XXIV will be applicable to REIT Index options. The REIT Index will be deemed to be "narrow-based" for purposes of the position limit requirements of CBOE Rule 24.4A. Ten reduced-value options will equal one full-value contract for position limit purposes.

The CBOE has the necessary systems capacity to support new series of options that would result from the introduction of REIT Index options.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to enable the listing and trading of REIT Index options subject to just and equitable principles of trade and is structured to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–94–05 and should be submitted by May 5, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8929 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33871; File Nos. SR–DTC–77–03, SR–DTC–87–07, and MSTC–77–01]

Self-Regulatory Organizations; the Depository Trust Company and Midwest Securities Trust Company; Notice of Withdrawal of Proposed Rule Changes Relating to Depository Interface Fees

April 7, 1994.

On March 10, 1977, and April 13, 1987, The Depository Trust Company ("DTC") filed proposed rule changes (File Nos. SR–DTC–77–03 and SR–DTC–87–07) and on March 1, 1977, the Midwest Securities Trust Company ("MSTC") filed proposed rule change (File No. MSTC–77–01) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934.[1] File numbers SR–MSTC–77–01 and SR–DTC–77–03 proposed to establish agreements whereby depositories would not charge each other for depository interface services and to establish participant fees for interdepository interface services. File number SR–DTC–87–07 proposed changes to the interdepository interface participant fees. The Commission published notice of file numbers SR–MSTC–77–01, SR–DTC–77–03, and SR–DTC–87–07, in the **Federal Register** on March 18, 1977,[2] March 24, 1977,[3] and May 20, 1987,[4] respectively. On March 16, 1994,[5] and March 24, 1994,[6] respectively, DTC and MSTC withdrew their respective proposals.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8930 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33673; File No. SR–OCC–91–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Clearing Fund Assessment Formula

April 7, 1994.

On February 12, 1991, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–91–03) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 16, 1991, to solicit comments from interested persons.[2] No comments were received. On March 9, 1994, OCC filed an amendment to the proposed rule change.[3] As discussed below, this order approves the proposal.

I. Description

The purpose of this rule change is to revise the formula by which OCC assesses its clearing funds for losses incurred as a result of a default by a clearing member and for losses resulting from the failure of any bank or securities or commodities clearing organization.

OCC maintains a stock clearing fund to which OCC's stock clearing members are required to contribute and a non-equity securities clearing fund to which non-equity security clearing members are required to contribute. Among other things, the purpose of the clearing funds is to make good any losses sustained by OCC as a result of the failure of a clearing member to meet its obligations to OCC or the failure of a clearing bank or another clearing organization to settle with OCC. Currently in the event of a clearing member default, once the contributions of the defaulting clearing member are exhausted, OCC will charge on a pro rata basis the clearing fund contributions of non-defaulting clearing members for any remaining losses. Similarly, in the event of a clearing bank or clearing organization default, the resulting loss is to be charged against all clearing members' contributions to the clearing funds on a pro rata basis.

Unless a clearing member has been recently admitted, a clearing member's contribution to the clearing funds is determined pursuant to the formula set forth in OCC Rule 1001. A clearing member's contribution to the clearing funds is related to the clearing member's use of the options markets provided, however, that each clearing member must contribute at least the required minimum. Pursuant to Rule 1001, each stock clearing member or non-equity securities clearing member must contribute to the stock clearing fund or the non-equity securities clearing fund, respectively, the greater of: (i) Such clearing member's proportionate share ("computed contribution") of five percent of its average daily aggregate margin requirement in respect of equity or non-equity securities option contracts outstanding during the previous calendar month or (ii) the required minimum contribution amount of $75,000. Because this contribution formula is based on a clearing member's open interests and margin requirements, it provides a reasonable approximation of a clearing member's participation in the options markets and use of OCC's services. Therefore, it is highly probable that a clearing member who deposits the required minimum to the clearing funds is less active in the options markets in ways that give rise to potential OCC financial exposure than a clearing member whose clearing fund contribution is its computed contribution.

Under the current assessment formula, non-defaulting clearing members are charged on a pro rata basis

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[1] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 13337 (March 7, 1977), 42 FR 15159.

[3] Securities Exchange Act Release No. 13375 (March 15, 1977), 42 FR 15996.

[4] Securities Exchange Act Release No. 24451 (May 14, 1987), 52 FR 19000.

[5] Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jerry Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission, (March 16, 1994).

[6] Letter from J. Craig Long, Foley & Lardner [legal counsel for MSTC], to Jerry W. Carpenter, Branch Chief, Division, Commission, (March 24, 1994).

[7] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 29167 (May 7, 1991), 56 FR 22744 (File No. SR–OCC–91–03).

[3] Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Esq. Chief, Branch of Clearing Agency Regulation, Division of Market Regulation, Commission (March 8, 1993). The amendment modified Article VIII, section 6 of OCC's By-Laws to clarify that in the event a clearing member seeks to withdraw from membership at the time of an additional assessment to the clearing funds and such clearing member's computed contribution is less than its minimum required contribution, the clearing member will be obligated to contribute 100% of the amount equal to its minimum contribution less its computed contribution.

against their required contributions, whether computed or the minimum. OCC believes that it is more equitable to base its assessment formula on a clearing member's participation in the options markets and use of OCC's services rather than on a minimum contribution requirement. Therefore, OCC is proposing that charges to clearing fund contributions be made on a proportionate basis against non-defaulting clearing members' computed contributions.

Accordingly, OCC is amending section 5 of Article VIII of its By-Laws to provide that any losses remaining after use of a defaulting clearing member's assets or as the result of a failure of a clearing bank or another clearing organization will be charged on a proportionate basis against non-defaulting clearing members' computed contributions. Section 5 is further amended to add three Interpretations and Policies. The Interpretations and Policies set forth the manner by which a clearing member's proportionate share of a remaining loss will be determined. As a result of these rule changes, OCC believes that the assessment formula is based upon a clearing member's use of the options markets and use of OCC's services and is more equitable to those clearing members which use the options markets with less frequency.

Conforming changes are made to sections 5(a), 5(b), 5(c), 5(d), 5(e), and 5(h), 6, 7, and 8 of Article VIII of OCC's By-Laws and to Rule 1106(e). A technical amendment to Section 5(h) also is made to correctly identify paragraph (b), in the place of paragraph (d), as a paragraph pertaining to certain applications of clearing fund contributions. A technical amendment also is made to Section 1 of Article VIII to identify correctly Chapter XI in place of Chapter VI as the Chapter of OCC's Rules where OCC's protective transaction provisions may be found.

II. Discussion

The Commission believes that the proposal is consistent with the purposes and requirements of section 17A of the Act.[4] Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among participants.[5] The proposed rule change provides a more equitable formula by which OCC may assess the clearing fund contributions of clearing members. Under the previous formula, clearing members depositing the minimum $75,000 clearing fund requirement were subject to proportionately greater assessments than clearing members whose clearing fund requirements were based on their computed contributions because the assessments were based upon a pro rata charge of required clearing fund contributions. By basing clearing fund assessments on a proportionate basis against the computed contributions of all clearing members, even those who have deposited the minimum requirement, the assessments will be linked more closely to the open interests and market activities of clearing members.

Section 17A(b)(3)(F) requires that the rules of a clearing agency assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[6] The proposed amendments will not affect the total size of the clearing funds. It is possible that as a result of the new assessment formula more than one round of charges to the clearing fund contributions of clearing members could be required to assess all of a clearing member's minimum contribution. However, OCC has provided in Article VIII, section 6 of its Bylaws that should a clearing member seek to withdraw from OCC membership, any portion of that clearing member's clearing funds that are unavailable for the first charge will be available to OCC in a second assessment.[7]

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-OCC-91-03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-8931 Filed 4-13-94; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78q-1 (1988).

[5] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[6] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[7] *Supra* note 3.

[8] 15 U.S.C. 78q-1 (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33874; File No. SR-PSE-93-22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Listing of Capped-Style Stock Index Options

April 7, 1994.

I. Introduction

On August 20, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder,[1] a proposed rule change to allow the Exchange to list capped-style stock index options ("capped options").[2] Initially, the Exchange proposes to list capped options on the Wilshire Small Cap Index and the PSE Technology Index (together, the "Indexes").

II. Description of the Proposal

Proposed PSE Rule 7.1(r) defines a "capped-style index option" as an index option that is exercised automatically prior to expiration when the cap price is less than or equal to the closing index value for calls or when the cap price is

[1] 17 CFR 240.19b-4 (1992).

[2] On October 20, 1993, the PSE amended its proposal to replace references to "CAPS" with references to "capped-style" options and to state that the Exchange plans initially to adopt a cap interval of 20 points. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated October 15, 1993 ("Amendment No. 1"). On November 3, 1993, the PSE amended its proposal to indicate that the proposal will apply only to broad-based domestic index options and to clarify that Bridge Data Company calculates the opening and closing index values for the Wilshire Small Cap Index and the PSE Technology Index. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated October 29, 1993 ("Amendment No. 2"). On February 7, 1994, the PSE amended its proposal to include new Rule 7.8(c), which will (1) indicate those indexes that have been approved by the PSE for capped option trading; (2) provide, in rule form, that, unless modified by the PSE, the cap interval will be $20.00; and (3) set forth the standards for listing and adding series of capped options. See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Michael A. Walinskas, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated February 7, 1994 ("Amendment No. 3"). On April 5, 1994, the PSE amended the proposal to indicate that the PSE has developed procedures to identify and correct any exercise settlement values prior to clearance and settlement of such contracts at the Options Clearing Corporation. See letter from Michael D. Pierson, Senior Attorney, PSE, to Michael Walinskas, Branch Chief, Division of Market Regulation, SEC, dated April 5, 1994 ("Amendment No. 4).

greater than or equal to the closing index value for puts. The cap price, which is assigned by the Exchange when the capped option is listed, is the exercise price plus the cap interval for a call or the exercise price minus the cap interval for a put. Accordingly, the cap price is above the exercise price (*i.e.*, strike price) for calls and below the exercise price (*i.e.*, strike price) for puts. The difference between the strike price and the cap price is equal to the "cap interval." Specifically, the PSE defines the cap interval as a "value specified by the Exchange which, when added to the exercise price for the series (in the case of a series of calls) or subtracted from the exercise price for such series (in the case of a series of puts), results in the cap price for the series." The PSE has set as an initial standard, subject to Exchange modification that the cap interval for capped options must be $20.00.[3]

While capped options will be subject to automatic exercise due to movements in the underlying index, they also will be European-style, so that if the cap price is not reached prior to expiration the option can be exercised by the holder only at expiration pursuant to the rules of the Options Clearing Corporation ("OCC"). Thus, if the underlying index fails to reach the cap price during the life of the capped option, the option becomes European-style on the last business day before expiration.

Upon automatic exercise of a capped option, the holder receives a cash settlement amount equal to the cap interval times the multiplier for the option. Under no circumstances, however, does the holder receive a cash settlement amount greater than the cap interval times the index multiplier. Therefore, the cap price establishes a maximum pre-defined value for the capped options. For example, if the index multiplier is 100, the index closes at 382 and the investor holds a capped call option with a strike price of 360 and a cap interval of 20, then the holder would receive a cash settlement amount equal to $2,000 (20 times $100).

Long capped call options closely resemble vertical bull spreads traded as a single security (*i.e.*, the combination of one long and one short call position with the same expiration but where the strike price of the short call is higher than the strike price of the long call). Conversely, long capped put options closely resemble vertical bear spreads traded as a single security (*i.e.*, the combination of one long put and one short put position with the same expiration, but where the strike price of the short put is lower than the strike price of the long put).

The PSE has proposed the following rule changes to accommodate the trading of capped index options. First, the PSE plans to amend Exchange Rule 7.1, "Definitions," to define "capped-style option," "capped-style index option." "cap interval," and "cap price."

Second, the Exchange proposes to amend Exchange Rule 7.6, "Position Limits," to provide that capped options will be aggregated with standard index option contracts on the same stock index for position limit purposes. However, the Exchange proposes to amend Exchange Rule 7.7, "Exercise Limits," to provide that capped options will not be aggregated with standard option contracts on the same stock index when calculating exercise limits. This amendment is designed to avoid instances where an investor would violate exercise limits by virtue of the automatic exercise of the capped options, an event over which the investor has no control.

Third, the Exchange proposes to amend Rule 7.8, "Terms of Options Contracts," to: (1) Indicate those indexes upon which capped options can be traded; (2) reflect that the cap interval for capped options, unless modified by the Exchange, shall be $20.00; (3) provide that initially, one at-the-money capped option call and put will be listed with an expiration of up to one year in the future and additional at-the-money capped option series may be listed every two months with expirations up to one year in the future; and (4) capped option series may be added to expiration months with three or more months remaining to their expiration, if there has been a move of ten or more points in the index value.

Fourth, the Exchange proposes to amend Exchange Rule 7.16, "Margin," to provide the following margin treatment for short positions in capped options. For cash accounts, the customer must deposit an amount equal to the cap interval times the index multiplier in cash or cash equivalents as defined in Section 220.8(a)(3) of Regulation T under the Act. For margin accounts, the margin requirement is 100% of the current market value of the contract plus 15% of the current index value times the index multiplier. In each case, the amount shall be decreased by any excess of the aggregate exercise price of the option over the current index value as multiplied by the index multiplier in the case of a call, or any excess of the current index value as multiplied by the index multiplier over the aggregate exercise price of the option in the case of a put; provided, however, that the minimum margin required on each contract shall not be less than (a) the option market value plus 10% of the current index value multiplied by the index multiplier or (b) the cap interval multiplied by the index multiplier, whichever is less. The maximum margin required on each contract shall not exceed the cap interval multiplied by the index multiplier.

III. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[4] and, therefore, approves the Exchange's proposal.[5] Specifically, the Commission believes that the capped options are an innovative financial product that will provide investors with additional choice and flexibility in their use of derivatives. In addition, capped options offer both holders and writers of options a means to participate in the options markets at a predetermined maximum gain or loss. Under the terms of the capped options, the option writer's (holder's) maximum loss (gain) is established at the time of the investment by the option's cap interval. Once the option's cap price (the strike price plus the cap interval for a call or the strike price minus the cap interval for a put) has been reached, the option is exercised automatically. The option writer's maximum potential liability is the amount of the cap interval, and, conversely, the option holder's maximum gain is the amount of the cap interval. Thus, capped options permit investors to participate in the options market at a known and limited cost. By limiting some of the risks associated with spread positions in American-style and European-style options, capped options likely will make the options markets more attractive to a broad range of investors. In addition, the Commission notes that capped options, which are the equivalent of vertical bull and bear spreads traded as a single security, likely will benefit investors by

[3] See Amendment No. 3, *supra* note 1.

[4] 15 U.S.C. 78f(b)(5) (1984).

[5] The PSE proposal is nearly identical to separate proposals to list and trade capped-style index options submitted by the CBOE and Amex and subsequently approved by the Commission. See Securities Exchange Act Release Nos. 29865, 56 FR 56255 (November 1, 1991) (order approving File No. SR–CBOE–91–24) and 29934, 56 FR 58593 (November 20, 1991) (order approving File No. SR–Amex–91–24).

providing them with a more efficient and cost-effective method of executing spread transactions.

The Commission also finds that the specific rules proposed by the PSE to accommodate capped options are consistent with the Act.[6] Specifically, the Commission believes it is reasonable for the Exchange to set a cap interval of $20.00 in that the cap price is placed sufficiently far from the exercise price so that the capped options will not be exercised automatically on a frequent basis.[7]

In addition, the Commission believes that the Exchange's proposal to bring up new at-the-money series of capped options every other month and after significant market moves is consistent with the Act because it will not result in a proliferation of options series. The Commission also finds that it is consistent with the Act to exclude capped options from exercise limit calculations because holders of capped options have no control over when their positions will be exercised, except on the last business day before expiration of the options. Moreover, the Commission notes that capped options are not excluded from position limit calculations, in that capped options are aggregated with non-capped-style index options for position limit purposes.

Finally, the Commission believes that the proposed margin treatment for capped options in cash and margin accounts is consistent with the Act. Specifically, the Commission believes that it is consistent with the Act to permit short capped options positions in a cash account so long as the maximum exposure (the difference between the exercise price and the cap price times the index multiplier) is deposited. This position is the equivalent of a completely covered position, because the maximum risk of loss is already on deposit. In addition, the Commission believes the proposed margin requirements for capped options positions maintained in margin accounts are consistent with the Act because they are virtually identical to the margin requirements for short stock index options positions in non-capped style stock index options held in margin accounts, except for the fact that a limit equal to the maximum exposure to the option writer is placed on the margin requirement. It is reasonable to limit the margin in this fashion because, if the limit is invoked, the margin covers 100% of the exposure to the writer and no additional margin calls need be made.

Lastly, the Commission believes that the automatic exercise feature of capped options necessitates that, when the PSR lists capped options on a specific index, the PSE ensures that the exercise settlement value for the index is accurate at all times. An erroneous exercise settlement value could conceivably result in the unwarranted automatic exercise of capped options and the irreversible elimination of an options position. Accordingly, in this regard, the Commission notes that the PSE has developed procedures to identify and correct any exercise settlement values prior to settlement of such contracts at OCC.[8]

The Commission finds good cause for approving the PSE's proposal to list capped options prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the Exchange's proposal is substantially the same as the formerly submitted and approved CBOE and Amex proposals to list and trade capped options.[9] The Commission received no adverse comments on the CBOE or Amex proposals during the 21-day comment period. The Commission also does not find any different regulatory issues arising from the PSE's proposal. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis in order to facilitate competition between the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that good cause exists for approving the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

With respect to the PSE proposal, including all amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 5, 1994.

It it therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PSE–93–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7006 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[6] The Commission notes that PSE Rule 7.1(q) defines capped-style options and PSE 7.1(r) defines capped-style index options. Because the current Exchange proposal, as the Commission's approval order herein, is limited to capped options on the Wilshire Small Cap Index and the PSE Technology Index, should the PSE decide to list capped-style options on other indexes, including a foreign broad-based stock index, a narrow-based stock index, or an individual security, then the Commission believes an Exchange rule filing made pursuant to Section 19(b) of the Act would be necessary.

[7] The Commission notes that a rule filing pursuant to Section 19(b) of the Act would be necessary if the PSE decided to change the present cap interval.

[8] See Amendment No. 4, *supra* note 1.

[9] See note 5, *supra*.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1993).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Air Express International Corporation, Common Stock, $.01 Par Value) File No. 1–8306

April 8, 1994.

Air Express International Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved a resolution on September 10, 1993, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS").

According to the Company, the decision of the Board followed a lengthy study, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than continuing the present listing on the Amex.

Any interested person may, on or before April 29, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8933 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Order Granting Application To Strike From Listing and Registration; The Chicago Stock Exchange, Inc. (Circle Fine Art Corporation, Common Stock, $.10 Par Value) File No. 1–8653

April 8, 1994.

The Chicago Stock Exchange, Inc. ("Exchange") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(c) promulgated thereunder to strike the above specified security from listing and registration thereon.

The reasons alleged for striking this security from listing and registration include the following:

According to the Exchange, Article XXVIII, Rule 7, states that, an issue will be considered for delisting when the volume of trading declines to a level which will not support a listed market in the judgment of the Exchange and its Committee on Floor Procedure.

According to the Exchange, there has been no trading volume since 1990 for the Circle Fine Art Corporation on the Chicago Stock Exchange, Inc. ("CHX").

According to the Exchange, Article XXVIII, Rule 7 Paragraph 1 states, that the applicant shall agree to notify the Exchange promptly of any changes in the general character or nature of its business.

According to the Exchange, the Company did not send a 10–K to the Exchange until it responded to a third request from the Exchange. The Company had been delinquent in sending current filings to the Exchange. In the interim, there were changes in the nature of the Company's general structure.

The Commission, having considered the facts stated in the application and having due regard for the public interest and protection of investors, orders that said application be, and it hereby is, granted, effective at the opening of business on April 11, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8934 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20207; 812–8704]

Hartford Life Insurance Company, et al.

April 8, 1994.

AGENCY: The Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford Life"), Hartford Life Insurance Company-Separate Account Two (the "Account") and Hartford Equity Sales Company, Inc. ("HESCO") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account which serves as the funding medium for certain flexible premium deferred variable annuity contracts issued by Hartford Life (the "Contracts").

FILING DATE: The application was filed on February 7, 1994. Amendment number one to the application was filed on March 28, 1994 and amendment number two to the application was filed on April 4, 1994.

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 on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 3, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06070.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, both at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Hartford Life is a stock life insurance company originally incorporated under Massachusetts law and redomiciled in Connecticut. On June 2, 1986, the board of directors of Hartford Life established the Account. The Account serves as the funding medium for the Contracts and consists of several subaccounts (the "Subaccounts"), each of which invests in certain underlying registered investment companies.[1]

2. HESCO, the principal underwriter for the Contracts, is registered with the Commission as a broker dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers.

3. Owners of the Contracts may allocate purchase payments to one or more of the Subaccounts, to the fixed account (the "Fixed Account") which is part of the general account of Hartford Life, or to a combination of the Subaccounts and the Fixed Account.

4. A Contract owner may select an annuity option on either a fixed or variable basis and may select one of four annuity options: Life annuity; life annuity with 120, 180 or 240 monthly payments certain; joint and last survivor

[1] In December of 1993, a registration statement on Form N–4 was filed with the Commission to register the Contracts. As of the date of this notice, the registration statement had not yet been declared effective.

annuity; and payments for a designated period. Each annuity option provides for a series of annuity payments beginning on the annuity commencement date.

5. If upon death, prior to the annuity commencement date, the annuitant or the Contract owner, as applicable, had not attained his or her 90th birthday, the beneficiary of the Contract will receive the greatest of:

(a) The Contract value determined as of the day written proof of death of such person is received by Hartford Life;

(b) 100% of the total purchase payments made to such Contract; or

(c) The maximum anniversary value[2] increased by the dollar amount of any purchase payments made and reduced by the dollar amount of any partial surrenders (commonly referred to as a "stepped up" death benefit). If the deceased, the annuitant or the Contract owner, as applicable, had attained age 90, the death benefit will equal the Contract value.

6. A contingent deferred sales charge (the "Sales Charge") may be assessed against Contract values upon surrender. The length of time from receipt of a premium payment to the time of surrender determines the Sales Charge. Purchase payments will be deemed to be surrendered in the order in which they are received and all surrenders will be deemed made first from purchase payments and then from other Contract values.

7. The Sales Charge is 6% the first and second years, 5% the third and fourth years, 4% the fifth year, 3% the sixth year, 2% the seventh year, and 0% the eighth year. During the first seven Contract years, on a non-cumulative basis, a Contract owner may make a partial surrender of Contract values up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without application of the Sales Charge. After the seventh Contract year, the Contract owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender, or 100% of the Contract value less the premium payments made during the seven years prior to the surrender, without the application of a Sales Charge.

8. Hartford Life will deduct an annual maintenance fee of $30 from each Contract to reimburse Hartford Life for expenses relating to administration and maintenance of the Contract and the Subaccounts. There is no charge for Contracts with more than a $50,000 Contract value on the Contract anniversary. The application states that the annual maintenance fee may not be increased during the life of the Contracts. Applicants further state that total revenues from the annual maintenance fees under the Contracts are not expected to exceed Hartford Life's average expected costs for administering the Contracts.

9. Hartford Life will deduct a daily charge at the rate of 1.25% annually to compensate it for providing mortality and expense guarantees with respect to the Contracts. Applicants estimate that 0.90% of the 1.25% charge is for mortality risk and 0.35% is for expense risk.

10. Applicants state that the mortality risk arises from the obligation of Hartford Life to:

(a) Make monthly annuity payments, regardless of how long an annuitant may live and regardless of how long annuitants as a group may live; and

(b) Pay the minimum death benefit under a Contract.

11. Applicants state that the expense risk assumed by Hartford Life is the risk that the administrative fees assessed by Hartford Life will be insufficient to cover actual expenses.

12. Applicants represent that the mortality and expense risk charge will not increase. If the charge is insufficient to cover actual costs, the loss will fall on Hartford Life. Conversely, if the charge proves more than sufficient to meet actual expenses, the excess will be profit to Hartford Life and will be available for any proper corporate purpose. Applicants state that Hartford Life expects a reasonable profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conclusions

1. Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Account.

2. Sections 26(a)(2)(C) and 27(c)(2), in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by Hartford Life under the Contracts.

4. Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. Applicants state that this representation is based upon a survey of comparable contracts issued by a large number of other insurance companies. The application states that Hartford Life will undertake to maintain and make available to the Commission upon request a memorandum setting forth in detail the methodology and the contracts of other insurance companies underlying this representation.

5. Applicants represent that Hartford Life has concluded that there is the likelihood that the proceeds from sales loads will be insufficient to cover the expected costs of distributing the contracts. Applicants state that any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Hartford Life has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and Contract owners. Applicants further state that Hartford Life undertakes to maintain and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

6. Applicants represent that the Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 of the 1940 Act to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

[2] The maximum anniversary value is equal to the greatest anniversary value attained as follows. The anniversary value is equal to the Contract value on a Contract anniversary (anniversary of the effective date of the Contract), increased by the dollar amount of any premium payments made since that anniversary and reduced by the dollar amount of any partial surrenders since that anniversary. As of the date of death, Hartford Life will calculate an anniversary value for each Contract anniversary prior to the deceased's attained age 81.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9011 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (IBP, Inc., Common Stock, $.05 Par Value) File No. 1–6085

April 8, 1994.

IBP, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Exchange, the Company is currently listed on the New York Stock Exchange, Inc. ("NYSE") and the Pacific Stock Exchange, Inc. IBP would like to delist from the PSE based on the low volume of trading and the costs associated with the PSE.

Of the Company's total stock traded on the NYSE and PSE for 1993, only 1.3% of the trading occurred on the PSE. The Company has also determined that each trade on the PSE costs IBP about double the cost of a trade completed on the NYSE. Based on these figures, IBP has determined it should delist from the PSE.

Any interested person may, on or before April 29, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–8932 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20205; 812–8824]

ITT Hartford Life and Annuity Insurance Company, et al.

April 8, 1994.

AGENCY: The Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: ITT Hartford Life and Annuity Insurance Company ("ITT Hartford"), ITT Hartford Life and Annuity Insurance Company/Putnam Capital Manager Trust Separate Account Two (the "Separate Account") and Hartford Equity Sales Company, Inc. ("HESCO"), collectively, the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as the funding medium for certain deferred variable annuity contracts issued by ITT Hartford (the "Contracts").

FILING DATE: The Application was filed initially on February 7, 1994, and subsequently amended on March 24, 1994, and April 4, 1994.

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 on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 3, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Kathleen A. McGah, Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. ITT Hartford, formerly ITT Insurance Corporation, is a stock life insurance company domiciled in Wisconsin.

2. On May 20, 1991, the Board of Directors of Hartford Life established the Separate Account. The Separate Account issues only flexible premium tax deferred variable annuity contracts. The Separate Account consists of several subaccounts (the "Subaccounts"), each of which invests in certain underlying registered investment companies.

3. In December 1993, the Separate Account filed a Form N–4 to register interests of a new flexible premium contract to be funded by the Separate Account (the "New Contract").

4. HESCO will serve as the principal underwriter for the Contracts (including the New Contract). HESCO is registered with the Commission as a broker dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

5. Contract owners may allocate purchase payments to any one or more of the Subaccounts, to the fixed account (the "Fixed Account") which is part of the general account of ITT Hartford, or to a combination of the Subaccounts and the Fixed Account.

6. A Contract owner may select one of four annuity options: life annuity; life annuity with 120, 180 or 240 monthly payments; joint and last survivor annuity; and payments for a designated period. Each annuity option provides for a series of annuity payments commencing on the annuity commencement date.

7. If upon death, prior to the annuity commencement date, the annuitant or the Contract owner, as applicable, had not attained his or her 90th birthday, the beneficiary of the Contract will receive the greatest of:

(i) The Contract value determined as of the day written proof of death of such person is received by ITT Hartford;

(ii) 100% of the total purchase payments made to such Contract; or

(iii) The maximum anniversary value [1] increased by the dollar amount

[1] The maximum anniversary value is equal to the greatest anniversary value attained as follows. The anniversary value is equal to the Contract value on a Contract anniversary (anniversary of the effective date of the Contract), increased by the dollar amount of any premium payments made since that anniversary and reduced by the dollar amount of

of any purchase payments made and reduced by the dollar amount of any partial surrenders (commonly referred to as a "stepped up" death benefit). If the deceased, the annuitant or the Contract owner, as applicable, has attained age 90, the death benefit will equal the Contract value.

8. Contract Owners will not pay a sales charge at the time of purchase. However, a contingent deferred sales charge ("CDSC") may be assessed against Contract values when they are surrendered. The length of time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge. Purchase payments will be deemed to be surrendered in the order in which they are received and all surrenders will be first from purchase payments and then from other Contract values. The CDSC equals 6% the first year, 6% the second year, 5% the third year, 5% the fourth year, 4% the fifth year and 3% the sixth year, and 2% the seventh year, and 0% the eighth year.

9. During the first seven Contract years, on a non-cumulative basis, a Contract owner may make a partial surrender of Contract values of up to 10% of the aggregate premium payments made to the Contract (as determined on the date of the requested withdrawal) without the application of the CDSC. After the seventh Contract year, the Contract owner may make a partial surrender of the greater of 10% of premium payments made during the seven years prior to the surrender, or 100% of the Contract value less the premium payments made during the seven years prior to the surrender, without the application of a CDSC.

10. ITT Hartford will deduct from Contract value each year a daily administrative charge at the rate of .15% per annum. In addition, for Contracts with Contract value less than $50,000, ITT Hartford will deduct from Contract value each year, on the Contract anniversary, a maintenance fee of $30. The annual maintenance fee is designed to reimburse ITT Hartford for expenses relating to the administration and maintenance of a Contract and the Subaccounts.

11. The Applicants represent that neither the annual maintenance charge nor the administrative charge may be increased during the life of the Contracts. Moreover, Applicants do not expect the annual maintenance and administrative charges to exceed ITT Hartford's average expected costs of administering the Contracts.

12. ITT Hartford will deduct a daily charge at the rate of 1.25% per annum to compensate it for providing mortality and expense guarantees with respect to the Contracts. (The Applicants estimate that of the 1.25% charge, 0.90% is for mortality risk and 0.35% is for expense risk.)

13. The mortality risk arises, in large part, from ITT Hartford's obligation:

(i) To make monthly annuity payments, regardless of how long an annuitant may live, and regardless of how long annuitants as a group may live; and

(ii) To pay the minimum death benefit under a Contract.

14. The expense risk is that administrative fees assessed by ITT Hartford will fail to meet the actual expenses incurred.

15. The Applicants represent that the mortality and expense risk charge will not increase. If the charge is insufficient to cover actual costs, the loss will fall on ITT Hartford. Conversely, if the charge proves more than sufficient to meet actual experience, the excess will be a profit to ITT Hartford and will become part of its general account surplus. ITT Hartford expects to realize a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conclusions

1. The Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as a funding medium for the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. The Applicants represent that the mortality and expense risk charge is reasonable in relation to the risks assumed by ITT Hartford under the Contracts.

4. The Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon Hartford Life's survey of comparable contracts issued by a large number of other insurance companies. Hartford Life will undertake to maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

5. The Applicants represent that it is likely that the proceeds from sales loads will be insufficient to cover the expected costs of distributing the contracts. Any shortfall will be covered from the assets of the general account, which may include profit from the mortality and expense risk charge. Therefore, ITT Hartford has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and Contract owners, and that it will maintain and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

6. The Applicants represent that the Separate Account will invest only in open-end management companies which, if they should adopt any distribution financing plan under Rule 12b–1 under the 1940 Act, will have a board of directors, a majority of whom are not interested persons of the open-end management company. Such board of directors must formulate and approve any such distribution plan.

Applicants' Conclusion

The Applicants assert that for the reasons set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. The Applicants assert that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9012 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

any partial surrenders since that anniversary. As of the date of death, Hartford Life will calculate anniversary value for each Contract anniversary prior to the decedent's 81st birthday.

[Rel. No. IC–20202; File No. 812–8246]

The Manufacturers Life Insurance Company of America, et al.

April 7, 1994.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Manufacturers Life Insurance Company of America (the "Company"), Separate Account Two of the Manufacturers Life Insurance Company of America (the "Separate Account"), and ManEquity, Inc.

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of the mortality and expense risks charge imposed under certain individual flexible payment variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on January 13, 1993 and amended on March 8, 1994.

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 the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on May 3, 1994, 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 may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Company and the Separate Account, 1600 Market Street, Philadelphia, PA 19103. ManEquity, Inc., 200 Bloor Street East, Toronto , Ontario M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Wendell M. Faria, Acting Assistant Director, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Company is a stock life insurance company organized under the laws of Pennsylvania in 1977 and redomesticated under the laws of Michigan on December 9, 1992. It is an indirect wholly-owned subsidiary of The Manufacturers Life Insurance Company, a mutual life insurance company based in Toronto, Canada.

2. The Separate Account is a separate account of the Company established under the laws of Pennsylvania for the purpose of funding variable annuity policies. Since December 9, 1992, it has operated under the laws of Michigan. Assets of the Separate Account will be invested in shares of Manulife Series Fund, Inc. ManEquity, Inc. an indirect wholly-owned subsidiary of The Manufacturers Life Insurance Company, will be the principal underwriter of the variable annuity contracts funded through the Separate Account.

3. The Contracts are individual annuity contracts designed for use in connection with plans which are entitled to special tax treatment under the Internal Revenue Code of 1986, and under plans or trusts not entitled to any special tax treatment. They provide for the accumulation of values on a fixed, variable or fixed and variable basis and for the payment of annuity benefits on a fixed basis only.

4. The Contracts provide for the deduction of a record-keeping charge equal to 2% of the contract value up to a maximum of $30 per year. The charge will be deducted from the guaranteed interest account, the fixed account and the Separate Account in the same proportion that the value in each bears to the Contract value. The Company will also deduct an administrative charge of .20% per year from the value of the Contractowner's assets allocated to the Separate Account. The Contracts permit one free transfer per month of assets among the sub-accounts of the Separate Account and one additional transfer per month subject to a $35 charge. There is a $5 charge per transfer or series of transfers occurring on any one transfer date under a dollar cost averaging program if the Contract value is under $15,000. A $15 charge is assessed for each transfer or series of transfers on one date if the contractowner chooses to participate in an asset allocation balance program. The Company also reserves the right to impose an administrative charge not to exceed $150 for a partial withdrawal or full surrender under a special policy access provision that allows a terminally ill Contractowner to make one such withdrawal or surrender without application of any withdrawal charges. The Applicants state that they propose to rely on Rules 26a–1 and 6c–8(c) under the 1940 Act to permit the imposition of these charges. The Company does not expect to recover from any of these charges any amount in excess of its accumulated expenses in connection with the administrative activities for which the charge is made. The Contracts also provide for the deduction of any premium taxes or similar state or local tax attributable to a Contract.

5. No sales charge will be deducted from purchase payments as they are made. Instead, a withdrawal charge will be assessed on amounts surrendered or withdrawn during a Contract year which exceed 10% of the Contract value as of the most recent Contract anniversary. Those amounts will be deemed to be purchase payments. The withdrawal charge will be based upon when the purchase payments to which such amounts are deemed attributable were made. The charge begins at 8% of purchase payments withdrawn. When three complete Contract years have elapsed since a purchase payment was made, the charge is reduced to 6% of that purchase payment and it declines 2% per year thereafter. The oldest previously unliquidated purchase payment will be deemed to have been liquidated first, then the next oldest and so forth. In no event will the sum of the withdrawal charges exceed 8% of the total purchase payments made.

6. The Company proposes to deduct a mortality and expense risks charge (1) daily, from the assets of the Separate Account, at an annual rate of .80% and (2) monthly, from the Contract value in the Separate Account and the Fixed Account at an annual rate of .45%. The Company estimates that approximately .85% of each charge is attributable to the mortality risks assumed by the Company in connection with the Contracts and .40% is attributable to the expense risks. According to the Applicants, the mortality risks assumed are the risks that (i) annuitants may live for longer periods of time than the periods indicated in the mortality tables on which the Company calculated the annuity tables in the Contracts, (ii) mortality will cause a Contract to terminate prematurely before the assumed annuitization date and (iii) the risk that mortality will cause the Company to incur higher costs than anticipated for certain benefits payable on the death of the Contractowner. The expense risks assumed are that expenses in administering the Contracts will be greater than the Company estimated.

7. The Company is aware that deducting a portion of the mortality and expense risks charge monthly instead of daily is slightly different from typical industry practice. To assure that the less frequent deduction of the 0.45% portion of the mortality and expense risks charge does not result in that charge being effectively larger for Contractowners than a solely daily charge at an annual rate of 1.25%, the 0.45% charge will be administered as a 0.449928% charge. As a result, the overall effective rate would be 1.24225%, as compared to an effective rate of 1.24226% if the charge were deducted as a daily charge at an annual rate of 1.25%.

8. Applicants submit that if the mortality and expense risks charge is insufficient to cover the actual cost of the mortality and expense risks assumed, the Company will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to the Company and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act requires that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks, and Applicants represent that the aggregate of (i) the daily charge of .80% per annum and (ii) the monthly charge of .45% per annum is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as the right to increase charges above current levels, the existence of other charges, the number of transfers permitted without charge and the nature of the free withdrawal provisions. Applicants represent that the Company will maintain at its service office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

3. Applicants submit that for it to be administratively possible for the Contracts to be issued by the Separate Account (as opposed to a new separate account), the accumulation unit values calculated on a daily basis must equal the accumulated unit values calculated for existing variable annuity contracts issued by the Separate Account. That can only be accomplished by deducting a portion of the Contract's mortality and expense risks charge at the Contract level. By splitting the charge into two components, the Company can avoid the cost of establishing, administering and auditing a new separate account. Such costs would otherwise have to be passed on to Contractowners in some form.

4. Applicants acknowledge that the withdrawal charge under the Contracts is expected to be insufficient to cover all costs relating to the distribution of the Contracts and that if a profit is realized from the mortality and expense risks charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. In such circumstances a portion of the mortality and expense risks charge might be viewed as providing for a portion of the costs relating to distribution on the Contracts. Notwithstanding the foregoing, the Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contractowners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its service office and will be available to the Commission.

5. The Company represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the particular company's board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of Section 2(a)(19) of the 1940 Act.

6. Applicants agree to the following conditions if the order is granted: (1) The fee table examples in the prospectus for the Contracts will reflect all applicable charges in a manner that will permit comparison with other contracts on the same basis as if the daily and monthly portions of the mortality and expense risks charge were combined; (2) all advertisements of the performance of the sub-accounts of the Separate Account will reflect the impact of both elements of the mortality and expense charge; (3) if the size of this charge is discussed in advertising, it will be presented as a 1.25% charge, with part deducted daily and part monthly; and (4) changes in accumulation unit values will not be advertised.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, their request for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8927 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC—20206; 813–122]

Morgan Stanley Venture Investors, L.P.; Notice of Application

April 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Morgan Stanley Venture Investors, L.P. (the "Partnership").

RELEVANT ACT SECTIONS: Applicant seeks an order under sections 6(b) and 6(e) granting an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order that would grant an exemption from most provisions of the Act, and would permit certain affiliated and joint transactions. Applicant is an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on November 19, 1993, and amended on March 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 3, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1251 Avenue of the Americas, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or C. David Messman, Branch Chief, at (202) 272–3018 (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 SEC's Public Reference Branch.

Applicant's Representations

1. Morgan Stanley Group Inc. and its subsidiaries (collectively, the "Morgan Stanley Group") constitute a global financial services firm. Morgan Stanley & Co. Incorporated ("MS&Co."), a wholly-owned subsidiary of Morgan Stanley Group Inc., is the principal broker-dealer affiliate of the Morgan Stanley Group and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). MS&Co. and Morgan Stanley Group Inc. are registered as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Partnership is a newly-formed Delaware limited partnership that was formed for the purpose of enabling certain employees, officers, directors, and advisory directors of the Morgan Stanley Group to pool their investment resources and to participate in various types of investment opportunities, including venture capital and private equity investments, without the necessity of each investor seeking to identify investments and to analyze their merit. The pooling of resources permits diversification and participation in investments that usually would not be offered to individual investors. The goal of the Partnership is to reward and retain key personnel by enabling them to participate in investment opportunities that would not otherwise be available to them and to attract other individuals to the Morgan Stanley Group.

3. The Partnership will operate as a non-diversified closed-end management investment company. The Partnership will seek to achieve a high rate of return through long-term capital appreciation by providing expansion capital to a diversified group of private emerging growth companies. The Partnership will co-invest alongside two venture capital funds (the "MS Venture Capital Funds") that recently were organized by the Morgan Stanley Group for third party investors. The MS Venture Capital Funds are exempt from registration under the Act in reliance upon section 3(c)(1) thereunder.

4. The general partner of the Partnership is Morgan Stanley Venture Partners II, L.P. (the "General Partner"). At present, the sole limited partner of the Partnership is Morgan Stanley Venture Capital II, Inc. ("MSVC II"), a wholly-owned subsidiary of Morgan Stanley Group Inc. The General Partner and MSVC II are registered as investment advisers under the Advisers Act. MSVC II is the managing general partner of the General Partner.

5. Interests in the Partnership will be offered without registration under a claim of exemption pursuant to section 4(2) of the Securities Act of 1933 (the "Securities Act"). Interests will be offered and sold only to "Eligible Employees" of the Morgan Stanley Group or trusts established by such Eligible Employees for their benefit or the benefit of their immediate family. To be an Eligible Employee, an individual must currently be an employee, officer, director, or advisory director of a member of the Morgan Stanley Group and, except for certain individuals who will manage the day-to-day affairs of the Partnership, and "accredited investor" meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the Securities Act.[1] The limitations on the class of persons who may acquire interests, in conjunction with other characteristics of the Partnership, will qualify the Partnership as an "employees' securities company" under section 2(a)(13) of the Act.

6. Only a small proportion of the Morgan Stanley Group's employees qualify as Eligible Employees. The Eligible Employees are experienced professionals in the investment banking, merchant banking, or securities business, or in administrative, financial, accounting, or operational activities related thereto. No Eligible Employee will be required to invest in the Partnership.

7. The management and control of the Partnership, including all investment decisions, is vested exclusively in the General Partner. The management and control of the General Partner, in turn, is vested exclusively in MSVC II. The business and affairs of MSVC II is managed by or under the direction of its board of directors (the "Board"). Thus, the Board indirectly manages and controls the Partnership. The Board will, among other things, act as the investment committee of the Partnership responsible for approving all investment and valuation decisions. Actions by the Board require the vote of a majority of its members. The Board is comprised exclusively of directors and senior officers of the Morgan Stanley Group, each of whom qualifies as an Eligible Employee. Members of the Board who are not partners of the General Partner have indicated their intention to participate in the Partnership on the same terms as other Eligible Employees.

8. The day-to-day affairs of the Partnership will be managed by certain individuals who are general and limited partners of the General Partner. These individuals have primary responsibility for identifying, investigating, structuring, and monitoring Partnership investments, and making recommendations with respect to investment decisions to the Board. All such individuals qualify as Eligible Employees and are officers of the Morgan Stanley Group.

9. The Partnership has obtained subscriptions from a number of Eligible Employees to acquire limited partnership interests in the Partnership; however, such Eligible Employees have not yet been admitted to the Partnership. In connection with the subscriptions, each Eligible Employee has deposited an amount equal to 10% of such Eligible Employee's capital commitment in a segregated interest-bearing account established by MS&Co. (the "Segregated Account"). Funds held in the Segregated Account on behalf of an Eligible Employee (including interest) will be returned to such person if admission to the Partnership does not occur before June 30, 1994, or if the Eligible Employee's subscription for a limited partnership interest is rejected by the General Partner for any reason.

[1] Three of the individuals who will manage the day-to-day affairs of the Partnership are not "accredited investors." Each of these individuals is a partner of the General Partner, had reportable income from all sources in the calendar year immediately preceding such person's admission as a partner of the General Partner in excess of $120,000, and has a reasonable expectation of reportable income in the years in which such person will be required to make capital contributions to the General Partner of at least $150,000.

10. Upon the occurrence of certain events (including receipt by the Partnership of the requested order), the Eligible Employees will be admitted to the Partnership as limited partners (the "Limited Partners"), and all amounts held in the Segregated Account (including interest on the deposited amounts) will be paid over to the Partnership. Simultaneously with the occurrence of these events, the limited partnership interest held by MSVC II will be redeemed by the Partnership in full and MSVC II will receive from the Partnership an amount equal to the sum of (a) the balance of MSVC II's capital account in the Partnership; (b) the expenses and management fee previously charged against MSVC II's capital account; and (c) interest on MSVC II's capital contributions to the Partnership calculated at an annual rate of 3% from the date each such capital contribution was made. Upon their admission into the Partnership, the Eligible Employees will be treated for all purposes (including without limitation the allocation of Partnership profits and losses) as it they had been Limited Partners from the initial formation of the Partnership. The date on which Eligible Employees are initially admitted to the Partnership is hereinafter referred to as the "Initial Closing."

11. The Board, through the General Partner, will determine in its sole discretion the amount and timing of capital contributions to be made by the General Partner and the Limited Partners to the Partnership, subject to certain maximum amounts that may be required during specified periods. Capital contributions will fund Partnership investments and the payment of Partnership expenses. The capital contribution of each Partner, including the General Partner, will be applied towards the Partner's *pro rata* share of each Partnership investment and each Partnership expense.

12. The maximum amount of capital contributions that a Limited Partner may be required to make during the life of the Partnership will be limited to the Limited Partner's capital commitment. The minimum capital commitment of each Limited Partner will be $100,000, subject to waiver by the General Partner in its sole discretion. The General Partner will be authorized to cause the Partnership to raise additional capital after the Initial Closing by admitting, at one or more additional closings held not later than June 30, 1994, additional Eligible Employees as Limited Partners. An additional Limited Partner will be required, at the time of admission to the Partnership, to make a capital contribution and to pay an interest charge to the Partnership as if such Limited Partner had been admitted to the Partnership at the Initial Closing and the Partnership had made a loan to such Limited Partner for any capital contribution required during the period from the Initial Closing to the admission date. Such interest charge will be allocated to the capital accounts of the Partners who had been previously admitted to the Partnership.

13. The General Partner has made a capital commitment to the Partnership equal to at least 1% of the Partnership's aggregate capital commitments. The partners of the General Partner are obligated to make capital contributions to the General Partner as and when the General Partner is required to make capital contributions to the Partnership.

14. The General Partner serves as the sole general partner of one MS Venture Capital Fund and a co-general partner (with responsibility for investment decisions) of the other MS Venture Capital Fund. The management and control of the MS Venture Capital Funds are vested exclusively in the General Partner, in its capacity as the general partner of such Funds. Thus, as in the case of the Partnership, the Board indirectly manages and controls the MS Venture Capital Funds, and the individual general and limited partners of the General Partner manage the day-to-day affairs of the MS Venture Capital Funds.

15. The General Partner has made capital commitments to the MS Venture Capital Funds in an aggregate amount of approximately 10.6% of the aggregate capital commitments of the Funds, of which approximately 94% will be funded by MSVC II and approximately 6% will be funded by the individual general partners and limited partners of the General Partner.

16. The General Partner will be paid an annual management fee equal to 2 percent of the Partnership's aggregate capital commitments, subject to reduction as specified in the Partnership's limited partnership agreement. However, to the extent the General Partner, its constituent general partners or its employees receive any officers', directors', broken-deal, remunerative or other net fees (i.e., excluding expense reimbursement) from portfolio companies, affiliates of portfolio companies, and potential portfolio companies, or to the extent employees of another member of the Morgan Stanley Group who serve as officers or directors of such entities pursuant to rights held by the Partnership to designate such officers or directors receive any officers' or directors' fees (excluding expense reimbursement), a portion of such net fees will reduce the management fee on a dollar-for-dollar basis.

17. The General Partner will pay out of the management fee its normal operating expenses, including rent, salaries of its personnel, expenses incurred by its personnel in investigating investment opportunities, and communications and travel expenses. The Partnership will pay certain enumerated expenses of the General Partner and the Partnership incurred in connection with the organization, operation, and dissolution of the Partnership. Expenses borne by the Partnership may include the fees, commissions, and expenses of a member of the Morgan Stanley Group for services performed by such member to the Partnership, including, without limitation, brokerage or clearing services.

18. The General Partner will be entitled to receive a "carried interest" of 12% of the realized and unrealized gains and losses of the Partnership. The remaining 88% will be shared by all Partners in proportion to their capital commitments. A "carried interest" is an allocation to the General Partner of the Partnership's net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions. For purposes of determining he Partnership's net gains, management fees and expenses borne by the Partnership, in addition to the Partnership's realized and unrealized losses, will be netted against the Partnership's realized and unrealized gains. The entire 12% carried interest received by the General Partner will be paid to the individual general and limited partners of the General Partner. The General Partner's carried interest is structured to comply with the requirements of rule 205–3 promulgated under the Advisers Act.

19. The Partnership will invest all of its capital in investment opportunities in which the MS Venture Capital Funds invest. The Partnership will not be permitted to make investments other than co-investments with the MS Venture Capital Funds. In connection with any investment opportunity, except with the consent of an advisory committee consisting of limited partners of one or both of the MS Venture Capital Funds (the "Fund Advisory Committee"), the amount of the Partnership co-investment generally will bear the same proportion to the aggregate investments of the MS Venture Capital Funds and the Partnership as the aggregate capital commitments of the Partnership bears to the aggregate capital commitments of

the MS Venture Capital Funds and the Partnership (other than with regard to differences that result from the specific expenses incurred by the MS Venture Capital Funds and the Partnership). In addition, except with the consent of the Fund Advisory Committee, the Partnership will be required to make any co-investments on terms no more favorable than those applicable to the investments by the MS Venture Capital Funds.[2]

20. The co-investments by the Partnership with the MS Venture Capital Funds are expected to include:

(a) Majority or 100% ownership interests in portfolio companies;

(b) Publicly traded securities; and (c) securities purchased in growth company buyouts.

21. The Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and the Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

22. An "MS Related Person," as defined below, will not, until the MS Venture Capital Funds and the Partnership are fully invested, be permitted to make certain types of equity investments in private emerging growth companies without first having offered the opportunity to make the investment to the MS Venture Capital Funds and the Partnership. An "MS Related Person" means the General Partner, Morgan Stanley Group Inc., any other person at least 80% of which is beneficially owned directly or indirectly by Morgan Stanley Group Inc., and any investment fund managed by any of the foregoing. Certain investments, however, are not subject to the "obligation to offer" described above. These investments include (a) an investment made by an MS Related Person pursuant to an offer available only to Morgan Stanley Group Inc. or one of its affiliates; (b) an investment that constitutes compensation for providing investment banking or other services to any person or entity; (c) an investment relating to an acquisition of a business or assets to be operated or used in connection with the existing, or a new line of, business of Morgan Stanley Group Inc. or one of its affiliates (other than the General Partner); (d) an investment made by any MS Related Person in its underwriting capacity or in connection with broker-dealer activities; (e) an investment made with an aggregate purchase price of less than $1 million; (f) an investment made by or in connection with an existing investment fund as a follow-on investment in one of its portfolio companies; and (g) an investment made in connection with the purchase of a portfolio of securities from another person or entity, subject to certain limitations.

23. No individual general or limited partner of the General Partner, and no employee on the General Partner's staff, will be permitted to co-invest with the Partnership in any investment opportunity, except:

(a) Through an MS Venture Capital Fund as a partner of the General Partner;

(b) As a Limited Partner; or

(c) Through the exercise of stock options or warrants granted, on the same terms and amount, to all outside directors of the entities in which the Partnership invests.

24. Except for the prohibitions described in paragraph 23 above, any member of the Morgan Stanley Group or any client of such member may co-invest with the MS Venture Capital Funds and the Partnership in connection with any investment opportunity in which the MS Venture Capital Funds and the Partnership participate. Such co-investments will be made on terms no more favorable than the terms applicable to the investments by the MS Venture Capital Funds and the Partnership; however, members will be permitted to invest on more favorable terms if and to the extent such terms are:

(a) In full or partial satisfaction of a fee that such members would otherwise be entitled to receive for providing financial advisory or other services in connection with such co-investment (other than services provided by the General Partner);

(b) The product of agreements or arrangements entered into by such members (other than the General Partner) with portfolio companies before the formation of the MS Venture Capital Funds and the Partnership; or

(c) Obtained through the exercise of officer's, director's, or similar options or warrants.

25. If, in connection with any investment opportunity, there are securities available for investment (determined after taking into account the proposed investments by the Partnership, the MS Venture Capital Funds and certain other persons, including other members of the Morgan Stanley Group), such remaining securities will be offered to limited partners of the MS Venture Capital Funds for co-investment outside the MS Venture Capital Funds.

26. The Partnership and the MS Venture Capital Funds will not be permitted, except with the consent of the Fund Advisory Committee, to invest for the first time in portfolio companies in which a member of the Morgan Stanley Group has previously made an investment, or in which a member is a director or officer. The Partnership and the MS Venture Capital Funds also will not be permitted, except with the consent of the Fund Advisory Committee, to make a follow-on investment in a portfolio company previously participated in by a member of the Morgan Stanley Group if, in such round, the member is acquiring more or less than its *pro rata* position from the previous round.

27. Except as described below, the Partnership will be given the opportunity to sell or otherwise dispose of its investments at the same time and on the same terms as the MS Venture Capital Funds. The General Partner does not intend to make distributions-in-kind to the Partners of portfolio securities that are subject to restrictions on sale (other than pursuant to rule 144(k) of the Securities Act) or that cannot be sold due to sales volume limitations, except in connection with distributions upon the dissolution of the Partnership. Because the Limited Partners generally will be affiliates of Morgan Stanley Group Inc., the General Partner may elect not to make distributions-in-kind of portfolio securities to the Limited Partners even though, in its capacity as general partner of the MS Venture Capital Funds, it has decided that a distribution-in-kind of portfolio securities of the same class as those held by the Partnership is appropriate for the MS Venture Capital Funds. Proceeds from the sale or other disposition of any Partnership investment may be reinvested by the General Partner in Partnership investments, subject to certain limitations.

28. Subject to the limitations described above, the Partnership will be permitted to enter into transactions involving:

(a) A member of the Morgan Stanley Group (including without limitation an MS Venture Capital Fund);

(b) Any entity in which the Partnership and/or the MS Venture Capital Funds make investments;

[2] It is anticipated that the economic terms applicable to the Partnership's investments will be the same as those applicable to the corresponding investments by the MS Venture Capital Funds. It is possible, however, that the investment of the MS Venture Capital Funds will have more favorable non-economic terms (e.g., the right to representation on the board of directors of the portfolio company) in light of regulatory or other considerations.

(c) Any partner of an MS Venture Capital Fund that is not a member of the Morgan Stanley Group (together with the affiliates of such partner, a "Non-MS Venture Fund Partner"); or

(d) Any Partner or person or entity related to any Partner. Any such transaction, however, must be on terms no less favorable to the Partnership than are generally afforded to unrelated third parties in comparable transactions. Such transactions include, without limitation, the purchase or sale by the Partnership of an investment, or an interest therein, from or to any member of the Morgan Stanley Group, acting as principal. With respect to any investment purchased by the Partnership from a member of the Morgan Stanley Group, acting as principal, the Partnership will acquire the investment for no more than the fair value at the time of purchase, plus carrying costs and certain organizational expenses. The fair value at the time of such purchase may be more or less than the price paid by the member, depending on the appreciation or depreciation in the particular investment.

29. A member of the Morgan Stanley Group may provide investment banking, management, or other services and receive fees or other compensation and expense reimbursement in connection therewith from entities in which the Partnership makes an investment or competitors of such entities. Such fees or other compensation may include, without limitation, advisory fees, organization or success fees, financing fees, management fees, performance-based fees, fees for brokerage and clearing services, and compensation in the form of carried interests entitling the member to share disproportionately in income or capital gains or similar compensation. The Morgan Stanley Group reserves the right not to charge or to waive all or part of any such fees or other compensation or expense reimbursement that the Partnership otherwise might incur or bear indirectly. However, except as described in paragraph 16 above, any such fees or other compensation or expense reimbursement received by a member of the Morgan Stanley Group will not be shared with the Partnership.

30. The Partnership may make distributions to the Partners at such times and in such amounts as determined by the General Partner in its sole discretion. Until the Limited Partners have received distributions equal to their respective capital contributions (disregarding, for this purpose, any distributions to enable Partners to pay taxes with respect to the Partnership's net taxable income allocated to them during any fiscal year), all discretionary distributions will be made to the Partners in proportion to their respective capital contributions. Thereafter, such distributions generally will be made 12% to the General Partner and 88% to the Partners, subject to certain limitations. When distributing cash or securities or both to the Partners, the General Partner will be required to distribute the cash and securities to all Partners in the same proportions; however, the General Partner will have the right, with the consent of Limited Partners representing at least two-thirds of the aggregate capital commitments, to make fair non-ratable distributions in kind. Such non-ratable distributions would be made in the event a Limited Partner notifies a General Partner that the receipt by such Limited Partner of a specific portfolio security would violate any law, regulation, or government order applicable to such Limited Partner. No distribution may be made to a Partner to the extent that such distribution would (a) create or increase a deficit balance in such Partner's account, or (b) render such Partner liable for a return of such distribution under the Delaware Revised Uniform Limited Partnership Act.

31. The General Partner will conduct a valuation of the Partnership's assets each time items of Partnership profit or loss (including unrealized gains and losses) are to be allocated to the capital accounts of the Partners; at the time of any distribution in kind to the Partners; and in connection with the preparation of periodic reports to the Partners. The General Partner's valuation of any securities will be conclusive and binding on all parties; however, if Limited Partners representing at least a majority of the aggregate capital commitments object to any valuation, a procedure exists for submitting the valuation to arbitration. The rules applicable to the valuation of Partnership assets are the same as those applicable to the valuation of assets of the MS Venture Capital Funds.

32. The Partnership will be permitted to borrow money, subject to limitations as to the aggregate principal amount and maturity of indebtedness that may be incurred by the Partnership. It is not anticipated that a member of the Morgan Stanley Group will advance funds to the Partnership but, if any such advances are made, the terms thereof will be no less favorable to the Partnership than would be obtained on an arm's-length basis.

33. Pending investment of capital contributions from the Partners and any distribution of proceeds to the Partners, the Partnership's funds may be invested in short-term money market or other comparable investments, including money market funds that may be advised by a member of the Morgan Stanley Group.

34. The term of the Partnership will expire on the tenth anniversary of the date on which capital contributions are first made to the Partnership. The term may be extended by the General Partner, with the consent of Limited Partners representing specified percentages (depending upon the extension being sought) of the aggregate capital commitments. The Partnership may be dissolved prior to the expiration of the term with the approval of Partners representing at least two-thirds of the aggregate capital commitments. In addition, the Partnership may be dissolved upon the occurrence of certain events.

35. A Limited Partner may not withdraw from the Partnership prior to the dissolution of the Partnership, except under certain limited circumstances. The General Partner may require a Limited Partner to withdraw (a) if the Limited Partner is a Defaulting Partner (as defined below); (b) if the Limited Partner violates the restrictions on transfer described below; or (c) if the General Partner determines in its reasonable discretion that continued membership of the Limited Partner in the Partnership would subject the Partnership to material onerous legal or other regulatory requirements that cannot reasonably be avoided. A Limited Partner may not withdraw in any event until the first anniversary of such Limited Partner's admission to the Partnership.

36. If any Limited Partner fails to make any required capital contribution when due or called by the General Partner (a "Defaulting Partner"), the General Partner may elect in its discretion any one or more of the following alternatives:

(a) Cause the Partnership to bring an action against the Defaulting Partner to collect the due and unpaid payment plus interest;

(b) Cause the Defaulting Partner to forfeit up to 50% of the value of such Defaulting Partner's capital account (as valued at the date the capital contribution was originally due), which forfeited portion will be allocated among the other Partners in proportion to their respective capital contributions, provided that the General Partner will not elect this alternative if the Defaulting Partner is suffering from, or will suffer, severe hardship;

(c) Determine that the Defaulting Partner will not be permitted to make additional capital contributions; and/or

(d) Reduce the Defaulting Partner's share of the Partnership's future profits by up to 50% of the amount that such Defaulting Partner would otherwise have been entitled to receive had it not defaulted. These rights and remedies are cumulative, and the General Partner may pursue any other remedies available to it or the Partnership to enforce the obligation of the Defaulting Partner. The Defaulting Partner is liable for all costs of the Partnership, including attorney's fees, incurred with respect to the collection of any of the capital contributions and the enforcement of any of the rights of the Partnership.

37. Interests in the Partnership will be non-transferable except with the prior written consent of the General Partner, which consent may be withheld in its sole discretion, and in any event, will not be transferable to persons other than (a) other Partners; (b) trusts established by the transferor Limited Partner for the benefit of such Limited Partner or such Limited Partner's immediate family; or (c) by succession or testamentary disposition upon the death of the transferor Limited Partner. A Limited Partner's interest will not be redeemable upon, and will not be affected by, such Limited Partner's termination of employment from the Morgan Stanley Group.

38. During the existence of the Partnership, books of account will be kept, in which the General Partner will enter, or cause to be entered, all business transacted by the Partnership, all moneys and other things received, advanced, paid out, or delivered on behalf of the Partnership, the results of the Partnership's operations, and each Partner's capital. Such books will at all times be accessible to all Partners. In addition, for each fiscal year of the Partnership, the General Partner will cause an examination of the financial statements of the Partnership to be made in accordance with generally accepted auditing standards by a nationally recognized firm of certified public accountants. A copy of the accountants' report with respect to each fiscal year will be furnished to each Partner within a specified period after the end of such fiscal year. The General Partner will also furnish certain information to the Partners on a quarterly basis. The scope and nature of the information furnished to the Limited Partners is the same as that furnished to the third party investors of the MS Venture Capital Funds.

Applicant's Legal Analysis

1. Applicant requests an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act, and the rules and regulations thereunder, except section 9, sections 17 and 30 (except as described below), sections 36 through 53, and the rules and regulations thereunder.

2. Applicant requests an exemption from section 17(a) of the Act to the extent necessary to (a) permit a member of the Morgan Stanley Group, acting as principal, to engage in any transaction directly or indirectly with the Partnership or any company controlled by the Partnership; (b) permit the Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any member of the Morgan Stanley Group has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any member of the Morgan Stanley Group is or will become otherwise affiliated; and (c) permit a Non-MS Venture Fund Partner, acting as principal, to engage in any transaction directly or indirectly with the Partnership or any company controlled by the Partnership. The transactions to which the Partnership is a party will be effected only after a determination by the Board that the requirements of Condition 1 below have been satisfied. In addition, these transactions will be effected only to the extent not prohibited by the limited partnership agreements of the MS Venture Capital Funds and the Partnership.

3. The principal reason for the requested exemption is to ensure that the Partnership will be able to invest in companies, properties, or vehicles in which a member of the Morgan Stanley Group (including without limitation an MS Venture Capital Fund), or the member's employees, officers, directors, or advisory directors, or the partners of an MS Venture Capital Fund, may make or have already made an investment. The relief is also requested to permit the Partnership the flexibility to deal with its portfolio investments in the manner the General Partner deems most advantageous to all Partners or as required by the MS Venture Capital Funds or the Partnership's other co-investors. Furthermore, the requested exemption is sought to ensure that a Non-MS Venture Fund Partner will not directly or indirectly become subject to a burden, restriction, or other adverse effect by virtue of the Partnership's participation in an investment opportunity.

4. The Partners will have been fully informed of the possible extent of the partnership's dealings with an MS Venture Capital Fund or another member of the Morgan Stanley Group or with a Non-MS Venture Partner and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks. Applicant asserts that the community of interest among the Partners, on the one hand, and an MS Venture Capital Fund or another member of the Morgan Stanley Group or the Non-MS Venture Fund Partners, on the other hand, is the best insurance against any risk of abuse.

5. Applicant states that the Partnership will not make loans to an MS Venture Capital Fund or any other member of the Morgan Stanley Group, or to any employee, officer, director, or advisory director of the Morgan Stanley Group, with the exception of short-term repurchase agreements or other fully secured loans to a member of the Morgan Stanley Group. In addition, the Partnership will not sell or lease any property to an MS Venture Capital Fund or any other member of the Morgan Stanley Group except on terms at least as favorable as those obtainable from unaffiliated third parties.

6. Applicant requests an exemption from section 17(d) and rule 17d–1 thereunder to the extent necessary to permit affiliated persons of the Partnership (including without limitation the General Partner, the MS Venture Capital Funds, and other members of the Morgan Stanley Group) or affiliated persons of any of these persons (including without limitation the Non-MS Venture Fund Partners) to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant. The exemption requested would permit, among other things, co-investments by the Partnership and individual partners or employees, officers, directors, or advisory directors of the Morgan Stanley Group making their own individual investment decisions apart from the Morgan Stanley Group.

7. Compliance with section 17(d) would prevent the Partnership from achieving its principal purpose. Because of the number and sophistication of the potential Partners and persons affiliated with such Partners, strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Partner or other affiliated person of the Partnership (or any affiliate of such a person) also had, or contemplated making, a similar investment. In addition, attractive investment opportunities of the types considered by the Partnership often require each

participant in the transaction to make available funds in an amount that may be substantially greater than may be available to the Partnership alone. As a result, the only way in which the Partnership may be able to participate in such opportunities may be to co-invest with other persons, including its affiliates. The requested exemption also is sought to ensure that a Non-MS Venture Fund Partner will not directly or indirectly become subject to a burden, restriction, or other adverse effect by virtue of the Partnership's participation in an investment opportunity. The flexibility to structure co-investments and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. The concern that permitting co-investments or joint investments by an MS Venture Capital Fund or another member of the Morgan Stanley Group or by the Non-MS Venture Fund Partners on the one hand, and the Partnership on the other, might lead to less advantageous treatment of the Partnership should be mitigated by the fact that (a) the Morgan Stanley Group, in addition to its substantial stake as a general partner in the MS Venture Capital Funds and investments in the Partnership and in the portfolio companies in which the Partnership invests, will be acutely concerned with its relationship with the key personnel who invest in the Partnership; and (b) senior officers and directors of the Morgan Stanley Group will be investing in the Partnership.

8. Applicant requests an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit a member of the Morgan Stanley Group to act as custodian without a written contract. Because there is such a close association between the Partnership and the Morgan Stanley Group, requiring a detailed written contract would expose the Partnership to unnecessary burden and expense. Furthermore, any securities of the Partnership held by the Morgan Stanley Group will have the protection of fidelity bonds. An exemption is requested from the terms of rule 17f–1(b)(4), as applicant does not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

9. Applicant requests an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnership to comply with rule 17g–1 by having a majority of the members of the Board take such actions and make such approvals as are set forth in rule 17g–1.

10. Applicant requests an exemption from Section 17(j) and rule 17j–1 (except rule 17j–1(a)) because the requirements contained therein are burdensome and unnecessary in the context of the Partnership. Requiring the Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners by virtue of their common association in the Morgan Stanley Group; the substantial and largely overlapping protections afforded by the conditions with which the Applicant has agreed to comply; the concern of the Morgan Stanley Group that personnel who participate in the Partnership actually receive the benefits they expect to receive when investing in the Partnership; and the fact that the investments of the Partnership will be investments that usually would not be offered to the Partners, including those Partners who would be deemed access persons, as individual investors. Accordingly, the requested exemption is consistent with the purposes of the Act, because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Partnership.

11. Sections 30(a), 30(b) and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. The forms prescribed by the Commission for periodic reports have little relevance to the Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners. Exemptive relief is requested to the extent necessary to permit the partnership to report annually to its Partners in the manner described above in paragraph 37. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partner, MSVC II, members of the Board, and any other persons who may be deemed members of an advisory board of the Partnership from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of interests in the Partnership.

12. Applicant submits that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all the parties and the fact that the Partnership is an "employees' securities company" as defined in section 2(a)(13). The Partnership was conceived and will be organized and managed by person who will be investing in the Partnership, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant also submits that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which the Partnership is a party (the "Section 17 Transactions") will be effected only if the Board, through the General Partner, determines that:

a. The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and

b. The transaction is consistent with the interests of the Partners, the Partnership's organizational documents and the Partnership's reports to its Partners.

In addition, the General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnership and at least two years thereafter, and will be subject to examination by the Commission and its staff.[3]

2. In connection with the Section 17 Transactions, the Board, through the General Partner, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of the Partnership in any investment in which a "Co-Investor," as

[3] The Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is:

(a) An "affiliated person" (as such term is defined in the Act) of the Partnership;

(b) A member of the Morgan Stanley Group;

(c) An officer or director of a member of the Morgan Stanley Group; or

(d) A company in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities (including without limitation each MS Venture Capital Fund). The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor:

(a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent;

(b) To immediate family members of the Co-Investor or a trust established for any such family member;

(c) When the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or

(d) When the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder.

4. The Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners, and each annual report of the Partnership required to be sent to the Partners, and agree that all such records will be subject to examination by the Commission and its staff.[4]

5. The General Partner will send to each Partner who had an interest in each capital account of the Partnership at any time during the fiscal year then ended Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner shall send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales are made by the Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in such entity by a Morgan Stanley Group advisory director, director, officer, or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchases or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9013 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26022]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 8, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declarant(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 2, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8399)

Notice of Proposal To Issue and Sell Common Stock in Connection With the Adoption of an Outside Directors Stock Plan; Order Authorizing Proxy Solicitation

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 50(a)(5), 62 and 65 thereunder.

Southern proposes to adopt, subject to shareholder approval at the 1994 annual meeting of shareholders to be held on May 25, 1994 ("1994 Annual Meeting"), The Southern Company Outside Directors Stock Plan ("Plan"). Under the Plan, Southern proposes to issue, from time-to-time through December 31, 2004, up to one million shares of common stock, par value of $5 ("Common Stock"). Southern states that the purpose of the Plan is to provide a mechanism for non-employee directors to automatically increase their ownership of Southern Common Stock and thereby further align their interests with those of the shareholders of Southern.

Common Stock which may be issued under the Plan will be newly issued shares which have been authorized but unissued shares or shares that will be acquired on the open market pursuant to a prior authorization. The Plan provides that any member of the board of directors who is not otherwise actively employed by Southern or any of its subsidiaries or affiliates shall receive a portion of the annual retainer fee (currently $30,000) equal to $5,000 in unrestricted Common Stock, with the remainder of to be payable in

[4] The Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

increments elected by the director, in cash or in Common Stock. Southern requests an exception from the competitive bidding requirements of Rule 50 under the Act pursuant to subsection (a)(5) in connection with any issuance or sale of Common Stock under the Plan.

In addition, Southern requests authorization to solicit proxies from its shareholders for approval of the Plan, among other things, at its 1994 Annual Meeting. Southern requests that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its shareholders on the Plan be permitted to become effective as provided in Rule 62(d).

It appearing to the Commission that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9016 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26023]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 8, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 2, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Leidy Hub, Inc. (70–7201)

Leidy Hub, Inc. ("Leidy"), formerly Enerop Corporation ("Enerop"), 10 Lafayette Square, Buffalo, New York 14203, a nonutility subsidiary company of National Fuel Gas Company ("National"), a registered holding company, has filed a post-effective amendment under sections 9(a) and 10 of the Act to its application-declaration which was originally filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45.

By orders dated May 1, 1986 and March 18, 1988 (HCAR Nos. 24081 and 24604, respectively), the Commission authorized, in relevant part: (1) National to loan $200,000 to Metscan, Inc. ("Metscan"), a New York corporation that has developed an electronic meter reading system ("Metscan System"), and to receive an option to convert the note ("Note") evidencing the loan into 80,000 shares of Metscan's preferred stock, at a price of $2.50 per share; (2) National to assign the Note and option from Metscan to Enerop; (3) National to provide Enerop $442,500 as a contribution to capital, which funds Enerop was authorized to invest, together with third parties, in Metscan Technology Partners ("Partnership"), a New York partnership formed by Metscan, after which Enerop would own approximately 9.96% of the Partnership; and (4) the Partnership and Metscan to be reorganized as a corporation before the end of 1989, and Enerop to acquire approximately 7.23% of the common stock of the new corporation.

The March 18, 1988 order contained a reservation of jurisdiction over this reorganization which was released by order dated April 27, 1989 (HCAR No. 24874). The reorganization occurred on May 17, 1989, and the new corporation was called Metscan Acquisition Corporation ("MAC"). Pursuant to the reorganization, the Note and Enerop's Partnership interest attributable to the $442,500 investment were converted into 80,000 shares and 177,000 shares of MAC common stock, respectively, at a conversion rate of $2.50 per share. MAC subsequently changed its name to Metscan, Inc., and the 257,000 shares that Enerop then owned represented 6.0% of the total shares of Metscan common stock outstanding, and 5.1% of that total if shares subject to outstanding warrants and employees' options were included.

By order dated September 7, 1990 (HCAR No. 25143), the Commission authorized Enerop to acquire an additional 143,000 shares of Metscan common stock for $357,500 ($2.50 per share), and 39,500 shares of Metscan Class A Preferred Stock ("Class A Preferred") for $158,000 ($4 per share). The Class A Preferred pays a cumulative annual 7% dividend, and is convertible by the stockholders to Metscan common stock on a 1:1 basis, through July of 1995. As a result of the September 7, 1990 order, Enerop owned 9.4% of Metscan's common stock and 7.1% of Metscan's Class A Preferred, or 7.9% of such common stock if the Class A Preferred stock is converted into common stock, and if all warrants and other rights are exercised.

Finally, by order dated July 12, 1991 (HCAR No. 25346), Enerop was authorized to purchase 17,000 additional shares of the Class A Preferred for $68,000 ($4 per share). Following the acquisition, Enerop owned 9.4% of Metscan's common stock and 9.8% of the Class A Preferred, or about 8.2% of the actual and potential equity investment in Metscan. Enerop's total investment in Metscan then totaled $1,226,000. On December 29, 1993, Enerop changed its name to Leidy Hub, Inc.

Leidy now proposes to acquire 29,167 shares of Metscan Class B Preferred Stock, $.01 par value, ("Class B Preferred"), out of a total number of 2,736,667 shares to be sold, for $35,000 ($1.20 per share). Once the proposed transaction has been consummated, Leidy will own 7.31% of Metscan's common stock, 9.83% of the Class A Preferred and 1.07% of the Class B Preferred, or about 5.52% of the actual and potential equity investment in Metscan. Leidy will, however, divest itself of all interest in Metscan within ten years of the acquisition of the Class B Preferred.

Entergy Corporation (70–8149)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70113, a registered holding company, has filed a declaration under Sections 6(a), 7, 32, and 33 of the Act and Rules 53 and 54 thereunder. The Commission issued a notice of the declaration on April 9, 1993 (HCAR No. 25789). Since then, Entergy has filed an amendment which requires the Commission to issue a second notice of the transaction.

Entergy proposes to enter into arrangements with one or more banks to effect borrowings and reborrowings by Entergy from time to time for a period not to exceed three years, of not more than $300 million by issuing to participating banks ("Banks") its unsecured promissory notes ("Notes") payable no later than three years from the date of their issuance. The proposed borrowing arrangements will be contained in a credit agreement among Entergy and the Banks.

Each borrowing by Entergy could either be made *pro rata* among the Banks, or be allocated among one or more of the Banks in such proportions as the Banks and Entergy shall agree. Each payment by Entergy with respect to a borrowing would be made *pro rata* among the Banks according to their respective ratable portions of the such borrowings.

Under the proposed arrangements, each borrowing would bear interest from the date thereof on the unpaid principal amount thereof at a rate per annum selected by Entergy from a number of rate options. These rate options include: (1) The higher of (a) the prime commercial rate of a specified bank (or an average of such rates of some or all of the Banks) from time to time in effect and (b) a specified margin (not in excess of 1%) above rates on overnight Federal funds transactions on a given day (or the average of such rates for a specified period) ("Prime Rate"); (2) the sum of (c) specified offered rates for certificates of deposit of a specified Bank (or an average of such rates of some of all of the Banks) for the amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and F.D.I.C. insurance and (d) a margin not in excess of 1.5% per annum ("CD Rate"); (3) the sum of (e) specified rates offered for U.S. dollar deposits by or to a specified Bank (or an average of such rates of some or all of the Banks) in the interbank Eurodollar market for amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and (f) a margin not in excess of 1.25% per annum ("LIBOR Rate"); or (4) a rate negotiated at the time of borrowing with one or more Banks, which would not in any event exceed a maximum rate of the Prime Rate plus 2% per annum, appropriately adjusted for the cost of bidding or negotiation ("Competitive Advance Rate").

Entergy states that generally interest on Prime Rate borrowings would be payable quarterly, and interest on CD Rate and LIBOR Rate borrowings would be payable at the end of selected interest periods for such borrowings, or, depending upon the length of such selected interest periods, at specified intervals within such periods and at the end thereof. Interest on Competitive Advance Rate borrowings would be payable on such dates as are agreed to by Entergy and Banks funding such borrowings.

Entergy may agree to pay to each Bank a facility and/or commitment fee for the period from the commencement of the borrowing arrangements to and including the date of termination of the commitments, computed at a rate not in excess of ½ of 1% per annum of the total commitments (in the case of a commitment fee) in effect during the period for which payment is made. Entergy also may agree to pay to the agent Bank (if any) an agent fee for the period from the commencement of the borrowing arrangements to and including the date of termination of the commitments, not in excess of $200,000 per year. The facility and/or commitment fee and agent fee would be payable on a quarterly basis and on the date upon which Entergy shall terminate the commitments. Entergy also may agree to pay to the Banks an up-front fee not in excess of 1% of the total commitments.

The proceeds of the borrowings under the proposed arrangements will be used by Entergy for general corporate purposes, including: (1) The acquisition of shares of Entergy's outstanding common stock pursuant to outstanding Commission authorization and any future similar authorizations; (2) further investments by Entergy in related non-utility businesses, subject to receipt of any further Commission approval, if necessary; and (3) investments in exempt wholesale generators and foreign utility companies.

Eastern Utilities Associates, et al. (70–8381)

Eastern Utilities Associates ("EUA"), a registered holding company, and EUA Service Corporation ("EUA Service" and together with EUA, "Applicants"), a wholly-owned subsidiary, each located at One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02107, have filed a declaration pursuant to Section 12(c) of the Act and Rule 46(a) thereunder.

By order dated February 18, 1986 (HCAR No. 24020) ("1986 Order"), the Commission authorized EUA to make capital contributions to EUA Service in order to support interim financing for constructing EUA Service's office complex (the "Service Center"). EUA made a $5 million equity capital contribution to EUA Service during 1987. The 1986 Order also authorized EUA Service to charge other companies in the system amounts in order to provide a return on EUA Service's equity capital, as increased by the capital contribution.

By order dated December 18, 1987 (HCAR No. 24543) ("1987 Order"), the Commission authorized EUA Service to issue and sell up to $20 million in notes ("Notes") to pay or reduce outstanding short-term borrowings incurred to construct the Service Center. The Notes mature in 2008 and are being repaid pursuant to a sinking fund schedule.

The Applicants state that EUA Service desires to reduce the $5 million in equity capital in order to reduce its fees to companies in the EUA holding company system. The Applicants further state that reducing this amount over the next fifteen years will permit payments out of internally generated cash and avoid the incurrence of additional debt to finance the payments. EUA Service proposes to declare and pay dividends to EUA out of EUA Service's paid-in capital account, from time to time through December 31, 2008, in amounts aggregating $5 million. Specifically, EUA Service proposes to pay $500,000 in 1994, $1,000,000 in each of 1995 and 1996, and $200,000 annually through 2008.

Gulf Power Company (70–8397)

Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32501, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 6(b), 7 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

Gulf proposes to issue and sell from time to time, prior to January 1, 1997, short-term and/or term-loan notes to lenders, commercial paper to dealers and/or non-negotiable promissory notes to public entities in exchange for the proceeds of their revenue anticipation notes in an aggregate principal amount at any one time outstanding of up to $150,000,000.

Gulf states that any borrowings proposed herein may be, and any such borrowings in excess of its charter limits on short-term unsecured debt would be, secured by a subordinated lien on certain assets of Gulf. In no circumstances will Gulf have unsecured borrowings outstanding at any one time that exceed applicable charter limitations.

Gulf proposes to borrow from certain banks or other lending institutions. Such institutional borrowings will be evidenced by notes to be dated as of the

date of such borrowings and to mature in not more than four years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each lender to be dated as of the date of the initial borrowing and to mature not more than four years after the date of issue. Gulf proposes that any note evidencing such borrowings may not be prepayable, or that it may be prepaid with payment of a premium that is not in excess of the stated interest rate on the borrowing to be prepaid, which premium in the case of a note having a maturity of more than one year, may thereafter decline to the date of the note's final maturity.

Borrowings will be at the lender's prevailing rate offered to corporate borrowers of similar quality. Such rates will not exceed the prime rate or (i) LIBOR plus up to ¾ of 1%, (ii) the lender's certificate of deposit rate plus up to 1%, or (iii) a rate not to exceed the prime rate to be established by bids obtained from the lenders prior to a proposed borrowing; provided, however, that with respect to borrowings with a maturity in excess of one year, the rate will not exceed the yield for a comparable maturity Treasury note plus one percent. Compensation for the credit facilities may be provided by balances of up to 10% of the available facility or by fees of up to ½ of 1% per annum of the amount of the facility.

Gulf also proposes to issue and sell commercial paper to dealers from time to time prior to January 1, 1997. Such commercial paper to dealers will be in the form of promissory notes with varying maturities not to exceed nine months. The commercial paper notes will be issued in denominations of not less than $50,000 and will not by their terms be prepayable prior to maturity.

Gulf also may effect short-term borrowings in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes. Under an agreement with each such public entity, the entity would effectively loan to Gulf the proceeds of the sale of such revenue bond anticipation notes, having a maturity of not more than one year after date of issue, and Gulf may issue its non-negotiable promissory note therefore. Such note would provide for payments thereon to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest, which shall not exceed the prime rate, on such revenue bond anticipation notes, whenever and in whatever manner the same shall become due, whether it stated maturity, upon redemption or declaration or otherwise.

By prior Commission orders in File No. 70–7937 dated March 31, 1992, November 30, 1993 and February 16, 1994 (HCAR Nos. 25507, 25932 and 25989, respectively), Gulf may effect short-term borrowings prior to April 1, 1996. Gulf proposes that the authorization sought herein will supersede and replace, with respect to Gulf, authorizations in File No. 70–7937 effective immediately upon the date of the Commission's order herein.

The proceeds from the proposed borrowings will be used by Gulf for working capital purposes, including the financing in part of its construction program. None of the proceeds from any borrowing or from the sale of the notes proposed herein will be used by Gulf, directly or indirectly, for the acquisition of any interest in an "exempt wholesale generator" or a "foreign utility company."

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9017 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20203; File No. 811–4406]

SunAmerica Tax Free Portfolios; Application for Deregistration

April 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: SunAmerica Tax Free Portfolios.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on March 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 2, 1994, and should be accompanied by proof of service on applicant, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust. On September 13, 1984, applicant filed a notification of registration on Form N–8A.[1] On September 16, 1985, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement became effective on November 29, 1985, and applicant's initial public offering commenced immediately thereafter.

2. At a joint meeting held on March 31, 1993, the boards of trustees of applicant and SunAmerica Income Funds (the "Acquiring Company"), a series company organized as a Massachusetts business trust, approved an agreement and plan of reorganization (the "Agreement") between applicant and the Acquiring Company. The Agreement and the transactions contemplated thereby are collectively referred to as the "Reorganization." The Agreement provided for the transfer of all of the assets and liabilities of applicant's series, SunAmerica Tax Exempt Insured Fund (the "Fund")[2] in exchange for shares of SunAmerica Tax Exempt Insured Fund (the "Acquiring Fund"). The Acquiring Company is a series company organized as a Massachusetts business trust,[3] and the Acquiring Fund is a series of the Acquiring Company.

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[1] Applicant formerly was named Integrated Insured Tax Free Fund.

[2] The Fund was named Selected Tax-exempt Real Estate Income Pooled Shares prior to the Reorganization, and originally was named Selected Term Real Estate Income Pooled Share.

[3] The Acquiring Company was named SunAmerica Income Portfolios prior to the Reorganization.

3. Applicant stated in proxy materials filed in connection with the Reorganization that the purpose of the Reorganization was to provide additional flexibility in purchasing shares of the SunAmerica mutual funds, eliminate duplication of administrative and management tasks, and provide applicant's shareholders with a wider range of investment options.

4. Applicant, the Acquiring company, and the Acquiring Fund are "affiliated persons" of each other, as that term is defined in the Act, solely by reason of having a common investment adviser, common trustees, and common officers. Applicant and the Acquiring Company relied on rule 17a–8 under the Act in order to exempt the transaction from the affiliated transaction prohibition of section 17(a) of the Act. To avail itself of the rule 17a–8 exemption, each of the boards of directors of applicant and the Acquiring Company determined that the Reorganization was in the best interest of the shareholders and that the interests of existing shareholders would not be diluted as a result of the Reorganization.

5. Preliminary proxy materials were filed on June 17, 1993, as part of the Acquiring Company's registration statement on Form N–14. Definitive proxy materials relating to the Reorganization were filed on July 29, 1993, and mailed to applicant's shareholders on or about that date. Applicant's shareholders voted to approve the Agreement on September 23, 1993.

6. As of October 1, 1993, applicant had 14,839,217.351 shares outstanding, having an aggregate net asset value of $190,683,942.96, and a per share net asset value of $12.85. On October 1, 1993, pursuant to the Agreement, applicant transferred all of its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund. The aggregate net asset value of Acquiring Fund shares received was equal to the net asset value of the Fund's shares held. Applicant then distributed the Acquiring Fund's shares it received *pro rata* to its shareholders, in complete liquidation of applicant.

7. No brokerage commissions were paid in connection with the Reorganization. Pursuant to the Agreement, the expenses for effecting the Reorganization were borne by the participating funds, including applicant and the Acquiring Company. Such expenses, which are not expected to exceed $50,000 for applicant, include preparation of proxy materials, printing expenses, and legal and accounting fees.

8. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On March 23, 1994, applicant filed a certificate of Termination of Trust with the Massachusetts Secretary of State.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8928 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20208; 812–8838]

Zweig Series Trust, et al.; Notice of Application

April 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Zweig Series Trust (the "Trust"), Zweig/Glaser Advisers (the "Adviser") and Zweig Securities Corp. (the "Distributor").

RELEVANT 1040 ACT SECTIONS: Exemption requested pursuant to section 6(c) of the 1940 Act from sections 18(f), 18(g), and 18(i) thereof.

SUMMARY OF APPLICATION: Applicants seek an order, on behalf of the Trust and all investment companies for which the Adviser in the future becomes investment adviser and the Distributor in the future becomes principal underwriter, amending a prior order (the "Prior Order") that permitted the establishment of a dual class and contingent deferred sales charge ("CDSC") arrangement. Investment Company Act Release Nos. 18460 (Dec. 31, 1991) (notice) and 18502 (Jan. 28, 1992) (order). The requested amended order will modify the multi-class arrangement allowed by the Prior Order to, among other things, allow the Trust to issue a third class of shares for one of its series (the "Multi-Class Plan"). Except with respect to the imposition of the CDSC, the requested amended order will supersede the Prior Order in its entirety.

FILING DATES: The application was filed on February 16, 1994, and an amended and restated application was filed on April 7, 1994. By letter dated April 8, 1994, counsel for the Applicants agreed to file another amendment during the notice period to make certain further revisions that are reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 1994, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 5 Hanover Square, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end management investment company organized in series form. The Trust currently has six series: Money Market Series, Government Securities Series, Priority Selection List Series, Zweig Strategy Fund, Zweig Appreciation Fund and Zweig Managed Assets (collectively and individually, the "Series"). The Trust has from time to time created new Series and may do so in the future. The Adviser serves as the investment manager of the Trust. The Distributor acts as the principal distributor of shares of beneficial interest of the Trust ("Shares"). Pursuant to the Prior Order, the Trust presently offers two classes of Shares: Class A shares and Class B Shares.

2. A new series of the Trust, Zweig Cash Fund ("New Cash Fund") is being created to become the successor by merger to Money Market Series, a series of the Trust, and Zweig Cash Fund Inc. ("Cash Fund"), an affiliated money market fund with the same investment adviser and distributor as the Trust. In connection with that merger, the Trust proposes to create a new class of Shares

(the "Class M Shares"), which will be exchanged for the assets of Cash Fund and then distributed to Cash Fund shareholders in complete liquidation of such Fund. In addition, Money Market Series will transfer its assets to New Cash Fund in exchange for Class A and Class B shares of New Cash Fund.

3. Class A Shares of five Series of the Trust are sold with a sliding scale initial sales charge. Class A Shares of Money Market Series are sold without an initial sales charge, and Class A Shares of New Cash Fund will also be sold without an initial sales charge. As provided in a plan adopted pursuant to rule 12b–1 under the 1940 Act (the "Rule 12b–1 Plan"), the Class A Shares of each Series pays the Distributor distribution fees of .05% and service fees of .25% of average daily net assets per annum.

4. The Class B Shares of the Trust are sold without the imposition of an initial sales charge, but they are subject to a CDSC of 1.25% of the net asset value of shares redeemed within one year of purchase. No CDSC is imposed on Class B Shares redeemed thereafter. Under the rule 12b–1 Plan, the Distributor is paid a distribution fee of .75% per annual of average daily net assets of Class B Shares of four Series, .50% for one Series, and .05% for Money Market Series. In each case, the Distributor also is paid a service fee of .25%. New Cash Fund will have the same pricing structure as Money Market Series, and the Class B Shares will pay an annual distribution and service fee of .05% and .25%, respectively, of average daily net assets (the same as paid by the Class A Shares).

5. Under the Multi-Class Plan, the Trust will continue to offer Class A and B Shares on the same terms as are presently offered, and New Cash Fund will also offer Class M Shares. Class M Shares will be sold without a front-end sales charge or CDSC but subject to a Rule 12b–1 Plan that requires the Class M Shares of New Cash Fund to pay up to .15% per annum of average daily net assets to securities dealers, financial institutions and other industry professionals for distribution, promotion and administration of and/or servicing investors in Class M Shares, and for payment by the Class M Shares for prospectuses, reports and promotional material in an amount not to exceed $100,000 per year. The Rule 12b–1 Plan for Class M Shares of New Cash Fund will be identical to the Rule 12b–1 Plan presently in effect for shares of Cash Fund.

6. Although there are no present plans for offering other classes of shares of the Trust (including Class M Shares of the other Series of the Trust), the terms of which may differ from the classes of shares described herein and in the application, the Trust may choose to do so in the future. Any such new classes, however, would comply with all of the conditions set forth below. The sum of any initial sales charge, asset-based sales charge, and CDSC for the existing or any new classes will not exceed the maximum sales charge provided for in Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers.

7. Under the Multi-Class Plan, each share of a Series will represent an equal pro rata interest in a Series, regardless of class, and will be identical in all respects except for: (1) The amount and type of fees permitted by Rule 12b–1 Plans and the terms of service agreements, if applicable; (2) voting rights on matters concerning Rule 12b–1 Plans; (3) exchange privileges; (4) any expenses which the Board of Trustees determines should be allocated or charged on a class basis ("Differential Expenses"), which are limited to (a) transfer agency fees as identified by the transfer agent as attributable to a specific class, (b) printing and postage expenses related to preparing and distributing class specific material such as shareholder reports, prospectuses and proxies to current shareholders, (c) Blue Sky and Commission registration fees incurred by a class of Shares, (d) the expenses of administrative personnel and services as required to support the shareholders of a specific class, if any, (e) litigation or other legal expenses relating solely to a specific class of Shares, (f) trustees' fees incurred as a result of issues relating to one class of Shares and (g) other expenses that are subsequently identified and determined to be properly allocated to one class of shares which shall be approved by the Commission pursuant to an amended order; and (5) the designation of such classes.

8. Under the Multi-Class Plan, all expenses incurred by each Series will be allocated among the various classes of shares based upon the net assets of the Series attributable to each class, except that shares of a particular class will bear the Differential Expenses incurred by such class. In addition, shares of a particular class will bear expenses assessed to that class as a result of a rule 12b–1 plan providing for a distribution fee or a service fee. Consequently, the net income of, and the dividends payable with respect to, each particular class would generally differ from the net income of, and the dividends payable with respect to, the other classes of shares of each Series. Therefore, the net asset value per share of the classes will differ at times. Expenses of each Series allocated to a class of shares will be borne on a *pro rata* basis by each outstanding share of that class.

9. Class 9 Shares of a Series will be exchangeable only for Class A Shares of the other Series, Class B Shares will be exchangeable only for Class B Shares of the other Series and Class M Shares of New Cash Fund will have no exchange feature since no other Series currently offers Class M Shares. The applicable exchange privileges will be in compliance with rule 11a–3 under the 1940 Act and will be set forth in each Series' prospectus.

Applicants' Legal Conclusions

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) of the 1940 Act to the extent the Multi-Class Plan may result in a senior security, as defined by section 18(g) of the 1940 Act, the issuance and sale of which would be prohibited by section 18(f)(1) of the 1940 Act, and to the extent the allocation of voting rights under the Multi-Class Plan may violate the provisions of section 18(i) of the 1940 Act. Applicants believe that the Multi-Class Plan does not raise any of the legislative concerns that section 18 of the 1940 Act was designed to ameliorate. The proposal does not involve borrowing and does not affect the Trust's existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the Shares of the Trust since all such Shares will participate *pro rata* in all of the Trust's income and expenses with the exception of the differing Rule 12b–1 fees and Differential Expenses.

2. Applicants also believe that the Multi-Class Plan will both facilitate the distribution of Shares by the Trust and provide investors with a broader choice as to the method of purchasing Shares. Additionally, if the Trust is able to maintain and expand its number of shareholders through the Multi-Class Plan, it shareholders would benefit to the extent the Trust's *pro rata* operating expenses per share would be decreased.

Conditions of Relief

If the requested relief is granted, Applicants agree to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investment of a Series and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Series will relate solely to: (a) The designation of each class of shares of a Series; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing for a

distribution fee or a service fee; (c) different Differential Expenses for each class of shares, which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholders reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Trustees' fees incurred as a result of issues relating to one class of shares; (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1; and (e) different exchange privileges. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The Trustees of the Trust, including a majority of the independent Trustees, will approve the Multi-Class Plan prior to its implementation by a particular Series. The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class Plan will reflect in detail the reasons for determining that the proposed Multi-Class Plan is in the best interests of the Series and its respective shareholders.

3. The initial determination of the Differential Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of Trustees, including a majority of the independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet the Differential Expenses shall provide to the Trustees, and the Board shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Series for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own costs will remedy the conflict up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Trustees to justify any fees charged to that class of shares. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that each particular class will bear exclusively its own Differential Expenses and costs and distribution fees associated with any rule 12b–1 plan relating to a particular class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert, the Independent Examiner. The Independent Examiner has rendered a report to the Applicants, which has been provided to the staff of the Commission, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Independent Examiner with respect to these reports, following request by the Trust, which the Trust agrees to make, will be available for inspection by the Commission's staff upon the written request for these work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Report on Policies and Procedures Placed in Operation," and the ongoing reports will be "Special Purpose" reports on the "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Independent Examiner in an initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Applicants will take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectus of the Trust will include a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Trust shares may receive different compensation with respect to one particular class of shares over another in the Trust.

10. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. The Applicants will require all persons

selling shares of the Trust to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the Multi-Class Plan will be set forth in guidelines that will be furnished to the Trustees.

12. Each Series will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Series will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Series as a whole generally and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by the Applicants for publication in any newspaper or similar listing of the Series' net asset values and public offering prices will present each class of shares separately.

13. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to any of its Rule 12b–1 Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9018 Filed 4–13–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2709]

New York (With Contiguous Counties in Connecticut and New Jersey); Declaration of Disaster Loan Area

Westchester County and the contiguous counties of Bronx, Putnam and Rockland in the State of New York; Fairfield County in the State of Connecticut and Bergen County in the State of New Jersey constitute a disaster area as a result of damages caused by a fire which occurred on March 1, 1994 at 106 Highland Avenue in the City of Yonkers. Applications for loans for physical damage may be filed until the close of business on June 6, 1994 and for economic injury until the close of business on January 6, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.900
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage in the State of New York is 270905 and for economic injury the number is 822400. In the State of Connecticut the numbers are 271005 and 822500 and in the State of New Jersey the numbers are 271105 and 822600.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 6, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–8985 Filed 4–13–94; 8:45 am]

BILLING CODE 8025–01–M

Clarksburg District Advisory Council Public Meeting

The U.S. Small Business Administration Clarksburg District Advisory Council will hold a public meeting from 1:30 p.m. on Thursday April 28, 1994, and ending April 29 at 12:00 Noon at the Shepherd College (South Branch), 115 Virginia Avenue, Petersburg, West Virginia to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Marvin Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, 168 W. Main Street, Clarksburg, WV 26302–1608, (304) 623–5631.

Dated: April 8, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–8986 Filed 4–13–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC–89–10]

Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to motor carriers on State periodic inspection programs.

SUMMARY: This notice adds the periodic inspection (PI) program of the State of Texas to the list of programs which are comparable to, or as effective as, the Federal PI requirements contained in 49 CFR 396.15 through 396.23. The FHWA published its initial list on December 8, 1989 (54 FR 50726). The list was most recently revised on November 27, 1992 (57 FR 56400). Including Texas, there are 21 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 9 Canadian Provinces, and one Canadian Territory which have PI programs which the FHWA has determined to be comparable to, or as effective as, the Federal PI requirements.

DATES: This docket will remain open until further notice.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–89–10, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m.

to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (the Act) (49 U.S.C. app. 2509) required the Secretary of Transportation to establish standards for annual or more frequent inspection of commercial motor vehicles (CMVs), and the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 49402) [Docket No. MC–113] which implemented the statutory requirements by amending part 396, Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule requires that CMVs operating in interstate commerce be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the FHWA determines that a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure that any of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring that its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** (54 FR 11020) [Docket No. MC–89–10] which requested States and other interested parties to identify and provide information on the CMV inspection programs in their States. Upon review of the information submitted, the FHWA published a list of State inspection programs which were determined to be comparable to the Federal PI requirements on (December 8, 1989, 54 FR 50726). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991 (56 FR 47983), to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory. On November 27, 1992 (57 FR 56400), the list was revised to include the Wisconsin bus inspection program.

Determination: State of Texas CMV Inspection Program

On October 8, 1993, the State of Texas (the State) amended its inspection requirements for CMVs under § 23.101 of the Texas Administrative Code. The State requires CMVs which are registered in Texas to be inspected annually. The State defines a CMV as any self-propelled or towed vehicle (except certain farm vehicles with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds) used on a public highway to transport passengers or property when: (1) The vehicle or combination of vehicles has a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, (2) the vehicle is designed to transport more than 15 passengers, including the driver, or (3) the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding. Upon review of the material submitted by the State, the FHWA has determined that the Texas CMV inspection program in effect as of January 1, 1994, is comparable to or as effective as the Federal PI requirements. Therefore, motor carriers operating CMVs (as defined in 49 CFR 390.5) subject to the Texas PI program must use the State's program to satisfy the Federal PI requirements. Not all CMVs are subject to the Texas program, however. Motor carriers operating vehicles that fall below the threshold weight for the Texas program, but which meet the FHWA's definition of a CMV may continue to use alternative means to satisfy the Federal PI requirements (e.g., self-inspection, the use of a commercial garage or similar facility, or passing a roadside inspection that meets the requirements of 49 CFR 396.17).

The FHWA notes that the State requires that CMVs subject to its program, and inspected prior to January 1, 1994, be inspected on or before the expiration of the current State inspection certificate or decal but no later than December 31, 1994. Therefore, CMVs that have Texas inspection certificates or decals issued prior to January 1, 1994, may use the alternative means provided by § 396.17 until the pre-1994 inspection certificate or decal expires, but no later than December 31, 1994.

It should also be noted that in accepting the State's PI program, the FHWA also accepts the recordkeeping requirements associated with the inspection program. Texas issues inspection decals for CMVs which pass the State inspection. The State inspection decal is considered by the FHWA as satisfying the Federal requirement for proof of inspection on the CMV.

States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs the FHWA has determined are comparable to, or as effective as, the Federal PI requirements.

Alabama (LPG Board)
Arkansas
California
District of Columbia
Hawaii
Illinois
Louisiana
Maine
Maryland
Michigan
Minnesota
New Hampshire
New Jersey
New York
Oklahoma
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin

In addition to the States listed above, the FHWA has determined that the inspection programs of the 9 Canadian Provinces and the Yukon Territory are comparable to, or as effective as, the Federal PI requirements. All other States either have no PI programs for CMVs or their PI programs have not been determined by the FHWA to be comparable to, or as effective as, the Federal PI requirements. Should any of these States wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FHWA regional office listed in 49 CFR 390.

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: April 7, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–8976 Filed 4–13–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94–38]

Amendments to Customs Bond Cancellation Standards

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Omnibus Trade and Competitiveness Act of 1988, the

Secretary of the Treasury is required to publish guidelines for cancellation of bond charges. The guidelines in effect at the time the Act was promulgated were published by Treasury Decision 89–48, dated April 14, 1989. This document amends certain portions of the guidelines that have proven to be inequitable or outdated, provides for new guidelines for cases in which petitions are filed untimely and for certain violations of regulations that have recently been promulgated, and republishes those guidelines which have worked successfully. The authority to promulgate these guidelines was delegated to the Commissioner of Customs by Paragraph 1 of Treasury Department Order No. 165, revised (T.D. 53654). A document published in the **Federal Register** (59 FR 17144) on April 11, 1994 set forth the explanation of the guidelines, but inadvertently omitted the actual guidelines. This document republishes the explanation and sets forth the guidelines.

EFFECTIVE DATE: These guidelines will take effect upon April 14, 1994, and shall be applicable to all cases which are currently open at the petition or supplemental petition stage. No second supplemental petitions shall be accepted solely to gain the benefit of a less harsh guideline.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, (202) 482–6950.

SUPPLEMENTARY INFORMATION:

Background

Section 1904 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100–418) amended section 623 of the Tariff Act of 1930 (19 U.S.C. 1623) by adding the following sentence at the end of section 623(c) of the Tariff Act of 1930 (19 U.S.C. 1623(c)):

> In order to assure uniform, reasonable and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

In T.D. 89–48, dated April 14, 1989, the text of guidelines for cancellation of claims for liquidated damages in effect at the time of enactment of the Omnibus Trade and Competitiveness Act was published. Because of changing enforcement priorities and the need for more efficient administrative processing, the guidelines require amendment. Through this document, Customs is publishing those changes.

New Sections XI and XII Added To Guidelines

The most significant change involves the addition of a new Section XII to the guidelines governing the cancellation of any claim for liquidated damages in which the petition for relief is filed untimely. Under the provisions of § 172.12(b)(1) of the Customs Regulations (19 CFR 172.12(b)(1)), a bond principal has 60 days from the date of mailing of the notice of liability for liquidated damages to file a petition for relief. If the principal does not pay the claim, arrange to pay the claim or file a petition within the 60-day period, then the surety is notified of the claim. Pursuant to the provisions of § 172.12(b)(2) of the Regulations (19 CFR 172.12(b)(2)), the surety has 60 days after notification to file a petition for relief.

Under the provisions of § 172.2(a) of the Regulations (19 CFR 172.2(a)), if any party liable for liquidated damages fails to pay, make arrangements to pay or file a petition for relief, the district director shall promptly refer the claim to the Department of Justice. If no response is received from both the principal and surety, Customs will issue bills to both parties, demanding payment of the unpaid claims. Billing is required before referral of the matter to the Department of Justice for commencement of judicial collection action in the Court of International Trade.

Under the provisions of § 172.23 of the Regulations (19 CFR 172.23), no petition may be entertained after a claim has been referred to the Department of Justice. In the past, Customs has articulated that, as a matter of policy, no late petitions would be entertained even if the matter had not yet been referred to the Department of Justice, but the petitioning period had expired. Under current procedures, if a principal or surety wishes to respond to the claim after billing has begun but referral has not yet occurred, it may only do so through the submission of an offer in compromise pursuant to the provisions of title 19, United States Code, section 1617, and section 161.5 of the Customs Regulations (19 CFR 161.5). Before acceptance of any offer, Customs must seek approval of the Office of General Counsel of the Treasury.

Through this document, Customs is changing its policy with regard to acceptance of late petitions. Petitions which are not filed timely will be honored, but mitigation will be less generous than that offered in those situations where petitions are filed timely.

Under new guidelines for mitigation to be offered when a petition is filed late, the district director will determine, based on the record and information submitted in the untimely filed petition, as to appropriate mitigation that would have been afforded had the petition been filed timely. The district director will then calculate the number of calendar days the petition is late. Weekends and holidays will not be excluded from the calculation of number of days late. He will then multiply the number of calendar days late by 0.1 percent. A calculation similar to that used to determine mitigation in late filing of entry summary cases will then be used, as the mitigation amount will be multiplied by the number of days late times 0.1 percent. A minimum additional payment of $100 on a late petition mitigation will be required.

For example, on November 1, Customs issues a CF–5955A against a bonded carrier, indicating that the carrier is liable for liquidated damages of $100,000 for delivering merchandise directly to the consignee in violation of the provisions of 19 CFR 18.8 and its custodial bond. The petition for relief is due from the bond principal by January 1. A petition is received on January 21, some 20 days late. A review of the petition shows that entry was not made on the merchandise nor were estimated duties paid by the consignee. Had an entry been filed, duties of $9,900 would have been paid. The carrier was shown to have had a good record of compliance, militating toward mitigation in the low end of the $100-$1,000 range for that type of violation. Accordingly, had the petition been filed timely, mitigation to $10,000 ($9,900 in an amount equal to approximate lost revenue plus $100) would have been afforded. Insofar as the petition was 20 days late, the time of lateness (20 days) will be multiplied by 0.1 percent, resulting in a multiplier of 2 percent. The $10,000 mitigation will be multiplied by 2 percent, resulting in a calculation of $200. The $200 amount is compared to the minimum charge of $100 for a late petition. Insofar as the computed amount is higher than the minimum amount, $200 would be added to the mitigation. Mitigation would then be afforded in the amount of $10,200.

As noted, under current procedures no petitions are accepted after billing of the principal and surety has commenced. While we are rescinding that policy through this document, in no case will a petition be accepted after the billing cycle has ended and the case has been determined by Customs to be eligible to be included in any surety

sanctioning action pursuant to the provisions of § 113.38 of the Regulations (19 CFR 113.38).

Inasmuch as both the principal and surety have separate petitioning times, a question arises as to whether the late charge will apply to a bond principal who fails to file a petition in the time period afforded to him by regulation, but then files a petition during the time period afforded to surety. Because the principal failed to respond timely during the time period permitted to him, Customs takes the view that his petition will be considered to be late, even if filed during the time period afforded to surety, and mitigation will reflect that late filing.

A new Section XI is added to the guidelines to provide cancellation standards involving claims for liquidated damages assessed against Centralized Examination Station (CES) operators for violations of their custodial bond. A Final Rule was published in the **Federal Register** on January 22, 1993 (58 FR 5596) as Treasury Decision (T.D.) 93–6, whereby Customs amended the Regulations to provide for a new part 118 (19 CFR part 118) and other amendments delineating the duties and responsibilities of CES operators. They are required, pursuant to new section 19 CFR 118.4(g), to maintain a Customs custodial bond in an amount set by the district director. The terms of the Customs custodial bond are found in § 113.63 of the Customs Regulations (19 CFR 113.63). Under the provisions of new section 19 CFR 151.15(b) (also added by T.D. 93–6), CES operators assume liability for merchandise for which they receipt or for which they transport to the CES under their operator's bond. Many of these violations are similar to those arising from breaches of § 113.62(f) of the basic importation bond which involve failure to deliver to or hold merchandise at the place of examination (current Section X of the Guidelines). Accordingly, the cancellation standards relating to failure to keep merchandise safe in the CES or failure to deliver merchandise to the CES will be similar. The explanation of changes to Section X will detail these standards.

The CES operator is also responsible, under the provisions of 19 CFR 118.4(h), for the maintenance and retention of records connected with the operation of the CES. Failing to maintain those records would involve a violation not involving merchandise and would result in liquidated damages of $1,000 for each day the violation continues. The bond cancellation standards for these cases will mirror the guidelines used for cancellation of claims incurred by bonded warehouse operators for violations not involving merchandise. The background information to the changes to Section VII describes these guidelines.

Changes to Section I

Section I of the bond cancellation standards includes guidelines for the cancellation of charges for late filing of entry summaries. The Option 1 immediate payment of a preset mitigated amount in lieu of filing a petition for relief is an extremely successful procedure and is being retained in late filing of entry summary cases. For those violators who do not wish to take advantage of the Option 1 mitigated amount, petitioning rights will be protected; however, under new guidelines, a party who chooses to petition for relief in a late filing case will no longer necessarily be afforded the Option 1 mitigation amount. If the petitioning party fails to show that the violation did not occur or that it occurred as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

Under the current guidelines, when a petition for relief is filed in a late filing case, a distinction is made between when the entry summary is late by less than 30 days and when it is late by more than 30 days. Different criteria apply to the review of those two types of petitions. This distinction has proved to be meaningless. Petitions are generally filed on the basis that the violation did not occur, or that it occurred as a result of contributory Customs error. In general, petitions are submitted without regard to whether the entry summary was more or less than 30 days late. Additionally, the factors delineated in the current guidelines to be considered when the entry summary is more than 30 days late are not consistent with the Option 1 procedure which does not turn on the intent of the violator, the circumstances causing the lateness or the past record of the violator. Accordingly, Customs is eliminating the distinction in the guidelines between cases that are late by more or less than 30 days.

The current guidelines note that ordinarily, mitigation granted under Option 2 shall not be in an amount less than that determined in accordance with Option 1 unless extraordinary mitigating factors are present. It has been Customs experience that those extraordinary circumstances generally relate to contributory Customs error or inaccurate detection of the violation. Accordingly, the guidelines are being amended to reflect this fact.

The guidelines do not indicate whether applicable merchandise processing fees, harbor maintenance fees and internal revenue taxes are included in the term "withheld duty" for purposes of mitigation of late filing cases. Questions have arisen as to the propriety of inclusion of these fees and taxes in the withheld duties upon which mitigation is based. In our view, the Government is deprived of not only duties but also these fees when an entry summary is filed and payment of duties and fees is tendered late. Accordingly, the guidelines are amended to provide a definition of "withheld duties" to include any fees and charges that are due and owing at the time of filing of the entry summary.

With the streamlining of the entry process and the onset of automation, multiple entry summaries are often filed by Customs brokers either in a combined single statement with a single duty check attached or a single electronic fund transfer occurring to satisfy the appropriate duties, fees and taxes. (This electronic fund transfer is known as the Automated Clearing House, or ACH.) On occasion, an entry statement check or an electronic fund transfer will be filed untimely. Because each individual entry summary on the statement is covered by its own importation bond, when an untimely filing occurs separate claims for liquidated damages are generated for each entry summary. Multiple assessments arise stemming from the same incident. Bond cancellation standards call for mitigation of each claim separately. This could involve mitigation of $100 or $200 per entry summary (depending upon whether Customs must bill for duties or the duties are paid voluntarily prior to billing) plus the concomitant interest charges.

Multiple liquidated damages assessments arise against numerous bonded parties because of a single error made with regard to the filing of the statement. An electronic fund transfer that is deficient a small amount of money on a large payment of duties will result in rejection of an entire statement. In these instances, mitigation based on each individual bond breach could provide an anomalous result and prove counterproductive to Customs desire to encourage the filing of statement entries. Accordingly, the bond cancellation guidelines are being amended to permit the district director, in his or her discretion, to grant extraordinary relief from multiple claims for liquidated damages when a statement is filed

untimely. If it appears from the facts available at the time of the breach that a Customs broker is responsible for the untimely filing of the statement, the district director is afforded the discretion to mitigate all claims arising from the breach in the same manner as an Option 1 calculation, except that rather than take a $100 base charge for each entry in the statement or batch (as the traditional guidelines dictate), one $500 base amount may be taken in settlement of all claims from the statement or batch. The appropriate interest calculation shall be added to the $500 base amount to arrive at the final Option 1 figure. If the responsible broker fails to pay such Option 1 mitigation within the time period prescribed or fails to petition for relief, the mitigation will be withdrawn and liquidated damages will be issued against all bond principals who have entries included in the statement. Those cases will then be treated individually within appropriate guidelines. District directors are encouraged to use the $500 guideline for first-time violators. Use of these guidelines on subsequent violations is at the district directors' discretion.

In Treasury Decision 93–37, published in the **Federal Register** on May 28, 1993, (58 FR 30979), Customs amended the provisions of the basic importation and entry bond to provide for liquidated damages when estimated duties, fees and taxes are paid in an untimely manner, when an estimated duty check is returned unpaid by a financial institution or when an electronic fund transfer is made without sufficient funds in the debited account. This claim for liquidated damages is assessed only when the entry documents are filed or electronically submitted timely, but the estimated duty payment is not timely. A claim for liquidated damages of double the unpaid estimated duties, fees and taxes is assessed. The new bond cancellation standards are amended to include these violations in the Option 1 late filing of entry summary guidelines.

Treasury Decision 93–37 also amended the provisions of the international carrier bond to provide for liquidated damages against international carriers who collect passenger processing fees as required by law, but who fail to remit those fees to Customs in a timely manner. Under the provisions of § 24.22(g) of the Customs Regulations (19 CFR 24.22(g)), carriers are required to pay passenger processing fees over to Customs no later than 31 days after the close of the calendar quarter in which they were collected. The failure to remit the collected fees as required by regulation results in assessment of liquidated damages equal to two times the collected but unremitted fees. The guidelines for cancellation of claims for late filing of estimated duty payments are amended to include guidelines for those claims established for late remission of collected passenger processing fees.

Changes to Section II

Section II includes the standards for cancellation of claims resulting from breaches of Temporary Importation Bonds (TIBs).

Under current guidelines, if merchandise is exported or destroyed but not within the bond period, or if it was exported but not under Customs supervision (if required), or if it was timely exported or destroyed but Customs was not notified (See C.S.D. 91–19 for timeliness of notification requirements) so as to cancel the bond, the guidelines call for cancelling the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the "bond amount" but not less than $100. This language has caused some confusion, insofar as the bond amount is often the full amount of a term bond. The bond amount can far exceed and double the duty or 110 percent of the duty claim that might arise because of a breach. Accordingly, Customs is amending this guideline by replacing the phrase "bond amount" with the term "the claim."

Customs has determined that less culpability exists in those cases where the merchandise is exported or destroyed in a timely fashion and the required proof is filed untimely as opposed to those instances where the merchandise is exported or destroyed outside the bond period. Therefore, the former claims will continue to be cancelled upon payment of an amount between 1 and 5 percent of the claim for liquidated damages (usually double or 110 percent of the duties), but in the latter instances (exportation or destruction outside the bond period), the claims will be cancelled upon payment of an amount between 5 and 10 percent of the claim, but not less than $200.

Under current guidelines, relief is granted to one times the duty on merchandise which is sold but later exported. This does not take into account whether merchandise is exported within or outside of the bond period. Customs is amending the guidelines to grant relief to one times the duty on merchandise which is sold but later exported within the bond period. For merchandise which is sold but later exported outside the bond period, the claim for liquidated damages will be cancelled upon payment of an amount equal to one and one-half times the duty. No relief shall be granted in these cases involving liquidated damages of 110 percent of the duties.

Under current policy, when Customs wishes to supervise the exportation or destruction of TIB merchandise, the entry is designated at the time of presentation for Customs supervision of exportation or destruction. If the importer fails to obtain Customs supervision of exportation or destruction, despite the specific designation by Customs, he receives the same mitigation as the importer who receives the requisite supervision but does so outside the bond period. Customs is of the view that, inasmuch as supervision of exportation or destruction is required so infrequently, the TIB importer who fails to obtain such supervision should receive less generous mitigation. Accordingly, the guidelines are amended to take an amount between ten and twenty-five percent of the claim amount, but not less than $500, when supervision is required but not obtained.

TIBs are sometimes taken on goods that are otherwise duty-free. Under the provisions of § 10.31(f) of the Customs Regulations (19 CR 10.31(f)), the district director is empowered to require a bond amount necessary to protect the revenue. In those instances where a breach occurs regarding otherwise duty-free merchandise, Customs should follow the appropriate guideline based on the circumstances surrounding the breach, but in no case should Customs cancel the claim upon payment of an amount less than two times the applicable merchandise processing fee or $100, whichever is greater.

Changes to Section III

Section III includes bond cancellation standards for claims which arise from violation of a custodial bond maintained by a bonded carrier. With the proliferation of overnight courier services, the volume of violations involving misdelivery of in-bond merchandise has risen. These result in violations of 19 CFR 18.8 and the assessment of claims for liquidated damages. In many instances, informal entries are filed on the misdelivered merchandise. The claims for liquidated damages are generally cancelled upon payment of $100, an amount that often exceeds the value of the misdelivered merchandise. Accordingly, Section III of the Customs Bond Cancellation Standards is amended to provide for cancellation upon payment of an amount between $50 and $1,000 of any

claim for which entry is made and duties, fees and taxes are paid via the informal entry process.

Additionally, many times in-bond violations are discovered when carriers come forward and disclose the violations to Customs. In order to encourage this behavior, new guidelines have been promulgated to permit mitigation to as low as $25 per entry when the in-bond carrier brings such violations to Customs attention.

Occasionally, the merchandise which is not properly delivered or is delivered short is, in fact, restricted merchandise. In those instances, mitigation guidelines based upon a loss of revenue do not take into account the possible inadmissibility of the merchandise. Accordingly, the guidelines are amended to specifically address these situations. Where the principal or surety can show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount between $100 and $1,000, consistent with guidelines for admissible merchandise; however, in those instances where the bond principal cannot show that entry was made, duties were paid and the merchandise was found to be admissible, the claim shall be cancelled upon payment of an amount equal to the duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

Finally, the in-bond guidelines are amended to permit use of the Option 1 mitigation procedures when the violation involves the late delivery of in-bond merchandise or the late delivery of in-bond documents to Customs.

Changes to Section IV

Section IV of the bond cancellation standards includes guidelines for cancellation of claims arising from failure to redeliver merchandise to Customs custody. An anomalous situation results under current guidelines for cancellation of claims for failing to mark merchandise with the country of origin (as required by the provisions of 19 U.S.C. 1304) when the merchandise is not marked and liquidation of the entry has become final, which would preclude Customs from assessing marking duties. Pursuant to current guidelines, if liquidation is final, thereby barring the assessment of marking duties, claims are cancelled upon payment of an amount equal to no less than 50 percent of the value. This places the bond principal whose entry has been liquidated and such liquidation has become final at a mitigation disadvantage compared to the bond principal whose entry has not been liquidated.

The latter principal, if a first-time violator, would receive mitigation to an amount between 10 and 25 percent of the value of the merchandise, after marking duties have been deposited. This would leave this principal with an ultimate liability, combining the payment of marking duties and the bond charge cancellation amount, of between 20 and 35 percent of the value of the shipment. Rather than further penalize the principal whose entry has been liquidated and such liquidation has become final, Customs is amending the guidelines to provide for mitigation to an amount between 20 and 35 percent of the value of the merchandise for the first-time violator whose entry has been liquidated and such liquidation has become final and to an amount between 35 and 60 percent of the value of the merchandise to the subsequent violator whose entry has been liquidated and such liquidation has become final, thereby barring the assessment of marking duties.

The guidelines are amended to add a section dealing with cancellation of bond claims that arise from failing to redeliver merchandise that is marked with a false designation of origin in violation of the provisions of 15 U.S.C. 1124 and 1125. These guidelines, designated as a new paragraph F provide for mitigation less generous than that afforded violations involving failing to mark merchandise with the country of origin.

The guidelines for cancellation of claims for violation of other Customs statutes and regulations permit cancellation of claims incurred by first-time violators upon payment of an amount between one and five percent of the value of the merchandise. This guideline does not provide Customs with sufficient mitigation flexibility. Accordingly, Customs amends the guidelines to permit cancellation of claims incurred by first-time violators upon payment of an amount between one and fifteen percent of the value of the merchandise.

A new guideline has been formulated for cases that involve failure to provide a sample to Customs. Under current guidelines, if an importer fails to provide a sample and liquidated damages result, the importer will receive mitigation in the one to five percent range because this is considered to be a violation of other Customs statutes or regulations. If an importer has a violative shipment, and a sample will serve to provide evidence of the shipment's inadmissibility, the importer could benefit in mitigation from failing to provide that sample.

For example, if an import specialist requests a sample to determine whether a shipment of merchandise bears a genuine or counterfeit trademark and the importer provides the sample and a violation is determined to exist, any resultant claim for liquidated damages would be cancelled using the guidelines for trademark violative goods (generally a 25–50 percent result). Under current guidelines, by failing to provide a sample, the importer would be granted relief in the one to five percent range. The guidelines are amended to provide that a claim for liquidated damages for failure to provide a sample will be cancelled consistent with guidelines in effect for any violation that is suspected with regard to the sample.

Finally, a new guideline is promulgated which will provide that in any case where redelivery or compliance with country of origin marking occurs, but not in a timely manner (i.e., outside the 30-day redelivery period or any other redelivery period which may be designated by the district director), the claim shall be cancelled upon payment of $100 or one percent of the value of the shipment, whichever is higher, but in no case shall the amount exceed $1,000. This guideline will only be appropriate for compliance that occurs prior to the issuance of the Notice of Claim for Liquidated Damages.

Change to Section VI

Section VI of the bond cancellation guidelines covers Guidelines for Cancellation of Claims Arising From Failure to Timely File Shipper's Export Declarations (SEDs). The guidelines provide for relief for the first and second violations incurred by a carrier, but after two violations, no relief is afforded from any claim. These guidelines do not take into account the fact that most carriers file large numbers of SEDs each year and that three violations may be a very small number when considering the total number of SEDs filed. Accordingly, Customs is amending the guidelines to remove the references to first or second violations. All claims will be cancelled upon payment of an amount between 25 and 50 percent of the claim but not less than $100, except that no relief shall be granted from any claims written for $50 or $100. If this mitigation does not have a deterrent effect upon a chronic violator, then cancellation upon payment of an amount exceeding 50 percent (or denial of relief) may be warranted. In order to promote administrative efficiency, the guidelines are also being amended to permit

Option 1-type mitigation in failure to file SED cases.

Change to Section VII

In Treasury Decision 92–81 (57 FR 37692), Customs published a Final Rule amending the Customs Regulations to provide for regulations specific to duty-free stores. The bond cancellation standards for violations of warehouse bond regulations are amended to make clear that they are also applicable to duty-free stores.

Under current policy, claims for liquidated damages for non-merchandise violations relating to the maintenance of a bonded warehouse are issued at $1,000 for each day that a violation continues. For example, under the provisions of § 19.12(a)(4) of the Regulations (19 CFR 19.12(a)(4)), a bonded warehouseman is required to update a permit file folder related to a bonded warehouse entry within two business days after any transaction related to that entry (generally a withdrawal for consumption) is accomplished. By failing to update within two business days, he is in breach of his bond. If the violation continues for 100 business days, he will be liable for liquidated damages of $100,000. This has provided some overly harsh claims for liquidated damages for relatively minor violations.

Through this document, Customs amends Section VII of the Customs Bond Cancellation Standards to provide for a limit of $10,000 on any continuing warehouse bond violation not involving merchandise. The promulgation of this cap on assessment of the claims will not affect guidelines for cancellation currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts. The guidelines are also amended to permit implementation of Option 1 procedures in all warehouse bond cases that involve claims for liquidated damages based upon defaults not involving merchandise.

The current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives issued concerning assessment of these claims, district directors are given broad discretion to issue claims for liquidated damages when breaches are detected. Issuance of claims for liquidated damages for violations arising from clerical error or mistake, as a matter of policy, is unnecessary in order to encourage compliance. Accordingly, if a claim for liquidated damages is established and the warehouse proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, it shall be *prima facie* evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the warehouse without permit, or failure to locate or account for merchandise in the warehouse.) The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not less than $100 nor more than $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section VIII

Under Section VIII of the guidelines, a reference is made to cancellation of claims for liquidated damages arising from violation of airport security regulations as published in § 122.14 of the Customs Regulations (19 CFR 122.14). In Treasury Decision 90–82, the provisions of § 122.14 were renumbered as 19 CFR 122.181 et. seq. The guidelines are amended to reflect that change.

For violations involving unauthorized entry into a secured area, failure to openly display or possess the identification card, strip or seal, or failure to surrender identification upon demand by an authorized Customs officer, under current guidelines a first violation is cancelled upon payment of $200, a second violation is cancelled upon payment of $500 and a third or subsequent violation results in no mitigation. If a bond principal has three employees or contractors who enter into a secured area without authorization, three violations immediately occur and any benefit given for a first or second violation dissipates. In order to provide a district director with more administrative discretion, the first, second and third violation distinctions are being eliminated. The district director will be able to cancel any claim arising from the violative conduct described above upon payment of an amount between $250 and $500. A district director will always have the discretion to deny relief in these cases based upon articulable aggravating factors. Inasmuch as the district director will be afforded the noted discretion, old paragraph F of the guidelines, which permits greater mitigation to a prior violator who does not incur a violation for six months, is being eliminated.

The guidelines for airport security violations are also being amended to permit the district director to apply Option 1 mitigation procedures, if the facts of a particular case are undisputed and the circumstances surrounding such case so warrant.

Change to Section IX

As with the guidelines relating to the cancellation of claims arising from violation of the warehouse bond, the guidelines for cancellation of claims arising from violation of the provisions of the Foreign Trade Zone bond also do not reference any cap on the assessment of claims for violations which do not involve merchandise. For purposes of liquidated damages assessment (as opposed to penalties which are assessed under the provisions of 19 U.S.C. 81s), as a matter of policy, the guidelines are amended to provide that claims will not be issued for any continuing violation in an amount that exceeds $10,000. The promulgation of this cap on assessment of the claims will not affect guidelines for cancellation currently in effect, but will serve to eliminate overly harsh assessments and concomitantly harsh cancellation amounts.

The guidelines are also amended to permit implementation of Option 1 procedures in all foreign trade zone claims for liquidated damages based upon defaults not involving merchandise.

As with warehouse bond violations, the current guidelines for claims arising from defaults involving merchandise do not accurately reflect commercial reality. The guidelines include a category of defaults arising from clerical error or mistake, that is a non-negligent, inadvertent error. Under Customs Directives governing Foreign Trade Zones issued concerning assessment of these claims, district directors are given broad discretion to issue claims when breaches of the bond are detected. Issuance of claims for liquidated damages for violations arising from clerical error or mistake is not always necessary, as a matter of policy, in order to encourage compliance. Accordingly, if a claim for liquidated damages is established and the Foreign Trade Zone proprietor can show that the claim arose from clerical error or mistake and no loss of revenue occurred, then the claim will be cancelled without payment. If a loss of revenue occurred, that fact shall be prima facie evidence that something other than clerical error or mistake occurred and other sections of the guidelines should be followed.

The guidelines for cancellation of claims arising from defaults involving merchandise which are based upon negligence do not distinguish between those violations involving merchandise that do not necessarily involve a threat to the revenue (i.e., manipulation of merchandise in the zone without Customs permit or not in accordance with the activity described in the permit) and those which do involve a threat to the revenue (i.e., removal of merchandise from the zone without permit, or failure to locate or account for merchandise in the zone). The guidelines are amended to provide for a revenue-based distinction in violations involving merchandise. Violations involving merchandise which result from negligence but involve no loss of revenue shall be cancelled upon payment of an amount between one and fifteen percent of the value of the merchandise but not to exceed $10,000. No distinction shall be made between violations involving restricted merchandise and violations involving merchandise which is not restricted; however, if the violation does involve restricted merchandise, that shall be considered to be an aggravating factor which will result in less generous mitigation. Violations involving merchandise which result from negligence but involve a potential loss of revenue shall be cancelled upon payment of an amount between one and three times the loss of revenue on the merchandise which cannot be accounted for, unless that merchandise is restricted, in which case the claim shall be cancelled upon payment of an amount between three and five times the loss of revenue, but in no case less than 10 percent of the value of such merchandise. If the violation is found to be intentional in nature, then no relief from the claim shall be granted.

Change to Section X

The current guidelines for cancellation of claims for liquidated damages arising from the failure to hold merchandise at the place of examination in violation of the provisions of § 113.62(f) of the Regulations (19 CFR 113.62(f)), are based on a standard that involves a determination by the deciding officer of a level of culpability (clerical error, negligence, intentional violation) of the bond principal. This standard is not followed in the guidelines in use for other similar misdelivery-type violations. Accordingly, through this document, Customs is abandoning the standard of finding a level of culpability.

In order to establish a violation under the provisions of 19 CFR 113.62(f), Customs must show that the bond principal obtained permission from Customs to have his merchandise examined at a place which is not in the charge of a Customs officer (e.g., his business premises, a Centralized Examination Station) and that the bond principal failed to: Hold the merchandise at such place until released by Customs; transfer such merchandise to any place directed by Customs; or keep all seals and cording intact.

Through this document, Customs amends the current guidelines so that when a party fails to hold the merchandise for examination or fails to transfer the merchandise to another place upon instruction from Customs obtained before the merchandise was released, the claim will be cancelled upon the following terms:

(1) If either the bond principal or surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited;

(2) If neither the bond principal nor surety files an entry summary and pays estimated duties, taxes and fees, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited;

(3) If the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal files an entry summary, pays estimated duties, taxes and fees and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000;

(4) If the merchandise not held for examination was suspected of being restricted or prohibited, and the bond principal does not file an entry summary or pay estimated duties or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties taxes and fees plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250; and

(5) If the violation is determined to be intentional in nature, no relief will be afforded.

For a violation which involves the failure to keep any Customs seal or cording intact until the merchandise is examined, the claim shall be cancelled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was the subject of tampering. If there is evidence of tampering, the claim shall be cancelled upon payment of an amount equal to the value of any missing merchandise.

Finally, an additional sentence shall be added to the guidelines to indicate that when the term "value" is used in any provision of these guidelines it means value as determined under 19 U.S.C. 1401a and not domestic value.

The new Section XI of the bond cancellation standards relating to CES operators will employ the same guidelines as those described in the changes to Section X with regard to violations involving failure to keep merchandise safe or deliver that merchandise to the CES.

The text of the guidelines, as modified, is set forth below.

Dated: April 12, 1994.

Samuel H. Banks,

Acting Commissioner of Customs.

Guidelines for Cancellation of Claims for Liquidated Damages

I. Guidelines for Cancellation of Claims for Liquidated Damages for Late Filing of Entry Summary Claims (19 CFR 142.15 and 113.62(b)), Late Payment of Estimated Duties Claims (19 CFR 113.62(a)(1)(i) and 113.62(k)(4)), and Late Remission of Collected Passenger Processing Fees (19 CFR 113.64(a))

A. Failure to file entry summaries timely. Pursuant to section 172.22(d) of the Customs Regulations, claims for liquidated damages for failure to file entry summaries timely shall be issued and mitigated as follows:

1. Notification of liquidated damages incurred; modified CF–5955A. Notices of liquidated damages incurred shall be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Calculation of mitigated amount; entry summary filed late. The amounts to be set forth under Option 1 on the CF 5955A shall be calculated as follows:

a. Dutiable entry summary filed late.

The bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. Duty-free entry filed late.

The bond principal or surety shall be charged an administrative fee of $100 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry summary was late.

c. Dutiable entry rejected and refiled late with no withheld duty, fees and taxes.

The bond principal or surety shall be charged $100.

d. Dutiable entry filed timely but rejected, refiled late with additional duties, fees and taxes owed.

The bond principal or surety shall be charged an administrative fee of $100 plus interest calculated on withheld duties, fees and taxes only, calculated at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late.

3. Entry summary not filed.

a. If at the time the demand for liquidated damages is issued the entry summary has not been filed, a claim for liquidated damages for non-filing of the entry summary shall be issued. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must file the entry summary and pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

b. Once the estimated duties, fees and taxes have been paid, a notice of claim for liquidated damages shall be issued for late filing of the entry summary, replacing the earlier notice of claim for non-filing of the entry summary. The late filing claim issued as a result of a non-filing situation shall be cancelled in accordance with the following guidelines once the estimated duties, fees and taxes have been deposited.

i. The bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the entry summary was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

ii. When the surety deposits estimated duties, fees and taxes, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

c. If no response from the principal or surety is received within 60 days from the date of issuance of the non-filing claim, a claim for liquidated damages for late filing shall be issued to both the principal and surety, but no Option 1 mitigation shall be offered.

4. Late filing of statement summaries.

a. If a Customs broker files an entry statement including multiple entry summaries for processing in an untimely manner, the district director may, in his or her discretion, cancel all claims for liquidated damages arising because of the late filing in accordance with the following standard:

The broker shall be charged, as an Option 1 amount, an administrative fee of $500 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary. This mitigation shall be afforded with regard to any first violation by a broker who is responsible for late submission of a statement summary. This mitigation may be afforded with regard to a subsequent violation, based upon the discretion of the district director.

b. Petition for relief.

i. If the broker files a petition for relief which demonstrates that the violation did not occur or occurred as a result of Customs error, all claims arising from the late filing should be cancelled without payment.

ii. If the broker files a petition for relief which fails to demonstrate that the violation did not occur or occurred as a result of Customs error, the claim shall be cancelled upon payment of $700 plus interest on any withheld fees and taxes calculated at the rate of 0.1 percent (.001) per calendar day that the entry statement was late.

c. Failure to pay Option 1 amount or petition for relief.

If a broker fails to pay the Option 1 amount or fails to petition for relief, Customs shall issue appropriate claims for liquidated damages against all bond principals and sureties and the mitigation guidelines enumerated in paragraph B. above shall be followed. In no case shall the $500 plus interest Option 1 amount afforded to brokers in

these cases be afforded to principals or sureties.

5. Suspension of immediate release privileges. If an importer fails to meet his obligations with regard to claims for liquidated damages for late filing of entry summaries, the district director is always empowered to suspend immediate release privileges of the importer. Alternatively, the district director may choose to assess liquidated damages but not offer an Option 1 alternative.

B. Late payment of estimated duties. Claims for liquidated damages for late payment of estimated duties shall be issued and mitigated as follows:

1. Notification of liquidated damages incurred; estimated duties not paid. If at the time the demand for liquidated damages is issued the estimated duties, fees and taxes have not been paid, the claim shall be issued on a CF–5955A citing 19 CFR 113.62(a)(1)(i) and 19 CFR 113.62(k)(4) as the bond conditions violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must pay estimated duties, fees and taxes or the surety must deposit estimated duties, fees and taxes.

2. Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, estimated duties, fees and taxes have been paid, the Notices of Claim for Liquidated Damages incurred shall be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs or financial institution error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. Calculation of Option 1 amounts.

a. If estimated duties, taxes and charges are paid untimely, but payment is made before Customs is required to issue a Notice of Claim as described in Subparagraph B(1) above, the bond principal or surety shall be charged an administrative fee of $100 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the withheld duty was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the withheld duty amount shall be rounded down to the next dollar. For purposes of these mitigation guidelines, the term "withheld duty" shall include unpaid duties, merchandise processing fees, harbor maintenance fees and any other taxes or charges due and owing at the time of filing of the entry summary.

b. If estimated duties, taxes, fees and charges are paid untimely by the bond principal after Customs has issued a claim for liquidated damages for non-payment of estimated duties in accordance with Subparagraph B(1) above, the bond principal shall be charged an administrative fee of $200 plus interest on the withheld duty at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar. For purposes of this calculation, the duty amount shall be rounded down to the next dollar.

c. When the surety deposits estimated duties, fees and taxes, in response to a demand made in accordance with Subparagraph B(1) above, the surety shall be charged an administrative fee of $200 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of the estimated duties, fees and taxes.

C. Failure to remit collected passenger processing fees. Claims for liquidated damages for untimely payment to Customs of collected passenger processing fees shall be issued and mitigated as follows:

1. Notification of liquidated damages incurred; passenger processing fees not remitted. If at the time the demand for liquidated damages is issued the collected fees have not been remitted to Customs, the claim shall be issued on a CF–5955A citing 19 CFR 113.64(a) and 19 CFR 24.22(g) as the bond condition and regulations violated. No mitigated amount shall be offered under Option 1. As a prerequisite for mitigation, the principal must remit the collected fees or the surety must deposit an amount equal to those unremitted fees.

2. Notification of liquidated damages incurred; estimated duties paid late; modified CF 5955A. If at the time of issuance of the demand for liquidated damages, the collected fees have been remitted, the Notices of Claim for Liquidated Damages incurred shall be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

3. Calculation of Option 1 amounts.

a. If the collected passenger processing fees are remitted untimely, but are remitted so that Customs is not required to issue a Notice of Claim as described in Subparagraph C(1) above, the bond principal or surety shall be charged an administrative fee of $200 plus interest on the unremitted fees at the rate of 0.1 percent (.001) per calendar day that the fees were late. The interest amount shall be rounded up to the next dollar.

b. If the collected but unremitted fees are remitted untimely by the bond principal after Customs has issued a claim for liquidated damages for failure to remit those fees in accordance with Subparagraph C(1) above, the bond principal shall be charged an administrative fee of $1,000 plus interest on the unremitted fee at the rate of 0.1 percent (.001) per calendar day that the payment was late. The interest amount shall be rounded up to the next dollar.

c. When the surety deposits an amount equal to the collected but unremitted fees, in response to a

demand made in accordance with Subparagraph C(1) above, the surety shall be charged an administrative fee of $1,000 plus 0.1 percent (.001) per calendar day between issuance of the demand on surety and payment of an amount equal to the collected but unremitted fees.

D. Referral of petitions to Headquarters. The district director may always refer a petition for relief to Customs Headquarters, Penalties Branch, for advice or guidance. This referral is at the discretion of the district director and shall not be allowed to a petitioner as a matter of right.

II. Guidelines for Cancellation of Claims for Liquidated Damages for Violation of Temporary Importation Bonds (19 CFR 10.39)

A. Cancel the claim without payment if the breach was for the benefit of the United States.

B. Cancel the claim upon payment of an amount equal to the merchandise processing fee that would have been due on the merchandise had an entry for consumption been filed (but not less than $100) if:

1. The breach was due wholly to circumstances beyond the importer's control and which could not have been reasonably anticipated i.e., destruction by accidental fire.

2. Merchandise which was the subject of the entry would have been entitled to free entry as domestic products exported and returned or under any other duty-free provision.

C. If the merchandise was exported or destroyed timely but Customs was not notified in a timely manner so as to cancel the bond, cancel the claim for liquidated damages upon payment of an amount between 1 and 5 percent of the claim (depending on aggravating or mitigating factors present), but not less than $100.

D. If the merchandise was exported or destroyed but outside the bond period, cancel the claim for liquidated damages upon payment of an amount between 5 and 10 percent of the claim (depending on aggravating or mitigating factors present), but not less than $200.

1. Examples of aggravating factors:

a. Importer is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the importer in relation to the total number of transactions engaged in.

c. Importer's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.

2. Examples of mitigating factors:

a. Importer cooperates with Customs personnel in resolution of the case.

b. Importer takes immediate remedial action.

c. Lack of experience in importing.

d. A small number of violations of this type in relation to the number of transactions engaged in.

E. If Customs designates a TIB entry for examination upon exportation or for supervision of destruction and the importer fails to obtain export examination or supervision of destruction, cancel the claim upon payment of an amount between 10 and 25 percent of the claim, but not less than $300, depending on the presence of aggravating or mitigating factors.

F. If the merchandise is sold, the following guidelines should be followed.

1. Grant relief equal to one times the duty on merchandise which is sold but later exported within the bond period.

2. Grant relief to one and one-half times the duty on merchandise which is sold but later exported outside the bond period.

3. If merchandise is sold but later exported outside the bond period, grant no relief if the bond amount represents 110 percent of the duties on the merchandise.

G. Grant no relief from the claim for liquidated damages in the following cases:

1. When the merchandise has entered into the commerce of the United States. If a petitioner claims the merchandise has been exported or destroyed, but does not present satisfactory proof of such exportation or destruction, the merchandise shall be presumed to have entered the commerce for purposes of these guidelines.

2. When the importer requests that a TIB entry be amended to a consumption entry after the merchandise has been released from Customs custody.

3. When TIB merchandise is sold, but not exported.

III. Guidelines for Cancellation of Claims for Shortage, Irregular Delivery, Non-Delivery or Delivery Directly to the Consignee of In-Bond Merchandise (19 CFR 18.8)

A. Documents filed late or merchandise delivered late.

1. Modified CF 5955A. Notices of liquidated damages incurred for this violation may be issued on a modified CF–5955A. If a modified form is issued, it shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* The bond principal or surety may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, the principal or surety waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. If merchandise is delivered untimely to the port of destination or exportation (not within 15 days if transported by air, 30 days if transported by vehicle, or 60 days if transported by vessel) but is otherwise intact, cancel the claim upon payment of an amount between $100 or $500, depending on the presence of aggravating or mitigating factors.

3. If merchandise is delivered timely but the documentation is not filed with Customs within 2 days of arrival in the port of delivery, cancel the claim upon payment of an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the bonded carrier consistently fails to deliver paperwork timely and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

B. Failure to deliver or shortage.

1. If the carrier shows that the merchandise was entered and duties, fees and taxes were paid (on any Immediate Transportation bonded movement) or that the merchandise was exported but not in accordance with regulation (on any Transportation and Exportation or Direct Exportation bonded movement), the claim may be cancelled upon payment of an amount between $100 and $1,000 depending on the presence of aggravating or mitigating factors.

2. If the bonded carrier can prove that the merchandise was never received or

landed, the claim should be cancelled without payment.

3. If the carrier cannot prove that the merchandise was entered and duties, taxes and fees paid or that it was properly exported or that it was never received or landed, the claim may be cancelled upon payment of an amount equal to the duties, fees and taxes that would have been due on the subject merchandise had it been entered for consumption plus an amount between $100 and $1,000.

4. If the merchandise delivered short is restricted or prohibited, and the carrier proves that an entry summary was filed, estimated duties were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

5. If the merchandise delivered short is restricted or prohibited, and the carrier does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

6. If the bonded carrier consistently has shortages and failure to deliver cases and Customs business is impeded by these repeated failures, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

C. Delivery of merchandise directly to the consignee.

1. If the carrier can show that the merchandise was entered and duties, taxes and fees paid, the claim may be cancelled upon payment of an amount between $100 and $1,000 depending on the presence of aggravating or mitigating factors.

2. If the carrier can prove that the merchandise was never received or landed, the claim should be cancelled without payment.

3. If the carrier cannot prove that the merchandise was entered and duties, taxes and fees paid or or that it was never received or landed, the claim should be cancelled upon payment of an amount equal to the duties, fees and taxes that would have been due on the subject merchandise had it been entered for consumption plus an amount between $100 and $1,000.

4. If the merchandise delivered directly to the consignee is restricted or prohibited, and the carrier proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, the claim should be cancelled upon payment of an amount between $100 and $1,000.

5. If the merchandise delivered directly to the consignee is restricted or prohibited, and the carrier does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

6. If the bonded carrier consistently delivers merchandise directly to the consignee, the district director may cancel any claim upon payment of a higher amount than the guidelines generally permit. The advice of Headquarters, Office of Regulations and Rulings, Penalties Branch, may be sought to determine appropriate mitigation.

7. If merchandise delivered directly to the consignee qualifies for entry via the informal entry process, and entry is made and duties, fees and taxes are paid on the improperly delivered shipment through that informal entry process, then the claim may be cancelled upon payment of an amount between $50 and $500, depending on the presence of aggravating or mitigating factors.

8. If merchandise is delivered directly to the consignee, and entry is made and duties, fees and taxes are paid on the improperly delivered shipment and the carrier brings the violations to the attention of Customs, the claims may be cancelled upon payment of $25.

D. Aggravating and mitigating factors.

1. Examples of aggravating factors:

a. Carrier is uncooperative, e.g., fails to provide information to Customs.

b. A large number of violations of this type by the carrier in relation to the total number of transactions engaged in.

c. Carrier's willful disregard of or carelessness toward responsibilities under applicable statutes, regulations or bond.

2. Examples of mitigating factors:

a. Carrier cooperates with Customs personnel in resolution of the case.

b. Carrier takes immediate remedial action.

c. Carrier inexperienced in handling in-bond shipments of the type in question.

d. A small number of violations of this type in relation to the number of transactions engaged in.

e. Circumstances intervened that were beyond the carrier's control (not negligence or error).

IV. Guidelines for Cancellation of Claims Involving Failure To Redeliver Merchandise Into Customs Custody or Failure To Comply With a Notice of Refusal of Admission Issued by Another Government Agency (19 CFR 141.113, 113.62(d) or 113.62(e))

A. Statutes and regulations enforced on behalf of the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).

1. The provisions of 21 CFR 1.97 (FDA Regulations) and 16 CFR 1500.271 (CPSC Regulations) require that the district director of Customs and the district director of the other agency be in agreement as to the amount to be accepted in cancellation of the claim for liquidated damages. All petitions for relief received in FDA and CPSC cases must be referred to those agencies for recommendation. By regulation Customs must follow the recommendation of FDA or CPSC.

2. EXCEPTION: When the sole requirement which has been imposed by FDA on refused merchandise is exportation or destruction under Customs supervision, apply guidelines to be used in the case of other Customs statutes or regulations in Subparagraph K below. See 21 CFR 1.97 and HQ Ruling 617367.

3. If any merchandise which is requested for examination by the other agency is available for examination at the place designated by such other agency but is not examined for any reason, Customs will not issue liquidated damages with regard to such merchandise or will cancel any claim related to such merchandise without payment.

4. If there is a compelling reason to depart from the recommendation of the other agency, state such reason in a referral memorandum and forward the case record to Customs Headquarters, Office of Regulations and Rulings, Penalties Branch.

B. Statutes and regulations enforced on behalf of other agencies (not FDA or CPSC).

1. Any petition received should be forwarded to the other agency for recommendation. As a rule, the recommendation of the other agency as to appropriate mitigation will be followed.

2. Customs is not required by regulation to follow the

recommendation of agencies other than FDA and CPSC. If the district director of Customs finds the recommendation of the other agency to be arbitrary and capricious, he may modify the recommendation to be consistent with Customs guidelines.

C. Country of origin marking cases—merchandise marked with the country of origin after liquidation of the entry and outside the 30-day marking period.

1. If the merchandise is marked outside the 30-day marking period *and* after liquidation of the entry, the entry should be reliquidated if liquidation has not become final, and marking duties should be assessed and collected.

2. If marking duties have been assessed and collected, cancel the claim upon payment of one percent of the value of the merchandise, but not less than $100 for a first-time violation. Cancel upon payment of between one and five percent but not less than $250 for a subsequent violation.

3. Grant no relief in any case until marking duties are assessed and collected; however, if liquidation is final and marking duties cannot be assessed, cancel upon payment of an amount equal to 11 percent of the value of the merchandise but not less than $100 for a first violation and between 11 and 15 percent but not less than $250 for a subsequent violation.

D. Country of origin marking cases—merchandise marked outside the 30-day period, but before liquidation.

1. If the merchandise is properly marked with the country of origin outside the 30-day period but before liquidation of the entry, liquidated damages are appropriate, but marking duties are not due.

2. For a first time violation, if the merchandise has been marked under Customs supervision outside the 30-day period, cancel the claim upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100.

3. For subsequent violations, cancel upon payment of an amount between one and five percent of the value of the merchandise but not less than $250 depending upon the number of violations and the presence of aggravating and mitigating factors.

E. Marking cases—merchandise not marked with the country of origin.

1. Relief from liquidated damages incurred is contingent upon deposit of marking duties. See 19 CFR 134.54(c).

2. For a first-time violation, where marking duties have been assessed and collected, cancel the claim upon payment of an amount between 10 and 25 percent of the value depending on the presence of aggravating or mitigating factors.

3. If it is a subsequent violation and marking duties have been assessed and collected, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise.

4. If marking duties have been assessed but not collected, grant no relief. If liquidation of the entry has become final, thereby barring the assessment of marking duties, cancel as follows:

a. If it is a first-time violation, cancel the claim for liquidated damages upon payment of an amount between 20 and 35 percent of the value.

b. If it is a second or subsequent violation, cancel the claim for liquidated damages upon payment of an amount between 35 and 60 percent of the value.

5. Examples of aggravating factors:

a. Offender is uncooperative, e.g., fails to provide information to Customs when requested.

b. A large number of violations of this type by the offender in relation to the total number of transactions engaged in.

c. Offender's experience in importing.

d. Offender's willful disregard or carelessness toward responsibilities under the applicable statutes or regulations.

6. Examples of mitigating factors:

a. Contributory Customs error, e.g., offender demonstrates that he acted in accordance with instructions given by Customs personnel.

b. Offender cooperates with Customs personnel in resolution of the case.

c. Offender takes immediate remedial action.

d. Offender's lack of importing experience.

e. A small number of violations of this type by the offender in relation to the number of transactions engaged in.

F. False designation of origin cases.

1. When merchandise is marked with a false designation of origin, and a claim for liquidated damages for failure to redeliver that merchandise results and the offender can demonstrate that the merchandise was marked with the correct country of origin outside the 30-day redelivery period, the claim should be cancelled upon payment of an amount equal to one percent of the value of the merchandise, but not less than $100 for a first violation. For subsequent violations of this type, the claim should be cancelled upon payment of an amount equal to one to five percent of the value of the merchandise, but not less than $250.

2. When merchandise is marked with a false designation of origin and the merchandise is not properly marked with the true country of origin and a first violation is involved, the claim should be cancelled upon payment of an amount between 25 and 50 percent of the value of the merchandise.

3. For a subsequent violation where the merchandise is not properly marked with the true country of origin, the claim should be cancelled upon payment of an amount equal to no less than 50 percent of the value of the merchandise.

G. Quota/visa violative merchandise.

1. If the importer fails to redelivery visa-violative merchandise, but subsequent to the assessment of the claim produces a valid visa or visa waiver, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100, depending on the presence of aggravating or mitigating factors.

2. If no visa is ever produced, and it is a first-time violation, cancel the claim upon payment of an amount between 20 and 30 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. If no visa is ever produced, and it is a subsequent violation, cancel the claim upon payment of no less than 40 percent of the value of the merchandise.

4. If the importer fails to redeliver quota merchandise, and it is a first-time violation, cancel the claim upon payment of an amount between 25 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating circumstances.

5. For subsequent quota redelivery violations, cancel the claim upon payment of no less than 50 percent of the value of the merchandise.

6. For merchandise that is not redelivered which is subject to both quota and visa restrictions, follow guidelines for cancellation of claims relating to quota-violative merchandise.

H. Copyright-violative merchandise.

1. If the importer fails to redeliver copyright-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the copyright holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the copyright holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the copyright holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

I. Trademark-violative merchandise.

1. If the importer fails to redeliver trademark-violative merchandise, but after assessment of liquidated damages receives a retroactive licensing of the merchandise from the trademark holder, cancel the claim upon payment of an amount between one and five percent of the value of the merchandise, but not less than $100.

2. If no authorization is received from the trademark holder, cancel a first-time violation upon payment of an amount between 20 and 50 percent of the value of the merchandise, depending on the presence of aggravating or mitigating factors.

3. For subsequent violations where no authorization of the trademark holder is received, cancel the claim upon payment of an amount equal to no less than 50 percent of the value of the merchandise. In order to receive any relief, extraordinary mitigating factors must be shown.

4. As a general rule, if the merchandise is counterfeit, no relief shall be granted. If the merchandise is genuine, that fact shall be considered as a mitigating factor in accordance with the above guidelines.

J. Failure to provide a sample.

1. If the importer fails to provide a sample within the time period prescribed, but then does provide the sample subsequent to the issuance of liquidated damages and can prove to the satisfaction of the import specialist that the sample is, in fact, from the shipment in question and the merchandise is not violative of any provision of law regarding its admissibility, the claim for liquidated damages may be cancelled upon payment of an amount between one and five percent of the value of the merchandise in the shipment, but not less than $100.

2. If the importer fails to provide a sample, cancel the claim consistent with guidelines for the violation which the sample was being examined. For example, if a sample is sought to determine whether merchandise is copyright-violative, and the importer fails to provide a sample, cancel the claim consistent with guidelines for failure to redeliver copyright-violative merchandise where no retroactive license is given.

K. Other Customs-enforced statutes and regulations.

1. If the merchandise is not redelivered for any reason not enumerated above, the claim may be cancelled upon payment of between 1 and 10 percent of the value of the merchandise depending upon the presence of aggravating or mitigating factors.

2. For subsequent violations, cancel the claim upon payment of an amount between 10 and 50 percent of the value of the merchandise, depending upon the presence of aggravating or mitigating factors.

3. If the issue is Customs supervision of exportation or destruction of merchandise which is the subject of a notice of refusal of admission issued by FDA or CPSC, and such exportation or destruction occurs, but not under supervision, cancel the claim in accordance with guidelines enumerated in subparagraphs K(1) or K(2) directly above.

4. If exportation or destruction (when ordered) never occurs, grant no relief.

5. Claims for liquidated damages arising for failure to comply with special marking for watch and clock movements, cases and dials as required by Chapter 91, Additional U.S. Note 4, United States Tariff Schedule (19 U.S.C. 1202) shall be cancelled in accordance with the guidelines promulgated subparagraphs K(1) or K(2) directly above.

V. Guidelines for Cancellation of Claims Arising From Failure To Provide Missing Documents (19 CFR 113.42)

A. Discretionary application of $25 provision. The regulatory provisions which permit cancellation of the bond upon payment of $25 are discretionary. In lieu of following such provision, the following guidelines should be used.

B. Issuance of modified CF–5955A. A modified CF5955A similar to that issued in cases involving late filing of entry summaries shall be issued in missing document cases.

1. *Option 1.*

a. Petitioner may pay a specified sum within 60 days and the case will be closed.

b. Such payment shall act as a waiver of his right to file a petition.

2. *Option 2.*

a. Normal petitioning procedures are in effect.

b. Mitigation shall not be permitted to an amount less than $100 greater than that afforded under Option 1 unless extraordinary mitigating factors can be shown.

c. Petitions shall be limited to the following issues:

i. Circumstances causing the delay in filing of the document.

ii. Extent of the lateness.

iii. Past record of the importer.

iv. Lack of intent to file documents untimely.

C. Missing documents not provided. When a claim for liquidated damages is issued and the missing documents have not been provided (as opposed to being provided untimely), a modified CF–5955A should not be issued.

D. Calculation of mitigated amount.

1. Document other than invoice filed late—cancel upon payment of $100.

2. Invoice filed late:

a. No resulting duty advance—cancel upon payment of $100.

b. Resulting duty advance—cancel upon payment of $100 plus 0.1 percent of amount of duty advance for each calendar day late.

3. Document not filed:

a. If absence of document will not affect duty due, cancel upon payment of $200.

b. If absence of document impedes Customs ability to appraise merchandise, cancel upon payment of $200 plus further duties determined by Customs to be owing after a reasonable appraisal of merchandise is made.

4. Document upon which a claim of conditionally free or reduced duty entry is based:

a. Filed late—Cancel upon payment of $100 plus 0.1 percent per calendar day late of duty that would have been due had the entry been liquidated as fully dutiable. This mitigation is not affected by the fact that the late-filed documents substantiated the conditionally free or reduced duty claim.

b. Non-filing.

i. For the first violation cancel upon payment of $200 plus liquidation of the entry as fully dutiable.

ii. For second or subsequent violation, cancel upon payment of $400 plus liquidation of the entry as fully dutiable.

E. Continuous course of conduct.

1. By an importer. If there is a continuing course of conduct by an importer where conditionally free entry is claimed, but documents supporting such claim are regularly missing from the entry and are not provided, the presumption after the fourth violation shall be one of bad faith in the filing of the entry as conditionally free. No relief from the claim should be afforded.

2. By a customs broker. If the violator is a Customs broker, a civil monetary penalty for violation of the provisions of title 19, United States Code, section 1641, may be appropriate.

F. Second or subsequent offenses.

Except as noted in subparagraph E above, second or subsequent offenses will not be considered in cancellation of claims other than as relating to

importers' past record in consideration of petitions for relief.

VI. Guidelines for Cancellation of Claims Arising From Failure To Timely File Shipper's Export Declarations (15 CFR 30.24)

A. Notification of liquidated damages; modified CF–5955A. Notices of liquidated damages incurred may be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

1. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount; however, in no case can the amount afforded in mitigation exceed the amount of the original claim.

B. Assessment amounts.

1. $50 per day for each of first three days late.

2. $100 per day for each day late beyond three.

3. Maximum assessment is $1,000.

C. Mitigation guidelines.

1. For each offense, the claim for liquidated damages may be canceled upon payment of an amount between 25 and 50 percent of the claim, but not less than $100.

2. Note: All claims assessed for $50 or $100 (1 or 2 days late) will receive no mitigation.

3. If a carrier has a poor record of compliance with shipper's export declaration filing requirements as compared to other carriers in a district, and mitigation in accordance with subparagraph (B)(1) above has had no deterrent effect, relief from the claim for liquidated damages may be denied.

VII. Guidelines for Cancellation of Claims Arising From Violation of Warehouse Proprietor's Bond (19 CFR Part 19, 19 CFR 113.63)

The following guidelines apply to violations involving bonded warehouse proprietors and duty-free store operators.

A. Defaults Involving Merchandise. Defaults involving merchandise include violations involving merchandise which:

1. Cannot be located or accounted for in a bonded warehouse.

2. Has been removed from a bonded warehouse without a Customs permit.

3. Has been deposited, manipulated, manufactured, or destroyed in a bonded warehouse:

a. Without proper Customs permit;

b. Not in accordance with the description of the activity in the permit; or

c. In the case of Class 6 warehouses, not manufactured in accordance with the formula specified in section 19.13(e) of the Customs Regulations (19 CFR 19.13(e)).

B. Defaults Not Involving Merchandise. Defaults not involving merchandise include those instances of failure, other than those involving merchandise, to comply with Customs laws and regulations. The same act shall not be regarded as both a default involving merchandise and a default not involving merchandise.

C. Defaults Involving Merchandise; Petitions. Petitions received in cases arising from defaults involving merchandise should be processed in accordance with the following.

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be cancelled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be cancelled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the warehouse, merchandise is removed from the warehouse without a permit), the claim shall be cancelled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes), but not less than $100. If the merchandise involved in the breach is restricted merchandise, the claim shall be cancelled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the warehouse proprietor conspires to remove merchandise from the warehouse without proper entry), there will be no relief granted from liquidated damages.

5. Aggravating factors.

a. Principal's failure or refusal to cooperate with Customs.

b. Large number of violations compared to number of transactions handled.

c. Experience of principal.

d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

a. Contributory error by Customs.

b. Small number of violations compared to number of transactions handled.

c. Remedial action taken by principal.

d. Cooperation with Customs.

e. Lack of experience of principal.

f. Merchandise which cannot be located or released without permit is returned to Customs custody.

D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the district director may cancel

the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be cancelled in conformance with the terms of these guidelines.

3. Clerical Error. If the breach resulted from clerical error, the claim may be cancelled without payment.

4. Negligence. If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. Intentional violation. If the breach was intentional, no relief shall be granted.

VIII. Guidelines for Cancellation of Claims Arising From Violation of Airport Security Regulations (19 CFR 122.181 et. seq.)

A. Assessment of claims for liquidated damages; Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF–5955A if the violation is of a type that warrants mitigation. The modified form shall specify two options from which the petitioner may choose to resolve the demand. The modified form should not be offered in any situation where the district director anticipates that substantial factual or legal issues may be raised.

1. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

2. *Option 2.* Petition for relief. Pursuant to the provisions of 19 CFR 172.11, the bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mitigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur or that the violation occurred solely as a result of Customs error. If the petitioner fails to demonstrate that the violation did not occur or that the violation occurred solely as a result of Customs error, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

B. Mitigation Guidelines.

1. Failure to conduct a background investigation or failure to retain background investigation records:

a. No mitigation unless extraordinary mitigating circumstances exist.

b. An example of an extraordinary mitigating circumstance would be destruction of records by accidental fire or act of God.

2. Unauthorized entry in secured area, failure to openly display or possess identification card, strip or seal or failure to surrender identification upon demand by an authorized Customs officer, cancel the claim upon payment of an amount between $250 and $500.

3. Failure to return, failure to report loss or theft of identification card, strip or seal or failure to notify district director that employee no longer requires access to a secured area:

a. First violation—cancel upon payment of $500.

b. Second or subsequent violation—grant no relief.

4. Presentation of an identification card, strip or seal by a person other than to whom it was issued:

a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor used the card, strip or seal in an improper manner and it had given warnings about such conduct to all its employees, agents or contractors.

b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in (B)(4)(a) above, cancel the claim upon payment of $200.

c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

5. Refusal of an employee, agent or contractor to obey any proper order of a Customs officer or any Customs order, rule or regulation.

a. For a first violation, cancel without payment if the bond principal can show that it was unaware that its employee, agent or contractor had acted contrary to proper order, rule or regulation and it had given warnings about such conduct to all its employees, agents and contractors.

b. For a subsequent violation against a bond principal who has received full cancellation of a claim as described in subparagraph (B)(5)(a) above, cancel upon payment of between $200 and $500.

c. For any violation where the bond principal was aware that its employees, agents or contractors were acting in this improper manner, no relief shall be granted.

IX. Guidelines for Cancellation of Claims Arising From Violation of Foreign Trade Zone Regulations (19 CFR Part 146, 19 CFR 113.73)

A. Defaults Involving Merchandise. Defaults involving merchandise include those violations relating to merchandise which:

1. Cannot be located or accounted for in the activated area of a foreign trade zone;

2. Has been removed from the activated area of the zone without a proper Customs permit; or

3. Has been admitted, manipulated, manufactured, exhibited, or destroyed in the activated area of a zone:

a. Without proper Customs permit; or

b. Not in accordance with the description of the activity in the Customs permit.

B. Defaults Not Involving Merchandise. Default not involving merchandise means any instance of failure, other than one involving merchandise or late payment of the annual fee, to comply with the laws or regulations governing foreign trade zones. A default involving one zone lot or unique identifier may not be combined with a default under another lot or unique identifier.

C. Defaults Involving Merchandise; Petitions. Claims arising from defaults involving merchandise should be processed in accordance with the following:

1. If the breach resulted from clerical error or mistake (a non-negligent inadvertent error), the claim should be cancelled without payment.

2. If the breach resulted from negligence but no threat to the revenue occurred (e.g., the merchandise was not manipulated in accordance with the permit to manipulate) the claim should be cancelled upon payment of an amount between one and 15 percent of the value of the merchandise involved in the breach, but not less than $100 nor more than $10,000. If the merchandise involved in the breach is restricted merchandise, that shall be considered an aggravating factor which shall result in mitigation on the higher end of the

range. If the merchandise involved in the breach is domestic status merchandise, that shall be considered a mitigating factor which shall result in mitigation on the lower end of the range.

3. If the breach resulted from negligence and a potential loss of revenue resulted (e.g., merchandise cannot be located in the zone, merchandise is removed from the zone without a permit), the claim shall be cancelled upon payment of an amount between one and three times the loss of revenue (loss of revenue to include duties, fees and taxes). If the merchandise involved in the breach is restricted merchandise, the claim shall be cancelled upon payment of an amount between three and five times the loss revenue but in no case less than 10 percent of the value of such merchandise.

4. If the breach is intentional (e.g., the foreign trade zone operator conspires to remove merchandise from the warehouse zone without proper entry being made), there will be no relief granted from liquidated damages.

5. Aggravating factors.

a. Principal's failure or refusal to cooperate with Customs.

b. Large number of violations compared to number of transactions handled.

c. Experience of principal.

d. Principal's carelessness or willful disregard toward its responsibilities.

6. Mitigating factors.

a. Contributory error by Customs.

b. Small number of violations compared to number of transactions handled.

c. Remedial action taken by principal.

d. Cooperation with Customs.

e. Lack of experience of principal.

f. Merchandise which cannot be located or which has been removed without permit is returned to Customs custody.

g. The merchandise involved in the breach is domestic status merchandise.

D. Defaults Not Involving Merchandise; Modified CF 5955A. Defaults not involving merchandise shall be processed in accordance with the following guidelines.

1. Modified CF 5955A. Notices of liquidated damages incurred may be issued on a modified CF–5955A. The modified form shall specify two options from which the petitioner may choose to resolve the demand.

a. *Option 1.* He may pay a specified sum within 60 days and the case will be closed. By electing this option in lieu of petitioning, he waives his right to file a petition. He may, however, file a supplemental petition, if he does so in accordance with the Customs Regulations and has some new fact or information which merits consideration in accordance with these guidelines.

b. *Option 2.* Petition for relief. The bond principal or surety may file a petition for relief. By filing a petition for relief, the petitioner will no longer be afforded the Option 1 mifigation amount. The district director shall grant full relief when the petitioner demonstrates that the violation did not occur. If the petitioner fails to demonstrate that the violation did not occur, the district director may cancel the claim upon payment of an amount no less than $100 greater than the Option 1 amount.

2. Maximum Assessments. In cases involving violations which do not involve merchandise which are assessed at $1,000 for each business day that the violation continues, a maximum of $10,000 shall be assessed for any one such continuing violation unless the district director can articulate a legitimate enforcement purpose for exceeding said limit. These claims shall be cancelled in conformance with the terms of these guidelines.

3. Clerical Error. If the breach resulted from clerical error, the claim may be cancelled without payment.

4. Negligence. If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default actually assessed, depending on the presence of aggravating or mitigating factors. For example, if a document is filed 100 days late, Customs, by policy, will generally limit the assessment to $10,000. Mitigation will be based on the $10,000 actual assessment and not relate to the $100,000 potential assessment.

5. Intentional Breach. If the breach was intentional, no relief shall be granted.

E. Cancellation of claims for late payment of the annual fee.

1. If the late payment resulted from clerical error or mistake, the claim may be cancelled upon payment of the amount due but not paid.

2. If the late payment resulted from negligence, cancel upon payment of the amount due but not paid plus the following percent of that amount for each day payment is in arrears:

a. First seven calendar days—not less than one-third of one percent nor more than three-fourths of one percent per day.

b. Second seven calendar days—not less than one and one-third percent nor more than one and three-fourths percent per day.

c. After the fourteenth calendar day—not less than two and one-third nor more than two and three-fourths percent per day.

3. If the late payment was intentional, no relief shall be granted.

X. Guidelines for Cancellation of Claims Arising From the Failure To Hold Merchandise at the Place of Examination (19 CFR 113.62(f))

A. Failure to Hold or Transfer Merchandise. If the principal seeks and obtains permission from Customs to have merchandise examined at a place other than at a wharf or other place in the charge of a Customs officer and fails to hold merchandise at the place of examination or fails to transfer the merchandise to another place upon instruction from Customs obtained before the merchandise was released, the claim will be cancelled upon the following terms.

1. If either the bond principal or surety files an entry summary and pays estimated duties, taxes and fees on the merchandise, Customs may cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

2. If neither the bond principal nor surety files an entry summary and pays estimated duties, taxes and fees on the merchandise, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

3. If the merchandise not delivered to or retained at the examination site is restricted or prohibited, and the bond principal or surety proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

4. If the merchandise not delivered to or retained at the examination site is restricted or prohibited, and the bond principal or surety does not prove that an entry summary was filed, estimated duties were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties plus an amount between 15 and 25 percent of the value of the merchandise but not less than $250.

5. If the violation is determined to be intentional in nature, no relief should be afforded.

B. Failure to Keep Customs Seal or Cording Intact. For a violation which involves the failure to keep any Customs

seal or cording intact until the merchandise is examined, the claim shall be cancelled upon payment of an amount between $100 and $500 if there is no evidence to indicate the merchandise in the sealed or corded shipment was tampered with. If there is evidence of tampering, the claim shall be cancelled upon payment of an amount equal to the value of any missing merchandise.

XI. Guidelines for Cancellation of Claims Arising From the Failure of a Centralized Examination Station (CES) Operator To Retain Merchandise at the CES (19 CFR Part 118, 19 CFR 113.63)

A. Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator.

1. If an entry summary is filed on the merchandise and estimated duties, taxes and fees are paid, Customs may cancel the bond claim upon payment of an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

2. If an entry summary is not filed or estimated duties, taxes and fees are not paid on the merchandise, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties that would have been due plus an amount between $100 and $1,000 if the merchandise was not suspected by Customs to be restricted or prohibited.

3. If the merchandise not delivered to or retained at the CES is restricted or prohibited, and the bond principal or surety proves that an entry summary was filed, estimated duties, taxes and fees were paid and the merchandise was deemed admissible with that entry summary, Customs will cancel the bond claim upon payment of an amount between $100 and $1,000.

4. If the merchandise not delivered to or retained at the CES is restricted or prohibited, and the bond principal or surety does not prove that an entry summary was filed, estimated duties, taxes and fees were paid or provide a showing that the merchandise was deemed admissible, Customs will cancel the bond claim upon payment of an amount equal to the estimated duties, taxes and fees plus an amount between 25 and 50 percent of the value of the merchandise, but not less than $250.

5. If the violation is determined to be intentional in nature, no relief should be afforded.

B. Failure to maintain records as required by regulation.

1. If a Centralized Examination Station operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise shall result.

2. If the breach resulted from clerical error, the claim may be cancelled without payment.

3. If the breach resulted from negligence, the claim may be cancelled upon payment of an amount between $100 and $250 per default, depending on the presence of aggravating or mitigating factors.

4. If the breach was intentional, no relief shall be granted.

5. Aggravating and mitigating factors shall be those enumerated in Section VII of these Standards.

XII. Guidelines for Cancellation of Claims When Petitions for Relief Are Filed Untimely

A. Petitions may be accepted at the discretion of the district director at any time prior to commencement of any sanctioning action against a bond principal or the issuance of any notice to show cause against a surety.

B. If a petition is received untimely, Customs shall first consider the petition as though it had been filed timely and shall determine the amount of mitigation that would have been afforded in the case had the petition been filed timely. For purposes of these guidelines, this determination shall be known as the base amount.

C. Once the base amount has been determined, Customs shall calculate the number of calendar days that the petition is late and charge an additional mitigation amount of 0.1 percent (.001) per day. In no case shall the additional amount be less than $100.

D. If the bond principal fails to file a petition during the time period provided by regulation, but then files a petition during the period in which the surety, by regulation, could file a petition, that petition will be considered as a late petition. The number of days late shall be calculated from the end of the 60-day petitioning period afforded to the principal.

Note: For purposes of all bond cancellation standards (Sections I–XII), the term value shall mean value as determined under 19 U.S.C. 1401a.

[FR Doc. 94–9118 Filed 4–12–94; 12:28 pm]

BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 15; 4–00236]

Surety Companies Acceptable on Federal Bonds; Municipal Bond Investors Assurance Corporation

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35805 to reflect this addition:

Municipal Bond Investors Assurance Corporation. Business Address: 113 King Street, Armonk, NY 10504–1610. *Phone:* (914) 273–4545. Underwriting Limitation[b]: $86,119,000. Surety Licenses[c]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. *Incorporated In:* New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: March 31, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–8918 Filed 4–13–94; 8.45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 72
Thursday, April 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–7874.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 14, 1994, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Legislative Recommendations—1994 (continued from meeting of April 5, 1994).

DATE AND TIME: Monday, April 18, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEM TO BE DISCUSSED:

MCFL Regulations: Summary of Comments and Draft Final Rules.

DATE AND TIME: Tuesday, April 19, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, April 21, 1994 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Convention Regulations (continued from meeting of April 14, 1994)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94– 9184 Filed 4–12–94; 8:45 am]
BILLING CODE 6715–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 16260, April 6, 1994.

PREVIOUSLY ANNOUNCED:

TIME AND DATE: April 19, 1994, 2:00 p.m.–4:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

CHANGES IN THE MEETING: Portion of the meeting to discuss designation of interim president will be closed to the public, as provided in 22 CFR 1004.4 (b).

Dated: April 12, 1994.

Adolfo A. Franco,
Sunshine Act Officer.

[FR Doc. 94–9153 Filed 4–12–94; 2:33 pm]
BILLING CODE 7025–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 4:00 p.m., Wednesday, April 20, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Personnel Action. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,
Secretary of the Board.

[FR Doc. 94–9200 Filed 4–12–94; 3:28 am]
BILLING CODE 7535–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, April 28, 1994.

PLACE: Hearing Room 965, One Lafayette Centre, 1120–20th Street, NW., Washington, DC 20036–3419.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *S.A. Healy Company* OSHRC Docket No. 89–1508.

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: April 12, 1994.

Earl R. Ohman, Jr.,
General Counsel.

[FR Doc. 94–9106 Filed 4–12–94; 10:39 am]
BILLING CODE 7600–01–M

Corrections

Federal Register
Vol. 59, No. 72
Thursday, April 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Bakersfield, CA

Correction

In notice document 94-7794 beginning on page 15378 in the issue of Friday, April 1, 1994 make the following correction:

1. On page 15379, in the first column, under "FOR FURTHER INFORMATION CONTACT", in the second line, "at 415/774-" should read "at 415/744-".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 940242-4042; I.D. 032894C]

Groundfish of the Gulf of Alaska

Correction

In rule document 94-7720, beginning on page 15134, in the issue of Thursday, March 31, 1994, make the following correction:

On page 15134, in the third column, under FOR FURTHER INFORMATION CONTACT:, in the first line, "Andrew N. Smoker, Fishery." should read "Andrew N. Smoker, Fishery Biologist, Fisheries Management Division, NMFS, (907) 586-7228."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 94-3]

Corrections Advisory: 1993 DOT Emergency Response Guidebook

Correction

In notice document 94-6943 beginning on page 14018 in the issue of Thursday, March 24, 1994 make the following correction:

1. On page 14018, in the third column, in the 26th line, "dioxide or" should read "dixoide or", and in the 27th line, "dioxide to" should read "dixoide to".

BILLING CODE 1505-01-D

federal register

Thursday
April 14, 1994

Part II

Environmental Protection Agency

40 CFR Part 455

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 455

[FRL–4859–7]

RIN 2040–AC21

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This is a proposed regulation under the Clean Water Act to limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works by existing and new facilities that formulate, package or repackage products containing pesticide active ingredients. This regulation proposes effluent limitations guidelines based on "best practicable control technology (BPT)", "best conventional pollutant control technology (BCT)", "best available technology (BAT)", new source performance standards (NSPS), and pretreatment standards for new and existing indirect dischargers (PSNS and PSES, respectively). The existing effluent limitations guidelines based on the achievement of BPT are not being changed by this proposed regulation. EPA is also proposing to establish a new subcategory which applies to refilling establishments whose principal business is retail sale.

DATES: Comments on the proposal must be received by June 13, 1994. EPA will conduct a workshop covering this proposal, in conjunction with a public hearing on the pretreatment standards portion of the proposal. The workshop will be held on June 7, 1994, from 9 a.m. to 12 noon. The public hearing will be conducted from 1:30 p.m. to 4:30 p.m. on the same day.

ADDRESSES: Submit comments in writing to: Ms. Janet Goodwin, Engineering & Analysis Division (4303), USEPA, 401 M Street SW., Washington, DC 20460.

The workshop and the public hearing will be held in EPA's Auditorium, Waterside Mall, 401 M Street SW., Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

The complete record for this rulemaking is available for review at the EPA's Water Docket; 401 M Street SW., Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional technical information write or call Ms. Janet Goodwin at (202) 260–7152. For additional information on the economic impact analyses contact Dr. Lynne Tudor at the above address or by calling (202) 260–5834.

SUPPLEMENTARY INFORMATION:

Overview

This preamble describes the scope, purpose, legal authority and background of this rule, the technical and economic bases and the methodology used by the Agency to develop these effluent limitations guidelines and standards.

Abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to the preamble of this document.

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Appendix A to the Preamble—Abbreviation, Acronyms, and Other Terms Used in This Document

I. Legal Authority

This regulation is being proposed under the authorities of sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95–217, and the Water Quality Act of 1987, Pub. L. 100–4), also referred to as "the Act."

II. Background

A. Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," (section 101(a)). To implement the Act, EPA is to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

These guidelines and standards are summarized briefly below:

1. Best Practicable Control Technology Currently Available (BPT) (Section 304(b)(1) of the Act)

BPT effluent limitations guidelines are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory for control of pollutants.

In establishing BPT effluent limitations guidelines, EPA considers the total cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements) and other factors as the EPA Administrator deems appropriate (Section 304(b)(1)(B) of the Act). The Agency considers the category or subcategory-wide cost of applying the technology in relation to the effluent reduction benefits. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

2. Best Available Technology Economically Achievable (BAT) (Sections 304(b)(2)(B) and 307(a)(2) of the Act)

In general, BAT effluent limitations represent the best existing economically achievable performance of plants in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of priority pollutants and nonconventional pollutants to navigable waters. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts (including energy requirements) (Section 304(b)(2)(B)). The Agency retains considerable discretion in assigning the weight to be accorded these factors. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include process changes or internal controls, even when these technologies are not common industry practice.

3. Best Conventional Pollutant Control Technology (BCT) (Section 304(a)(4) of the Act)

The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing BCT for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: Biochemical oxygen demanding pollutants (BOD), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). EPA's current methodology for the general development of BCT limitations was issued in 1986 (51 FR 24974; July 9, 1986).

4. New Source Performance Standards (NSPS) (Section 306 of the Act)

NSPS are based on the best available demonstrated treatment technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent numerical values attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES) (Section 307(b) of the Act)

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The Act requires pretreatment standards for pollutants that pass through POTWs or interfere with POTWs' treatment processes or sludge disposal methods. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based and analogous to the BAT effluent limitations guidelines for removal of toxic pollutants. For the purpose of determining whether to promulgate national category-wide pretreatment standards, EPA generally determines that there is pass-through of a pollutant and thus a need for categorical standards if the nation-wide average percent removal of a pollutant removed by well-operated POTWs achieving secondary treatment is less than the percent removed by the BAT model treatment system.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. (Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and does not use the percent removal comparison test described above. See 52 FR 1586, January 14, 1987.)

6. Pretreatment Standards for New Sources (PSNS) (Section 307(b) of the Act)

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like the new direct dischargers, have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements and Litigation

Section 304(m) of the Clean Water Act (33 U.S.C. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines"), and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Pesticide Chemicals category.

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc., challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia (*NRDC et al* v. *Reilly*, Civ. No. 89–2980). The plaintiffs charged that EPA's plan did not meet the requirements of sec. 304(m). A Consent Decree in this litigation was entered by the Court on January 31, 1992. The terms of the Consent Decree are reflected in the Effluent Guidelines Plan published on September 8, 1992 (57 FR 41000). This plan requires, among other things, that EPA propose effluent guidelines for the formulating, packaging and repackaging subcategories of the Pesticide Chemicals category by January, 1994 and take final action on these effluent guidelines by August, 1995. EPA filed a motion with the court in November, 1993 requesting an extension of time until March 31, 1994, for the EPA Administrator to sign the proposed regulation.

C. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) makes pollution prevention the national policy of the United States. The PPA identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction "include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. The term 'source reduction' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

The PPA directs the Agency to, among other things, "review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103). This directive led the Agency to implement a pilot project called the Source Reduction Review Project that would facilitate the integration of source reduction in the Agency's regulations, including the technology based effluent guidelines and standards. (See Section IV. B. for a more complete discussion of the Source Reduction Review Project.)

D. Prior Regulation and Litigation for the Pesticide Chemicals Category

EPA promulgated BPT regulations for the Pesticide Chemicals Category on April 25, 1978 (43 FR 17778; 40 CFR part 455), and September 29, 1978 (43 FR 44846; 40 CFR part 455, subpart A). The BPT effluent limitations guidelines established a zero discharge limitation for the pesticide formulating and packaging subcategory (subpart C).

Several industry members challenged the BPT regulation on April 26, 1978 and the U.S. Court of Appeals remanded them on two minor issues [*BASF Wyandotte Corp.* v. *Costle*, 596 F.2d 637 (1st Cir. 1979), *cert. denied, Eli Lilly* v. *Costle*, 444 U.S. 1096 (1980)]. The Agency subsequently addressed the two issues on remand and the Court upheld the regulations in their entirety [*BASF Wyandotte Corp.* v. *Costle*, 614 F.2d 21 (1st Cir. 1980)].

On November 30, 1982, EPA proposed additional regulations to control the discharge of wastewater pollutants from pesticide chemical operations to navigable waters and to POTWs (47 FR 53994). The proposed regulations included effluent limitations guidelines based upon BPT, BAT, BCT, NSPS, PSES, and PSNS. The proposed effluent limitation guidelines and standards covered the organic pesticide chemicals manufacturing segment, the metallo-organic chemicals manufacturing segment and the formulating and packaging segment of the pesticide chemical industry. In addition, the Agency proposed guidelines for test

procedures to analyze the nonconventional pesticide pollutants covered by these regulations on February 10, 1983 (48 FR 8250).

Based on the new information collected by EPA in response to the comments on the November 30, 1982 proposal, on June 13, 1984, EPA published a Notice of Availability (NOA) of new information (49 FR 24492). In this NOA, the Agency indicated it was considering changing its approach to developing regulation for this industry. EPA requested comments on the data. EPA published a second NOA of new information on January 24, 1985, which primarily made available for public review technical and economic data which had previously been claimed confidential by industry.

EPA issued a final rule on October 4, 1985, that limited the discharge of pollutants into navigable wastewaters and into POTWs (50 FR 40672). The regulation included effluent limitations guidelines and standards for the BAT, NSPS, PSES, and PSNS levels of control for new and existing facilities that were engaged in the manufacture and/or formulation and packaging of pesticides. The regulation also established analytical methods for 61 pesticide active ingredients for which the Agency had not previously promulgated approved test procedures.

Several parties filed petitions in the Court of Appeals challenging various aspects of the pesticide regulation [*Chemical Specialties Manufacturers Association, et al.* v. *EPA* (86–8024)]. After a review of the database supporting the regulation the Agency found flaws in the basis for these effluent limitations guidelines and standards. Subsequently, the Agency and the parties filed a joint motion for a voluntary remand of the regulation in the Eleventh Circuit Court of Appeals. The Court dismissed the case on July 25, 1986, in response to the Joint Motion.

Upon consideration of the parties' motion to modify the dismissal, on August 29, 1986, the Court modified its order to clarify the terms of the dismissal. The Eleventh Circuit Court of Appeals ordered that: (1) The effluent limitation guidelines and standards for the pesticide chemicals industry be remanded to EPA for reconsideration and further rulemaking; and (2) EPA publish a **Federal Register** notice removing the remanded pesticide regulation from the Code of Federal Regulations.

EPA formally withdrew the regulations on December 15, 1986 (51 FR 44911). Although the Agency found no errors in the analytical methods promulgated October 4, 1985, it withdrew these methods to allow for further testing and possible revision. The BPT limitations that were published on April 25, 1978, and September 29, 1978, were not affected by the withdrawal notice and remain in effect. Those existing BPT limitations regulations are not proposed to be changed in today's notice.

On September 28, 1993, (58 FR 50637] EPA published additional effluent limitations guidelines and standards under subpart A of part 455, which covers manufacturers of organic pesticide active ingredients.

E. Scope of Today's Proposed Rule

The regulation proposed today would cover the pesticide formulating, packaging or repackaging industry by establishing effluent limitations guidelines and standards for the following subcategories:

- *Subcategory C:* Pesticide Chemicals Formulating, Packaging and Repackaging.
- *Subcategory E:* Repackaging of Agricultural Pesticides Performed by Refilling Establishments Whose Principal Business is Retail Sales

EPA has already issued final effluent guidelines limitations and standards for the manufacturing of pesticide active ingredients covered by subcategories A and B and BPT effluent limitations guidelines for subcategory C (as previously mentioned). Subpart D contains the analytical methods promulgated as part of the September 28, 1993, rulemaking.

In today's notice, EPA is proposing to expand water pollution control requirements for the pesticide formulating and packaging subcategory. Effluent limitations for BAT, BCT and NSPS are proposed to be equivalent to BPT limitations previously established in regulations which are based on zero discharge. EPA is also proposing to establish PSES and PSNS for this subcategory. All formulating packaging and repackaging waste streams would be covered by the regulations except for certain waste streams from a subgroup of facilities that process products containing sanitizer chemicals, as defined in the regulations.

EPA is also proposing limitations for BPT, BCT, BAT limitations and NSPS as well as PSES and PSNS, for the repackaging performed by refilling establishments as a new subcategory.

III. Summary of Proposed Regulations

A. BPT

The BPT regulation promulgated in 1978 under subpart C of part 455 prohibits the discharge of process wastewater pollutants generated from formulating and packaging pesticide products. This regulation is not being changed. BPT regulations for subpart E, a new subcategory, are proposed. The new subcategory applies to repackaging agricultural pesticides when performed by refilling establishments whose principal business is retail sale. The proposed BPT for this subcategory would require that there be zero discharge of process wastewater pollutants.

B. BCT

EPA is proposing to establish BCT limitations equivalent to BPT limitations for both subcategories.

C. BAT

EPA is proposing to establish BAT limitations equivalent to BPT limitations for both subcategories.

D. NSPS

EPA is proposing to establish NSPS equivalent to BAT limitations for both subcategories.

E. PSES

EPA is proposing to establish PSES equivalent to BAT limitations (i.e., zero discharge) for both subcategories, except that a separate provision is proposed for subcategory C facilities that formulate, package or repackage sanitizer pesticides as listed in Table 8 to the proposed regulation. This separate provision requires zero discharge of process wastewater pollutants from only the "interior" wastestreams at these facilities as discussed in Section XII of this preamble.

F. PSNS

EPA is proposing to establish PSNS equivalent to NSPS for both subcategories.

IV. Overview of the Industry

A. Industry Description

The industry as a whole is referred to as the pesticide formulating, packaging and repackaging industry. The subcategories are referred to as:

- PFPR or subcategory C for the pesticides chemicals formulating, packaging and repackaging subcategory, (including sanitizer pesticides formulating, packaging and repackaging); and
- Refilling establishments, or subcategory E for the repackaging at refilling establishments whose principal business is retail sale.

The pesticide formulating, packaging and repackaging industry is made up of an estimated 5,200 facilities per EPA's

data base generated through the annual reports submitted by pesticide producing establishments. These facilities are located throughout the country, with greater concentrations of refilling establishments located in the midwestern and southeastern states to serve the agricultural market. Approximately 3,240 of these facilities are represented by the data base for this rulemaking, which was developed primarily based on 272 pesticide active ingredients covered by the manufacturing rule.

Pesticide formulating is the mixing of pesticide active ingredient with inert ingredients without a chemical reaction that changes the active ingredient. Pesticide formulations take all forms: Water-based liquid; organic solvent-based liquid; dry products in granular, powder, solid forms; pressurized gases; and aerosols. The formulations can be in a concentrated form requiring dilution before application or can be ready to apply. The packaging of the formulated pesticide product is dependent on the type of formulation. Liquids generally are packaged into jugs, cans, or drums; dry formulations generally are packaged into bags, boxes, drums, or jugs. Pressurized gases are packaged into cylinders. Aerosols are packaged into aerosol cans.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [cite] requires that all products making a claim of killing, mitigating or repelling pests be registered with EPA and bear a label directing the safe use of the product. In addition, production of all pesticide products must be reported annually to EPA. Thus, EPA has extensive data on the contents of pesticide products, their annual production, who formulates, packages or repackages these products and the uses for which these products are registered. EPA's Office of Water made extensive use of this data in its analysis of the pesticide formulating, packaging and repackaging industry.

Based on 1988 FIFRA establishment registration data, EPA identified 3,241 pesticide formulating, packaging, and repackaging facilities in the United States for the 272 active ingredients. Subsequently, EPA surveyed a stratified random sample of these 3,240 facilities. Based on this survey, facilities were identified, an estimated 1,305 as pesticide producing establishments involved in formulating, packaging and repackaging pesticide products and the remaining 1,134 facilities as refilling establishments whose principal business is retail sales that only repackage pesticide products. Based on these survey results, EPA estimates that for all of the PAIs covered by this rule, that in 1988 there were 2,000 facilities involved in formulating, packaging and repackaging pesticide products and 1,810 refilling establishments, using 1991 regulation data, these numbers increased to 3,200 and 2,800 facilities respectively. In addition, there were 48 pesticide manufacturing facilities that also formulated and packaged pesticide products. EPA estimates that there could be as many as 13 additional manufacturing facilities that also formulate, package and repackage pesticide products.

As described above, the formulating, packaging and repackaging industry produces products in different forms. EPA has observed formulating, packaging or repackaging done a number of different ways ranging from very sophisticated and automated formulation and packaging lines to completely manual lines. In general, for liquid products the process involves mixing the active ingredient with liquid inert ingredients in a tank and then transferring the product to containers. For dry products, the active ingredient may be sprayed in liquid form onto a dry substrate or it may be mixed in dry form. Dry products may undergo processes for mixing, grinding, sifting and finally packaging. Formulating aerosol products is the same as other liquid products, but the packaging is more complex and involves filling the container, capping it, drawing a vacuum on the container, adding propellant under pressure, and sealing the container.

Some other types of pesticide products manufactured include collars to repel and kill fleas and ticks, pesticides that are micro-encapsulated, and pesticides that are formed into solid shapes.

The pesticide industry is changing and efforts are being made to improve products to meet demands of consumers for less toxic and safer pesticides. For example, water-based solutions are gradually replacing organic solvents in liquid pesticide formulating. Developments in packaging also are underway. For example, the growing use of water soluble packages can reduce worker exposure to pesticides and minimize problems with disposal of packaging.

The 1,130 refilling establishments represent a new population of facilities that was identified in the Agency's Survey of Pesticide Producing Establishments. The survey sought to identify all facilities that reported formulating, packaging or repackaging pesticide products in their annual report of 1988. (This survey is described more fully in section V.A.2.) Somewhat unexpectedly, EPA discovered a significant population of facilities that reported repackaging only. These facilities are retail dealers of agricultural chemicals and farm supplies. These facilities repackage pesticide chemicals, usually herbicides, into refillable containers which are used to transport the pesticide to the site where it is applied.

The use of refillable containers became widespread during the 1980's to reduce the numbers of empty pesticide containers needing to be disposed of by farmers. In general, registrants distribute large undivided quantities of pesticides to dealerships (refilling establishments) where the products are stored in large bulk tanks. The dealer then repackages the pesticide from the bulk storage tanks to portable minibulk containers that generally have capacities around 100 gallons. The increased use of refillable containers led to an increased amount of herbicide stored in bulk quantities and the need to have a secondary containment system built around the bulk storage tanks.

Based on the results of the survey conducted to support this rulemaking, and focussing on the 272 PAIs, EPA estimates that 1,130 refilling establishments existed in the U.S. in 1988. This number is significantly lower than the population estimates for these types of facilities based on all PAIs and registration data, it is also lower than the estimates for the number of these facilities presently in existence, made by EPA in its proposed containers and containment standards rule (40 CFR part 165, 59 FR 6712, February 11, 1994) and by estimates of members of this industry. EPA believes this discrepancy between the 1988 and current numbers of facilities is due to the fact that repackaging into refillable containers was still a growing market, particularly in 1988. In addition, some industry representatives indicated that because it was so early in the creation of this market, many of the refilling establishments were unaware that their new service of repackaging pesticide products required them to be registered establishments and to report their annual production to the Agency. Thus, it is possible that many refilling establishments were not included in the population from which our sample was drawn.

B. Source Reduction Review Project

Section 6604 of the PPA directs the Administrator to set up an office for the purpose, among other things, of reviewing for the EPA Administrator the impact that Agency regulations would

have on source reduction. See PPA section 6604, 42 U.S.C. 13103; S. Rep. No. 526, 101st Congress, 2nd session at 2 (1990). This office is to "consider" the effect of Agency programs on source reduction efforts and to "review" EPA's regulations prior and subsequent to their proposal to determine their effect on source reduction.

The Source Reduction Review Project (SRRP) is a pilot program of the U.S. EPA to demonstrate the value and feasibility of taking a source reduction approach in designing environmental regulations. The project's goal is to ensure that source reduction measures and cross-media implications of rules are fully considered during development of regulations. To the extent practicable and consistent with existing law, and considering cost-effectiveness as appropriate, the Agency will emphasize source reduction as the basis of its rules. Where source reduction cannot be implemented, the Agency will consider recycling, then treatment and if necessary disposal technologies and practices as the basis of its rules. Even in cases where EPA cannot base its rule on source reduction practices, the Agency may encourage the regulated community to consider using innovative source reduction measures to comply with rules by providing information and economic incentives. To investigate opportunities for source reduction, EPA will consider source reduction in every phase of rule development: data collection, site visits, bench-scale technology testing, economic and technical analysis, multi-media impacts and agency and public reporting.

The PFPR effluent guidelines regulation was one of approximately 25 rules chosen for this pilot effort. Since initial data collection for this rule preceded the PPA, the Agency did not directly ask questions about source reduction in the industry survey. In every phase since the survey, however, the Agency has considered and evaluated opportunities for source reduction. In addition, the Agency has tried to coordinate this rule with efforts of the Office of Solid Waste in developing a hazardous waste listing for carbamates, a family of pesticide active ingredients.

As will be described in greater detail in Section VII of today's notice, *Water Use and Wastewater Characteristics*, wastewater is generated by pesticide formulating, packaging or repackaging facilities in relatively small volumes and on an intermittent basis. Furthermore, the source of virtually all wastewater is from cleaning something that has been in contact with the pesticide product. These characteristics afford considerable opportunities for pollution prevention and water conservation. As described in section VII of this preamble, EPA has studied and observed a number of pollution-preventing and/or wastewater conserving practices at a wide range of pesticide formulating, packaging or repackaging facilities. Because of the pollution prevention opportunities demonstrated by this industry, the Agency has included this rule in the SRRP. Some of the research on wastewater treatment described in the next section focuses on wastewater treatment that also allows for product recovery. This research was funded through the inclusion of this rule in the SRRP.

The SRRP designation for the PFPR effluent guidelines has prompted EPA to look more closely at what some of the likely outcomes would be of applying the identified candidate BAT technologies. For example, the Agency has looked beyond the usual estimation of the cost expected to be incurred by the industry to comply with this rule and the pollutants expected to be removed from the wastewater stream. EPA also has estimated the savings that might be realized due to the water conservation and product recovery practices that are part of the best available technology (See section XIV, *Economic Considerations*). EPA is also attempting to track the destinations of all wastes from the formulating, packaging or repackaging industry. Particular focus is, of course, placed on the wastewater, because it is the waste source for which there is the most data. EPA has attempted to anticipate the ultimate destination of wastewater pollutants to consider whether the proposed regulatory approach, and the expected action taken by the industry in response to the regulatory approach, will truly result in net environmental benefit or will merely result in transfer of pollutants to another medium. This will be discussed in more detail in Section XVI, *Non-Water Quality Considerations*. EPA believes that both of the SRRP-related studies (evaluating the savings and the pollutant destinations) will help to expand EPA's knowledge of sources of waste and opportunities for real pollution prevention and savings. This effort also points out data gaps that EPA may be able to fill during future data collection efforts. Such information could improve EPA's ability to carry out its mission to identify and control the more significant environmental problems.

EPA believes that source reduction and application of the Pollution Prevention Act's environmental management hierarchy is achieved in today's proposed rulemaking through the proposal's recognition of the following:

- At Pesticide Formulating, Packaging and Repackaging Facilities:
  - —*Source reduction* is accomplished by rinsing raw material containers and adding the rinsate directly into the product as it is formulated.
  - —*Recycle and reuse* can be applied to other interior wastewater streams that are held until they can be added to product when it is next formulated.
  - —*Treat and recycle* can apply to other wastewater sources.
- At Refilling Establishments:
  - —*Source reduction* can be accomplished by putting bulk tank storage areas and loading pads under roof, thus avoiding the creation of contaminated precipitation.
  - —*Recycle and reuse* can apply to minibulk and other equipment rinsates in an application mixture.

EPA recognizes that source reduction in the context of pesticide use generally has other important components. These include improving efficiency in pesticide production and formulating processes, improving application efficiencies, encouraging integrated pest management and low input sustainable agricultural practices, and encouraging the use of safer pesticides when pesticides are necessary. Currently, the Agency is pursuing efforts in these other areas, such as the pesticide containers and containment standards proposed rule, which is intended to reduce the numbers of pesticide containers needing disposal by setting standards and guidelines for the use of refillable containers.

V. Data Gathering Efforts

A. Technical Data

The technical data gathering efforts for this rulemaking involved several activities which are summarized in this section and in the technical Development Document for today's proposed rule. In general, EPA's data gathering efforts were conducted by six principal means: (1) Reviewing existing information from past rulemaking records and other Agency files pertaining to the pesticide chemicals formulating and packaging industry; (2) obtaining new information through a questionnaire sent to a stratified random sample of the industry; (3) conducting numerous site visits to observe pollution prevent practices; (4)

implementing a wastewater sampling and analysis program; (5) implementing bench-scale treatability studies; and (6) transferring data from the pesticide manufacturing subcategories and other sources. These are described further below:

1. Existing Databases

A pesticide, as defined by the FIFRA, includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant" (40 CFR 152.3(s)). Under FIFRA, all pesticides must be registered with EPA prior to shipment, delivery, or sale in the United States. A pesticide product is a formulated product; that is, it is a mixture of at least one "active ingredient" and "inert" diluents. Each formulation has a distinct registration.

Mandatory reporting of yearly pesticide production is required by FIFRA as part of the pesticide registration process. Pesticide producing establishments, including formulating, packaging or repackaging facilities, are required to provide information to EPA on registered pesticide products, such as product registration numbers, product classification, type and use, and production rates. These data are submitted as part of the "Pesticide Report for Pesticide-Producing Establishments" (EPA Form 3540–16) and are stored in the FIFRA and TSCA (Toxic Substances Control Act) Enforcement System (FATES) data base. (The FATES data base has been renamed the Section Seven Tracking System (SSTS).) Accessing the FATES data base gave the population data from which the stratified random sample of formulating, packaging and repackaging facilities were drawn. The databases for more recent years (1989 through 1991) were also accessed to identify any changes in the make-up of the industry and to evaluate the applicability of this regulation, as will be discussed in more detail later in this preamble.

For the survey of pesticide chemicals formulating, packaging or repackaging industry, the Agency focused on the 272 active ingredients or classes of active ingredients that were the basis of the census for the pesticide manufacturing facilities. In 1988, EPA decided to separate the pesticide manufacturing rulemaking, which at that time was well underway, from the pesticide formulating, packaging or repackaging rulemaking. However, as the subcategories are all included in the same point source category and were initially intended to be developed concurrently, EPA continued to use the same list of 272 active ingredients that formed the basis for the pesticide manufacturing data base for the pesticide formulating, packaging and repackaging subcategories. (For the final rule covering organic pesticide chemical manufacturing, three of the active ingredients were dropped from coverage: biphenyl since it was no longer a registered pesticide active ingredient and ortho- and para-dichlorobenzene whose manufacture is covered by another effluent guidelines regulation.)

The initial basis of this list was the 284 active ingredients and classes of active ingredients presented in Appendix 2 of the October 4, 1985 regulation (50 FR 40672). These 284 active ingredients were originally selected in 1977 on the basis of significant production and/or commercial use. EPA then expanded this list to 835 active ingredients by adding the following group of active ingredients:

- All salts and esters of listed organic acids (such as 2,4-D);
- All metallo-organic active ingredients (consisting of an organic portion bonded to arsenic, cadmium, copper, or mercury);
- All organo-tin active ingredients;
- All active ingredients that appeared to be structurally similar to other listed active ingredients (such as organo-phosphorus pesticides); and
- Any other active ingredients with an analytical method previously demonstrated to be applicable to wastewater.

EPA excluded from this list of 835 active ingredients those active ingredients already subject to regulation under other effluent guidelines—specifically, those for which the manufacturing is regulated by the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR part 414), Inorganic Chemicals Manufacturing (40 CFR part 415), and Pharmaceutical Manufacturing (40 CFR part 439) effluent guidelines. Information provided to EPA under FIFRA indicated that 335 of those 835 active ingredients were produced in 1984–1985, and the other 500 were not produced for domestic use in either 1984 or 1985. An additional 15 (of the 835) were added to the 335 active ingredients because those 15 active ingredients had been manufactured prior to 1984 and might still be manufactured for export. The list of 350 active ingredients and derivatives, such as salts and esters of an active ingredient, was consolidated into an active ingredient class, to arrive at a total of 272 active ingredients and classes of active ingredients. Because the consolidated classes include all elements of the class, such as all salts and esters of 2,4-D (i.e., not just those in use in 1986), the 272 active ingredients and classes of active ingredients actually include 606 of the 835 specific active ingredients. This list of active ingredients was used as a basis for the effluent limitations guidelines and standards for the pesticide chemicals manufacturing subcategories (58 FR 50367).

2. Survey Questionnaire

A major source of information and data used in developing effluent limitations guidelines and standards is industry responses to questionnaires distributed by EPA under the authority of section 308 of the Clean Water Act. These questionnaires typically request information concerning the generation of wastewater and pollutants as part of production processes, treatment, and disposal, as well as wastewater treatment system performance data. Questionnaires also request financial and economic data for use in assessing economic impacts and the economic achievability of technology options. In 1988 EPA submitted a draft questionnaire to pesticide industry trade associations, environmental public interest groups and a number of pesticide formulating, packaging or repackaging facilities for review and comment. EPA subsequently revised the draft questionnaire and in 1989 distributed it to nine facilities for a pretest. Further revisions were made to the form following the pretest, and it was then submitted to the Office of Management and Budget for review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB cleared the questionnaire on January 30, 1990 (OMB control number 2040–0139).

FATES data files were accessed to obtain information on product registrations containing one or more of the 272 targeted PAIs. This dataset was used to define a sampling frame of 3,241 facilities identified in the 1988 Fates database as formulators, packagers, or repackagers of these PAIs. The sampling frame was partitioned into 51 strata. The stratification was done according to pesticide production amount (large, medium, small, and tiny) and pesticide type (fungicide, herbicide, insecticide, and other and combinations of these types for facilities that formulate and/or package more than one type). A total of 611 facilities was selected randomly from the sampling frame to comprise the questionnaire survey sample. The survey was also distributed to a census

of 91 pesticide manufacturers that also formulate, package or repackage pesticides which were identified from the "Pesticide Manufacturing Facility Census for 1986". Two of the 611 sampled facilities and two of the 91 manufacturers were sampled twice and received duplicate surveys so the actual number of facilities sent surveys was 609 sampled facilities and 89 manufacturers for a total of 698 surveyed facilities. EPA received responses from 676 (587 randomly sampled facilities and 89 manufacturers) of the 698 facilities that received the questionnaire (a 97 percent response rate).

Of the 676 facilities that responded to the survey, 349 indicated that they were formulating, packaging or repackaging pesticide products in 1988 and 203 were refilling establishments. One hundred nineteen (119) facilities did not formulate and package pesticide products in 1988. Of the remaining 5 facilities that were sent questionnaires, 3 had gone out of business, one was released from completing a questionnaire and one sampled facility merged with a second sampled facility. A small number of facilities (22) did not submit questionnaires. EPA believes most of these facilities are refilling establishments by virtue of their stratum, the company name and their locations. Since the survey had drawn significant numbers of refilling establishments, EPA did not further pursue these questionnaires. Based on the responses to the surveys from the randomly sampled facilities and the census of manufacturers, quantitative estimates of pesticide formulating, packaging or repackaging activities were computed for the entire U.S. population of such facilities.

EPA also received questionnaires from six facilities that were not selected in the random sample part of the census of manufacturers. Three of these facilities had participated in a pretest of the questionnaire but were not chosen in the sample. The remaining three were facilities that asked if they might submit voluntary surveys. The responses to these questionnaires were reviewed but for statistical reasons were omitted from any further analysis for the purpose of national population estimates.

The questionnaire was divided into four sections. An introductory section asked for information on the facility as a whole and whether it was involved in formulating, packaging or repackaging any of the 272 active ingredients in 1988. If the facility did not formulate, package or repackage pesticide products containing any of the 272 active ingredients then no further information was required. If the facility did formulate, package or repackage pesticide products containing the 272 active ingredients in 1988, then questions were asked regarding water use. If the facility used no water in their process and thus, the response to all water use questions were negative, then a minimal of additional financial information was requested and no further information was required. Facilities were also excused from responding to the other sections of the questionnaire if 1988 was the last year that they formulated, packaged or repackaged pesticide products containing the 272 active ingredients.

The remaining sections were as follows: (1) A technical section which requested details on production and water use practices, volumes, and disposition, and wastewater treatment and characteristics; (2) an economic section that asked for detailed information on assets, debts, costs and revenues on the facility level as well as firm level data; and (3) the last section of the questionnaire that requested the names of contacts should EPA need to follow-up on the data provided and that requested a certification that the information was accurate.

EPA also requested that pesticide formulating, packaging or repackaging facilities submit wastewater self-monitoring data. Fifty facilities submitted some form of self-monitoring data. Six facilities submitted data only for conventional pollutants, while ten of the 50 facilities submitted priority pollutant and/or nonconventional pollutant data (including the active ingredients). However, most of these data were not useful in characterizing pesticide process wastewaters. In many cases, only one detection was reported for a specific pollutant, or the sampling locations represented commingled wastewaters containing pollutant discharges from other industrial processes, such as pesticide manufacturing, organic chemical manufacturing or formulating, packaging or repackaging other products including pesticide products containing active ingredients not included in the list of 272 active ingredients. Often the data represented sampling results only at the end-of-pipe plant discharge. Self-monitoring data from only 10 facilities included priority pollutant discharges in raw pesticide process wastewaters.

The questionnaire was mailed to a stratified random sample of U.S. pesticide formulating and packaging facilities with stratification done according to pesticide production amount (large, medium, small, and tiny) and pesticide type (fungicide, herbicide, insecticide, other and combinations of these types for facilities that formulate and/or package more than one type). The survey was also distributed to a census of pesticide manufacturers that also formulate, package or repackage pesticides. Based on sample results from the survey, quantitative estimates of pesticide formulating, packaging or repackaging activities were computed for the entire U.S. population of such facilities. The results of these computations will be referred to as national stratified estimates. The national stratified estimates generated, include point estimates of totals, means (i.e., averages) and medians (i.e., the point at which an equal number of responses are above and below the value) and their associated standard errors.

In the 1988 survey, the facilities were originally classified into strata based on each facility's projected 1989 pesticide product type and 1989 projected production volume, and not based on actual reported 1988 product types and production volume, as intended. As such, the sample facilities were selected at random from strata based on 1989 projected production characteristics when the ultimate goal was to report production characteristics for strata based on 1988 production levels and product types. In statistical terms, some of the facilities classified using the original scheme were misclassified under the derived scheme for stratification based on 1988 production only (e.g., a facility classified as "large" based on its estimated 1989 production level might instead be classified as "medium" when the 1988 production level is used). Because of instances of misclassification the sample had to be post-stratified into correct 1988 based strata. Also, the typical formulas used to generate national estimates of totals and standard errors of these totals are not wholly correct. Instead alternate formulas have been used based on methods for estimating totals on subpopulations as described in Sampling Techniques, 3rd Edition by Cochran (1977, p. 143–144).

In general, misclassification of members in the final strata can impact the estimated standard error. Most often, a larger variance will be estimated than what would be obtained using the typical formulas for stratified random samples. However, for the pesticides survey data, the degree of misclassification is small enough that a large change in the estimated standard errors was not expected. To test this expectation, one would ideally rechoose sample facilities based on the actual 1988 production-levels and product

type and re-estimate standard errors using the typical formulas for a stratified random sample with no misclassification. Since that is not feasible, a reasonable comparison can still be made by examining the standard errors obtained by applying the usual formulas to the original stratification scheme based on 1989 projected production levels. Because the same algorithm would be used for selecting the number of facilities within each stratum, regardless of the stratification scheme employed, it can be assumed that the estimated standard errors from the original stratification will be representative of the results that would have been computed had the actual 1988 production characteristics been used to stratify the target population initially.

Comparison of the estimates for selected survey questions, including the distribution of facility revenues and the distribution of facilities ownership and operation type, indicates that, as expected, the estimated standard errors on the national totals are generally larger after using Cochran's formulas to account for the misclassification than those computed assuming no misclassification. The magnitude of the differences was quite small (usually no more than one or two percent) for the standard errors on the overall totals, but was in a few cases 20 percent or more for very small strata.

Though restratification of the survey facilities often increases the estimated standard errors, the national totals themselves will be exactly the same mathematically, as long as the same set of facilities is used to compute the estimates. In the PFPR project, a small number of the facilities which were included in the sample because of projected 1989 production figures did not have any actual production in 1988. These facilities were therefore not a part of the targeted facility universe and so were excluded from the restratified calculations. Even so, the overall national totals showed very minor changes (on the order of at most four to five percent) when the restratified estimates were compared with totals based on the original stratification.

As noted above, a number of facilities sent questionnaires and included in the original sample did not respond to the survey and hence were missing from the database. If these facilities had been known to be actual PFPR operations, it might have been possible to impute data for the survey items of interest. However, since many facilities in the sample indicated that they were not PFPR operations, it is possible that at least some of the non-respondents were also not PFPR operations, and hence not part of the target population. In this case imputations for these facilities would have little meaning. Those facilities that did not respond to the questionnaire were therefore omitted from any further statistical analysis.

Because some facilities failed to answer all the survey questions, data were imputed for missing responses. The amount of missing data was negligible in most instances. The only case where a significant amount of data was imputed involved wastewater volumes and production-normalized wastewater volumes, which were reported on a line-by-line basis for each combination of wastewater source and destination. Approximately 10% of the volume and/or production-normalized volume entries were missing and subsequently imputed.

The imputation strategy utilized provides an unbiased estimate of the total for any given variable, when used in conjunction with the formulae described above for national stratified estimates in the context of misclassified strata.

3. Site Visits

In order to develop effluent guidelines for this industry, EPA conducted site visits and sampling at a number of pesticide formulating, packaging or repackaging facilities, and at pesticide manufacturing facilities which also are used as formulating and packaging facilities. Typically, during guidelines development, EPA depends on a wastewater sampling program to characterize the raw wastewater and to establish which treatment systems operate at BAT and NSPS levels. In the case of the pesticide formulating, packaging and repackaging industry, EPA could not conduct a sampling program as extensive as had been conducted for some of the previous effluent guidelines rulemakings. This is because: (1) Only 12 facilities surveyed reported operating on-site treatment systems that treated only PFP water (out of those 12 facilities one was a voluntary participant; not part of the sample); (2) facility operating schedules are very unpredictable due to the batch nature of their operations and just-in-time production philosophy; and (3) due to the batch nature of the formulating and packaging processes, treatment is almost always operated on a batch basis making it very difficult to characterize long-term treatment performance (long-term even for a 3-day period). Therefore, EPA had to implement a more widespread and in-depth site visiting program than usual. Between 1991 and 1993, EPA visited 51 facilities (2 of these facilities are not survey or pretested facilities and, therefore, did not fill out a questionnaire) and collected wastewater samples from 13 facilities (one facility was sampled during two different production periods for a total of 14 sampling episodes). The site visits were conducted to provide EPA with an in-depth look at actual formulating, packaging or repackaging operations and wastewater generation and wastewater handling practices.

4. Wastewater Sampling and Analytical Programs

Seven of the 14 pesticide formulating, packaging or repackaging sampling episodes included sampling of wastewater treatment systems and all 14 included sampling for raw wastewater characterization.

Raw wastewater characterization data were collected to provide EPA with concentration data for pesticide formulating, packaging or repackaging wastewaters for a number of different wastewater sources. EPA collected 72 raw wastewater samples which contained 45 different active ingredients at 14 different episodes. Wastewater samples were collected for the following wastewater sources: equipment interior cleaning, exterior equipment/floor wash, air or odor control scrubber water, DOT aerosol test bath, drum or other raw material container rinsate, laboratory equipment cleaning water, laundry and showers. A number of these samples were collected to characterize wastewater that was intended for reuse (the concentration of active ingredients in these samples is expected to be high). Samples of commingled raw wastewater sources were also collected. Raw wastewater samples are typically analyzed for levels of conventional pollutants, non-conventional pollutants (including active ingredients), metals, semi-volatile and volatile organics.

Facilities were selected for sampling of treatment systems after an evaluation of existing data and responses to the questionnaires and follow-up telephone conversations. Facilities were selected for sampling if: (1) The facilities were operating an apparently effective wastewater treatment system (especially if the water treated was intended for reuse); (2) the treatment system was used to treat pesticide formulating, packaging or repackaging wastewater only; (3) the treatment system was similar to a system EPA was evaluating in a treatability study (the facility treatment system could then be used as a benchmark); (4) the expected active ingredients could be analyzed using developed analytical methods; and/or

(5) the facility was treating wastewater that contained active ingredients (or structural groups) for which data was lacking.

As mentioned above, sampling of wastewater treatment systems occurred for 7 of the 14 sampling episodes. The treatment technologies that were sampled to test treatment performance include: Activated carbon adsorption, membrane filtration (ultrafiltration and cross-flow filtration), ozonation, clarification and biological oxidation. EPA analyzed the levels of pollutants in the raw and effluent streams and the overall performance of the treatment systems.

Whenever possible, prior to a sampling episode at a pesticide formulating, packaging or repackaging facility, representatives from the Agency conducted an engineering site visit. Following the visit, a draft sampling plan was prepared which provided the rationale for the selection of sampling location as well as the procedures to be followed during sampling. A copy of this draft plan was provided to the plant for comments.

During the sampling episode, teams of EPA engineers and EPA contractor engineers and technicians collected and preserved samples and shipped them to EPA contract laboratories for analysis. Levels of conventional pollutants, non-conventional pollutants (including the pesticide active ingredients), and priority pollutants were measured in raw wastewater and treated effluent. EPA always offered to split the samples with the facility so that the facility could have an independent analysis of pollutant concentrations made. When facilities chose to split samples with EPA, either the facility accepted the split samples provided by the EPA or plant personnel independently collected wastewater from the EPA sampling sites. Following the sampling episode, a draft trip report was prepared that included descriptions of the pesticide formulating, packaging or repackaging operations and treatment processes, sampling procedures, analytical results, quality assurance/quality control evaluation, and discussion of the raw wastewater composition and treatment system performance. The report was provided to the sampled facility for review and comment, and any corrections were incorporated into the report. The facilities also identified any information in the draft report that the facility considered confidential business information.

5. EPA Bench-Scale Treatability Studies

EPA performed several treatability tests with various treatment technologies on various pesticide active ingredient pollutants and also a variety of pesticide manufacturing and formulating, packaging, and repackaging process wastewaters. The purpose of these studies was to expand the treatability information available on various active ingredients to verify given technologies' effectiveness on pesticide formulating, packaging, and repackaging wastewater matrices and to evaluate the ability of some technologies to allow for recovery of product. In addition, EPA is relying in this rulemaking on various treatability studies done in conjunction with the development of the recent pesticide manufacturers rulemaking. EPA also studied the performance of a treatment system that will be referred to as the "Universal Treatment System" for pesticide formulating, packaging, and repackaging wastewater (described below), and studied the performance of ultrafiltration and reverse osmosis separately due to their use in recovering wastes. EPA also performed a treatability study on the pyrethrin active ingredients, testing both hydrolysis rates and carbon isotherms.

The Universal Treatment System treatability study was done because EPA had no performance data on this complete system of control technologies for treating pesticide active ingredients. Although EPA has considerable data from the pesticide manufacturing rulemaking to demonstrate that the individual treatment technologies are effective at removing specific active ingredients from wastewater, the pesticide formulating, packaging or repackaging wastewater may have a more complex matrix (as compared to manufacturing wastewater) because of emulsifiers and surfactants and thus these individual treatments might not be as effective absent pretreatment to remove the emulsifiers/surfactants. There are some pesticide formulating, packaging or repackaging facilities that do pretreat their wastewater to remove surfactants and emulsifiers prior to treatment by activated carbon. However, these facilities may not be using the most effective physical/chemical technology for removing the active ingredient in their wastewaters.

Bench-scale test results using a wastewater generated by a facility which formulates and packages products containing Bromacil, Tebuthiuron, Diuron, Terbufos and Benthiocarb indicate that the concentrations of these active ingredients can be reduced to levels below the analytical limit of detection. The technologies tested on this wastewater were chemical assisted separation (emulsion breaking), ozone/ultraviolet light oxidation and activated carbon adsorption. The emulsion breaking step removed turbidity, a major portion of the oil and grease and some total organic carbon (TOC). The rate of oxidation of the active ingredients appears to be a function of the concentration of other oxidizable organics contained in the wastewater. In this case, oxidation converted a portion of the soluble organics into insoluble precipitates, thus requiring a second clarification step prior to activated carbon treatment. Carbon isotherm and carbon adsorption column tests indicate that oxidation generates short chained organic acids and alcohols which are poorly adsorbed on carbon, resulting in a large TOC concentration in the effluent.

The second facility generated cleaning wastewater which contained an alkali soap and followed a cleaning with isopropyl alcohol. The active ingredients present in the wastewater included Piperonyl Butoxide, Propoxur, Allethrin, Tetramethrin and Permethrin. The study indicates that emulsion breaking using ferric chloride and a polyelectrolyte removes the majority of Allethrin, Permethrin, oil and grease and turbidity. This would indicate that the Allethrin and Permethrin are more soluble in the organic or oil fraction and thus are removed in conjunction with the removal of the oil and grease or organic fraction. Alkaline hydrolysis at pH 12 and 60 °C followed by carbon adsorption decreased the concentrations of Allethrin and Permethrin to below the analytical limit of detection. Carbon adsorption effluent contained approximately 800 mg/L of TOC of which nearly 60 percent was derived from isopropyl alcohol.

EPA also conducted a study of ultrafiltration (UF) and reverse osmosis (RO) membrane separations technologies. This study tested the effectiveness of ultrafiltration and reverse osmosis to obtain a clean, reusable water stream and to generate a concentrate that could be recovered for its product value. Membrane separation processes utilize a pressure driven, semi-permeable membrane to achieve selective separations. The pore size of the membrane can be relatively large if precipitates or suspended materials are to be removed from a wastewater, or very small for removal of inorganic salts or organic molecules. During operation, the feed solution flows across the surface of the membrane. Water permeates the membrane, and the contaminants remain in the now more concentrated feed solution.

An earlier study had shown that reverse osmosis treatment alone was not effective for formulating and packaging wastewater. This was attributed to the presence of emulsifiers and surfactants that are formulation components that subsequently contaminated the wastewater. The surfactants or emulsifiers with a somewhat higher molecular weight than the other components were not only retained by the RO membrane, but also caused fouling and gumming of the membrane, which reduced its effectiveness. Therefore, the EPA studied a treatment train consisting of ultrafiltration and reverse osmosis. The ultrafiltration was added to remove larger molecular constituents such as the emulsifiers and surfactants from the wastewater. A major advantage of the process is that not only can a high quality product water stream (permeate) be produced, the membrane-rejected material can potentially be recycled back into the formulating and packaging process, substantially reducing the amount of material requiring disposal. The concentrates from both the UF and the RO units were evaluated for recoverability.

Bench-scale tests using wastewaters from two PFPR facilities were tested using UF followed by RO. Also, jar tests were performed to evaluate alternative physical/chemical methods of pretreating the wastewater before RO treatment.

Two separate systems were used for the ultrafiltration and reverse osmosis tests. The bench-scale systems were designed to use commercially available ultrafiltration and reverse osmosis equipment, while keeping the size of the systems as small as possible. This design approach was selected to provide results representative of a full-scale system, while minimizing the amount of wastewater which had to be collected, shipped, and ultimately disposed.

The results of the UF/RO study show this treatment sequence was effective in removing the nine active ingredients present in the wastewaters taken from the two PFPR facilities. Ultrafiltration pretreatment prevented rapid fouling of the RO membrane. For all but one of nine active ingredients (2, 4–D, Dicamba, MCPP, Prometon, Bromacil, Benthiocarb, Diuron, Terbufos, and Tebuthiuron) better than 99% removal was accomplished by the treatment sequence. Data for Bromacil indicate it was reduced by 89.3%; however, this percent removal may misrepresent the treatment performance because there is some indication the measurement of Bromacil in the untreated wastewater was affected by analytical interference and thus could have been present at a higher concentration that was measured. The UF/RO treatment sequence appears to be a very effective alternative to the Universal Treatment System, at least for high molecular weight active ingredients, to achieve a treated water that can be reused in the facility. It is less clear whether the concentrated waste created by either of these treatment steps can be recovered for its product value. The samples taken from the concentrate fraction show high concentrations of the active ingredients, however, there are also high concentrations of sodium, calcium and total dissolved solids which could prevent the recoverability of these wastes.

A third treatability study was performed to support rulemaking for both the PFPR and pesticide manufacturing. This study examined wastewater containing pyrethrins to determine their treatability by hydrolysis and activated carbon. Wastewater collected from a pyrethrin manufacturer was tested under varying hydrolysis conditions of temperature and pH. Carbon isotherms were also developed for this wastewater.

The combined pyrethrins concentration in the untreated wastewater was initially 110 mg/L. Hydrolysis tests performed at 60 °C and pH values of 2 and 12 were used to determine the hydrolysis rates (half-life values) of the pyrethrins. Pyrethrins hydrolyzed rapidly at pH 12, exhibiting a half-life of 1.2 hours. Pyrethrins hydrolyses at pH 2 were much slower, with a calculated half-life of 77 hours.

Six carbon dosages were also tested to determine adsorption characteristics of pyrethrins. At a 10 gallon per minute flow rate, the carbon column would have a service life of 11.4 days for combined pyrethrins at 110 mg/L initial concentration indicating that pyrethrins are adsorbed.

6. Data Transfers From Pesticide Manufacturing Subcategories and Other Sources

The Agency has developed an active ingredient treatability dataset, based on full-scale treatment system data, treatability study information, and data transfers, that show that all of the 272 active ingredients included in the survey are amenable to one or more of the treatment technologies that are included in the Universal Treatment System, which EPA is identifying as BAT for purposes of today's proposed pretreatment standards for existing sources (see PSES discussion below).

EPA transferred the treatability data from the following sources, listed in order of preference.

(1) Pesticides manufacturing active ingredient or active ingredient group BAT limitations development data. The data are transferred from the manufacturing data base to support BAT limitations if the treatment is based on activated carbon adsorption, chemical oxidation, hydrolysis, a combination of these technologies, or precipitation of organo-metallic active ingredients or active ingredient groups.

(2) EPA bench-scale treatability study reports.

(3) EPA sampling episode reports.

(4) Industry treatability study reports, literature articles, and other data sources.

For some active ingredients, a different treatment technology, such as resin adsorption or solvent extraction, may have served as the basis for manufacturers' limitation because it was in use at a given facility and judged to represent BAT performance based on monitoring data. In some cases, a PFPR facility may want to use these types of technologies, rather than the Universal Treatment System, if the facility is only handling an active ingredient that requires that technology. The wastewater matrix at PFPR facilities, however, may be more complex than the manufacturer's wastewater containing the same active ingredient because of emulsifiers and surfactants, and the treatment technology identified as Best Available Technology for the manufacturers' limitation may not be capable of achieving the removal levels specified in the manufacturers rule without substantial pretreatment. In addition, for most PFPR facilities, the commingled wastewater will contain multiple active ingredients, all of which will be amenable to the more common treatment technologies comprising the Universal Treatment System. Furthermore, a treatment system relying on a technology such as solvent extraction to remove an active ingredient would still require activated carbon polishing to adsorb other wastewater constituents, including residual extraction solvent, before the treated wastewater could be reused. Rather than attempting to integrate these other technologies of resin adsorption, solvent extraction or others into a centralized wastewater treatment scheme, EPA believes that the Universal Treatment System offers a more consistent, simplistic, and cost-effective design and thus constitutes BAT treatment at PFPR facilities (together with recycle/reuse of the treated wastewaters, as described below). The

technologies included in the Universal Treatment System, together with pretreatment for emulsifiers/surfactants where needed, are capable of removing all toxic pollutants that may be in PFP wastewaters to levels that will allow recycle or reuse of the wastewaters at the facility. Thus, these BAT technologies support the zero discharge requirements proposed in today's notice.

As stated above, EPA developed a treatability dataset for the 272 active ingredients in order to ensure that the Universal Treatment System technologies will be effective in providing treated effluent suitable for reuse. EPA evaluated full-scale and bench-scale treatability data available for the 272 active ingredients, including those where a different technology basis was used to support the manufacturers' limitation. The Agency also developed technical treatability data transfer methodologies for the transfer of activated carbon adsorption and hydrolysis treatability data between structurally-similar active ingredients.

Transfers of treatability data are based on an analysis of properties of active ingredients and active ingredient groups, such as chemical structure, molecular weight, aromaticity, and solubility. If, based on this analysis, an active ingredient is considered amenable to hydrolysis or carbon adsorption but lacks treatability data, then treatability data are transferred to this active ingredient from a structurally-similar active ingredients with either hydrolysis or carbon adsorption treatability data. If multiple treatability data exist for structurally-similar active ingredients, then the most conservative data are transferred. If no data exist for structurally-similar active ingredients, and if the active ingredient is expected to be amenable to hydrolysis or carbon adsorption based on its structure, solubility, or molecular weight, then conservative treatability data, determined from all active ingredients with hydrolysis or carbon adsorption treatability data, are transferred to the active ingredient.

In determining the efficacy of the treatment technologies in the Universal Treatment System to the active ingredients in PFPR facility wastewater, EPA also factored in the need for pretreatment steps. PFPR facility wastewater may contain emulsifiers, surfactants, solids, organic constituents in addition to the active ingredients, and other pollutants that may interfere with active ingredient removals across the treatment technologies. The Agency examined existing PFPR facility treatment systems and vendor-supplied treatment systems designed to be applicable at all PFPR facilities. The Agency's identification of Best Available Technology includes the Universal Treatment System treatment technologies including emulsion breaking, oil layer removal and off-site disposal as a hazardous waste, solids separation and removal, and removal of any remaining large particles by in-line strainers prior to activated carbon adsorption.

Final effluent from the Universal Treatment System is expected to be suitable for reuse, e.g., as general pesticide production area cleanup water. Based on the active ingredient treatability dataset and information from PFPR facilities that treat and reuse pesticide process wastewater, the Agency believes that the identified of Best Available Technology is applicable to all PFPR Subcategory C facilities.

VI. Industry Subcategorization

A. Prior Subcategorization Scheme

EPA divided the pesticide chemicals point source category into three subcategories in the 1978 BPT rulemaking. These three subcategories are the organic pesticide chemicals subcategory, which applies to the manufacture of organic pesticide active ingredients; the metallo-organic pesticide chemicals subcategory, which applies to the manufacture of metallo-organic pesticide active ingredients; and the pesticide chemicals formulating and packaging subcategory which applies to the formulating and packaging of all pesticide products. In addition, the regulations include Test Methods for Pesticide Pollutants at 40 CFR part 455, subpart D (58 FR 50637, September 28, 1993).

B. Development of Current Subcategorization Scheme

In today's proposal EPA does not address the organic pesticide chemicals and metallo-organic pesticide chemicals subcategories because they were the subject of the recent rulemaking covering pesticide manufacturing (58 FR 50637). Today's notice proposes to retain the pesticide chemicals formulating and packaging subcategory (subpart C) and to create a new subcategory: repackaging performed at refilling establishments (subpart E).

EPA considered the factors that can most affect the decisions on subcategorization:

- product type;
- raw materials;
- type of operations performed;
- nature of waste generated;
- dominant product;
- plant size;
- plant age;
- plant location;
- non-water quality characteristics; and
- treatment costs and energy requirements.

EPA has surveyed and visited facilities with a variety of product types and has not seen evidence of differences in water use based on product type. Therefore, EPA does not consider this factor to be a basis on which to subcategorize.

The raw material of refilling establishments is the registered pesticide product, which is simply transferred from one refillable container (a stationary bulk tank) to another refillable container (a minibulk tank). The raw materials for the formulating, packaging and repackaging facilities are active ingredients and inert ingredients which take all physical forms and require formulating and packaging to result in the registered product. Thus, raw materials are a contributing factor in subcategorizing this industry. In addition, the type of operation performed at refilling establishments, repackaging only, is considerably different from the operations performed at formulating, packaging and repackaging facilities. Thus, the type of operation also contributes to the subcategorization of this industry.

There are no great differences in the sources from which wastewater is generated, virtually all wastewater is derived from cleaning equipment and surrounding areas. However, there are differences in the volumes of wastewater generated by facilities. The median annual volume of PFPR wastewater generated by manufacturing/PFPR facilities is 179,330 gallons, the median annual volume generated by PFPR only facilities is 2,223 gallons and the median annual volume generated by refilling establishments is 736 gallons. Although these differences are substantial, they alone might not justify subcategorization. They do, however, affect the costs of wastewater treatment.

PFPR facilities do not necessarily have a dominant product although most serve one predominant market. EPA considered the effect that market differences could have within the PFPR subcategory as described in the next section. The refilling establishments are very homogeneous in that they serve only one market, the agricultural market, and the products they repackage are mostly liquid bulk herbicides. Thus, the dominant product is a factor in subcategorizing this industry to the extent that the refillers have a dominant product and the PFPR facilities do not.

Climatic conditions which are related to location could have an effect on water use and water conservation practices. At the time of the industry survey, California was experiencing a severe drought. EPA noticed that the lack of and cost of water in this part of the country encouraged many innovative pollution prevention and reuse techniques at those facilities. However, many of these same techniques have been implemented in areas of net precipitation, thus the climatic conditions related to geographic location are not a factor in subcategorizing.

There are some distinct differences in the location of facilities. Whereas most refilling establishments are either in rural locations or in small towns near agricultural areas, many of the PFPR facilities are located in urban areas. In particular the PFPR facilities that serve the industrial and institutional/commercial markets are located in urban areas. The Agency is unsure whether this is due to the fact that the type of business these facilities are engaged in and the markets that they serve result in their urban location, thus providing them with access to POTWs, or that all facilities that were more rural in their location and also direct discharges either discontinued production or relocated and switched to becoming dischargers to POTW's in response to the BPT limitations requiring the elimination of dischargers directly to receiving waters.

Treatment costs and best available wastewater treatment technology are a significant factor in considering whether to subcategorize PFPR facilities and refilling establishments. As described more fully in the discussion of the regulatory approach, wastewaters generated at refilling establishments are expected to be recycled/reused without treatment. EPA has estimated the cost of holding the wastewater until it can be recycled/reused. As previously mentioned, the refilling establishments generate a median of 736 gallons annually. These wastewaters are expected to be collected in the containment system and loading areas, whereafter they can be pumped into and held in a tank or container. The few refilling facilities that are estimated to discharge wastewater were discharging a total estimate volume of 1500 gallons annually to POTW's. This represents an average volume of approximately 78 gallons per facility which can be held in a single minibulk container, which costs about $200–$300. The PFPR facilities (other than refilling establishments) are also expected to be able to recycle/reuse wastewaters, however some wastewater sources may require treatment before they can be recycled.

EPA has estimated the costs for storage of wastewater and treatment through the Universal Treatment System. The average estimated cost of compliance for PFPR facilities is approximately $32,300 annually. Based on this higher cost between the two basic types of facilities and the different operations, separate economic analyses were conducted. These analyses showed that refilling establishments and most types of PFPR facilities can achieve the zero discharge limitations economically. However, EPA's analysis of economic impacts for PFPR facilities indicate that a small segment, sanitizer facilities, will incur much greater costs and economic impacts from complying with the zero discharge limitations than the other facilities would incur. The Agency considered creating a separate subcategory for sanitizer facilities, but sanitizer facilities are very similar to other PFPR facilities in other respects. Since the data indicate that the economic impacts can be reduced and the amount of discharge is small for indirect discharging sanitizer facilities, EPA decided not to form a separate subcategory but simply to provide separate pretreatment standards for sanitizer facilities.

As described above, there are clear differences between refilling establishments and PFPR facilities. They differ in the raw materials, water use, location, wastewater treatment requirements and costs. Therefore, EPA proposes to establish a separate subcategory that will apply to refilling establishments. However, following review of comments on this proposal, the final rule may incorporate the refilling establishments into the PFPR subcategory, provided the limitations are the same.

C. Proposed Subcategories

The following discussions of EPA's subcategories reflects the analysis done with the survey data representing the formulating, packaging and repackaging practices for the 272 active ingredients that were the subject of that survey. EPA believes that the formulating, packaging and repackaging practices for the rest of the active ingredients will be the same as for the 272, however, the data presented in the following discussion does not reflect their inclusion.

1. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

This subcategory applies to the formulating, packaging and repackaging of pesticide chemicals. BPT regulations already exist for this subcategory. EPA proposes to add the word "repackaging" to the title and applicability provision of this subcategory, but these do not represent changes to the applicability or coverage of this subcategory. Repackaging is proposed to be defined as "the direct transference of a single pesticide active ingredient or single formulation from any marketable container to another marketable container, without intentionally mixing in any inerts, diluents, solvents, other active ingredients, or other materials of any sort." The term "packaging" in the applicability provision of Subpart C was always intended to cover repackaging as well as packaging operations. Facilities engaged in repackaging pesticide products must comply with the same reporting requirements under FIFRA as formulating and packaging facilities. In addition, repackaging frequently generates wastewater sources similar in nature to formulating and packaging activities. Thus, repackaging activities are within the scope of Subcategory C.

To assist EPA with its evaluation of the PFPR facilities, EPA divided the industry into subgroups. This analysis of subgroups was also performed to evaluate whether there was a need to further subcategorize the industry based on these subgroups. These subgroups were developed primarily from the information in the questionnaires.

The subgroups were analyzed to determine if there are trends in water usage, water discharge or disposal methods, and production associated with particular markets or products. EPA identified facilities within the subgroups that are currently achieving zero discharge through recycle or reuse of wastewater and facilities that are not achieving zero discharge. This information was used to coordinate additional data gathering activities.

EPA created ten subgroups defined as:

- *Aerosol*—All pesticide formulating, packaging or repackaging facilities that operated a Department of Transportation (DOT) aerosol test bath in any formulating, packaging or repackaging operation. These facilities are *not* included in any other group, regardless of other activities at the facility or the markets reported by the facility.
- *Agriculture*—All pesticide formulating, packaging or repackaging facilities with at least 90 percent of 1988 pesticide formulating, packaging or repackaging revenues from the agriculture market that did not fall into any other subgroup (this does not include refilling establishments). This subgroup also includes facilities identified as "agriculture" through a review of their products handled in 1988 and their revenue markets.
- *Consumer Home Products*—All pesticide formulating, packaging or repackaging

facilities with 1988 pesticide formulating, packaging or repackaging revenues from the consumer home, lawn and garden market that handled products specifically aimed at the home portion of the market (including household cleaners).

• *Consumer Lawn and Garden*—All pesticide formulating, packaging or repackaging facilities with 1988 pesticide formulating, packaging or repackaging revenues from the consumer home, lawn and garden market that handled products specifically aimed at the lawn and garden portion of the market.

• *Industrial*—All pesticide formulating, packaging or repackaging facilities with at least 90 percent of 1988 pesticide formulating, packaging or repackaging revenues from the industrial market that did not fall into any other subgroup.

• *Institutional*—All pesticide formulating, packaging or repackaging facilities reporting at least 90 percent of 1988 pesticide formulating, packaging or repackaging revenues from the disinfectant or institutional market or facilities reporting at least 50 percent of the facility's pesticide formulating, packaging or repackaging production from products with a product type of "disinfectant," "sanitizer" or "sterilizer" that did not fall into any other subgroup. This subgroup also includes facilities identified as "institutional" through a review of their products handled and their revenue markets; however, it does not include those facilities placed in the consumer home products subgroup.

• *Manufacturers*—All pesticide formulating, packaging or repackaging facilities that also manufactured one or more active ingredient in 1986. These facilities are *not* included in any other group, regardless of other activities at the facility.

• *Organo-Metallic*—All pesticide formulating, packaging or repackaging facilities reporting at least 90 percent of 1988 pesticide formulating, packaging or repackaging revenues from wood preservatives market or facilities reporting at least 50 percent of the facility's pesticide formulating, packaging, or repackaging production from handling products containing organo-metallic active ingredients, including organo-copper, organo-mercury, or organo-tin active ingredients that did not fall into any other subgroup.

• *Organo-Metallic/Industrial*—Pesticide formulating, packaging or repackaging facilities that fall into both the organo-metallic and the industrial subgroups.

• *Other*—All pesticide formulating, packaging or repackaging facilities that do not fall into any of the above categories. This subgroup does not include those facilities that were placed in a subgroup based on the products and markets that appeared to represent the majority of operations at the facility, even if the facility did not meet all the criteria for the subgroup.

Each facility was put into only one subgroup. If a facility's products or markets were not predominantly in one subgroup the facility was placed in the "other" subgroup. EPA chose this approach to evaluate the factors of market type, physical properties of an active ingredient or active ingredient group, or formulation type which, aside from the treatment requirements for a given active ingredient, were believed to have the greatest effect on the generation of wastewater and therefore treatment needs. The Agency split one market type: "home, lawn and garden" into two subgroups because facilities producing products to be used inside the home such as insecticides controlling roaches would likely be formulating, packaging or repackaging their products throughout the year, whereas the facilities that formulate, package or repackage pesticides for the lawn or garden would likely have a seasonal production schedule. These different production schedules can affect wastewater treatment requirements and the ability to recycle or reuse wastewater. Similarly, all facilities that reported having a DOT test bath were grouped together because this source of significant volumes of wastewater affects wastewater treatment requirements and the ability to recycle and reuse wastewater. Manufacturers were separated from other pesticide formulating, packaging or repackaging facilities because they are chemical manufacturers and tend to be large facilities with existing wastewater treatment systems. Although their formulating, packaging or repackaging operations are not different from other facilities, the scale at which they produce pesticide products and the volumes of wastewater generated and current wastewater disposal practices are different.

The subgroup analysis did not reveal substantive differences in the water usage or production processes within any subgroup, thus EPA does not believe there is any need for further subcategorization of this subcategory. However, the economic impact analysis indicates that facilities which formulate, package or repackage sanitizer chemicals would be impacted by the costs of the various technology options. Sanitizers chemicals are proposed to be defined as products containing one or more of the active ingredients listed on Table 8 of the regulation. EPA has segmented the sanitizer facilities for the purposes of establishing PSES.

Facilities in the pesticide formulating, packaging or repackaging industry typically conduct more than one type of operation to produce pesticide products. The industry generally comprises facilities that either formulate and package pesticide products (68 percent), or facilities that formulate, package and repackage pesticide products (22 percent). A small group of facilities perform other combinations of these operations (e.g., package and repackage only).

The largest concentration of PFPR facilities, 45 percent of the facilities are located in EPA Regions IV and V, the southeast and midwest portions of the country. However, PFPR facilities can be found in every geographic region of the United States.

Facilities were requested to report the percentage breakdown of their 1988 pesticide formulating, packaging and repackaging revenues by market type. Revenues coming from the agricultural market constituted the largest percentage, approximately 65 percent of the pesticide formulating, packaging or repackaging revenues.

Products that are formulated, packaged or repackaged contain various percentages of one or more of the 272 active ingredients considered in the survey for this regulation by EPA. Some products may contain less than one percent of active ingredient by weight, while others may contain over 95 percent of active ingredient by weight. The five active ingredients that had the highest estimated use in products that were formulated, packaged or repackaged are listed below:

• Atrazine is a herbicide used to control various weeds mainly on corn and sorghum crops. An estimated 278 million pounds of atrazine were used in products formulated, packaged or repackaged by water-using pesticide formulating, packaging or repackaging facilities in 1988.

• Alachlor is used as a preemergence herbicide to control certain grasses and weeds in a variety of crops such as corn, cotton, soybeans, and potatoes. An estimated 141 million pounds of alachlor was used in products formulated, packaged or repackaged by the water-using pesticide formulating, packaging or repackaging facilities in 1988.

• Cyanazine is used as a preemergence or postemergence herbicide for corn, or as weed control on fallow cropland. An estimated 107 million pounds of cyanazine were used in products formulated, packaged or repackaged by the water-using facilities in 1988.

• Methyl Bromide is used as a space fumigant to control insects and rodents in greenhouses, grain elevators, and other areas used to store various commodities. It may also be used as a preplant soil fumigant to control fungi, nematodes, and weeds. An estimated 95 million pounds of methyl bromide was used in products formulated, packaged or repackaged by the water-using facilities in 1988.

• Glyphosate is a non-selective, non-residual post-emergence herbicide used on grasses, sedges and broad leaved weeds. An estimated 86 million pounds of glyphosate was used in products formulated, packaged or repackaged by the water using facilities in 1988.

Production lines range from complex configurations involving numerous formulating and packaging steps to simpler lines that transfer product from storage to a marketable container. Typically, facilities that formulate and package products operate lines that include one or more storage tanks, one or more formulating processes such as mixing, blending, grinding, milling and filtering, and a final packaging process. Facilities in Subcategory C that solely package products typically transfer a product from a storage tank into a marketable container, and facilities that solely repackage products transfer product from one marketable container into another marketable container. Facilities that merely relabel a product's container are not under the scope of today's notice. The average market value of a production line is estimated to be $216,000 and the median value is estimated to be $10,000. The gap in magnitude between average and median is representative of the fact that most of the facilities attach a relatively modest market value (half estimates a value less than $10,000) while a relatively few facilities attach very high market value to their production lines bringing the average up to $216,000.

The number of products formulated, packaged or repackaged on each line varies from line to line and from facility to facility. Some lines are dedicated to one product while others may handle ten or more. Certain lines produce a variety of pesticide products that contain the same or a similar pesticide active ingredient, while other lines produce pesticides that contain a variety of different active ingredients. Some lines are also used to formulate, package or repackage products that have different formulation types.

The questionnaire requested facilities to specify those months each pesticide formulating, packaging or repackaging line was in operation in 1988, and to estimate the total number of days and hours each line was in operation in 1988. Most lines (66%) are operated 80 days or less in the production of registered products that contain one of the 272 active ingredients covered by the survey. A high proportion (28%) of lines are estimated to be in operation 10 days or less per year.

2. Repackaging Performed at Refilling Establishments (Subcategory E)

This subcategory applies to repackaging of agricultural pesticide products done by refilling establishments whose principal business is retail sales, for the purpose of this preamble these facilities will be referred to as refilling establishments. The term refilling establishment is defined by the proposed 40 CFR part 165 rule as an establishment where the activity of repackaging pesticide product into refillable containers occurs, and encompasses a broader universe of facilities than the previous description and than this proposal will apply. When it became apparent that refilling establishments are so numerous, and among themselves very similar but very different from the formulating, packaging and repackaging facilities, EPA decided to segregate refilling establishments into a separate subcategory. The distinction of refilling establishments from repackaging activities is that refilling establishments use a refillable container as the receptacle of the repackaged product.

Refilling establishments perform a single operation that is covered by today's notice: repackaging agricultural pesticide product. As a group, refilling establishments are very similar to one another. They differ from pesticide formulating, packaging or repackaging facilities in the following ways: (1) Locations—refilling establishments of agricultural pesticides are mostly in rural areas or small towns while formulating, packaging or repackaging facilities are frequently urban; (2) SIC codes—refilling establishments are in 5191, which characterizes establishments as "primarily engaged in the wholesale distribution of animal feeds, fertilizers, agricultural chemicals, pesticides, seeds and other farm supplies except grains", whereas PFPR facilities reported being classified in SIC code 2879; and (3) customers—refilling establishments are retail establishments, selling directly to the end user (i.e., the farmer), while formulating, packaging or repackaging facilities sell to distributors or retailers. EPA's approach to developing effluent guidelines and standards is different between the two groups due in large part to the nature and origin of the wastewater, as explained below.

Refilling establishments of agricultural chemicals repackage pesticide products from bulk storage tanks into smaller portable containers commonly referred to as minibulk or shuttle tanks. These refillable containers are constructed of plastic and typically have capacities ranging from 100 to 500 gallons. Minibulk containers may be owned by the refilling establishment, the pesticide registrant, or by the end user. Refilling establishments do not formulate a registered pesticide product.

Refilling establishments may also offer additional pesticide services such as custom blending and commercial application. Pesticide products are usually blended with water or other carriers and applied to farmers' fields using trucks equipped with application equipment. Of the estimated 1,134 refilling establishments estimated by the 1988 data, 935 are estimated to provide application services of registered pesticide products. Today's notice does not apply to facilities that offer custom application services unless they are also refilling establishments of agricultural pesticide chemicals. Refilling establishments frequently provide fertilizer sales and application as well as selling seeds and other farm supplies.

Refilling establishments are usually located in small towns and serve rural agricultural areas. The largest concentration of refilling establishments is in EPA Regions V and VII which contain most of the midwestern agricultural states.

An estimated 97 percent of the products reported to be repackaged and 90 percent of the total 1988 production (in pounds) are classified as herbicides. Nine products classified as fungicides were reported to be repackaged by refilling establishments; these amounted to less than two percent of the total production (in pounds). These fungicides are commonly used in grain storage areas.

Agricultural pesticide products that are repackaged at refilling establishments contain various percentages of one or more of the 272 active ingredients that were part of the survey. An estimated 1,746 products that are repackaged contained between 40 percent and 50 percent active ingredients. An estimated 30 million pounds, (44 percent of the total pounds) including 504 products repackaged by these facilities contained between 80 percent and 90 percent active ingredient.

The amount of active ingredient(s) in a product may vary somewhat with the type of formulation of the product. The five active ingredients that were repackaged in the greatest quantity by the water-using refilling establishments are listed below:

- EPTC is used as a herbicide to control perennial grassy weeds in a variety of crops such as beans, legumes, potatoes, and corn. An estimated 22 million pounds of EPTC were used in products repackaged by the water-using refilling establishments in 1988.
- Alachlor is used as a preemergence herbicide to control certain grasses and weeds in crops such as corn, cotton, soybeans, and potatoes. An estimated six million pounds of alachlor were used in products repackaged by the water-using refilling establishments in 1988.
- Metolachlor is used as a preemergence and preplant herbicide to control weeds in a variety of crops such as corn, soybean,

peanuts, potatoes, cotton and grain sorghum. An estimated four million pounds of metolachlor were used in products repackaged by the water-using refilling establishments in 1988.

- Atrazine is a herbicide used to control various weeds used mainly on corn and sorghum crops. An estimated 3.7 million pounds of atrazine were used in products repackaged by the water-using refilling establishments in 1988.
- Butylate is used as a preemergence herbicide for grassy weeds mainly on corn. An estimated 1.7 million pounds of butylate were used in products repackaged by the water-using refilling establishments in 1988.

The Office of Pesticide Programs also classifies products by their type of formulation. The largest percentage of products reported to be repackaged by water using refilling establishments were emulsifiable concentrates, which composed an estimated 74 percent of the products repackaged and 80 percent of the total 1988 production in pounds.

Production lines at refilling establishments typically consist of a bulk storage tank, a minibulk into which the product is repackaged, and any interconnecting hoses, piping and pumps. The bulk storage tanks are usually clustered together, and the repackaging operations are controlled by the use of either a computer- or manually-regulated system of pumps and meters.

Some refilling establishments dedicate their bulk storage tanks, hoses, piping and pumps to one product to prevent any cross contamination of products that are applied to different crops. When a repackaging line was used to repackage more than one product, the establishment may have switched to a different product on that line during the season to meet farmers' demands. For example, several refilling establishments in the midwest that were contacted for the phone survey reported switching from repackaging corn pesticides to soybean pesticides during the middle of the season. These establishments may or may not have utilized a single line to repackage these different products.

Approximately half of the refilling establishments reported operating their lines on an as-needed basis and the remainder reported that they operated their lines during only one period. In both cases, the facility provides the product on an as-needed basis to meet the demands of a transitory market. The busiest period for repackaging is March through June.

VII. Water Use and Wastewater Characteristics

A. Wastewater Sources and Characteristics

EPA estimates that 1,806 facilities (PFPR facilities and refilling establishments combined) use water in their formulating, packaging or repackaging process. The median annual volume of water discharged by PFPR facilities is 3,003 gallons, except for manufacturing facilities that formulate and package with a median annual volume of formulating and packaging wastewater of 261,174 gallons. The average annual volume of water discharged, as reported by refilling establishments, is approximately 78 gallons.

Many pesticide formulating, packaging or repackaging facilities reported no water use. EPA estimates there are 633 facilities nationwide that do not use water in their formulating, packaging or repackaging process. Of the estimated PFPR facilities that use water in their formulating, packaging or repackaging process 652 discharge wastewater to surface water or Publicly Owned Treatment Works (POTWs), 19 refilling establishments are indirect dischargers to POTWs. An estimated 457 facilities recycle or reuse on-site some or all of their wastewater. In some cases, facilities treat and reuse their process wastewater before reusing it. An estimated 142 facilities use off-site disposal of some or all of their wastewater. Reports of off-site disposal included incineration, deepwell injection and centralized waste treatment facilities. An estimated 93 facilities dispose of some or all of their wastewater to septic systems or by land application.

Previously established BPT for pesticide formulating, packaging or repackaging requires zero discharge of process wastewater pollutants. Nevertheless, there are a small number of facilities identified through EPA's survey that do discharge directly to surface waters. Most of these facilities are also manufacturing active ingredients and they combine the wastewater from formulating, packaging or repackaging with the other process wastewater through their wastewater treatment systems. These facilities seek to show compliance with their National Pollutant Discharge Elimination System (NPDES) permit conditions, which include no allowance for the pollutants present in the formulating or packaging wastewater, by showing that their combined discharge (consisting of both manufacturing and formulating, packaging or repackaging wastewaters) meets the permit limits.

EPA's survey of the pesticide formulating, packaging or repackaging industry revealed that process wastewater derives primarily from cleaning the process equipment, shipping and raw material containers, the general processing area, laboratory equipment, and safety equipment. Occasionally, formulating, packaging or repackaging facilities will have an air pollution control scrubber, contaminated stormwater (fairly common at refilling establishments), or a heated water bath in which aerosol containers are tested for leaks. Wastewater generated by cleaning the interior of formulating or packaging equipment, bulk storage tanks, or the interior of raw material and shipping containers contains the highest concentrations of active ingredient and product constituents. Since these wastewaters are generated from the cleaning interiors of equipment or containers, they are referred to as "interior" cleaning wastewater sources for purposes of this regulation. Wastewater from cleaning the general facility, including floors, the exterior of equipment, and laboratory or safety equipment, DOT aerosol test baths, and air pollution scrubbers will also be contaminated with active ingredients and product, but are likely to be less concentrated and may be contaminated with other pollutants unrelated to the product's constituents. These latter sources of wastewater are referred to as "non-interior" cleaning wastewater sources. EPA believes that the interior waste streams will generally be capable of reuse directly without application of wastewater treatment technologies. In contrast, the non-interior waste streams may not be capable of reuse back into the product because of non-product constituents that may be present, but may be reused elsewhere in the facility (e.g., as floor washwater) after treatment to remove or reduce pollutant concentrations.

The formulation type of the pesticide products will also have an effect on the wastewater characteristics. For example, some pesticide active ingredients are not very soluble in water, therefore the product may use an organic solvent as a carrier for the active ingredient. Such formulations may contain agents such as surfactants and emulsifiers to aid in keeping the active ingredient in solution when applied. Some pesticide products are produced as a solid. The active ingredient may be a solid or liquid that is sprayed onto a dry substrate.

EPA collected wastewater samples from thirteen PFPR facilities. Eight

facilities were sampled over a period of two or three days and numerous wastewater samples were collected. Six of these facilities operated treatment systems which were the focus of the sampling episode. One of the six facilities with treatment was sampled during two distinct episodes. The remaining five facilities were sampled during a one-day site visit. Usually only one sample was collected from these five. EPA concentrated on sampling facilities that are operating wastewater treatment technologies. EPA has also attempted to characterize a variety of different formulation types with as many different active ingredients as possible. Most of the eight facilities sampled over a period of days are formulating and packaging a variety of products containing a number of active ingredients. Therefore, although in many cases all wastewaters may be combined and EPA may not have been able to characterize wastewater from each production batch, a considerable amount of data has been collected on the nature and characteristics of wastewaters generated by formulating, packaging and repackaging facilities.

EPA has not sampled any wastewater from refilling establishments, however 7 facilities have been visited.

B. Pollution Prevention, Recycle, Reuse and Water Conservation Practices

The pesticide formulating, packaging or repackaging facilities employ many pollution prevention, recycle and reuse practices. As described above, wastewater is mainly generated by cleaning the production areas and associated equipment. Throughout the site visiting program, EPA noticed that pollution prevention practices are widely accepted and practiced by the industry. Recycle and reuse practices are evident in addition to other practices which are widely used by facilities in this industry for water conservation or to avoid creating a wastewater source. EPA believes that some or all of these practices can be implemented at all pesticide formulating, packaging, and repackaging facilities.

Pollution prevention, recycle and reuse practices fall into three groups: actual production practices, housekeeping practices, and practices that involve equipment designed for pollution prevention. Some of these practices/equipment listed below conserve water, others reduce the amount of active ingredient or pesticide product in the wastewater, while others may prevent the creation of a wastewater altogether.

Production practices include:

- Using the appropriate solvent (water or organic) to rinse and placing the rinsate from triple-rinsing raw material shipping containers directly into the formulation;
- Scheduling production to minimize cleanouts;
- Segregating formulating/packaging equipment by individual product, organic solvent- versus water-based formulations, and grouping production by product "families" (products that contain similar PAIs in different concentrations);
- Storing interior equipment rinsewaters for use in future formulation of the same product;
- Packaging products directly out of formulation vessels;
- Using inert raw material drums for packaging final products containing same inert; and
- Dedicating equipment (possibly only mix tank or agitator) for hard to clean formulations.

Housekeeping practices include:

- Performing preventative maintenance on all valves, fittings and pumps;
- Placing drip pans under leaky valves and fittings; and
- Cleaning up spills or leaks in outdoor bulk containment areas to prevent contamination of stormwater.

Equipment that promotes pollution prevention by reducing or eliminating wastewater generation includes:

- Low volume—high pressure hoses;
- Spray nozzle attachments for hoses;
- Squeegees and mops;
- Low volume/recirculating floor scrubbing machines;
- Portable steam cleaners;
- Drum triple rinsing stations (described later); and
- Roofs over outdoor tank farms.

The following discussion describes how pollution prevention, recycle, reuse and water conservation practices are applied by formulating, packaging and repackaging facilities included in EPA's survey.

1. Shipping Container/Drum Cleaning

Facilities frequently receive pesticide raw materials in containers such as 55-gallon steel or 30-gallon fiber drums. In some cases, the empty drums are returned to the supplier for reconditioning and reuse, but usually the PFPR facility is responsible for disposal of the drums. Many PFPR facilities reported rinsing raw material containers after emptying. This practice was also common at the facilities visited. The simplest, and generally the best method for handling the rinsate is to add the rinsate to the product being formulated. This practice not only eliminates a potential highly concentrated wastewater source, but also recovers the product value of the raw material. Some facilities employ a high-pressure, low-volume wash system equipped with a hose and a spray nozzle to triple rinse drums. Such wash systems are reported to use 5 to 15 gallons of water to rinse a drum. EPA identified many facilities that reuse the rinsates from shipping containers directly into product formulations.

2. Bulk Tank Rinsate

Pesticide formulating, packaging and repackaging facilities sometimes store large quantities of formulated pesticide products and raw materials in bulk tanks. These tanks are typically rinsed only when it becomes necessary to use the tank for storage of a different material. These tanks are most commonly found at refilling establishments for agricultural pesticides, where they are used to hold formulated pesticides (rather than raw materials) and where it is also more likely that they will need to be cleaned due to product changeover. For example, a refilling establishment may store bulk quantities of a pesticide product used for corn crops during the spring and then switch in the summer to storing a pesticide product used for soybeans. Each time the facility switches the product stored in a bulk tank, the tank is rinsed. Bulk tanks are sometimes also rinsed at the end of a season as part of general maintenance procedures.

The recovery of product value from bulk tank rinsates is a common pollution prevention practice in the industry. Bulk tank rinsates have been reused by some PFPR facilities into product formulations and by some refilling establishments in application mixtures of pesticides mixtures (using the rinsate as make-up water). EPA has observed that facilities can usually store this rinsate on site until the opportunity arises to add it to a formulation or use it for application. Facilities can also minimize the amount of rinsate generated during bulk tank cleaning by using high-pressure, low-volume washers. Some PFPR facilities have also demonstrated that the use of squeegees reduces wastewater generation during the cleaning of bulk tanks. The smaller the volume of water needed to clean the bulk tank, the more readily the entire volume can be recovered by addition to the product or application mixture.

3. Equipment Interior Cleaning

Formulated and packaged products may be either liquid or solid. A liquid formulating and packaging line often consists of mix tanks, melt kettles (if necessary), transfer piping or hoses and pumps, filters prior to packaging, and a packaging hopper and fillers operating over a conveyor belt. A dry formulating

and packaging line often consists of crushing, pulverizing, grinding, and/or milling equipment; blenders; screening equipment; and the packaging equipment. Repackaging is often a simple process of transferring material manually from one container into another of different size. For both liquid and dry operations, the packaging equipment is often portable.

Facilities often do not dedicate line equipment to a specific product because most facilities produce many products and the production schedules for any one product are usually seasonal and can be very infrequent. Often the equipment is used for short-term production campaigns, and can be used for both pesticide and non-pesticide products. To ensure product quality, the production line equipment is normally cleaned between product changeovers. Many facilities perform routine periodic cleaning of production lines for maintenance and, on occasion, also perform special or non-routine cleaning due to equipment failures or the use of materials that require additional cleaning time or cleaning solvents. Different types of lines (i.e., dry, liquid, emulsifiable concentrates, etc.) require different cleaning methods, such as water or solvent rinsing, flushing with solid material, mechanical abrasion, or a combination of these techniques.

Lines handling dry products are usually cleaned by flushing with the solid, inert material used as the carrier for the products handled on the line. This may be followed by rinsing with water when additional cleaning is required. EPA has seen one facility which used the dry diluent to clean equipment out on a routine basis. However, the facility thoroughly cleans out the equipment interiors with water prior to product changeover or line shut down for the season. Because the product is dry and this water cannot be reused to recover its product value, this particular facility treats the wastewater and recycles it back for use in the facility.

Liquid lines are usually rinsed between changeovers with either water or an organic solvent, depending on the production just completed and the product to be produced next on the line. Water cleaning is also performed for routine maintenance. Changeover cleanings can be eliminated or greatly reduced by dedicating equipment to specific products or groups of products. Although entire lines are not generally dedicated, EPA is aware of many facilities that dedicate formulation mix tanks to specific products, thereby eliminating one of the most highly concentrated wastewater streams generated by formulating, packaging or repackaging pesticide products. Facilities also dedicate lines to the production of a specific product type, such as water-based versus solvent-based products, thereby reducing the number of cleanings required, and allowing for greater reuse of the cleaning water or solvent.

Another effective pollution prevention technique identified by EPA is the scheduling of production to reduce the number of product changeovers, which reduces the number of equipment interior cleanings required. Facilities may also reduce the number of changeover cleanings or the quantity of water or solvent used for cleaning by scheduling products in groups or "families."

An effective water conservation technique that EPA has observed for equipment interior cleaning is to equip water hoses with hand-control devices (for example, spray-gun nozzles) to prevent free flow of water from unattended hoses, and employing high-pressure, low-volume washers instead of ordinary hoses. One of the facilities visited indicated that the use of high-pressure washers reduced typical equipment interior rinse volumes from 20 gallons per rinse to 10 gallons per rinse. Steam cleaning can also be used to clean equipment interiors while producing less wastewater. Steam cleaning can be a particularly effective method to clean viscous products that might otherwise require considerable water and/or detergent to remove. Many facilities will have access to steam from boilers on-site, however, if there is no existing source of steam, steam cleaning equipment is available for purchase. Although steam generation can increase energy consumption and add NO_x and SO_x pollutants to the atmosphere, the benefits to be gained by creating a small volume of wastewater and potentially avoiding the need to use detergents or other cleaning agents which could prevent product recovery, make steam very attractive for some applications. The Agency cautions that steam could be a poor choice for cleaning applications where volatile organic solvents or inerts are part of the product as the steam would accelerate the volatilization of the organics.

Facilities also clean equipment interiors by using squeegees to remove the product from the formulation vessel and by using absorbent "pigs" for cleaning products out of the transfer lines before equipment rinsing. These techniques minimize the quantity of cleaning water required. Regardless of whether or not residual product is removed from equipment interiors before rinsing, equipment interior rinsate can typically be reused as makeup water the next time that a water-based product is being formulated.

4. Department of Transportation (DOT) Aerosol Container Leak Testing

The DOT leak test bath water is a source of wastewater at aerosol packaging facilities since it must be changed periodically, due to the buildup of contaminants in the water. Leaking (or occasionally exploding) cans contaminate the water bath with pesticide product. Can exteriors may also contaminate the bath water since they may have product or solvent on them from the can filling step. According to several facilities, pesticide products and solvents can cause visibility problems in the bath water and leave an oily residue on the cans exiting the bath. One of the facilities visited also indicated that bath water must be dumped and refilled periodically to prevent rust particles from fouling steam sparging equipment (used to heat the bath).

No method of eliminating this source of wastewater has been identified; however, the volume of water used may be minimized through the use of a contained water bath as opposed to a continuous overflow water bath. A contained water bath is completely emptied and refilled with water when required, based upon visual inspection by the operator. Therefore, the quantity of wastewater generated is dependent on the volume of the bath (200 gallons is a typical volume of the contained water baths at visited facilities) and the frequency of refilling. It is the Agency's opinion that the best practice to reduce wastewater generated by aerosol container (DOT) leak testing is to use a contained water bath where the water is changed out when it is determined to be "dirty" by visual inspection.

5. Floor/Wall/Equipment Exterior Cleaning

Pesticide formulating, packaging and repackaging facilities clean the equipment exteriors and floors for general housekeeping purposes and to keep sources of product contamination to a minimum. When water is used, these cleaning procedures become a source of wastewater.

Equipment exteriors and floor areas of dry formulating and packaging lines are typically cleaned without the use of water. Vacuuming, scraping, and other mechanical means are used to clean the areas around these lines. Floors and equipment exteriors associated with liquid lines, and occasionally dry lines

when an especially thorough cleaning is desired, are rinsed with water (or an aqueous-based cleaning solution, or possibly an organic solvent to clean equipment exteriors). While some facilities routinely clean equipment exteriors and floors, or do so at all changeovers between certain products, many facilities have indicated that equipment exterior and floor cleanings are performed only when required through visual inspections by the operators or facility management. Walls around formulating and packaging lines appear to be cleaned infrequently. Therefore, wastewater from such cleaning is rarely generated. The quantity of water used annually for equipment exterior or floor cleaning varies widely from facility to facility, from several gallons to thousands of gallons.

This wastewater source can be minimized through the use of high-pressure, low-volume washers. Facilities have noted that attaching spray nozzles or other devices to prevent the free flow of water from unattended hoses has reduced water use. Additionally, steam cleaning of equipment exteriors is practiced at some facilities to reduce the amount of wastewater generated.

The Agency has identified some facilities that wipe the exterior using rags, or use a solvent cleaner, such as a commercially available stainless steel cleaner. This avoids the generation of a wastewater stream, but creates a solid waste which, depending on the ingredients involved, could be considered a hazardous waste. Squeegees are also used to clean equipment exteriors and floors, and are not disposed after single uses. It may be possible to dedicate squeegees to a certain line or piece of equipment, but the use of squeegees may still require some water. Automated floor scrubbers are also employed at some facilities in place of hosing down floors. Mopping with a single bucket of water can also be employed in place of hosing. Floor mopping can generate as little as 10 gallons of water per cleaning.

EPA has been to a number of facilities where their floor wash water is reused with and without filtering. One facility has set up its production equipment on a steel grated, mezzanine platform directly above a collection sump. Following production, the equipment and the floor of the platform, on which the operator stands when formulating product, are rinsed down and the water is allowed to drip into the sump. A pump and a filter have been installed in the sump area to enable the operator to transfer this rinsate back into the formulation tank the next time he is ready to formulate. This sump is also connected to floor trenches in the packaging area for the same product. When the exterior of the packaging equipment and the floors in this area are rinsed, this water is directed to the trenches and eventually ends up in the collection sump for reuse.

It is the Agency's opinion that wastewater generated from floor and equipment cleaning can be best reduced by: (1) Sweeping the area before rinsing; (2) cleaning on visual inspection rather than routine/daily cleaning; (3) using a floor scrubbing machine or a mop and a bucket to clean the floors; and (4) using a high pressure, low volume hose with a spray nozzle or a steam cleaning machine to clean equipment exteriors.

6. Leaks and Spills

Leaks and spills occur during the normal course of formulating and packaging operations. Leaks originate at hose connections or valves. Spills of raw materials occur from failures of bulk storage tanks and/or during transfer of raw materials between vessels. Product spills can occur during storage in bulk storage tanks and/or during packaging, including overfilling containers, missing the container to be filled, or tipping of filled containers before capping.

Leaks can be reduced by preventive maintenance such as checking equipment and connections before use or on a regular basis, while good housekeeping procedures like keeping work areas uncluttered can help in the prevention of spills. Simple preventative measures such as placing drip pans under areas where leaks and spills are likely to occur can either eliminate or minimize the quantity of water required for many types of cleanups. Leaks and spills of dry products can be vacuumed or swept without generating any wastewater. Liquid leaks and spills can be collected into a trench or sump (for reuse, discharge, or disposal) with a squeegee, leaving only a residue to be mopped or hosed down if further water cleanup is required. Liquid leaks and spills can also be cleaned up using absorbent material, such as absorbent pads or soda ash. For an acidic product, the use of soda ash or a similar base material will also serve to neutralize the spill. If a residue remains, some water may be used for mopping or hosing the area down, but methods to reduce floor wash should be implemented whenever possible. EPA has observed that many facilities cleanup liquid leaks and spills from water-based products with water and reuse the wastewater in product formulation. On the other hand the facilities generally cleanup liquid leaks and spills from solvent-based products with absorbent materials.

Direct reuse of materials from leaks and spills is another possible pollution prevention technique. If drip pans or other containers are used to catch leaks and spills, the material can be immediately reused in the product being formulated or packaged, or stored for use in the next product batch. Collection hoppers or tubs can be installed beneath packaging fillers to capture spills and immediately direct the spills back to the fillers. Leaks or spills around bulk storage tanks and dispensing areas can be contained by dikes, which, in fact, are often required by state regulations. (EPA recently proposed a federal regulation for containment structures at agricultural refilling establishments and at certain other facilities (see 59 FR 6712. February 11, 1994).)

7. Air Pollution or Odor Control Scrubbers

Some PFPR facilities employ wet scrubbers to reduce air emissions from PFPR operations. Facilities that also perform non-PFPR operations may employ scrubbers that are not specific to PFPR operations, but instead serve the general facility. Scrubbers can be operated with continuously recycled water until replacement of the contaminated water is necessary (as practiced by one of the facilities visited) or they can be operated with a bleed steam (blowdown) on a continuous basis.

Many PFPR facilities employ dry air pollution control equipment, such as carbon filters and baghouses, thus accomplishing air pollution reduction without generating wastewater.

Some facilities may only need a wet scrubber on one particular process (i.e., a dedicated scrubber). These facilities have been able to use the scrubber blowdown or changed-out scrubber water as make-up water in the formulation of that particular product. Some facilities with non-dedicated scrubbers have been able to use the scrubber blowdown or changed-out scrubber water for floor or equipment exterior cleaning.

8. Safety Equipment Cleaning

Most PFPR facilities employ the use of safety equipment, including safety showers and eye washes, gloves, respirators, and rubber boots to protect individuals from the dangers associated with some raw materials and the production of PFPR products. Wastewater is generated from routine

checks of safety showers, routine flushes of eye wash stations (to ensure the station is clean and operable), and rinsing of boots, gloves, and respirators.

Quantities of contaminated wastewater generated from safety equipment cleaning are generally on the order of several gallons or tens of gallons. Some facilities are successful in avoiding the generation of this type of wastewater by using disposable safety clothing (gloves, dust masks). This practice does result in a solid and possibly even hazardous waste stream, thus it does not prevent pollution.

9. Laboratory Equipment Cleaning

Many PFPR facilities operate on-site laboratories for conducting quality control (QC) tests of raw materials and formulated products. Wastewater is generated from these tests and from cleaning glassware used in the tests.

One effective pollution prevention technique for laboratory equipment cleaning is to dedicate laboratory sinks to certain products, so wastewater generated from testing a product can be collected for reuse in the product or for transfer back to the PAI manufacturer or product registrant. In the cases where solvents are often used in conjunction with the QC tests performed in the laboratory, the facility may not be able to reuse the solvent-contaminated water. One facility uses a small activated carbon unit to treat their lab water.

10. Contaminated Precipitation Run-off

This source of wastewater includes all precipitation that falls directly onto or runs onto PFPR facilities that is believed to be contaminated by product constituents. Contaminated precipitation runoff can be prevented by bringing all PFPR operations indoors, as many PFPR facilities have done, or roofing outdoor storage tanks and dikes, which has also been done at many PFPR facilities. The roofs must extend low enough to prevent crosswinds from blowing rain or other precipitation into spill-containment dikes. To prevent rainwater contamination, the drain spouts and gutters should conduct roof runoff to areas away from PFPR operations, and the roofs should be kept in good repair.

VIII. Wastewater Control Technology Currently Available

EPA has sampled six facilities with wastewater treatment. Through EPA's survey of the formulating, packaging and repackaging industry, very few facilities were found that use water in their formulating, packaging and repackaging process that also treat their wastewater. Most facilities discharge their wastewater indirectly to POTW's with little or no pretreatment. Many facilities send some of their more concentrated streams off-site for disposal or treatment, and many others reported recycling or reusing some or all of their wastewater. Of the few facilities that reported treatment, most are treating their wastewater and recycling it back to the facility. Five of the six sampled facilities that are treating their wastewater were recycling their treated wastewater.

One of the six sampled facilities treated wastewaters from floor and equipment exteriors cleaning with ultrafiltration followed by activated carbon filtration. The treated water is recycled back to be used for this purpose again. At the same facility most of the wastewater generated by cleaning equipment interiors is recycled back into the product. This facility segregates wastewaters generated in the insecticide formulation area from those generated in the herbicide formulation area but otherwise mixes all herbicide or insecticide wastewaters together for treatment.

A second facility treats its wastewater through a filtration system with a portion of the wastewater stream being sent to biological treatment. Most of the filtered wastewater is recycled to the facility for reuse as general process area cleaning water. The wastewater treated through biological treatment is sent for use as make-up in the general facility air pollution control scrubber.

Two other facilities treat their wastewater through a cross-flow filter followed by activated carbon filtration. The wastewaters are then sent back to the processing area to be used for general clean-up. Another facility treats its wastewater through ozonation followed by activated carbon filtration. This wastewater is recycled back to the facility for reuse.

The sixth facility sampled is also a manufacturer of pesticide active ingredient. This facility treats its formulating and packaging wastewater along with its manufacturing wastewater through an activated carbon system prior to discharge to an industrial pretreatment facility.

The other surveyed facilities that treat their wastewaters were mostly the pesticide manufacturing facilities.

Through site visits or phone follow-ups, EPA discovered that some plants have instituted several changes to wastewater handling practices since 1988. For example, one of the sampled facilities with wastewater treatment has since shut down. Between 1988 and shut down, the operation converted from discharge to reuse of wastewater. Two of the facilities that were sampled for wastewater treatment system performance have installed treatment since 1988. Another facility that was sampled for its wastewater treatment system had upgraded its system by adding ozonation treatment after 1988.

IX. Best Practicable Control Technology Currently Available

A. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

EPA is not proposing any substantive amendments to the existing BPT provisions applicable to Subcategory C, established in 1978. However, EPA proposes to add the word repackaging to the title and the applicability provision for subpart C (§ 455.40) and to specifically exclude from BPT applicability the wastewaters generated by employee showers and laundry facilities. These changes are being proposed to clarify the types of operations covered and would not expand or contract the current coverage of the BPT effluent limitations guidelines. The term "packagers" in the subpart C applicability provision, 40 CFR 455.40, was always intended to cover repackaging as well as packaging. Likewise, EPA proposes to expressly exclude from coverage wastewaters generated by employee showers (distinct from safety showers, which are included), fire protection test water and laundry facilities. The current regulation does not expressly state whether employee showers and laundry facilities are process wastewater sources. EPA is proposing to clarify that employee showers, fire protection test water and laundries are not within the scope of coverage because of concerns that their inclusion could cause a disincentive for facilities to provide shower facilities for their employees, which in turn could pose a potential health and safety concern. Fire protection test water is generated by facilities testing sprinkler systems or hydrants to ensure their operation should the facility have a fire. EPA does not wish to create a disincentive for this testing by controlling these waters especially since it is unlikely they would be contaminated. EPA is aware of PFPR facilities that have permits allowing discharges from employee showers and laundries while other PFPR wastewater sources at the facilities are required by their permits to achieve zero discharge. EPA is soliciting comment on this clarification of the applicability of the PFPR regulations to wastewater from showers, fire protection test water and laundries.

BPT limitations for this subcategory require zero discharge of wastewater pollutants. EPA's information shows that the majority of PFPR facilities are complying with this requirement by virtue of the large numbers of facilities which reported no discharge (an estimated 71 percent of the survey population) and because nearly all facilities that reported discharging are indirect dischargers (to POTW's).

The BPT technologies identified in the 1978 regulation as capable of achieving zero discharge were water conservation, reuse and recycle practices, with any residual water being evaporated or hauled off-site to a landfill. Several facilities that participated in a study of the industry for that rulemaking reported using evaporation as the principal means for disposing of wastewater from their formulating and packaging operations. Since that time, the practice of disposing of liquid hazardous wastes in landfills has been banned. (Nevertheless, one recently surveyed facility did indicate that they send wastewater to a landfill.) Additionally, EPA finds that disposal of wastewater by evaporation is now a less preferred practice, presumably because of concerns about pollutant transfers among media (e.g., air, soil, groundwater). In our recent survey, EPA has found that only a small proportion of PFPR facilities use evaporation to achieve zero discharge. Mostly, zero discharge is attained through recycle and reuse, though some facilities report hauling their wastewater off-site. Off-site destinations include incinerators, deep wells, and commercial waste treaters (in some cases, wastes are returned to the registrant or manufacturer). Some facilities that are achieving zero discharge have gone to considerable expense and installed state-of-the-art wastewater treatment to accomplish it through treatment and recycling.

Because of recent revisions to the effluent guidelines for pesticide manufacturers (58 FR 50637, September 28, 1993), some of the facilities that manufacture pesticide active ingredients and also formulate and package pesticide products may have to change their current practices to comply with the existing BPT regulations for formulating and packaging. A number of the direct discharging pesticide manufacturers that also formulate and package have been combining pesticide manufacturing wastewaters with wastewaters generated from pesticide formulating and packaging and discharging the combined wastewaters. They are able to combine these wastewaters and still achieve the limits in their NPDES permits, which provide numeric discharge limits for pollutants generated in the pesticide manufacturing process. Although they are given no allowance for the pollutants present in their formulating and packaging wastewater they have been able to discharge this wastewater because the treatment systems reduce the pollutants in the combined wastewater to the level specified in their permits. The recently issued pesticide manufacturing regulation sets production-based BAT limits for specific active ingredients. These limits supersede the previous concentration-based BPT limit for "total pesticides." Due to these newly issued BAT limits, it is unlikely that pesticide manufacturing facilities will be able to continue to discharge their formulating and packaging wastewater and still be in compliance with their new permits.

EPA did not project any costs associated with BPT regulations for any direct discharging pesticide formulating, packaging or repackaging facilities in Subcategory C, because BPT for Subcategory C is not being amended.

B. Repackaging of Agricultural Pesticides Performed by Refilling Establishments Whose Principal Business is Retail Sales (Subcategory E)

As discussed above, refilling establishments generate wastewater through cleaning minibulk containers and bulk storage tanks; also, contaminated precipitation run-off often falls inside their containment systems. BPT for these wastewaters from repackaging operations is proposed to be zero discharge of process wastewater pollutants.

The existing BPT regulations do not cover refilling establishments. As described above, the practice of refilling minibulks, etc. did not begin until the 1980s, i.e., after the original BPT regulation was promulgated in 1978. Further, the refillers are different from the general packagers and repackagers because of the differences in their volumes of wastewater generated and discharged, the homogeneity at refilling establishments of processes, water generation and disposal practices, and products being repackaged at refilling establishments, and the differences between the type of business (e.g., retail sales vs. wholesale sales) as described earlier. These types of facilities were not part of the data base for the original BPT regulations and were not considered in the development of those regulations.

EPA finds that secondary containment of bulk storage areas and loading pads, plus the collection, holding and eventual reuse of rinsates, contaminated precipitation run-off and leaks and spills represents the best practicable technology for the refillers subcategory. The Agency's Office of Pesticide Programs has proposed a regulation under FIFRA that would require refilling establishments for agricultural pesticides to build secondary containment structures and loading pads to certain specifications (59 FR 6712, February 11, 1994). The secondary containment structures are designed to collect spills, rinsates from containers, and contaminated precipitation run-off. Today's proposal builds on this proposed requirement to contain contaminated wastewater by proposing that the contained wastewater may not be discharged. It is likely, therefore, that the wastewater will be held until such time as it can be applied as pesticide on a site compatible with the product label or used as make-up water in an application of pesticide chemical to an appropriate site. Of the estimated 1134 facilities (based on the 1988 survey) that would be affected by today's proposal, EPA's questionnaire responses indicate that 98 percent or an estimated 1101 already achieve zero discharge, primarily by holding contaminated wastewater and reusing it as make-up water. Thus, this practice not only eliminates the discharge of wastewater but also allows the facility to recover the value of the product in the wastewater. Accordingly, EPA concludes that this proposal represents the average of the best performance at existing facilities. Indeed, because the proposal is to require zero discharge, this also represents the best performance at any existing facility, and therefore EPA is also identifying zero discharge as the basis for BAT and PSES regulations (See below).

Since the Office of Pesticide Programs proposed rule would already require these facilities to contain any contaminated wastewater, the Office of Water does not expect there to be a significant additional cost associated with the holding of this water until such time as it can be used as make-up in commercial application. There are no existing direct dischargers in this subcategory that EPA is aware of. The average volume of wastewater discharged indirectly by refilling establishments is estimated to be 78 gallons per year per facility. EPA assumes volumes of this magnitude can be held in a minibulk container until such a time as it can be reused. EPA estimates the cost of a minibulk container to be about $300 capital investment. EPA concludes that the cost

of this proposed BPT regulation would not be wholly disproportionate to the projected effluent reduction benefits.

As mentioned above, the sources of wastewater from refilling establishments derive primarily from rinsates generated from cleaning minibulk containers and bulk storage tanks. Another source of wastewater that might contribute a significant volume is contaminated stormwater. The current practice for many refilling establishments is to contain and hold contaminated stormwater until it can be used as make-up in a commercial application. However, this source can be virtually eliminated by covering the bulk storage area and loading pad under roof. According to an industry representative, it is becoming a widespread practice for many of the midwestern refilling establishments to do this. In addition to potentially avoiding the generation of a contaminated wastewater that must be controlled, enclosing the bulk storage area also protects it from vandalism and from severe weather such as cold winters. Enclosing containment structures is not a basis for today's proposed regulation, nor is it a requirement of the Office of Pesticide Programs proposed containment rule. However, the Agency would certainly consider roofing a bulk storage area and loading pad a prudent and pollution-preventing action by refilling establishments. EPA does also recognize that there may be barriers in some areas to enclosing bulk storage under roofs, such as fire code restrictions.

EPA recognizes that it is not uncommon for refilling establishments to have more than one pesticide product on-site to be used on different crops. For example, a refilling establishment may have bulk Bicep® (atrazine and metolachlor) that is applied to corn early in the season, and also have Freedom® (alachlor and trifluralin), which is applied to soybeans later in the growing season. Mixtures of rinsates of the two products (Bicep® and Freedom®) cannot be used in an application mixture if there is no crop for which the two pesticides are mutually labelled. In estimating costs, the Agency has assumed that the containment system, including separate holding tanks, will segregate pesticide products to avoid spills and stormwater from becoming cross contaminated. EPA has seen this segregation in containment systems at refilling establishments which have been designed to comply with state or local requirements.

X. Best Conventional Pollutant Control Technology

The Agency is proposing to establish BCT limitations for each of the two subcategories that are equivalent to the BPT limits and based upon the same control technologies. Accordingly, there would be no additional costs associated with the BCT regulations.

A. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

EPA is proposing to establish BCT limitations for this subcategory that are equivalent to the limitations established for BPT. Since BPT requires zero discharge of process wastewater pollutants and there can be no more stringent limitations, EPA believes an equivalent technology basis is appropriate for BCT.

B. Repackaging of Agricultural Pesticides Performed by Refilling Establishments (Subcategory E)

EPA is proposing to establish BCT limitations for this subcategory that are equivalent to the limitation established for BPT. Since BPT requires zero discharge of process wastewater pollutants and there can be no more stringent limitations, EPA believes an equivalent technology basis is appropriate for BCT.

XI. Best Available Technology Economically Achievable

The Agency is proposing to establish BAT for each of the two subcategories on the equivalent technology basis as BPT. Accordingly, there would be no additional costs associated with the BAT regulations.

A. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

EPA is proposing to establish BAT limitations for this subcategory that are equivalent to the limitations established for BPT. Since BPT requires zero discharge of process wastewater pollutants and there can be no more stringent limitations, EPA believes an equivalent technology basis is appropriate for BAT. EPA believes that there are no additional costs associated with establishing these limits.

B. Repackaging of Agricultural Pesticides Performed by Refilling Establishments (Subcategory E)

EPA is proposing to establish BAT limitations for this subcategory that are equivalent to the limitation established for BPT. Since BPT requires zero discharge of process wastewater pollutants and there can be no more stringent limitations, EPA believes an equivalent technology basis is appropriate for BAT.

XII. Pretreatment Standards for Existing Sources

A. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

1. Options Selection

The Agency is proposing to establish PSES at the zero discharge level. The best available technologies identified as a basis for these proposed standards consist of recycle and reuse of wastewater and treatment, where necessary, of wastewater by the Universal Treatment System prior to recycle/reuse.

EPA's detailed evaluation of the technology-based options is described in the following paragraphs of this section of the preamble. This evaluation utilizes as a basis the results of the industry survey, which focused on facilities involved in formulating, packaging and repackaging the 272 active ingredients that were covered in the recently promulgated (September 28, 1993, 58 FR 50637) manufacturing effluent guidelines and standards. Based on sample results of the survey there are an estimated 2439 facilities involved in formulating, packaging and repackaging the 272 active ingredients. Information obtained primarily from OPP Section 7 data bases on registered products, and also from the survey and EPA facility visits and sampling episodes were used to evaluate approximately 1300 of the 2400 facilities with respect to product lines that formulate, package or repackage process both the 272 active ingredients and other active ingredients covered by this proposed rule. As a second phase of the evaluation, approximately 1500 facilities that process only the non-272 active ingredients were evaluated. These facilities were identified from the FIFRA registration data for the base year of 1988. Based on the formulating, packaging and repackaging practices and the types of products being similar or the same at these facilities as that seen and/or reported as part of the data base for the 272 active ingredients, EPA has extrapolated the detailed evaluation of the 272 active ingredients to propose coverage of all PFPR facilities and refilling establishments. EPA visited 51 PFPR facilities to conduct a technical inspection of the facilities, their production processes, wastewater generation, pollution prevention and wastewater treatment practices. Of those 51 facilities 39 also formulate, package or repackage pesticide products

containing the non-272 active ingredient(s). Based on observations and discussions with facility personnel, EPA believes that the production practices, pollution prevention practices and treatment practices (where they exist) are the same for the products containing the 272 active ingredients and the products containing the non-272 active ingredients.

The only FIFRA registered products that would not be covered by this PSES proposal are pesticide products containing the active ingredient sodium hypochlorite (also called bleach). EPA proposes to exclude sodium hypochlorite from the applicability of PSES because it is commonly classified as an inorganic chemical even though it has registered pesticidal uses. EPA notes that it would be inappropriate to combine wastewater generated from formulating, packaging or repackaging sodium hypochlorite with wastewater from other active ingredients due to the high probability that the sodium hypochlorite will react with organic active ingredients and inerts, generating chlorinated organics. Thus, EPA expects that wastewaters generated from the formulating, packaging and repackaging of sodium hypochlorite are kept separate from other PFPR wastewaters even in facilities where they co-exist (900 facilities formulate, package or repackage sodium hypochlorite only). Because sodium hypochlorite is commonly classified as an inorganic chemical and not as a pesticide and because sodium hypochlorite PFPR waste streams are generally expected to be segregated and treated separately from the remaining PFPR waste streams, EPA proposes not to include sodium hypochlorite PFPR waste streams within the scope of today's proposed regulations for indirect dischargers. Instead, EPA believes that sodium hypochlorite formulating, packaging and repackaging waste streams would be more appropriately included within the coverage of future effluent guidelines rulemakings in other industry categories, e.g., inorganic chemicals.

EPA recognizes that the existing BPT zero discharge requirement would apply to the sodium hypochlorite PFPR direct dischargers. EPA is not proposing to amend that requirement, since it has been in place since the 1978 BPT rulemaking and there is no information that this approach should be changed. However, EPA invites comment on whether to exclude sodium hypochlorite PFPR waste streams from the regulations for both indirect and direct dischargers. EPA also invites comment on whether to expand the list of active ingredients excluded from coverage should data become available that other specific active ingredients are like sodium hypochlorite in that they act as strong oxidizing agents and process wastewaters should not be combined with other pesticide active ingredients through process wastewater treatment. Alternatively, if EPA receives information indicating that sodium hypochlorite is not as different from the other ingredients that are formulated, packaged or repackaged as EPA believes, then EPA may decide to include sodium hypochlorite discharges within the PSES coverage in the final rule, and would make no changes to the rule's coverage with respect to direct dischargers.

EPA's survey of the pesticide formulating and packaging subcategory projects that out of an estimated 1300 facilities, formulating, packaging and repackaging the 272 active ingredients that were the focus of the survey, 669 are achieving zero discharge of process wastewater. Virtually all of the estimated 633 discharging facilities are indirect dischargers. Of the zero discharge facilities, half reported that they do not use water for any of the purposes identified as being process-related sources of wastewater. The estimated 342 other facilities reported generating wastewater and achieving zero discharge of that wastewater through a combination of direct recycle, treatment and recycle, or off-site disposal. EPA assumes that many of these 342 facilities would be discharging directly, if it were allowed. EPA examined the wastewater disposal practices of these facilities and made a determination of what constituted the best available technologies which serve as the basis for PSES.

Indirect dischargers in the pesticide formulating, packaging and repackaging industry, use as raw materials many nonconventional pollutants (such as the active ingredients) and priority pollutants. They may be expected to discharge many of these pollutants to POTWs at significant mass or concentration levels, or both. EPA estimates that indirect dischargers of products containing one or more of the 272 organic pesticides annually discharge approximately 115,400 pounds of wastewater pollutants to POTWs.

EPA determines which pollutants to regulate in PSES on the basis of whether or not they pass through, interfere with, or are incompatible with the operation of POTWs (including interference with sludge practices). A pollutant is deemed pass through when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by directly discharging facilities applying BAT for that pollutant.

As with the pesticide manufacturing rule (58 FR 50637, September 28, 1993), EPA has very little empirical data on the active ingredient removals actually achieved by POTWs. Therefore, the Agency is relying on lab data to estimate the active ingredient removal performance that would be achieved by biotreatment at well-operated POTWs applying secondary treatment. The results of this laboratory study are reported in the Domestic Sewage Study (DSS) (Report to Congress on the Discharge of Hazardous Waste to Publicly Owned Treatment Works, February 1986, EPA/530–SW–86–004). The DSS provides laboratory data under ideal conditions to estimate biotreatment removal efficiencies at POTWs for different organic active ingredients structural groups.

EPA has identified zero discharge of wastewater pollutants as achievable with the best available technology, and this translates to 100 percent removal of active ingredient pollutants, which is considerably greater than the removals achieved by biotreatment under laboratory conditions for the active ingredients. For each of these active ingredient structural groups, the DSS shows that average BAT removal efficiencies are considerably greater than the average active ingredient removals achieved by biotreatment under laboratory conditions for each of the active ingredients (100 percent removal by the technologies identified as BAT versus an optimistic estimate of 50 percent or less removal by the POTW as reported in the DSS). Accordingly, all active ingredients were deemed to pass through the treatment systems at POTWs.

The active ingredients that are formulated, packaged or repackaged into pesticide products at a given facility are expected to always be present in the process wastewater. Since EPA's pass through analysis indicates that all active ingredients pass through, and the facility would be required to achieve zero discharge of the active ingredient, it would be inappropriate to exempt phenol or 2,4-dimethylphenol (or any other priority pollutant) from regulation on the basis that they do not pass through a POTW (as EPA did in the recent pesticides manufacturers rulemaking). This is because these two priority pollutants, which have been determined to be compatible with well-operated secondary treatment, will never be the only pollutants present in

a wastewater stream resulting from pesticide formulating, packaging or repackaging.

PFPR facilities often generate wastewater on multiple production lines. Because the wastewater volumes are usually small, however, it is not practical to operate dedicated wastewater treatment systems to serve individual lines. Recognizing the need for operational simplicity, EPA believes that centralized wastewater treatment is more appropriate and has conceptualized a single BAT treatment system for PFPR facilities that the Agency is terming the "Universal Treatment System." As envisioned by EPA, the Universal Treatment System would be sized to handle small volumes of wastewater on a batch basis and would combine the most commonly used treatment technologies for pesticide active ingredients, hydrolysis, chemical precipitation, chemical oxidation, and activated carbon, with one or more pretreatment steps, such as emulsion breaking, solids settling, and filtration. The BAT performance of the three active ingredient treatment technologies is well demonstrated and they serve as the full or partial basis for most of the manufacturers' active ingredient limitations.

The pesticide formulating, packaging and repackaging wastewater is expected to contain the constituents of the pesticide product being formulated. It could be possible that a facility would formulate and package, for example a product containing an active ingredient that is best treated by hydrolysis and another product that contains an active ingredient that is best treated by chemical oxidation. The Universal Treatment System is expected to be flexible in that it can handle these diverse treatment requirements. This system can treat pesticide formulating, packaging or repackaging wastewater with hydrolysis, chemical oxidation, chemical precipitation and activated carbon or a combination of these technologies depending on the active ingredients needing to be controlled. The Universal Treatment System also can accomplish chemical/thermal emulsion breaking, which controls emulsifiers and surfactants that are added to some pesticide products as inert ingredients. Emulsion breaking may be needed as an initial step to improve the treatability of the wastewater. As described previously in Section V of this preamble, the Agency conducted a treatability study using pesticide formulating, packaging and repackaging process wastewater from two facilities to demonstrate the performance of the Universal Treatment System.

EPA envisions the Universal Treatment System as being a flexible treatment system that can treat for a variety of active ingredients, be sized to handle the small volumes generated by pesticide formulating, packaging and repackaging facilities, and be operated on a batch basis. EPA expects that the majority of facilities needing treatment will need less than the full array of control technologies provided in the Universal Treatment System.

EPA believes the Universal Treatment System including pretreatment for emulsifiers/surfactants where needed and pollution prevention practices and water conservation that lead to the recycle/reuse of the treated wastewaters, reflects the best available technology for this PSES rulemaking. However these are by no means the only technologies available to achieve the proposed standards. For example, as described previously in Section VIII of this preamble, three of the facilities sampled employed an ultrafiltration membrane separation technology or cross-flow filtration that operates in a similar manner in combination with activated carbon technology. The full Universal Treatment System may not currently be available on a commercial basis as an off-the-shelf system, but EPA believes that in many cases there are commercially available systems that will be suitable for a specific facility's needs. Many of the pesticide formulating, packaging or repackaging facilities that do have treatment have purchased off-the-shelf treatment units such as ultrafiltration or cross-flow filtration membranes and activated carbon systems.

Based on the BAT technology identified by EPA, EPA developed five regulatory options that were considered for PSES. The Agency estimated the cost and pollutant removal expected to be incurred for each option and evaluated the economic impacts and cost effectiveness of these options. The Agency selected the proposed regulatory approach based on the economic and technological achievability of the options.

The options considered for PSES are as follows:

Option 1 would set numeric discharge limits for various pollutants based on end-of-pipe treatment for the entire wastewater volume currently generated by PFPR facilities through the Universal Treatment System and discharge of the entire volume to POTWs.

Option 2 adds pollution prevention by requiring zero discharge of process wastewater pollutants for wastewaters generated from cleaning the interiors of formulating and packaging equipment and raw material and shipping containers, which can be recycled back into the product to recover the product value in the wastewaters. Numeric discharge limits would be set for other wastewaters,which would still be expected to be treated through the Universal Treatment System and discharged to POTWs.

Option 3 would be based on the same technology and pollution prevention practices as the Option 2. BAT for this option, however, would include recycling of all process wastewater by recycling the wastewater back to the facility in some cases after treatment through the Universal Treatment System instead of allowing a discharge after treatment.

Option 3/S is the same as Option 3 for all PFPR facilities, except for those facilities that formulate package, or repackage sanitizer active ingredients and whose sanitizer production is less than 265,000 lbs/yr. Based on the level of impacts imposed on facilities that formulate, package or repackage these small quantities of sanitizer active ingredients (sanitizer active ingredients are defined in Table 8 of the regulation) and the small amounts of pollutant discharges from non-interior sources at sanitizer facilities, EPA developed this option which requires the achievement of zero discharge of interior wastewaters only. Other wastewater sources generated by formulating packaging or repackaging using sanitizer active ingredients at these facilities would not be subject to pretreatment standards.

Option 4 incorporates the pollution prevention aspects of Options 2 and 3, but instead of treatment, assumes that wastewaters that cannot be recycled will be disposed of by off-site incineration.

Option 5 is based on disposal of all wastewater through off-site incineration.

Option 3/S proposes to exempt the non-interior streams at facilities that formulate, package or repackage less than 265,000 lb/yr sanitizer products for the following reasons: The sanitizers segment is composed almost entirely of small businesses. The projected impacts of this rulemaking on them are more significant than they are on other PFPR facilities due primarily to the costs of having to install treatment for their non-interior streams. The amount of pollutants associated with their non-interior streams is small—about 22 toxic-weighted pound equivalents per year out of a total toxic weighted loading of 12 million toxic pounds generated by this industry. Therefore, excluding their non-interior streams from coverage results in basically the same overall reduction in pollutants discharged by the PFP industry but significantly eases the burden on these small entities (see Section XIV below). This is consistent with the objectives of the Regulatory Flexibility Act, which directs agencies to examine "any significant alternatives to the proposed rule which accomplish the stated

objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." (RFA Section 603). Section 603 also specifically mentions exemptions from coverage of the rule as one type of alternative that could be examined. EPA also notes that sanitizer products, in contrast to most other pesticide products, are intended to be discharged to sinks and drains with normal use and therefore large quantities of the products themselves (apart from the PFP waste streams) end up at the POTW. EPA is not aware that these products are causing any interferences at POTWs. Further, discharging this small additional amount of sanitizer chemicals—22 pound-equivalents per year—to POTWs would not materially increase the total amount of these chemicals being discharged to POTWs.

Option 1 is more costly and estimated to cause more economic impacts than Options 2, 3, and 3/S due to a higher volume of water that is costed for treatment through the Universal Treatment System. Options 2 and 3 are estimated to have the same costs and level of economic impacts since both options are based on the same technology. For simplification and because the technology is essentially identical the costs are assumed to be identical.

In reality Option 3 costs could be lower than Option 2, because sampling data indicate that facilities which do treat wastewater for recycling back to the facility do not always achieve the same degree of pollutant removal from the wastewater that would be required to comply with numeric standards (see Section V of the Technical Development Document). However, Option 3 requires the treated wastewater to be recycled rather than discharged thus achieving greater pollutant removals than Option 2. Options 3/S is less costly than Options 2 and 3, and is expected to cause fewer economic impacts. Option 4 is more costly than Options 1 through 3/S and Option 5 is more costly than Option 4, though both achieve the same degree of wastewater pollution control as Option 3.

In order to provide coverage of this proposed rule to the facilities formulating, packaging and repackaging the additional PAIs not included as part of the 272 PAIs identified in the survey, an additional Option 3/S.1 was evaluated. This Option was costed to include facility costs for control of the additional non-272 at facilities costed for Option 3/S and approximately 1500 additional facilities with only non-272 PAIs.

Based on the evaluation of the additional facilities Option 3/S.1 has been selected to be the basis for pretreatment standards for existing sources. This selection provides a basis for PSES that is consistent with requirements for direct dischargers. Option 3/S.1 represents the performance of the best available technology economically achievable, incorporating the best existing practices of pollution prevention, recycle/reuse, water conservation and wastewater treatment in this subcategory. Based on the analysis comparing the various options showing Option 3/S to be less costly the Agency believes that Option 3/S.1 imposes lesser costs than all other options would if their coverage was expanded, and achieves greater pollutant removals than Options 1 and 2 with expanded coverage. Options 3, 4 and 5 which require zero discharge from all wastewater sources remove only slightly more pollutants due to small production sanitizer chemical facilities being required to treat and recycle their exterior wastewater sources. Since EPA as part of its analysis in accordance with the Regulatory Flexibility Act, has determined that the costs and impacts associated with installing treatment systems to recycle non-interior wastewater sources at small production sanitizer facilities can be reduced and the associated pollutant discharges are small (see section XIV of this preamble), Option 3/S.1 was selected. Thus, EPA is proposing to establish separate standards for the formulating, packaging and repackaging of sanitizer chemicals when total sanitizer product is less than 265,000 lbs/yr, which require these sanitizer facilities to achieve zero discharge from interior wastewater sources only. The production cut-off of 265,000 lbs/yr represents the production level of the largest facility that is projected to benefit by an exemption of wastewater treatment requirements for non-interior wastewater sources. This production level applies to a facility's sum total pounds of all sanitizer registered products containing one or more of the sanitizer active ingredients listed on Table 8 of the regulation and no other active ingredients.

EPA has estimated the costs associated with the survey database for the 272 active ingredients. Option 3/S would cost $26.9 million annually and would result in one facility closure and 147 product line closures or conversions. The expanded coverage of all active ingredients (except for sodium hypochlorite) is estimated to increase the costs to a final total of $56.1 million annually and would result in an estimated 2 plant closures, and 256 product line closures or conversions.

EPA expects that many facilities which formulate, package or repackage both pesticide chemicals and sanitizer chemicals will not realize any significant relief in their regulatory requirements through Option 3/S (and 3/S.1) as compared to Option 3. This is because the non-interior waste streams which the Agency is proposing to exclude from coverage (equipment exterior cleaning, floor washing, laboratory equipment cleaning, safety equipment cleaning, air pollution scrubbers and contaminated stormwater) for the sanitizer chemicals tend to be related to the activities occurring throughout the facility not to specific products or even specific production lines. Therefore, unless a combined facility has dedicated lines that physically separate the sanitizer and non-sanitizer wastewaters, the non-interior PFPR waste streams will contain both sanitizer and non-sanitizer chemicals and therefore will be controlled by the pretreatment standards for the non-sanitizer chemicals active ingredients. EPA emphasizes that products which contain a sanitizer active ingredient and non-sanitizer active ingredient shall be considered not subject to the sanitizer exemption.

EPA has not provided the same exemption for small sanitizer facilities in the BPT, BAT and BCT regulations. EPA has evaluated whether this would be appropriate, but could find no basis for expanding the exemption. The BPT requirements have covered all PFPR waste streams since those requirements were issued in 1978, and EPA believes there is no reason to relax those requirements. However, EPA invites comments on this issue. The Agency would consider revising the BPT, BCT and BAT regulations to be consistent with the PSES standards with respect to the small sanitizer facilities exemption if new information and comments indicate that extending that exemption to the direct discharger facilities would be appropriate (i.e., based on the ability to relieve significant impacts on small direct discharge entities while sacrificing only a small number of toxic-weighted pounds).

The following discussion of the Options considered reflects estimated costs and loadings for the wastewater generated from formulating, packaging or repackaging the 272 active ingredients only.

Option 1 is estimated to cost $33.6 million annually for the 2400 facilities analyzed, and would remove an estimated 111,653 pounds of active

ingredients per year. EPA's analysis of the impacts of these costs projects that eleven plants would close and 189 plants would discontinue their pesticides production (i.e. would have line conversions). EPA's estimates are based on the cost required to install a Universal Treatment System, including one or more of the identified Universal Treatment System control technologies and holding tanks, pumps, and piping as needed. For ease of analysis, EPA assumed conservatively that this cost would be imposed on all facilities that currently discharge to POTW's and that no existing facilities would have any savings due to treatment already in place. EPA estimated costs on a plant-by-plant basis for all plants surveyed that reported discharge of process wastewater to a POTW. Although there are a small number of surveyed facilities that reported treating their wastewater prior to discharging it to a POTW, in most cases this treatment was not intended to control active ingredients. For the majority of facilities, EPA costed treatment technology (and equipment to accomplish recycle and reuse as needed) for the total volume reported in the questionnaire as being discharged currently. For facilities that are engaged in both pesticide manufacturing and formulating, packaging or repackaging EPA assumed that costs would be incurred for PFPR wastewater treatment and recycle and reuse equipment believed to be needed beyond the equipment these facilities already have in place.

Option 1 was rejected because it does not incorporate any recycle or water conservation, pollution prevention techniques that are widely demonstrated and practiced in this industry. Therefore, it does not represent the best available technology. Also, the Agency would be unable to control the discharge of all pollutants due to a lack of analytical methods for some active ingredients. EPA also notes that Option 1 would require significant additional data on a large number of pollutants for which the Agency would have to establish standards and for which facilities would need to monitor. EPA did consider setting standards for one or more pollutants that could be used as surrogates for the active ingredients and other priority pollutants. The Agency considered, for example, using immunoassays as a less expensive alternate method for demonstrating compliance. EPA performed tests using these immunoassay techniques as written up in Environmental Lab; June/July 1993, Vol. 5, Number 3, page 27. As stated in this article, the immunoassay tests appear to work reasonably well if the monitoring involves a relatively small number of analytes overall.

However, since there are only a few ingredient-specific immunoassay tests available, EPA does not consider this method of determining compliance to be feasible at present. EPA also considered the possibility of using Total Organic Carbon (TOC) or the Chemical Oxygen Demand (COD) as measures of the performance of wastewater treatment in removing active ingredients and other pollutants. This alternative was also rejected because it would be very difficult to establish a specific concentration of TOC or COD that would reflect adequate treatment and removal of the active ingredients and other pollutants for all of the diverse wastewater matrices found at pesticide formulating, packaging or repackaging facilities. Lastly, the Agency gave some consideration to a measurement of the toxicity of the wastewater. This was also rejected, because toxicity measurements are in no way specific to any given pollutant and they are not expected to be sensitive at the levels that represent good wastewater treatment.

To alleviate the burden associated with monitoring for each specific regulated pollutant would have required EPA to identify a suitable surrogate pollutant in each case for formulating, packaging or repackaging facilities, which was not possible.

Option 2 is estimated to cost $28.7 million annually for the 2400 facilities, and would be expected to remove 111,683 pounds of active ingredients per year. The estimated costs for Option 2 are slightly lower than the estimated costs for Option 1, due to a lower volume of wastewater that is expected to be treated by the Universal Treatment System. Since EPA believes that wastewater from rinsing the interior of shipping containers can be directly added to the product being formulated, EPA has estimated that no cost is associated with the recycle of this stream. EPA has estimated the cost of holding the rinsate from cleaning equipment interiors and bulk storage tanks. This cost is based on the greatest volume expected to be generated over a 90 day period. EPA has assumed that facilities will hold these wastewater sources no longer than 90 days in order to avoid the possibility of being classified a RCRA waste storage facility, and separate holding tanks to avoid cross-contamination of wastewater were costed for each product the facility reported making. If there is a gap in production of greater than 90-days based on the reported production schedule for a given product it was assumed that the volume would be combined with other pesticide process wastewater for treatment through the Universal Treatment System. Generally, wastewater volumes from interior cleaning were costed for recycle only and were not part of the hydraulic load that was costed for treatment through the Universal Treatment System. Therefore the Universal Treatment System can be smaller than the system costed for Option 1. EPA estimates that the economic impact of Option 2 would be one possible plant closure and 192 line conversions.

Option 2 was rejected even though it does incorporate pollution prevention practices, because it does not represent the best available technologies, i.e. the best performance of facilities in this subcategory. In addition, EPA would still need to establish standards for a long list of pollutants and there would still be some pollutants for which the discharge would be uncontrolled. As discussed previously an estimated 669 of the 1305 PFPR (not including refilling establishments) facilities are achieving zero discharge. EPA generally could find no significant difference between facilities that use but do not discharge wastewater versus facilities that do discharge. There is generally no significant difference in production processes, volumes produced, type of products made, active ingredients used, geographic location or any other factor. Therefore, Option 2 for PSES was also rejected because it would allow a discharge and thus result in largely inconsistent requirements for PSES compared to BPT/BAT for direct dischargers.

Option 3 is also estimated to cost $28.7 million annually for the 2400 facilities and result in one plant closure and 188 product line closures or conversions. However Option 3 is estimated to remove 111,996 pounds per year of active ingredient pollutants. As discussed previously, EPA has proposed to select not Option 3 but a variation of Option 3 in which the costs and economic impacts associated are reduced for the small sanitizer facilities. (See Section XIV of this preamble for more detailed discussion).

Options 4 and 5 were rejected because they rely on transferring wastewater pollutants to other media as part of their approach. In addition their very high cost would result in greater economic impacts on many facilities. Option 4 is estimated to cost $290 million and Option 5 is estimated to cost $364 million for the 2400 facilities. The projected economic impacts include 8 plant closures for both Options with 193

product line closures or conversions for Option 4 and 230 product line closures or conversions for Option 5. It should be noted that there are small numbers of facilities that could find it less expensive to practice pollution prevention on the interior cleaning wastewaters and send the rest of their pesticide formulating, packaging or repackaging wastewater off-site for disposal than it will be for them to install a treatment system to handle these wastes. EPA is providing suggestions for handling wastewaters and treating and/or recycling them in an efficient, low-cost manner such that these facilities can be dissuaded from opting to transfer wastewater pollutants to other media. (See Technical Development Document for details.)

2. Cost Estimates

EPA estimated industry-wide costs for these five options by estimating costs on a plant-by-plant basis for the 707 facilities involved in the survey. These costs were used to estimate costs for the 2400 facilities that are represented by the survey. Each of the surveyed facilities that use and discharge wastewater to the POTW was costed for each option. For the second phase of the evaluation (facilities processing both the 272 and the non-272 active ingredients) additional costs were determined based on the survey responses. For facilities processing only the non-272 active ingredients, costs were estimated based on the results of costing compliance with the proposed rule for the 2400 facilities for which the detailed information was developed. Based on the additional 1500 facilities processing only the non-272 PAIs, as identified in the FIFRA data base, and taking into account the estimated number of these facilities that would already be at zero discharge based on the surveyed population of facilities, 311 of the 1500 PFPR facilities were estimated to incur costs. This is proportional to the 507 PFPR facilities which were costed in the costing evaluation for the 272 PAIs. Since the practices and types of products are expected to be the same for facilities processing both the 272 active ingredients in the survey data base and the other active ingredients (non-272 active ingredients) covered by the proposed rule, the distribution of costs was estimated to be the same for both populations of facilities. Including the additional costs for the 311 PFPR facilities to formulate, package, and/or repackage non-272 PAIs, the additional annualized cost associated with the extended coverage of the proposed rule for PFPR facilities is $20.5 million, with 818 PFPR facilities incurring costs. EPA also estimated that there could be an additional 13 manufacturing/formulating, packaging and repackaging facilities that make products containing only non-272 active ingredients. Using the same approach as above EPA estimates there may be a cost of $5.8 million annualized cost associated with their compliance, and an additional $3.7 million annualized cost for the original 22 PFPR/manufacturers. This results in a total annualized cost of $56.1 million for the proposed option.

With respect to the detailed costing evaluation for the 2439 out of the 3879 facilities, EPA began by establishing a hierarchy with which to estimate the costs for all wastewaters.

- EPA assumes that any wastewater stream achieving zero discharge to surface waters as of 1988 would not be affected by these regulations and so no additional cost was included.
- Any wastewater stream generated by rinsing drums or shipping containers is assumed to be reused in product formulations without storage at no additional cost to the facility.
- Wastewater streams generated by rinsing bulk storage containers are assumed to be temporarily stored and later reused on site. Facilities would incur costs associated with this storage.
- Wastewater streams generated by cleaning the interiors of pesticide formulating and packaging equipment are assumed to be temporarily stored and later reused in product formulation where possible, or treated (as discussed below) and reused on site. Facilities would incur costs associated with this storage.
- Wastewater contained in waste streams that are generated by cleaning pesticide formulating and packaging equipment with both water and solvent streams is assumed to be kept separate from the solvent and treated and reused on site. When switching from a solvent to a water-based product a facility typically rinses the equipment first with the solvent, (which can be reused in the next formulation) followed by a water rinse. Although this water rinse may contain small quantities of solvent, the Agency believes this water can be treated on-site and reused. Facilities would incur costs associated with this treatment and storage.

Under the selected regulatory approach wastewater generated from cleaning out the interiors would be reused as diluent in the next batch of the same product to be formulated, thus recovering the product value of this wastewater. However, some facilities reported cleaning equipment interiors in a way that may preclude the wastewater's reuse. The Agency believes that these facilities can change their cleaning practices or change their equipment configurations such that they will be able to reuse these waste streams. Without the facility-specific information needed to assess how each facility might do this, the Agency has taken the following approach to costing for these interior waste streams.

- Organic based Solvents used for cleaning are not expected to be discharged to a POTW and are not included in the estimates of cost. EPA's survey data base indicates that companies generally prefer for cost or other reasons to keep solvents separate from wastewaters and not discharge them to POTWs. Often companies can reuse solvents or burn or sell them for their fuel content.
- Cleaning with inert materials (besides water) or mechanical cleaning (e.g. scraping) are not expected to result in a wastewater source and are not included in the estimates of cost.
- Cleaning water that is currently being recycled or reused is already complying with the regulatory approach and therefore is not included in the estimates of cost.
- Cleaning water that is disposed of off-site and not to a POTW is already complying with the regulatory approach in that it is not discharged directly to surface waters or indirectly through a POTW and therefore is not included in the estimates of cost.

In the case of cleaning the interior of equipment with water only, the following factors were also considered:

a. Lines that do not formulate. It is assumed that wastewater generated by cleaning lines that are not used to formulate products (i.e., those lines used exclusively for packaging or repackaging pesticide product) is unable to be reused directly in product formulations, since no pesticide products are formulated on these lines. These waste streams were costed for treatment and reuse or off-site incineration.

b. Lines that handle dry or emulsifiable concentrate products. On lines where emulsifiable concentrates were formulated and packaged, wastewater generated from cleaning equipment interiors was assumed not to be reusable in the product. Since it is impossible to determine the portion of water generated on the line which is due to only these emulsifiable concentrate products, EPA assumed that all the water reported for those lines could not be reused. Therefore, formulation and packaging lines producing either emulsifiable concentrate or dry products were costed for treatment and reuse or off-site incineration.

c. Toll or contract formulating. Facilities that generate water during cleaning and are toll or contract formulators (i.e., the facility provides the formulating and packaging of the pesticide products as a service) may not have a consistent base of production. EPA assumes that they may not make a product more than once in any given time period and therefore may not be

able to reuse cleaning water directly into product formulations. Therefore, toll or contract formulation and packaging facilities were costed for treatment and reuse or off-site incineration.

d. Lines that have a break in operations greater than 90 days. Wastewater generated from cleaning equipment interiors that will not be used to formulate that product for more than 90 days (i.e., the facility reported that the line was not producing pesticide products during four or more consecutive months in 1988) could be affected by RCRA or similar state storage rules. EPA assumed that a portion of the water generated on the line is unable to be reused in product formulation. This was costed for treatment and reuse or off-site incineration.

Some lines produced pesticide during only one period in the year. In these cases, EPA assumed that equal volumes of water would be generated for each cleaning; therefore, the total volume was divided by the number of occurrences to determine the volume of water generated during each cleaning. This volume was used to estimate the cost of treatment and reuse or off-site disposal of the last cleanout performed. The remaining volume of water was costed for storage and direct reuse back into the product.

Some lines may be unable to reuse untreated water. All interior cleaning water from these lines was costed for treatment and reuse or off-site incineration along with the facilities' non-interior process wastewater.

e. Lines that have special cleaning operations. Some facilities generate wastewater from special cleaning operations, as opposed to routine or product changeover cleaning, and have more than one product on the line. (Lines with only one product are assumed to be able to reuse water directly in the product formulation.) In situations where these lines handle the same active ingredients in all the products, EPA assumed the cleaning wastewaters could be reused directly in the product formulations.

Other facilities may have some difficulty reusing water from these operations directly into product formulations with their current practices. Special cleanings are presumed to be unplanned and may result in large quantities of wastewaters that are contaminated by multiple products. In these cases, the special cleaning water was costed for treatment and reuse or off-site incineration.

f. Lines that generate more volume than could potentially be reused in the product. Based on the available information, EPA believes some facilities may generate more water from cleaning operations than could be reused. EPA used the following approach to estimate this under the following conditions:

(1) The pounds of active ingredient reported to be in the product were calculated. The percent of active ingredient(s) provided by the facility in Section 3 of the questionnaire was used to determine this value: (Total Pounds Produced × Total % Active Ingredient)=Total Pounds Active Ingredient.

(2) The calculated pounds of active ingredient were subtracted from the total pounds of product to determine the pounds of inert ingredients (especially diluent): (Total Pounds Produced − Pound of Active Ingredient)=Pounds of Inert Ingredients.

(3) The pounds of inert ingredients remaining were converted to gallons: (Pounds of Inert Ingredients/8.34 pounds/gallons)=Gallons of Inert Ingredients.

(4) Assume that cleaning water could be used to make up 50 percent of this volume: (Gallons of Inert Ingredients × 50 percent)=Gallons of water that can be reused.

(5) Compare this value to the volume of interior equipment cleaning wastewater generated on the line:

For: Gallons of water that can be reused ≤ Total interior equipment cleaning, water is costed for reuse in the product.

For: Gallons of water that can be reused ≥ Total interior equipment cleaning, water is costed for treatment and reuse or off-site incineration.

Other conditions were reported in the questionnaires and were costed in the following ways:

- Lines with multiple cleaning sequences and different steps in each sequence, often mixing water with other steps such as abrasives or detergents, were costed for off-site disposal or treatment and reuse. This is because the effect of using the abrasives or detergents along with water to clean equipment results in adding a contaminant to the wastewater that is not a constituent of the product and could thus render the wastewater incompatible for direct product recovery and reuse without treatment.
- Lines with detergent solutions used to clean the interiors of equipment were costed for treatment and reuse.
- Lines in which the water used to clean equipment interiors becomes contaminated with solvents also used on the same line were costed for treatment and reuse.

All other wastewater streams ("non-interior streams") are assumed to be treated and reused on-site or hauled for off-site incineration, depending on the option costed. EPA's cost model for wastewater treatment was initially based on the model used to estimate costs for the pesticide manufacturers rulemaking effort. EPA refined that model to enable costs and loadings to be estimated for all water-using pesticide formulating, packaging or repackaging facilities in the surveyed population.

The Universal Treatment System identified as BAT/PSES technology, and assumed in the cost model to be required, consists in part, of raw wastewater storage tanks. Storage tank capacity was costed to hold as much volume as is assumed to be generated during three months or the facility's maximum wastewater volume generated at one time in 1988, whichever volume is larger. The system also includes a jacketed process treatment vessel in which emulsion breaking, chemical oxidation, sulfide precipitation and hydrolysis will take place, an activated carbon system consisting of a feed storage tank, a grit pre-filter, a three-bed adsorber unit (and, if size required, a backwash system), and effluent storage tanks equal in capacity to the raw wastewater storage.

A review of pesticide manufacturing treatability data reveals that activated carbon, chemical oxidation, and hydrolysis are the most common BAT technologies used to treat pesticide active ingredients. These technologies are expected to be capable of treating any and all active ingredients in PFPR waste streams to levels that will allow recycle/reuse and thus would result in zero discharge of wastewaters. (See previous discussion of the Universal Treatment System treatability study.)

The model calculates costs for BAT under the assumption that hydrolysis and chemical oxidation are carried out only when required (based upon the treatability information for each active ingredient available from the pesticide manufacturer rule database or data transfers as described previously in Section V). Emulsion breaking pretreatment and activated carbon adsorption, however, are always assumed to be carried out on the wastewater and therefore their costs are always included. This approach is conservative, because it is likely that not all facilities will need to use emulsion breaking to treat their wastewaters.

The input data required by the cost model consist of facility-specific wastewater flow data, facility-specific influent active ingredient concentration data, active ingredient treatability data, and active ingredient analytical method data. These data are used to calculate current and proposed active ingredient loadings, to size and cost the treatment system, and to cost monitoring of the treated wastewater. The flow data were obtained from the PFPR questionnaire responses. The concentration data were obtained from EPA sampling at seven PFPR facilities. Both sets of data are stored in the pesticide formulating data base.

The cost model determines the quarterly wastewater volumes and the maximum wastewater volume needing treatment at any one time. These values are used to size the raw wastewater storage tanks in the Universal Treatment System.

Active ingredient loadings were estimated on a stream-by-stream basis by first identifying the active ingredients that could be in each stream and then extrapolating sampling data to set an influent concentration for each active ingredient in each stream. It was assumed that each active ingredient contained in the pesticide product would be contained in the wastewater streams generated by the production line for that product. It was also assumed that all active ingredients formulated, packaged or repackaged by each facility would be in the facility's non-line specific wastewater streams. The concentration of each active ingredient in the facility's commingled wastewater was then estimated by dividing the sum of the stream-specific loadings for each active ingredient by the total facility pesticide formulating, packaging or repackaging wastewater flow.

The active ingredient concentrations for each stream were extrapolated from the sampling data in the pesticide formulating, packaging or repackaging analytical database (and were sorted by stream type and active ingredient). Due to the lack of concentration data for numerous active ingredients in the process wastewater streams, concentration values were extrapolated from available active ingredient stream data to other active ingredients within that particular stream type for which no characterization data exist. The following methodology was used:

- Actual active ingredient concentration data were used when available;
- Active ingredient concentration data were transferred to structurally similar active ingredients for the same source of wastewater; and
- Median values of all the active ingredient concentration data points for the same stream type were transferred to all remaining active ingredients lacking characterization data.

The median active ingredient concentrations are assumed to reasonably reflect what is likely to be found in the wastewater. To check this, comparison was made of the calculated load of the commingled waste streams based on the median concentration values and the actual loading observed in the wastewater samples at two sampled facilities. The two values were reasonably close.

The active ingredient treatability data used in the cost model were principally taken from the pesticide manufacturers data base or from treatability studies as described previously under the discussion of data transfers. The following methodology was applied:

- Active ingredients with pesticide manufacturing BAT technologies of hydrolysis, chemical oxidation, or activated carbon adsorption (the technologies used in the "Universal Treatment System") were assumed to be treated by these technologies in the cost model, to the same effluent concentrations set under the manufacturing rulemaking (58 FR 50637). This assumption results in conservative cost estimates since the sampling data from the PFPR facilities that are treating to recycle their wastewater sometimes had higher concentrations of pollutants in their treated wastewater than the manufacturing limits would have allowed, yet they still reuse their treated wastewater in various non-interior process related uses.
- For pesticide active ingredients (PAIs) that have pesticide manufacturing limitations which are based on one of the UTS technologies (i.e., activated carbon, hydrolysis, chemical oxidation, chemical precipitation), achievable effluent concentrations were based on LTA concentrations from data derived from the development of the pesticide manufacturing effluent limitations guidelines. When pesticide manufacturing limitations existed but were not based on one of the UTS technologies mentioned above, treatability data for one of the UTS technologies was used to back up the manufacturing LTA concentration. When pesticide manufacturing limitations did not exist, EPA transferred LTA concentration data within strutural groups (using the highest LTA in the strutural group). When there was no LTA for any PAI within a given strutural group, EPA transferred the 90th percentile highest LTA, which means that 90% of the PAIs with manufacturing limits have LTAs less than the transferred limit.

Active ingredient analytical methods and associated costs were used to calculate effluent monitoring costs for each facility. The analytical methods and costs were obtained by:

- Using the actual methods and costs, obtained from laboratories' rates, for those active ingredients for which EPA has approved methods;
- Using the same method(s) as for structurally similar active ingredients for the active ingredients without approved methods. In cases where more than one method is available for structurally-similar active ingredients, the most expensive method is used to calculate costs;
- Using an average monitoring cost of $200 for those active ingredients lacking analytical methods for structurally-similar active ingredients. This cost assumes that a method would become available, and is based on the cost analytical laboratories have charged EPA to analyze for pesticide active ingredients in EPA's sampling program.

EPA estimated costs for monitoring active ingredient concentrations for Options 1,2,3 and 3/S. Option 3 and 3/S (and 3S.1) would not require monitoring of pollutant concentrations to demonstrate compliance. However, the Agency assumes facilities may monitor wastewater after treatment and before recycling or reusing it to ensure it has been adequately treated. To be conservative EPA has assumed all facilities will incur this monitoring cost. In actuality, many facilities do not perform analyses to determine active ingredient concentrations. However, they usually do perform some type of quality check. It can vary from visual inspection to measuring a parameter such as density, COD or TSS to actually measuring the concentration of the active ingredient as done by some large facilities.

EPA estimated the number of days each facility discharged in 1988 as well as the number of days each facility would discharge under the proposed regulatory options. Because the number of discharge days was not provided by pesticide formulating, packaging or repackaging facilities in the questionnaire, EPA estimated 1988 discharge days based on the number of days that facilities operated their individual pesticide formulating, packaging or repackaging lines in 1988. Facilities reported the number of days each line was used to produce pesticide products in 1988 and which months each line was in operation, but did not report the total number of days that the entire pesticide formulating, packaging or repackaging facility was in operation. In order to account for overlap when a facility operated multiple lines producing pesticide products during the same days, EPA compared the total number of days reported for all pesticide formulating, packaging or repackaging lines at each facility with 22 days per month for each month the facility was in operation (assumes most facilities operated five days per week). EPA then selected the smallest of these estimations to be the number of discharge days. For the two proposed discharge options, facilities are assumed to discharge wastewater, at a minimum, once per each calendar quarter that they are in operation.

See Section 8 of the Technical Development Document for a detailed discussion of the engineering and technical analysis that is the basis of the cost estimates.

B. Repackaging of Agricultural Pesticides Performed by Refilling Establishments Whose Principal Business Is Retail Sales (Subcategory E)

EPA is today proposing to establish pretreatment standards for refilling establishments that repackage agricultural pesticide products based on achieving zero discharge of wastewater pollutants to POTWs. Using the same approach to evaluating the pass through of wastewater pollutants as is discussed for Subcategory C, EPA expects that the pesticide active ingredient pollutants present in process wastewaters from refilling operations will pass through POTW's. As with pass through analysis for Subcategory C, an optimistic estimate of 50 percent removal of active ingredients using well-operated secondary treatment at POTWs does not come close to matching 100 percent removal achieved by the proposed BAT level treatment. As with Subcategory C, EPA assumes that the active ingredient will always be present in the wastewater from refilling establishments.

The best available technology identified for this proposal is secondary containment of bulk storage areas and loading pads, plus the collection and holding of rinsates, contaminated stormwater and leaks and spills. The Agency's Office of Pesticide Programs has proposed a regulation under FIFRA that would require refilling establishments for agricultural pesticides to build secondary containment structures and loading pads to certain specifications (59 FR 6712, February 11, 1994). Of the estimated 1134 facilities (based on the 1988 survey) that would be affected by today's proposal, EPA's questionnaire responses indicate that 98 percent or an estimated 1101 already achieve zero discharge, primarily by holding contaminated wastewater and reusing it as make-up water. Thus, this practice not only eliminates the discharge of wastewater but also allows the facility to recover the value of the product in the wastewater. The average volume of wastewater discharged by refilling establishments is estimated to be 78 gallons per year per facility. EPA assumes volumes of this magnitude can be held in a minibulk container until such a time as it can be reused. EPA estimates the cost of a minibulk container to be about $300 capital investment. EPA finds the costs are economically achievable (see Section XIV).

XIII. New Source Performance Standards and Pretreatment Standards for New Sources

A. Pesticide Chemicals Formulating, Packaging and Repackaging (Subcategory C)

EPA is proposing to establish NSPS as zero discharge, equivalent to the BAT requirements for existing sources. Zero discharge represents best available and best demonstrated technology for the pesticide formulating, packaging and repackaging subcategory as a whole. The economic impact analysis for existing sources shows that this regulatory approach (termed Option 3 in the discussion above) would be economically achievable for the industry. EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies (including dedicated lines and pressurized hoses for equipment cleaning) more efficiently than sources that need to retrofit for those technologies. EPA's analysis concludes that a zero discharge requirement for new source direct dischargers would be economically achievable and would not be a barrier to entry.

EPA is proposing to set pretreatment standards for new sources (which cover indirect dischargers) equivalent to the NSPS standards (which cover direct dischargers), i.e., at zero discharge for all PFPR waste streams. For the reasons stated above with respect to the NSPS standards, EPA finds that the PSNS regulations would be economically achievable and not a barrier to entry.

Although EPA has proposed to exempt the non-interior waste streams of the small sanitizers from this zero discharge requirement for existing pretreatment facilities (PSES), EPA is not proposing to include this same exemption for the new source pretreatment facilities (PSNS). The rationale for finding that the exemption for those sanitizer waste streams is appropriate for existing sources is based on EPA's findings that the impacts on existing small entities would be significantly reduced by the exemption while the associated additional loading of toxic pollutants would be small. With respect to new source pretreaters, EPA does not have sufficient information to conclude that the size and economic conditions of those new sources, the impacts on those new sources, and the associated loadings of toxic pollutants, would justify a similar exemption for the non-interior waste streams for sanitizer facilities. EPA solicits comments on these conclusions.

In addition, EPA has proposed to set a zero discharge requirement for NSPS, also without any exemption for sanitizers' waste streams, based on the proposal to set BAT at zero discharge for all waste streams and the finding that NSPS should be set at a level at least as stringent as BAT. EPA has stated elsewhere in today's preamble that, based on comments and new information, it would consider varying the final rule to exempt the sanitizers' non-interior waste streams in the BAT regulations as well as in the PSES standards. Even if EPA were to do so, it would be likely that NSPS would still be set at zero discharge without any exemption for sanitizers, for the reasons discussed above as to why EPA is not proposing to include an exemption for sanitizers in the PSNS regulations.

B. Repackaging of Agricultural Pesticides Performed by Refilling Establishments (Subcategory E)

EPA is proposing to establish NSPS and PSNS as equivalent to the zero discharge BAT requirements for existing sources. Since EPA has determined that zero discharge requirements for existing sources are economically achievable EPA also concludes that NSPS and PSNS regulations would be economically achievable and would not be a barrier to entry for new sources.

XIV. Economic Considerations

A. Introduction

EPA's economic impact assessment is set forth in the report titled "Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Pesticide Formulating, Packaging, and Repackaging Industry" (hereinafter "EIA"). This report estimates the economic effect of compliance with the proposed regulation in terms of facility closures, conversions of production lines to alternate activities, and compliance costs as a percentage of facility revenues. Firm-level impacts, local community impacts, international trade effects, effects on new pesticide formulating, packaging, and repackaging (PFPR) facilities, and estimates of the cost savings of pollution prevention techniques are also presented. A Regulatory Flexibility Analysis detailing the small business impacts for this industry is also included in the EIA. In addition, EPA conducted an analysis of the cost-effectiveness of the regulatory options. The report, "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Pesticide Formulating/Packaging/Repackaging

Industry" is included in the record of this rule-making.

As previously discussed, projection of economic impacts relies heavily on the responses to the questionnaire distributed to PFPR facilities by EPA under the authority of Section 308 of the Clean Water Act. EPA sent the questionnaire, requesting both technical and economic information, to 707 facilities, representing 3,241 facilities in the population. (See Section V.A.2 for details.) Data from the questionnaires are used to project economic impacts for PFPR facilities using one or more of the 272 pesticide active ingredients (PAIs) or classes of PAIs that were the focus of the survey. As previously mentioned, based on results from the survey, quantitative estimates of PFPR activities were computed for the entire U.S. population of PFPR facilities using the original 272 PAIs considered for regulation. The remainder of the discussion of economic impacts will report only these national stratified estimates, unless otherwise indicated.

EPA also performed analyses and developed population-level estimates encompassing the additional PAIs not on the original list of 272 PAIs studied for regulation. The results from these analyses are reported in Preamble Section XIV.L., Assessment of Economic Impacts Including Additional PAIs Not on the Original List of 272 PAIs Studied for Regulation. Except in that section of the Preamble, the economic impact estimates presented in this section pertain only to the use of the 272 PAIs originally studied for regulation. In section XIV.L., the discussion of impact estimates includes the additional (non-272) PAIs to distinguish the findings that encompass the additional PAIs from those presented elsewhere that pertain to the original list of 272 PAIs studied for regulation.

The list of 272 PAIs on which this detailed analysis is based matches the list of PAIs considered for regulation in the recent effluent guidelines rulemaking for the pesticide manufacturing industry. (See Section V.A for the derivation of the list of the 272 PAIs.) However, EPA believes that the financial characteristics of the facilities surveyed on the basis of using one or more of the 272 PAIs are representative of the entire PFPR industry, regardless of the particular active ingredients that a facility formulates, packages, or repackages. Based on the responses to the survey, an estimated 2,439 population facilities remained in the PFPR business as of 1990 (the year the Section 308 Economic Survey was conducted). An estimated 1,806 facilities both operate in the PFPR business and use water in their PFPR operations. Six hundred fifty-two of these facilities also discharge PFPR wastewater either directly to bodies of water or to POTWs. These water discharging facilities may be subject to cost increases as a result of today's proposed effluent limitations guidelines and standards.

Based on the questionnaire, the 598 facilities for which costs of complying with PSES were estimated all discharge to POTWs. PSES regulations are proposed for two subcategories based on technical and economic differences exhibited between the subcategories: Subcategory C applies to wastewaters containing any pesticide active ingredients (PAIs) except for sodium hypochlorite. Within Subcategory C, a subgroup of chemicals is defined for certain PAIs which are used as sanitizers.[1] The PAIs are listed on Table 8 of the regulation.

The second subcategory, Subcategory E, applies to the wastewater streams generated by refilling establishments that repackage agricultural chemicals and whose principal business is retail sales. The economic basis for creating the subcategories is discussed in the methodology section below. Many other factors including differences in raw materials, geographic locations, plant age, etc. are considered when the Agency subcategorizes an industry. These other factors are discussed in detail in Section 4 of the Technical Development Document.

B. Economic Impact Methodology

1. Impact Measures

The EIA examines three categories of economic impacts that may result from regulation: Facility closures, conversion of PFPR product lines to non-PFPR operations, and compliance costs in excess of five percent of facility revenue. Facility closure is the most severe of the three impacts evaluated. Consistent with the analysis in other effluent guidelines rulemakings, compliance costs that are less than five percent of facility revenue are judged to be economically achievable (see, for example, the EIAs for effluent limitations for the OCPSF and pesticide manufacturing industries). However, it is assumed that compliance costs equal to five percent or more of facility revenue do not necessarily indicate a significant impact, such as an operational change at a facility. This ratio is counted as a moderate economic impact as a conservative measure of the possibility of such an impact.

Projections of these economic impacts are based on economic models that estimate pre- and post-compliance costs, revenues, and quantities for individual facilities. The individual facility impacts are projected using a combination of data from the 1988 Survey Questionnaire and secondary sources (e.g., Robert Morris Associates Annual Statement Studies, Dun and Bradstreet's Million Dollar Directory, Standard and Poor's Price Index Record). In addition, impact projections rely on facility-specific compliance cost estimates developed by the Agency (see Section X of today's notice). Impact projections are first made for surveyed facilities and then extrapolated to the facility population.

Facility financial viability is first analyzed in the baseline (pre-compliance) scenario by calculating the three-year after-tax cash flow from the Survey data. If a facility has lost cash on average over the three-year period, the facility is not expected to continue in operation and post-compliance impacts are not evaluated, i.e., the facility is considered to be a baseline closure.

2. Application of the Impact Measures

The particular impacts evaluated for a facility are a function of the type of PFPR operations conducted at the facility as well as the percentage of the facility's revenue that is derived from PFPR operations. These characteristics are used as indicators of the likely response of management to compliance costs. The impact measures used in the analysis are discussed below.

a. Subcategory C Facilities. Certain PFPR facilities regulated under Subcategory C are expected to be the most likely to consider facility closure as a response to the regulation. In particular, PFPR facilities that also manufacture PAIs and facilities earning a significant percentage of their revenue from PFPR activities are assumed to be the likeliest facilities to consider closure as the alternative to compliance with the regulation. PFPR facilities that also manufacture PAIs (hereafter "PFPR/Manufacturing facilities") generally obtain a high percentage of their revenue from PFPR activities. Based on responses to the 1988 Survey questionnaire, the mean percentage of facility revenue from PFPR activities was 54 percent for PFPR/Manufacturing facilities, with a median value of 38 percent. In addition, the manufacturing operations are integrated with the PFPR

[1] The term "sanitizer" is being defined for the purpose of this effluent guideline regulation and is not intended to classify sanitizers as no longer being pesticides, other than for the purposes of distinguishing their requirements under this regulation. Also, some PAIs other than those PAIs listed in Table 8 of the regulation may be used as sanitizers.

operations and additional costs may be incurred in manufacturing operations (e.g., tolling costs) if PFPR operations are shut down.

Owners of PFPR facilities that do not manufacture PAIs might also consider closing entirely rather than converting their PFPR lines if PFPR activities constitute a substantial portion of their business. The analysis assumes that facilities that obtain at least 25 percent of their revenue from PFPR activities will consider closing entirely.[2] This fairly low percentage of revenue was chosen so that evaluation of the most severe economic impact—facility closure—includes all facilities that might consider this alternative.

Facilities regulated under Subcategory C that do not manufacture PAIs and that obtain less than 25 percent of their revenue from PFPR activities are expected to respond differently to compliance costs. These facilities frequently engage in the formulating and packaging of many non-pesticide products as well as pesticide products. The facilities are typically not dependant on pesticide FPR, but may include pesticides in the line of many chemical preparations that they formulate, package, and repackage. The production lines are not usually specific to pesticides, but can formulate, package, or repackage a wide range of products. Therefore, the facilities are more likely to consider converting their PFPR lines to produce non-pesticide products than closing the facility or the lines if PFPR production is discontinued. The analysis evaluates whether these facilities would, in fact, be expected to convert their pesticide lines to other formulating/packaging/repackaging operations as a result of the regulation.

As an additional measure of economic effects on facilities regulated under Subcategory C, the annualized compliance costs are compared to facility revenue for each facility. As discussed above, projected annualized compliance costs that are less than five percent of facility revenue are taken to indicate that the facility will not experience significant economic impacts.

b. Subcategory E Facilities. For refilling establishments, the only economic measure evaluated is compliance costs as a percentage of revenue. Refilling establishments constitute a distinct set of facilities within the PFPR industry. An estimated 47 percent of the facilities potentially covered by the PFPR regulation are classified as Subcategory E facilities. These facilities do not formulate or package pesticides, but maintain at least one bulk storage tank for pesticides and distribute the formulated product in refillable containers to farmers. Most refilling establishments surveyed reported a primary SIC code of #5191, which characterizes the establishments as "primarily engaged in the wholesale distribution of animal feeds, fertilizers, agricultural chemicals, pesticides, seeds, and other farm supplies, except grains." In keeping with this line of business, typical ownership of refilling establishments differs from that of other PFPR facilities. An estimated 29 percent of refilling establishments are owned as a cooperative, e.g., a group of farmers who purchase and distribute pesticide among themselves. (See Table 1.) In contrast, only an estimated two percent of other PFPR facilities have a cooperative form of ownership.

TABLE 1.—ESTIMATED NATIONAL DISTRIBUTION OF SELECTED CHARACTERISTICS OF SUBCATEGORY E FACILITIES VS. OTHER PFPR FACILITIES

[Facilities that use water]

	Subcategory E facilities	Subcategory C facilities [1]
Number of facilities	830	942.
Most frequently reported SIC Code	5191 (67%)	2842 (manufacturing furniture, metal, and other polishes) (14%).
Mean percent revenue from PFPR	15%	28%.
Facility revenue:		
Mean	$ 4,757,000	$ 16,280,000.
Median	$ 1,730,000	$ 3,320,000.
Estimated market value of production lines:		
Mean	$ 3,800	$ 166,000.
Median	$ 1,900	$ 6,000.
Ownership type:		
Cooperative	242 (29%)	15 (2%).
Single facility	227 (27%)	569 (60%).
Multi-facility	361 (43%)	341 (36%).
Other	0 (0%)	17 (2%).
Percentage of facilities with zero water discharge of the 272 PAI's	98%	35%.

[1] Includes only PFPR/manufacturing and other PFPR facilities regulated under PSES that use water. Omits facilities that are directly discharging PFPR wastewater. Percentages may sum to more than 100% due to rounding.

Generally, refilling establishments have lower total revenues than other PFPR facilities. The estimated mean annual revenue for refilling establishments was less than $5 million, while other PFPR facilities have an estimated mean revenue of over $16 million. Further, refilling establishments derive only a small percentage of their revenue from pesticide repackaging. The estimated mean percentage of revenue from pesticide refilling activities is 15 percent, while other PFPR facilities have a mean percentage of revenue from PFPR activities of 28 percent. Also, the other activities conducted at refilling establishments do not depend on

[2] Ideally, the determination of whether management would consider closing a facility entirely would be based on the percentage of profit, rather than revenue, derived from PFPR activities. However, because costs were not reported for PFPR activities in the Survey, calculation of PFPR profits is not possible.

repackaging pesticides. Therefore, for this subcategory, no facility closures are expected in response to compliance costs imposed by this rulemaking and no further analysis of facility closure has been conducted.

Refilling establishments have simple production lines, typically consisting of one or more bulk tanks purchased specifically to hold pesticides. The investment in the "production line" is minimal and alternative uses of the tank are limited and unlikely to provide significant profits. Therefore, most owners of refilling establishments are not expected to discontinue their refilling practices for the purpose of converting their tanks to an alternate use and no analysis of production line conversion has been conducted.

The economic returns to refilling establishments may, however, be affected by compliance with the proposed regulation. The analysis evaluates the extent of potential impacts by comparing annualized compliance costs to facility revenue. Costs in excess of five percent of the facility's revenue are characterized as a possible significant economic impact.

Table 2 summarizes the methodology for calculating impacts.

TABLE 2.—ECONOMIC ANALYSES BY FACILITY SUBCATEGORY

Subcategory C: Manufacturer/PFPR facility or 25% of revenue from PFPR (380 estimated population facilities)	Subcategory C: Non-manufacturer and ≥25% of revenue from PFPR (902 estimated population facilities)	Subcategory E (1,122 population facilities)
1. Cash flow analysis to project facility closure	1. Comparison of ROA for PFPR with alternative asset use.	1. Compliance costs compared to revenue.
2. Compliance costs compared to revenue	2. Compliance costs compared to revenue.	

3. Methodology for Calculating Impacts

a. Baseline. The baseline economic analysis evaluates each facility's financial operating condition prior to incurring compliance costs for this regulation. The purpose of the baseline analysis is to identify PFPR facilities that are currently experiencing or are projected to experience significant financial stress following the period for which the Survey was completed. These facilities are having or are expected to have serious financial difficulties regardless of the promulgation of effluent guidelines. Attribution of these financial difficulties to the effluent guidelines rather than to facilities' current financial problems would inaccurately represent the burden of the effluent guidelines.

Facility financial viability is analyzed in the baseline scenario by calculating the three-year after-tax cash flow from the Survey data, incorporating the costs of EPA regulations effective after the Survey was administered. If a facility has lost cash on average over the three-year period, the facility is not expected to continue in operation and post-compliance impacts are not evaluated.

This baseline analysis included the estimated costs associated with three significant EPA regulations which were not in place in 1988 (the base year) and whose costs were therefore not reflected in the annual operating expenses provided by facilities in the 1988 Survey. These regulations are: (1) Resource Conservation and Recovery Act (RCRA) land disposal restrictions (40 CFR part 268), (2) effluent limitations for the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) industry (40 CFR part 414), and (3) effluent limitations for the Pesticide Manufacturing Industry (40 CFR part 455). Also, Congress passed the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Amendments of 1988, most of which became effective in December, 1988. The annual product maintenance fees mandated by the amendments therefore would not have been included in the Survey responses and are therefore added to facility costs in the baseline.

An estimated 18 facilities are projected to incur costs due to the RCRA land disposal restrictions in the baseline analysis. As a result of the RCRA restrictions, these 18 facilities are expected to incur annualized costs of $156,000, in 1988 dollars. These costs reflect compliance with land disposal restrictions and include outlays associated with landfills, surface impoundments, and waste piles. In addition, an estimated 15 facilities are projected to incur costs due to the OCPSF effluent guidelines in the baseline analysis. The OCPSF guidelines are estimated to impose annualized costs of $5.4 million, in 1988 dollars, on these 15 facilities.

Two effects of effluent guidelines for pesticide manufacturers are included in the analysis. First, a portion of the compliance costs resulting from the effluent guidelines are expected to be passed on to the PFPR facilities. Therefore, PFPR facilities are expected to incur higher costs in purchasing PAIs that had costs under the manufacturing rule. Of the 634 PFPR facilities that discharge water from PFPR operations, 525 are expected to bear such increased costs, totaling $3.4 million per year. Not all of the compliance costs associated with the pesticide manufacturers effluent guideline, however, are expected to be passed on to consumers. Therefore, additional annualized costs ($5.6 million) are added to the baseline for the pesticide manufacturer facilities that also PFPR. Finally, all pesticide producing establishments must pay annual FIFRA maintenance fees. These fees are not expected to result in capital costs, but annual operating costs borne by the facilities are expected to increase by $3.0 million (1988).

b. Post-compliance. For this EIA, a PFPR facility is defined as all operations conducted at a facility that formulates, packages, or repackages pesticide products. The facility closure analysis is based on an evaluation of baseline and post-compliance facility after-tax cash flows. Following calculation of baseline after-tax cash flow, projected regulatory costs were added to the baseline costs. Total post-compliance costs were then used to estimate a post-compliance cash flow. A facility closure is projected to result from the regulation if the baseline after-tax cash flow is positive and the post-compliance after-tax cash flow is negative (i.e., if a facility begins to lose cash due to the regulation).

In theory, conversion of PFPR production lines would be predicted to occur at the point that the return on the assets employed in an alternate activity, adjusted for conversion costs, exceed the return from PFPR. The return available from another activity, however, would vary for each facility based on such factors as local/regional manufacturing activity, capacity availability, and business connections. However, in general, it is expected that alternate FPR opportunities exist in the operations characterized by SIC codes #2899 (chemical preparations) and #2842 (manufacturing furniture, metal, and other polishes.) These SIC codes were the most frequently reported primary SIC codes for PFPR facilities that obtain less than 25 percent of their revenue from PFPR.

The analysis of product line conversion is based on comparing the return on assets (ROA) that would be obtained by continuing PFPR in the post-compliance scenario with the ROA that could be obtained from operating activities classified in SIC 2842. (This data is not available for SIC 2899.) The analysis assumes that the ROA achieved by 75 percent of facilities operating in SIC 2842 could reasonably be expected to be achieved by a converted PFPR line. From 1986 through 1988, the average lowest quartile ROA was 2.9 percent for SIC 2842 (Robert Morris Associates, Annual Statement Studies). If a facility's ROA for PFPR falls below 2.9 percent as a result of compliance costs, the facility would be expected to convert its PFPR production lines to other FPR activities.[3]

EPA evaluated each of the impact measures assuming that the facility is unable to pass any costs through to customers. This is an extremely conservative assumption that yields maximum projected impacts on PFPR facilities. In fact, this scenario is highly unlikely. For a zero cost pass-through analysis to represent a realistic scenario, either the supply curves for pesticide markets must be perfectly inelastic or the demand curves must be perfectly elastic. A perfectly inelastic supply curve is associated with goods for which there is a fixed supply. This is not the case in the pesticide market. Based on an analysis of the price elasticity of demand for pesticides conducted for the pesticide manufacturer EIA, demand for pesticides is generally somewhat inelastic.[4] Because supply curves for the pesticide markets are not known, however, and compliance costs are not estimated in a manner that can necessarily be associated with specific pesticide products, it is difficult to project the percentage of the compliance costs that will be passed through to customers. If the analysis shows the regulation to be economically achievable under an assumption of zero cost pass-through, then it is reasonable to conclude that the regulation would be economically achievable under a more realistic scenario of partial cost pass-through. A sensitivity analysis based on partial cost pass-through was also conducted and is presented in Appendix D of the EIA. Estimated impacts under a partial cost pass-through assumption of 50 percent are expected to be five percent lower than those estimated under the assumption of zero cost pass-through.

C. Projected Facility Economic Impacts

1. Baseline Analysis

The baseline impacts projected for the indirect discharge facilities are shown in Table 3. As mentioned above, a baseline impact is said to occur if a facility's average after-tax cash flow for the three years of Survey data is negative.

TABLE 3.—PROJECTED POPULATION BASELINE FACILITY CLOSURES FOR FACILITIES THAT USE WATER[1]

[Based on 3-year Average Negative Cash Flow]

	Subcategory C facilities	Subcategory E facilities
Facility closures	203	169
Total facilities ...	943	830
Percentage of facilities impacted	22%	20%

[1] Not including direct discharging facilities.

2. Impacts Due to Compliance

a. Subcategory C Facilities: Original PSES Options 1 through 5.

For Subcategory C facilities, EPA initially analyzed the impacts of five possible regulatory options for PSES. These five options were previously described in Section X. Of these options, EPA initially decided to propose Option 3 because, as discussed in Section X, it represents the performance achievable with the best available technology. EPA's analysis shows that this option is economically achievable and, in fact, results in the fewest impacts among the five options. (As described below, today's notice proposes a different option, (Option 3/S.1) based on 3/S, which is the same as Option 3 but includes somewhat different provisions for wastewaters from the formulating, packaging, and repackaging of a group of PAIs termed the "sanitizer" PAIs.)

The estimated facility-level impacts associated with each of the regulatory options are discussed below and presented in Table 4. In addition, estimated worst-case employment impacts are provided. For a projected facility closure, all employment at the associated facility is assumed to be lost. In estimating employment losses, facilities projected to convert their pesticide product lines to formulating, packaging, or repackaging of alternate products are treated as closing their PFPR lines entirely. All production and non-production employment associated with PFPR is assumed to be lost. In fact, some or all PFPR employment at such facilities might be retained. Demand and production might shift to non-pesticide products, unregulated pesticides, or to pesticides for which compliance is less costly. The assumption that all PFPR production is lost is therefore a worst-case assumption. The examination of whether compliance costs are greater or less than five percent has not been used to assess employment impacts. As discussed above, this impact measure is assumed not to lead to an operational change. Under Options 1, 2, and 3 all of the moderate impacts were projected on the basis of a comparison of post compliance return on assets for PFPR activities with a return assumed to be achievable in alternative business activities using the same capital equipment (i.e., based on projection of line conversions). Therefore, employment losses associated with moderate impacts at these facilities are accounted for. For Options 4 and 5, over 85 percent of moderate impacts are projected based on the ROA comparison. Therefore, most moderate impacts are associated with an employment loss.

i. Impacts of Option 1. There are 578 Subcategory C facilities that are estimated to incur costs under Option 1. One hundred twenty of these facilities were analyzed for possible facility closure and the remaining 458 were analyzed as candidates for a line conversion, a more moderate impact.[5] A comparison of annualized compliance cost to facility revenue was conducted for all Subcategory C facilities. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 1 are estimated to be $79.0 million and $32.6 million, respectively. An estimated nine Subcategory C facilities are projected to close due to compliance with Option 1. One hundred seventy-one facilities are estimated to incur moderate economic impacts. Total U.S. job losses are projected, in the worst-case, to be 437 full-time equivalents (FTEs) as a result of the estimated impacts.

ii. Impacts of Option 2. There are 558 Subcategory C facilities that are estimated to incur costs under Option 2. One hundred thirteen of these facilities were analyzed for possible facility closure and the remaining 445 were analyzed for line conversions. A comparison of annualized compliance

[3] In recognition of the uncertainty regarding the ROA achievable by facilities from alternate formulating, packaging, and repackaging activities, a sensitivity analysis of the ROA conversion percentage is presented in Appendix E of the EIA.

[4] See Appendix C of the EIA.

[5] As described above, PFPR/Manufacturing facilities, and facilities that obtain more than 25 percent of their revenue from PFPR were analyzed for possible closures, and all other facilities were analyzed for possible line closures.

cost to facility revenue was conducted for all Subcategory C facilities. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 2 are estimated to be $66.1 and $27.9 million, respectively. One facility is projected to close due to compliance with Option 2. One hundred seventy facilities are estimated to incur moderate economic impacts. Total U.S. job losses are projected, in the worst case, to be 426 FTEs as a result of the estimated impacts.

iii. Impacts of Option 3. There are 558 Subcategory C facilities that are estimated to incur costs. One hundred thirteen of these facilities were analyzed for possible facility closure and the remaining 445 were analyzed for line conversions. A comparison of annualized compliance cost to facility revenue was conducted for all Subcategory C facilities. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 3 are estimated to be $66.1 and $27.9 million, respectively.[6] One facility is projected to close due to compliance with Option 3. One hundred seventy facilities are estimated to incur moderate economic impacts. Total U.S. job losses are projected, in the worst case, to be 426 FTEs as a result of the estimated impacts.

iv. Impacts of Option 4. There are 558 Subcategory C facilities that are estimated to incur costs under Option 4. One hundred thirteen of these facilities were analyzed for possible facility closure and the remaining 445 were analyzed for line conversions. A comparison of annualized compliance cost to facility revenue was conducted for all Subcategory C facilities. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 4 are estimated to be $18.4 and $286.5 million, respectively. Seven Subcategory C facilities are estimated to close due to compliance with Option 4. One hundred ninety-three facilities are estimated to incur moderate impacts. Total U.S. job losses are projected, in the worst case, to be 1,113 FTEs as a result of the estimated impacts.

v. Impacts of Option 5. There are 578 Subcategory C facilities that are estimated to incur costs under Option 5. One hundred twenty of these facilities were analyzed for possible facility closure and the remaining 458 were analyzed for line conversions. A comparison of annualized compliance cost to facility revenue was conducted for all Subcategory C facilities. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 5 are estimated to be $21.0 and $360.2 million, respectively. Seven Subcategory C facilities are projected to close due to compliance with Option 5. Two hundred seventeen facilities are estimated to incur moderate economic impacts. Total U.S. job losses are projected, in the worst case, to be 1,173 FTEs as a result of the estimated impacts.

TABLE 4.—NATIONAL ESTIMATE OF ECONOMIC IMPACTS ON SUBCATEGORY C FACILITIES

[Assuming Zero Cost Pass Through]

	Option 1	Option 2	Option 3	Option 4	Option 5
All subcategory C facilities:					
Facility closures: (Severe Economic Impacts)	9	1	1	7	7
Facilities with Moderate Economic Impacts	171	170	170	193	217
Estimated Worst-Case Job Losses (FTEs)	437	426	426	1,113	1,173

b. Identification of differential impacts. As shown above, Option 3 is economically achievable when viewed across all Subcategory C facilities. However, EPA was aware, through discussions with industry, that certain segments of the industry exhibit distinctive technical and market characteristics. In particular, industry identified the institutional/commercial market for pesticides as having unique technical and market characteristics. The Agency therefore analyzed whether subgroups of facilities, defined by major pesticide market, were disproportionately affected and considered whether technical and market factors distinguished any subgroups in ways that would warrant different regulatory approaches for those subgroups.

Impacts were analyzed by market, with market definitions based on responses to Survey question #19 (page I–9 of the Survey[7]). Responses to this question indicated each facility's total 1988 revenues from pesticide products containing the original 272 PAIs by the following markets:

- Agricultural.
- Institutional/commercial.
- Industrial.
- Wood preservatives and coatings.
- Pesticide intermediate products.
- Products used as an additive to a non-pesticide product.
- Non-agricultural professional use products.
- Consumer home, lawn, and garden.
- Government, for non-institutional use.
- Other.

This analysis indicated that facilities obtaining greater than fifty percent of their 272 PAI pesticide related revenue from the institutional/commercial (I/C) market bore both a large and disproportionately high percentage of the impacts under Option 3. Table 5 indicates the distributions by primary market of all facilities projected to incur costs under Option 3, and of those facilities projected to incur significant economic impacts under Option 3.[8] Table 5 shows that, of the 574 facilities expected to incur costs, 267 or about 47 percent of those facilities receive 272–PAI-related revenue primarily from the I/C market. Moreover, the distribution of significant economic impacts is even more concentrated in the I/C market facilities. Of the 171 facilities expected to incur significant economic impacts, 102 or nearly 60 percent receive 272–

[6] Note that the compliance costs projected for Options 2 and 3 are identical because both options are based on the same technology. For simplification and because the technology is essentially identical the costs are presented to be identical. In reality Option 3 costs could be lower than Option 2, because sampling data indicate that facilities which do treat wastewater for recycling back to the facility do not need to achieve the same degree of pollutant removal from the wastewater that would be required to comply with numeric standards.

[7] See Appendix A of the EIA.

[8] A facility's primary market is the market from which it receives at least fifty percent of its in-scope pesticide revenue. If no market accounts for at least 50 percent of in-scope pesticide revenue, the facility has no primary market.

PAI-related revenue primarily from the I/C market.

TABLE 5.—DISTRIBUTION BY PRIMARY MARKET OF FACILITIES INCURRING COSTS AND OF FACILITIES EXPECTED TO INCUR SIGNIFICANT ECONOMIC IMPACTS

Primary market	Distribution of costs projected to be incurred under option 3 [1]		Distribution of significant economic impacts projected under option 3 [1]	
	Number of facilities incurring costs	Percent of facilities incurring costs (percent)	Number of facilities incurring impacts	Percent of facilities incurring impacts (percent)
Agricultural	73	12.7	6	3.5
Institutional/commercial	267	46.5	102	59.6
Industrial	114	19.9	48	28.1
Wood Preservatives and Coatings	18	3.1	0	0.0
Pesticide Intermediate Products	15	2.6	1	0.6
Products used as additives to non-pesticide products	1	0.2	0	0.0
Non-agricultural professional use products	15	2.6	7	4.1
Consumer home, lawn and garden	56	9.8	2	1.2
Government, for non-institutional use	6	1.0	5	2.9
Other	1	0.2	0	0.0
No primary market	8	1.4	0	0.0
Totals	574	100.0	171	100.0

[1] Percentage totals may not sum to 100.0 because of rounding.

For those facilities estimated to incur significant economic impacts under Option 3 *and* concentrated in the institutional/commercial market, EPA next analyzed usage of the 272 PAIs. This analysis found that the PAI used most frequently by impacted facilities primarily in the I/C market is PAI 56, Hyamine 3500; over 66 percent of these 102 impacted facilities use this PAI. Although several other PAIs were also found to be used with some frequency by the impacted facilities primarily in the I/C market, none were used by more than 30 percent of these facilities, or well less than half the frequency of use for PAI 56.

Taking into account both the high frequency of use of Hyamine 3500 (PAI 56) and the fact that the pounds removed are virtually unchanged by excluding the exterior sanitizer wastestreams (19 additional lb-eq), the Agency decided to examine less stringent requirements with respect to PAI 56 in its efforts to moderate economic impacts of Option 3 on facilities in the I/C market.

In the EIA for the pesticide manufacturers effluent guidelines, EPA defined markets of competing PAIs. This market definition is more detailed than the broad markets listed in the Survey. For example, not all pesticides used in the agricultural market compete with each other. Pesticides used as herbicides on corn do not compete with pesticides used as fungicides on apples. Pesticide markets were therefore defined as clusters of PAIs that are substitutes in a specific end-use (e.g., herbicides on corn). The list of 272 PAIs were mapped into 57 separate clusters along with other non-272 PAIs with which they compete and are presented in Appendix F of the EIA.

PAI 56 is a member of cluster R–4 which is defined as: "Sanitizers for use in dairies, food processing, restaurants, and air treatment". PAIs from the original list of 272 that are included in this cluster are: Hyamine 2389 (PAI 162), methyl benzethonium chloride (PAI 159), Hyamine 1622 (PAI 105), Hyamine 3500 (PAI 56), oxine-sulfate (PAI 51), and Hydroxyethyl amino ethanol (HAE) (PAI 36).

If the Agency were to adopt a different regulatory approach for different individual pesticides within a cluster of pesticides, a market advantage might result for the less stringently regulated pesticides. To avoid this, EPA created a subgroup based on the market and technical characteristics of facilities at which the majority of PAI use comes from Cluster R–4. Analysis of facilities with the majority of PAI use from cluster R–4 (referred to as "sanitizer" facilities) revealed the following differences in market and technical characteristics between sanitizer and other PFPR facilities:

- Sanitizer facilities obtained a smaller percentage of their revenue from PFPR than other facilities;
- Sanitizer facilities had lower facility revenues than other facilities.
- Sanitizer facilities had fewer employees than other facilities.
- Sanitizer facilities are less likely to have already achieved zero discharge than other facilities.
- Sanitizer facilities recycled/reused wastewater less frequently than other facilities (see Table 6).[9]

EPA also notes that sanitizer products, in contrast to other pesticide products, are intended to be discharged to sinks and drains with normal use and therefore large quantities of the products themselves (apart from the PFPR wastestreams) end up at the POTW. EPA is not aware that these products are causing any interferences at POTWs. In addition, adding this small additional amount of sanitizer chemicals—19 lbs.-eq./year—to POTWs would not materially increase the total amount of these chemicals being discharged to POTWs.

TABLE 6.—ESTIMATED NATIONAL CHARACTERISTICS OF SANITIZER FACILITIES VS. OTHER SUBCATEGORY C FACILITIES [1]

	Sanitizer facilities [2]	Other subcategory C facilities
No. of facilities	245	698
Percent of revenue from PFPR:.		
mean	18%	32%
median	5%	10%
Facility Revenue:		
mean	$7.6 MM	$19.3 MM
median	$1.3 MM	$4.7 MM

[9] See Section 5 of the Technical Development Document.

TABLE 6.—ESTIMATED NATIONAL CHARACTERISTICS OF SANITIZER FACILITIES VS. OTHER SUBCATEGORY C FACILITIES [1]—Continued

	Sanitizer facilities [2]	Other subcategory C facilities
Employment associated with PFPR processing of 272 PAIs:		
mean	< 1 FTE	6 FTEs
median	< 1 FTE	< 1 FTE

[1] Facilities that directly discharge are not included. Data are based only on facilities that use water in their production of the 272 PAIs.
[2] Sanitizer facilities are defined as those facilities with the majority of their PAI use from PAIs in cluster R–4.

In recognition of the distinct market and technical characteristics exhibited by facilities with PFPR operations concentrated on PAIs classified as sanitizers, the Agency proposes to treat them as a distinct segment or subgroup. The subgroup does not apply broadly to facilities but, instead, applies to wastewater streams generated in conjunction with the formulating, packaging, or repackaging of the six sanitizer chemicals that are physically separate from wastewater streams from formulating, packaging, or repackaging of other PAIs.

c. *Additional PSES Regulatory Options considered for the sanitizer segment.* In performing the regulatory flexibility analysis, EPA had to balance the traditional concerns of the regulatory flexibility analysis-moderation of impacts among small-business entities—with the broader regulatory objectives of the Clean Water Act.

On the basis of the considerations outlined in the foregoing discussion, EPA defined and analyzed an additional regulatory option for sanitizer chemicals. This option (called Option 3/S) is the same as Option 3 discussed above except for those facilities that formulate, package, or repackage sanitizer active ingredients and whose sanitizer production is less than 265,000 pounds per year. Specifically, in such facilities, non-interior wastestreams such as those from exterior cleaning, cleaning safety equipment, lab wastewater, floor washing and DOT test baths and that contain only sanitizer active ingredients would be exempted from PSES. All other PAI wastestreams at these facilities, including interior wastestreams containing sanitizers PAIs and any non-interior wastestreams containing both sanitizer and other PAIs, would be subject to the zero discharge requirement. In the same way as for Option 3, the zero discharge requirement for these other wastestreams can be met through pollution prevention practices. The Option 3 zero discharge requirement would apply to all PAI wastestreams at any facilities whose wastestreams do not qualify for the sanitizer PAI exemption. The projected impacts under Option 3/S are discussed below for all Subcategory C facilities.

In defining this regulatory alternative, EPA set the 265,000 pounds per year production limit based on analysis of the production volume of facilities that would be expected to avoid adverse impacts as a result of the Option 3/S sanitizer chemical exemption. Specifically, in its facility impact analyses, EPA found that no facility larger than the 265,000 pounds per year production limit would avoid a significant impact as a result of the exemption. Accordingly, in an effort to mitigate significant impacts among PFPR facilities owned by small businesses while retaining as large a share as possible of the pollution reduction benefits of the originally selected Option 3, EPA decided to limit the Option 3/S (ans the Option 3/S.1) sanitizer chemical exemption to only those facilities with less than 265,000 pounds per year of production involving designated sanitizer PAIs.

Table 7 compares the impacts projected under Option 3 and 3/S, providing detail for facilities with wastewater streams containing only sanitizer PAIs.

i. Impacts of Option 3/S. Under Option 3/S, 529 population facilities are estimated to incur costs. The incremental capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 3/S are estimated to be $63.0 million and $26.1 million, respectively. Compared to Option 3, total annualized costs are reduced by approximately $2 million as a result of the reduced requirements on exempted sanitizer PAI-only wastestreams. The possibility of facility closure was analyzed for 113 of these facilities and the remaining 416 were analyzed for line conversions. A comparison of annualized compliance cost to facility revenue was conducted for all facilities.

One facility is estimated to close due to compliance with Option 3/S. In addition, 136 facilities (20 percent fewer than under Option 3) are estimated to incur moderate economic impacts. Under Option 3/S, total U.S. job losses are estimated, in the worst case, to be 355 FTEs or 17 percent fewer than the 426 job losses estimated for Option 3. All of the reduction in impacts necessarily occurs in facilities with non-interior wastewater streams containing only sanitizer PAIs and whose sanitizer production volume is less than 265,000 pounds per year. The requirements of Option 3 and Option 3/S are the same for facilities that co-mingle their wastestreams or whose sanitizer production volume is at least 265,000 pounds per year.

TABLE 7.—NATIONAL ESTIMATES OF IMPACTS FOR SUBCATEGORY C FACILITIES UNDER OPTION 3 AND OPTION 3/S

[Assuming Zero Cost Pass-Through]

	Option 3	Option 3/S
Facilities with only wastewater streams containing pesticide PAIs:		
No. of facilities projected to incur costs	391	391
Total annualized compliance costs (million dollars) [1]	$24.0	$24.0
Facility closures: (Severe economic impacts)	1	1
Moderate economic impacts	119	119
Expected job losses (FTEs)	348	348
Facilities with wastewater streams containing only sanitizer PAIs:		
No. of facilities projected to incur costs	167	138
Total annualized compliance costs (million dollars) [1]	$3.9	$2.1
Facility closures: (Severe economic impacts)	0	0
Moderate economic impacts	51	17
Expected job losses (FTEs)	78	7

TABLE 7.—NATIONAL ESTIMATES OF IMPACTS FOR SUBCATEGORY C FACILITIES UNDER OPTION 3 AND OPTION 3/S—Continued

[Assuming Zero Cost Pass-Through]

	Option 3	Option 3/S
All subcategory C facilities:		
No. of facilities projected to incur costs .	558	529
Total annualized compliance costs (million dollars) [1]	$27.9	$26.1
Facility closures: (Severe economic impacts)	1	1
Moderate economic impacts	170	136
Estimated worst-case job losses (FTEs)	426	355

[1] Total annualized compliance costs are 1988 dollars and therefore differ from the costs in the cost effectiveness section of the preamble which are in 1981 dollars for comparison with other rules.

The Agency decided to propose Option 3/S.1 based on Option 3/S because: The impacts of Option 3 are largely on small facilities, and are primarily due to the costs of having to install treatment for their non-interior wastestreams; the amount of pollutants associated with their non-interior wastestreams is insignificant; and excluding their non-interior wastestreams from coverage results in basically the same overall reduction in pollutants discharged by the PFPR industry but significantly eases the burden on these small entities.

The adoption of Option 3/S.1 based on Option 3/S is consistent with the objectives of the Regulatory Flexibility Act, which directs agencies to examine any significant regulatory alternatives which will accomplish the stated objectives of the applicable statute and which minimize any significant economic impact of the proposed rule on small entities. (RFA Section 603). Section 603 also specifically mentions exemptions from coverage of the rule as one type of alternative that could be examined.

d. Subcategory E Facilities. Refilling establishments generate wastewater as a result of contaminated stormwater and leaks and spills falling within their secondary containment areas or loading pads, as well as the collection and holding of rinsates from refillable containers. Secondary containment and loading pad requirements for refilling establishments who handle agricultural pesticides were recently proposed by EPA's Office of Pesticide Programs. EPA considered two regulatory options for refilling establishments. These two options would both require zero discharge of pollutants but they would be based on different control technologies. Option 1 is based on reuse of all contaminated wastewater, and assumes that the contaminated wastewater is used as make-up water in application of pesticide chemicals to the field. Option 2 assumes that the wastewater is disposed of by off-site incineration. The Agency is proposing Option 1.

i. BPT. Refilling establishments with their use of refillable containers is a relatively new industry which developed during the mid 1980s as a response to industry and environmental concerns regarding the packaging of pesticide products. Because they are a new subcategory, they are not covered under the BPT zero discharge rule promulgated in 1978. EPA is therefore establishing a new requirement for this subcategory.

Responses to the survey indicate that there are no direct dischargers and therefore there are no costs to the industry to comply with a BPT regulation.

ii. PSES. Of the estimated 1,122 Subcategory E facilities that are potentially subject to the regulation, EPA's data indicate that 98 percent, or 1,103 facilities, are already in compliance. Therefore, they would not incur any costs to comply with the proposed regulatory option. In addition, the remaining 19 facilities are expected to be able to achieve compliance with the proposed regulation at zero additional cost.

Under Option 2, the same population of facilities (i.e, approximately 19 facilities) were evaluated for compliance costs. The estimated incremental capital and annualized total costs for these facilities (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 2 is estimated to be $11,794 and $1,837, respectively. A comparison of annualized compliance cost to facility revenue was conducted for the 19 facilities with costs under Option 2. The estimated mean compliance cost as a percentage of facility revenue would be 0.026 percent and the estimated median value 0.032 percent, with a range from 0.001 percent to 0.048 percent. No facilities had a cost-to-revenue ratio greater than five percent. (See Table 8.)

TABLE 8.—ESTIMATED POPULATION IMPACTS FOR SUBCATEGORY E FACILITIES

	Option 1	Option 2
No. of facilities with costs	0	19
Total annualized compliance costs ..	0	$1,837
Facility closures: (Severe economic impacts)	0	0
Moderate economic impacts	0	0

D. Community Impacts

As mentioned above, community impacts may result from facility-level impacts. Community impacts are typically evaluated based on projected decreases in employment in communities affected by the regulation. For this analysis, community impacts were assessed on the basis of both primary and secondary employment losses. Primary impacts consist of the employment losses that are expected to occur as a direct result of the regulation. Secondary economic impacts and associated employment losses occur in other businesses than those directly affected by regulation and result from two mechanisms. First, reductions in output at directly affected facilities influence activity and employment levels in linked industries (indirect effects). Second, the losses in employment and employee earnings in both the directly and indirectly affected facilities result in reduced personal consumption expenditures, which may further affect employment levels in the community (induced effects). If the aggregate impacts, including both primary and secondary employment effects, amount to an employment decline of greater than one percent in an affected community, then community impacts are deemed significant.

The primary employment losses estimated under Options 1 through 5, including Option 3/S, are presented above. (See Tables 4 and 7.) The worst-case national estimated job losses ranged from a high of 1,173 full-time equivalents (FTEs) under Option 5 to a low of 355 FTEs under the proposed Option 3/S. These job losses are distributed over a large number of facilities, with the average job loss per affected facility under any of the options being about three FTEs.

Because the sample was not designed to characterize community or state characteristics, accurate estimates of the

distribution of estimated job losses by community or state cannot be made. Nonetheless, the locations of the surveyed impacted facilities show that the impacts are expected to be widely distributed nationally. (See Table 9.)

TABLE 9.—DISTRIBUTION OF PROJECTED SAMPLE FACILITY EMPLOYMENT IMPACTS UNDER OPTION 3/S

State	FTE loss estimated to occur in state
MO	58
MN	37
All others (no greater than 4 in a single state)	20
Total	115

Although a statistically valid analysis of population level employment impacts on a regional or community level cannot be performed, analyses based on assumptions regarding the locational distribution of primary employment impacts can demonstrate that compliance with the proposed regulation is unlikely to have a significant impact on community employment. To assess whether Option 3/S could be expected to result in significant community employment impacts, EPA analyzed aggregate employment effects at the community level under highly conservative and unlikely assumptions. Specifically, this analysis incorporated three assumptions that will likely lead to a substantial overestimation of community-level impacts.

First, EPA assumed that both closure and line conversion impacts would result in full loss of PFPR-related employment at affected facilities. Line conversions would not generally be expected to result in employment losses.

Second, to estimate secondary employment impacts, EPA used a worst-case regional impact multiplier from the Regional Input-Output Modeling System developed by the Bureau of Economic Analysis (BEA) within the Department of Commerce. BEA publishes state-level employment multipliers by industry classifications. For this analysis, EPA used the highest state-level employment multiplier applicable to the Chemical and Petroleum Refining Industry, the 2-digit BEA industry that is most likely to include facilities engaged in PFPR business. The highest total employment impact multiplier reported by BEA is for the state of Texas and has a value of 9.20.

Third, EPA assumed that all of the direct impact employment losses that are not directly accounted for by the affected sample observations would occur at the known locations of the affected sample facilities in proportion to sample facility weights. Thus, all of the facilities that are represented by an affected sample facility, and their associated employment losses, are assumed to occur at the same location as the affected sample facility. This assumption regarding the locational distribution of facility impacts is also expected to overstate employment losses in each metropolitan statistical area (MSA), because the non-sample facility impacts would likely be distributed among other MSAs that are unknown.

Using these highly unrealistic conservative assumptions, EPA found that Option 3/S is unlikely to result in significant employment impacts at the community level. Specifically, the largest weighted aggregate employment impact under this analysis is associated with an MSA in the state of Minnesota. The estimated sample facility-based employment loss in the MSA is 37.2 FTEs. The sample weight associated with this facility is 4.9, meaning that, in the impact analysis, the facility represents itself plus 3.9 other facilities in the underlying PFPR facility population whose locations may not be estimated. Applying the sample weight brings the primary employment impact to 181.0. Further, applying the industry impact multiplier for Texas of 9.20 brings the weighted aggregate employment impact to 1,665.2 full-time equivalent employment positions. This unrealistically high value exceeds all the other simulated MSA-level impacts by nearly a factor of three. Although this value also yields the highest percentage loss in MSA employment, at 0.1181 percent, it is still less than one-eighth of the one percent significant impact threshold (see Table 10). The next highest percentage employment impacts are 0.0738 percent, in Missouri, and 0.0656 percent, in Texas, or approximately 1/14th and 1/15th of the one percent impact threshold, respectively. Even using highly unrealistic assumptions, this analysis finds that Option 3/S would not likely cause a significant loss of employment in any affected MSA.

TABLE 10.—ANALYSIS OF COMMUNITY EMPLOYMENT IMPACTS ASSUMING WORST-CASE MULTIPLIER AND PROPORTIONAL DISTRIBUTION OF SAMPLE-WEIGHTED EMPLOYMENT LOSSES

State	Primary Impacts Only			Primary and Secondary Impacts		
	Estimated FTE loss in sample facility MSA	Implicit sample-weight	Sample-weighted FTE loss	Maximum State multiplier	Multiplier-adjusted FTE loss	Percent loss in employment
CA	1.9	5.0	9.7	9.2	89.1	0.0020
CA	0.2	4.9	0.8	9.2	7.0	0.0006
CO	0.7	1.2	0.8	9.2	7.4	0.0028
CT	3.8	4.9	18.6	9.2	171.2	0.0403
FL	0.0	7.2	0.1	9.2	0.9	0.0006
GA	0.1	4.9	0.7	9.2	6.6	0.0004
IA	0.1	5.0	0.3	9.2	2.3	0.0010
LA	0.1	7.2	0.4	9.2	3.4	0.0006
MD	0.4	4.0	1.5	9.2	13.5	0.0011
MN	37.2	4.9	181.0	9.2	1,665.2	0.1181
MO	56.9	1.2	68.3	9.2	628.8	0.0738
MO	1.5	4.9	7.1	9.2	65.4	0.0051
OH	3.7	5.1	18.5	9.2	170.6	0.0217
OR	0.7	4.9	3.3	9.2	30.1	0.0044
PA	2.7	7.3	19.5	9.2	179.0	0.0180
SC	0.8	7.2	5.5	9.2	50.7	0.0148
TN	1.1	4.9	5.2	9.2	47.5	0.0100

TABLE 10.—ANALYSIS OF COMMUNITY EMPLOYMENT IMPACTS ASSUMING WORST-CASE MULTIPLIER AND PROPORTIONAL DISTRIBUTION OF SAMPLE-WEIGHTED EMPLOYMENT LOSSES—Continued

State	Primary Impacts Only			Primary and Secondary Impacts		
	Estimated FTE loss in sample facility MSA	Implicit sample-weight	Sample-weighted FTE loss	Maximum State multiplier	Multiplier-adjusted FTE loss	Percent loss in employment
TN	0.4	4.9	2.1	9.2	18.9	0.0035
TX	0.3	5.7	1.8	9.2	16.9	0.0023
TX	1.9	4.0	7.5	9.2	68.8	0.0656
UT	0.3	7.2	2.2	9.2	19.8	0.0039
WA	0.1	7.2	1.0	9.2	9.3	0.0008
Total	114.8	3.1	355.7	.....	3,272.5	

The community-level employment impact values presented in this table provide a worst-case illustration of possible impacts in the MSAs in which those sample facilities assessed as incurring economic impacts were located. The employment losses are likely to overstate substantially actual impacts because of the use of a maximum employment impact multiplier and because non-sample facility impacts (for which an impact location is unknown) are assumed to occur in the same MSA as the sample facility is located. In fact, the non-sample facility employment impacts are likely to be distributed among these and other unknown MSAs in a way that does not yield as high a concentration of impacts at the sample facility locations as indicated in this analysis.

E. Foreign Trade Effects

Products of the PFPR industry are traded internationally. Therefore, changes in domestic production resulting from effluent regulations may affect the balance of trade. EPA evaluated the potential foreign trade impacts of the PFPR regulation by separately estimating the changes in both exports and imports that could occur as a result of a PSES regulation for Subcategory C (PFPR) Facilities. EPA analyzed foreign trade impacts under two cases: a proportional case, which assesses trade impacts based on the relative competitiveness of U.S. and foreign producers in international markets; and a worst case, which makes severely conservative assumptions regarding U.S. competitiveness. Both analyses showed relatively minor trade impacts from the regulatory option, Option 3/S.

Trade impacts were examined for the six PSES options considered for Subcategory C Facilities. Among these options, the estimated impacts of proposed Option 3/S are the least severe under both the worst-case and proportional case assumptions.

1. Proportional Case

The analysis of trade impacts focuses on the PFPR sales of facilities that are assessed as closures or line conversions as the result of the PFPR rule. When a facility ceases PFPR production, the markets that it served, both domestic and export, are assumed to be competed for by other domestic producers and foreign producers. Under the proportional case assumptions, domestic and foreign producers share in these markets on a proportional basis according to their average participation in domestic and export markets before regulation. These assumptions allow foreign producers to compete away a share of both the sales to domestic production and sales for export that had previously been supplied by the impacted facilities. The shares of these markets that are won by foreign producers reflect the long-run success of foreign and domestic producers in competing for domestic and export markets. In effect, the proportional case assumes that foreign and domestic producers would remain as competitive on the margin in capturing domestic and export PFPR markets as they are currently on average. Specifically, exports decline as domestic producers are assumed to capture 30.2 percent of impacted facilities' former exports while foreign producers capture 69.8 percent of this amount. And imports increase as domestic producers are assumed to retain 82.1 percent of impacted facilities' former sales for domestic consumption, while foreign producers capture 17.9 percent.

The estimated decrease in exports (stated as a positive value) and increase in imports are summed to yield the estimated decline in the U.S. PFPR trade balance. Under the proportional case assumptions, the estimated trade impact under Option 3 amounts to a $9,872,000 decrease in the pesticide trade balance, or a 1.04 percent decline. Option 3/S would result in a $9,190,000 decrease in the pesticide trade balance, or a decline of less than one percent (see Table 11 below).

2. Worst-Case

The worst-case analysis again begins with foreign and domestic producers competing to capture the domestic and export PFPR sales of facilities that were assessed as closures or line conversions as the result of the PFPR regulation. Under the worst-case assumptions, however, foreign producers are assumed to win this competition completely. That is, the sales for domestic consumption are fully replaced by increased imports and the sales for export are fully replaced by foreign producers. These assumptions maximize the possible adverse trade impact associated with reduced production and sales of PFPR products by significantly impacted facilities. The estimated decline in exports (stated as a positive number) and increase in imports are summed to yield the decline in the balance of trade in the PFPR market. This analysis makes severe and unrealistic assumptions, but serves to illustrate the minimal impact that the regulation is expected to have on foreign trade, even under the most conservative assumptions.

Under the worst-case assumptions a decrease of $43,995,000 in the net trade balance (4.6 percent) is projected under Option 3, and a decrease of $40,184,000 (4.2 percent) is calculated for the proposed option, Option 3/S (see Table 11).

TABLE 11.—CHANGE IN FOREIGN TRADE BALANCE FOR SUBCATEGORY C PSES OPTIONS ($000, 1988)

Regulatory option	Worst case assumptions			Proportional case assumptions		
	Increase in imports	Decrease in exports	Decrease in net trade balance	Increase in imports	Decrease in exports	Decrease in net trade balance
Option 1	40,155	4,070	44,225	7,188	2,841	10,029
Option 2	40,149	3,846	43,995	7,187	2,685	9,872
Option 3	40,149	3,846	43,995	7,187	2,685	9,872
Option 3/S	36,338	3,846	40,184	6,505	2,685	9,190
Option 4	194,548	8,963	203,511	34,824	6,256	41,080
Option 5	199,219	8,963	208,182	35,660	6,256	41,916

F. Impacts on Firms Owning PFPR Facilities

The assessment of economic achievability of the PFPR regulation is based primarily on the facility-level impact analysis. However, because the impacts at the level of the firm may exceed those assessed at the level of the facility, particularly when a firm owns more than one facility that will be subject to regulation, EPA also conducted a firm-level impact analysis for the PFPR regulation. The firm-level analysis estimates the impact of regulatory compliance on firms owning facilities subject to PFPR effluent guidelines. A firm-level analysis was conducted for all firms which own at least one sample facility that uses water in its PFPR operations, and therefore for which financial data were available. Because of sample design considerations, the findings from the firm-level analysis, which is based on facilities in the sample survey, cannot be extrapolated on a statistically valid basis to the population level of PFPR industry firms.

The firm-level impact analysis involves aggregating financial and compliance cost data for sample facilities by firm. Compliance cost data for the sample facilities within a firm were then used to impute compliance costs for the portion of a firm's PFPR revenue that was not covered by the data for sample facilities. Baseline cost adjustments from other regulatory requirements were also included in the firm-level analysis and were apportioned to those revenues within the firm that were not reflected by sample facilities.

The firm-level financial impact was assessed on the basis of change in pre-tax return on assets (ROA) taking into account the expected compliance requirements for sample facilities and the portion of a firm's PFPR revenue that was not covered by the data for sample facilities. ROA was calculated for the baseline and post-compliance, and compared with a threshold value based on the lowest quartile data for SIC codes in the 2800 group (Chemicals and Allied Products) of 2.396 percent.[10] ROA is a measure of the profitability of a firm's capital assets, independent of the effects of taxes and financial structure. This financial measure provides information regarding the competitive position of the firm within the industry, as well as operating margin and asset management capability. If a firm cannot sustain a competitive ROA when baseline costs and compliance costs are considered, then the firm will likely have difficulty financing the costs of complying with the regulation.

The firm-level financial data used to calculate baseline ROA and to which adjustments were made for the post-compliance analysis were obtained from public financial reports for the public-reporting firms that own facilities in the PFPR Survey. For the multiple facility, non-public-reporting firms, baseline firm-level data were imputed using facility-level data from the Survey and aggregate ratios of sales-to-assets and pre-tax operating income as reported in the Robert Morris Associates publication Annual Statement Studies.[11] Data for single facility firms were taken from the PFPR industry Survey.

1. Baseline Impacts

The baseline ROA analysis evaluates the firm's financial operating condition before costs of complying with the proposed regulatory option are considered. This analysis identifies firms which are expected to be financially weak relative to the overall industry before the regulation is enacted. For the firm-level analysis, baseline costs for non-sample PFPR facilities were estimated and summed with the sample facility firms' costs. Baseline costs include the estimated costs associated with the Resource Conservation and Recovery Act (RCRA), the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) (40 CFR 414), Pesticide Manufacturing, and FIFRA regulations as previously described. The non-sample baseline costs were estimated based upon the portion of PFPR firm revenue which is not attributable to the sample facilities, and on the ratio of firm baseline costs to firm revenues from PFPR. Baseline costs for manufacturing facilities that do not perform PFPR activities owned by the firms being analyzed were also included in the analysis.[12] Firms that have a baseline ROA of less than the threshold value are not considered for compliance impacts because their financial weakness results from current circumstances. Of the 308 firms initially considered in the analysis, 66 firms (all of which are single entities) had a baseline ROA of less than the threshold level of 2.396 and were therefore not considered in the remainder of the analysis. Thus, 242 firms were considered for impacts from the proposed PFPR regulation.

2. Post-Compliance Impacts

Post-compliance ROA was calculated by adjusting the baseline ROA components to reflect the costs of complying with the proposed options—Option 3/S for Subcategory C facilities and Option 1 for Subcategory E facilities[13]. Again, the costs of compliance for facilities not included in the sample were estimated based on the portion of PFPR firm revenue not attributable to the sample facilities, and the ratio of capital and operating costs of compliance to firm PFPR revenue.

Of the 242 firms considered for compliance impacts, 5 firms were found to have a post-compliance ROA of less

[10] The threshold value ROA (2.396 percent) was calculated by weighting the ROA for all available SIC codes in the 2800 group by the total value of shipments of that group.

[11] Robert Morris Associates, *Annual Statement Studies*, 1991, Philadelphia, PA. Calculations are based on a composite weighted average of values for chemical industry sectors.

[12] Data are from EIA for Pesticides Manufacturing Industry, 1993.

[13] Refilling establishments are expected to meet compliance with the proposed option at zero cost.

than 2.396 percent and are therefore assessed as incurring adverse financial impacts as a result of regulatory compliance. Three of these five firms are private single entities and two are private multi-facility firms. No firm impacts are expected to occur among public-reporting firms. The Agency judges that these firm-level impacts should not pose a significant burden to the PFPR industry (see Table 12).

TABLE 12.—ESTIMATED SAMPLE FIRM FINANCIAL IMPACTS

Firm Type	Baseline		Post-compliance	
	Number of projected impacts	Number of firms considered	Number of projected impacts	Number of firms considered
Public-reporting firms	0	36	0	36
Private multi-facility firms	0	92	2	92
Private single entity firms	[1] 66	180	3	114

[1] Sixty-three of these firms have an ROA of less than 2.396 percent before baseline cost adjustments were taken into account.

G. Impacts of NSPS and PSNS

1. Subcategory C

As stated above, EPA is proposing to establish NSPS as zero discharge, equivalent to the BAT requirements for existing sources. Zero discharge represents best available and best available demonstrated technology for the pesticide formulating, packaging and repackaging subcategory as a whole. The economic impact analysis for existing sources shows that this regulatory approach (termed Option 3 in the discussion above) would be economically achievable for the industry. EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies (including dedicated lines and pressurized hoses for equipment cleaning) more efficiently than sources that need to retrofit for those technologies. EPA's analysis concludes that a zero discharge requirement for new source direct dischargers would be economically achievable and would not be a barrier to entry.

EPA is proposing to set pretreatment standards for new sources (which cover indirect dischargers) equivalent to the NSPS standards (which cover direct dischargers), i.e., at zero discharge for all PFPR waste streams. For the reasons stated above with respect to the NSPS standards, EPA finds that the PSNS regulations would be economically achievable and not a barrier to entry.

Although EPA has proposed to exempt the non-interior waste streams of the small sanitizers from this zero discharge requirement for existing pretreatment facilities (PSES), EPA is not proposing to include this same exemption for the new source pretreatment facilities (PSNS). The rationale for finding that the exemption for those sanitizer waste streams is appropriate for existing sources is based on EPA's findings that the impacts on existing small entities would be significantly reduced by the exemption while the associated additional loading of toxic pollutants would be small. With respect to new source pretreaters, EPA does not have sufficient information to conclude that the size and economic conditions of those new sources, the impacts on those new sources, and the associated loadings of toxic pollutants, would justify a similar exemption for the non-interior waste streams for sanitizer facilities.

In addition, EPA has proposed to set a zero discharge requirement for NSPS, also without any exemption for sanitizers' waste streams, based on the proposal to set BAT at zero discharge for all waste streams and the finding that NSPS should be set at a level at least as stringent as BAT.

2. Subcategory E

EPA is proposing NSPS/PSNS for Subcategory E facilities equal to BAT/PSES proposed limitations for existing sources. Compliance with BAT/PSES is projected to have zero costs for existing facilities. Likewise, new facilities are not expected to incur additional annual costs due to the regulation. Since compliance with the proposed option has been found to be economically achievable for existing facilities, EPA has determined that compliance with NSPS/PSNS will also be economically achievable and not a barrier to entry for new sources.

H. Benefits of Pollution Prevention

Typically, the economic achievability of a regulation is evaluated by considering the impacts of projected compliance costs on an industry, for example, the costs of installing and operating a treatment technology. However, facilities may offset some of their compliance costs by achieving regulatory compliance through use of pollution prevention measures. The cost analysis of the proposed PFPR regulation assumes that, where possible, facilities will use certain pollution prevention measures to achieve zero discharge. These measures include, for example, recovery and reuse of rinse waters and other wastewaters that contain reusable PAIs. By recovering and reusing the PAIs contained in such wastewaters, facilities may save on the purchase cost of PAIs, water consumption costs, and sewage treatment costs. The cost analyses described above for the proposed regulation reflect the costs of implementing such pollution prevention measures and reflect cost savings from reduced waste management and disposal costs (about $4.7 million on an annualized basis). The regulatory cost analyses, however, do not include certain additional offsetting cost savings that may accrue to facilities through pollution prevention.

To provide a more comprehensive accounting of the costs of achieving compliance with the proposed PFPR regulation, EPA therefore identified and assessed additional mechanisms by which facilities might achieve cost savings through use of pollution prevention. Specifically, EPA identified five mechanisms by which facilities may offset some of their regulatory compliance costs through pollution prevention. Two mechanisms are associated with the direct costs of PFPR processing and manufacturing PAIs: recovery of PAIs, and recovery of water (reducing water and discharge costs). The other three mechanisms, termed indirect cost savings, arise from reductions in facility and firm costs (or other business-enhancing benefits) that are not directly associated with the manufacturing or PFPR processing of PAIs. These indirect cost savings mechanisms include: reductions in permitting costs, reductions in business

insurance premiums, and reductions in firm cost of capital.

Using Survey data for PFPR facilities subject to regulation, EPA estimated facility-specific savings for the two direct cost mechanisms listed above. Although EPA was not able to estimate facility-specific savings for the three indirect cost mechanisms, EPA assessed these opportunities on the basis of discussions with permitting authority and insurance and finance industry personnel and a review of relevant literature. From these discussions and reviews, EPA concluded that the indirect cost mechanisms would also offer cost-savings opportunities to PFPR industry firms that adopt pollution prevention measures as part of their compliance strategy.

1. Savings From Reduced Water Use and Water Discharge

Wastewaters that contain reusable PAIs can be recovered and reused with the same line or processes in a PFPR facility from which it was taken. Economic benefits can accrue due to the reduced demand for new water and as well from decreased volume of wastewater discharge and associated sewage system costs. In its analysis, EPA assumed 100 percent reduction or reuse of water that is currently discharged. Water and sewer rates were obtained from Ernst & Young's Water and Wastewater 1992 Survey of the monthly rates for the 100 largest metropolitan areas. EPA supplemented this rate information with data on water rates for facility locations not covered by the Ernst & Young data. Also, EPA adjusted these rates to reflect the trend in expected increases in water and sewer rates which is greater than the general rate of inflation.

For the 529 facilities with compliance costs under Option 3/S, EPA estimated that 519 facilities could be expected to achieve water and sewer cost savings by use of pollution prevention. For those facilities achieving cost savings, the mean water and sewer savings is estimated at $213 per annum. The maximum annual savings at an individual facility is approximately $11,000. On average, these savings represent about one percent of the total annualized compliance costs for the facilities expected to achieve water and sewer cost savings. However, the maximum percentage of compliance costs estimated to be saved at a specific facility is about 11 percent of total annual compliance costs. For some facilities, therefore, the reuse and recovery of water and PAIs can provide substantial savings. On the basis of the individual facility values, EPA estimates national aggregate annual benefits from water and sewer savings of $116,000.

2. Savings From Recovery and Reuse of PAIs

Under Option 3/S, facilities will recover PAIs from interior wastewater streams. The value of these PAIs was estimated based on PAI-specific prices calculated for the pesticide manufacturers effluent guideline when necessary data were available, and from secondary sources when not. Of the 545 facilities expected to incur compliance costs under Option 3/S, 354 were assessed as being able to recover and reuse PAIs by use of pollution prevention in complying with the proposed PFPR regulation. In aggregate, facilities are estimated to save about 77,816 pounds of active ingredient per year with a total value of $628,065 (in 1988 dollars). The mean estimated annual PAI savings per facility with savings was estimated at $1,777. On average, these savings represent about 0.65 percent of these facilities' total annual compliance cost. The facility with the highest savings is estimated to save $427,000 per year.

3. Savings From Reduced Costs of Permits and Fees

EPA believes that facilities may also save money by reducing indirect and direct discharge permitting costs as a result of using pollution prevention measures in complying with Option 3/S. Permitting costs include application fees, costs of preparing applications, discharge monitoring reports and engineering reports, annual fees, and monitoring costs. A review of permitting information from several states with PFPR facilities showed that permitting costs vary considerably from state to state. In general, reducing or eliminating discharge volumes through pollution prevention should allow facilities to save on permitting costs. In some cases, facilities may be able to forego permitting costs entirely by eliminating discharges. In other cases, facilities may incur lower permitting costs. For example, several states vary permit application and maintenance fees based on facility discharge volumes and complexity of discharge streams. Some states indicated that their permit fee structures have been explicitly designed, or are being designed, to promote pollution prevention as a discharge reduction or elimination method.

The permitting cost amounts that may be saved vary from a few hundred dollars a year for some POTW-related charges to tens of thousands of dollars for direct discharge permits. As an illustration of the possible significance of these savings, EPA developed an example scenario in which total PFPR industry annual permitting cost savings might amount to $2 million or more.

The Agency solicits comments from the industry and other parties on the likelihood and possible value of such savings.

4. Savings From Reduced Insurance Premiums

Although liability and general business insurance policies do not currently incorporate discounts for use of pollution prevention, trends in insurance coverage show that decreasing risks in the chemical industry will be reflected in cost savings in the insurance premiums. Specifically, the insurance industry has begun to recognize that pollution prevention efforts can reduce a number of business and liability risks. Representatives from business insurance firms indicate that compliance with the PFPR effluent limitations guideline by means of pollution prevention could result in lower insurance premiums through several mechanisms, for example:

- Reduced volume of pesticide ingredients shipped and handled at a facility can result in lower risk of hazardous exposures for workers and the surrounding community;
- Elimination of pollutant discharges would result in a lower risk of leaks or accidental excess discharges of polluting materials; and
- Elimination of pollutant discharges reduces the risk that a facility would be found in violation of discharge limits.

As pollution prevention methods become more accepted and their efficient and effective performance is better established, insurance firms will be more likely to account for the potential risk-reducing benefits of pollution prevention programs in setting insurance premiums. EPA requests that industry discuss the likelihood and possible extent of such savings in its comments on the proposed regulation.

5. Savings From Reduced Cost of Capital

Compliance by pollution prevention under Option 3/S can provide financial benefits to firms by reducing the cost of capital. Decreases in the amount of pesticides being used can reduce contingent liabilities associated with worker safety and environmental compliance issues, and may also provide preferential recognition and valuation in the public capital markets.

The factors that influence the cost of capital to a firm include: the firm's expected financial performance; the variability of the firm's financial

performance; the financial structure of the firm and the associated variability in the performance of the instruments by which the firm's assets are financed; and the relationship of the variability in the firm's own financial performance to that of other firms and competing investment opportunities. These factors determine the overall riskiness of a firm as an investment or lending opportunity. In general, actions that reduce the riskiness or expected variability of a firm's financial performance will reduce its cost of capital. Adoption of pollution prevention measures can reduce the riskiness of the firm's financial performance through:

• *Avoidance of contingent liabilities.* For similar reasons to those outlined above for reduced insurance costs, use of pollution prevention measures by PFPR facilities can reduce contingent liabilities that pose a risk for creditors and investors. For example, more efficient use of PAIs and the use of dedicated lines for each PAI or product can reduce the overall level of worker exposure to PAIs due to elimination or reduction of cleanup due to product changeover. In addition, the reduction or reuse of PAIs can reduce or eliminate pollutant discharges, thereby reducing risks to the surrounding community from accidental spills or leakage and also reducing the risk of being found in violation of discharge limits. Each of these contingencies may pose a financial risk to the firm. Elimination or reduction of such contingent liabilities should reduce uncertainty about future financial performance and result in lower required returns for creditors and investors.

• *Increased managerial control of the firm.* Facilities that prevent pollution associated with PAI use will be better able to control the financial impact of environmental regulations. Firms that limit but continue to discharge effluents are left with the risk of achieving compliance with possibly more stringent environmental requirements in the future. Firms that implement pollution prevention (i.e., source reduction and recycling of wastewaters) to eliminate discharges are proactively avoiding, and therefore controlling, the possibility of these future compliance costs. The removal of this cost uncertainty should make those firms that adopt pollution prevention less risky to invest in or lend to.

• *Preferential recognition and valuation by investors and lenders.* Some investors preferentially search for firms that apply effective and proactive pollution prevention programs. For example, some mutual funds include a social/environmental responsibility component in their charter. Firms that are perceived as environmentally responsible may be awarded a higher valuation and lower cost of capital in the public capital markets.

• *Improved firm financial performance.* Finally, some consumers may favor products of firms that are perceived as environmentally responsible (as defined by the individual consumer). To the extent that a mechanism exists for consumers to be aware that a given firm has undertaken pollution prevention programs, consumers may favor that firm's products over those of its competitors and thus improve the firm's business prospects.

EPA requests comments on the likelihood and possible extent of such financial benefits.

In summary, although EPA has been able to quantify only partially the potential cost-savings benefits of pollution prevention, EPA believes that these benefits may significantly improve the financial circumstances of many facilities and firms that choose pollution prevention as a means of complying with the proposed PFPR effluent limitation guideline.

I. Labor Requirements and Possible Employment Benefits of Regulatory Compliance

Firms will need to install and operate compliance systems to comply with an effluent limitations guideline for the PFPR industry. The manufacture, installation, and operation of these systems will require use of labor resources. To the extent that these labor needs translate into employment increases in affected firms, a PFPR rule has the potential to generate employment benefits. If realized, these employment benefits may partially offset the employment losses that are expected to occur in facilities impacted by the rule. The employment effects that would occur in the manufacture, installation, and operation of treatment systems are termed the "direct" employment benefits of the rule. Because these employment effects are directly attributable to the PFPR rule, they are conceptually parallel to the employment losses that were estimated for the facilities that are expected to incur significant impacts as a result of the PFPR rule.

In addition to direct employment benefits, the PFPR rule may generate other employment benefits through two mechanisms. First, employment effects may occur in the industries that are linked to the industries that manufacture and install compliance equipment; these effects are termed "indirect" employment benefits. For example, a firm that manufactures the pumps, piping and other hardware that comprise a treatment system will purchase intermediate goods and services from other firms and sectors of the economy. Thus, increased economic activity in the firm that manufacturers the treatment system components has the potential to increase activity and employment in these linked firms and sectors. Second, the increased payments to labor in the directly and indirectly affected industries will lead to increased purchases from consumer-oriented service and retail businesses, which in turn lead to additional labor demand and employment benefits in those businesses. These effects are termed "induced" employment benefits.

In view of these possible employment benefits, EPA estimated the labor requirements associated with compliance with the PFPR effluent guidelines Option 3/S. Labor requirements—and thus the possible employment benefits—were estimated in two steps. EPA first estimated the direct employment effects associated with the manufacture, installation, and operation of the PFPR compliance equipment. Second, EPA considered the additional employment effects that might occur through the indirect and induced effect mechanisms outlined above.

1. Direct Labor Requirements of Complying With the PFPR Rule

EPA separately analyzed each component of the direct labor requirements: Manufacturing, installing, and operating compliance equipment. The analysis is based on the compliance cost estimates developed for the economic impact analysis of the PFPR regulation. Compliance requirements and associated costs were estimated for each facility in the Survey that was assessed as incurring costs. For the labor requirements analysis, compliance costs and their associated labor requirements were considered only for those facilities that were not assessed as a baseline closure, or as a closure or line conversion due to compliance. That is, the analysis considered the labor requirement effects associated only with those facilities that, upon compliance with the rule, would be likely to continue PFPR production activities.

EPA estimated the direct labor requirements for manufacturing and installing compliance equipment based on the cost of the equipment and its installation, and labor's expected share of cost in manufacturing and installing the equipment. The labor input was

estimated in dollars based on information contained in the National Input-Output Tables assembled by the Bureau of Economic Analysis in the Department of Commerce. In particular, the direct requirements matrix identifies the value of each input, including labor, that is required to produce a one dollar value of output for a subject industry. The industries in the input-output tables that were used as the basis for this analysis are: the Heating, Plumbing, and Fabricated Structural Metal Products Industry (Bureau of Economic Analysis industry classification 40) for compliance equipment manufacturing; and the Repair and Maintenance Construction Industry (Bureau of Economic Analysis industry classification 12) for compliance equipment installation. The dollar value of labor's contribution was converted to a full-time employment equivalent based on a yearly labor cost of $35,800 (1988 dollars, including benefits and payroll taxes). Because compliance equipment purchase and installation are considered one-time outlays, the labor requirements for these activities were annualized over a 10-year period at the seven percent social discount rate.

For the analysis of the labor required to operate compliance equipment, EPA used the estimates of annual labor hours that had been developed as the basis for assessing the annual operating and maintenance costs of the PFPR regulatory options.

From these analyses, EPA estimated an annual direct labor requirement of 131 full-time equivalent positions for complying with the Option 3/S PFPR regulation. Of this total, the annualized labor requirements for manufacturing and installing compliance equipment are 71 and 27 full-time equivalent positions, respectively. Compliance equipment operation is estimated to require 32 full-time equivalent positions annually. The corresponding annual estimated payments to labor is $4,676,685 (1988 dollars) (see Table 13).

TABLE 13.—ANALYSIS OF POSSIBLE EMPLOYMENT GENERATION EFFECTS OF AN EFFLUENT GUIDELINE FOR THE PFPR INDUSTRY

	Total weighted expenditures	Labor cost share of production value [1] (percent)	Labor cost component		Direct labor requirements [3]	
			One-time basis	Annual basis [2]	One-time basis	Annual basis
Direct Labor Effects From Compliance Equipment:						
Manufacturing	$57,846,443	31.02	$17,941,653	$2,554,488	501	71
Installation	16,096,368	42.23	6,797,979	967,879	190	27
Operation				1,154,318		32
Total Direct Labor Effects				4,676,685		131

[1] Source: U.S. Department of Commerce, The 1982 Benchmark Input-Output Accounts of the United States, December 1991. The labor cost share of production value for compliance equipment manufacturing is based on the input-output composition of the Heating, Plumbing, and Fabricated Structural Metal Products Industry (Bureau of Economic Analysis industry classification 40). The labor share of production value for compliance equipment installation is based on information for the Repair and Maintenance Construction Industry (Bureau of Economic Analysis industry classification 12).

[2] Annualized over 10 years at the social discount rate of 7 percent.

[3] Number of jobs calculated on the basis of an average hourly labor cost of $17.21 and 2,080 hours per labor-year.

2. Indirect and Induced Labor Requirements of Complying With the PFPR Rule

In addition to its direct labor effects, the PFPR effluent guideline may also generate labor requirements through the indirect and induced effect mechanisms described above. EPA assessed the indirect and induced employment effects by use of multipliers that relate aggregate economic effects, including indirect and induced effects, to direct economic effects. Using a range of multipliers from previous studies of the aggregate employment effects of general water treatment and pollution control expenditures, EPA estimated that the total labor requirement effect of the Option 3/S rule would range from 353 to 523 full-time equivalent positions. The lower end of this range reflects the use of lower multiplier values and conservative assumptions regarding effects on economic activity in industries linked to the PFPR industry. The higher end of the range reflects the higher multiplier values and assumes full incurrence of indirect economic effects in industries linked to the PFPR industry.

J. Cost-Effectiveness Analysis of PSES Options

In addition to the foregoing analyses, the Agency has performed a cost-effectiveness analysis. Cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used in setting effluent limitations guidelines to compare the efficiency of one regulatory option is removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. Pollutant removals are measured in copper based "pounds-equivalent." The cost-effectiveness value, therefore, represents the unit cost of removing the next pound-equivalent (lb eq.) of pollutant. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis is not intended to analyze the removal of conventional pollutants (oil and grease, biological oxygen demand, and total suspended solids). The removal of conventional pollutants is therefore not addressed.

For each of the regulatory options, the estimated pounds-equivalent removed were calculated by weighting the number of pounds of each pollutant removed by the relative toxic weighting factor for each pollutant. The use of pounds-equivalent gives correspondingly more weight to more highly toxic pollutants. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Cost-effectiveness

is calculated as the ratio of the incremental annual costs to the incremental pounds-equivalent removed for each option. So that comparisons of the cost-effectiveness among other regulated industries may be made, annual costs for all cost-effectiveness analyses are reported in 1981 dollars.

Table 14 provides estimates of the total annualized compliance costs, in 1981 dollars, and the total pollutant removals in pounds and pounds-equivalent. Table 15 lists estimates of the incremental cost-effectiveness of the regulatory options.

TABLE 14.—NATIONAL ESTIMATE OF ANNUALIZED COSTS AND REMOVALS UNDER PSES

[Subcategory C Facilities]

Option	Annualized cost, MM $ (1981)	Pound removals	Pound-equivalent removals
Option 1	$25.4	111,653	12,127,075
Option 2	21.8	111,683	12,127,666
Option 3/S	20.4	111,793	12,134,031
Option 3	21.8	111,996	12,134,050
Option 4 [1]	224.1	111,996	12,134,050
Option 5 [1]	281.8	111,996	12,134,050

[1] These options result in additional costs with no additional removals.

TABLE 15.—ESTIMATED INDUSTRY INCREMENTAL COST-EFFECTIVENESS UNDER PSES SUBCATEGORY C FACILITIES [1]

Option	Cost-Effectiveness, $/lb.	Cost-Effectiveness, $/lb-eq.
Incremental from baseline to option 1	$227.87	$2.10
Incremental from option 1 to option 2	[2] 121,746	[2] 6,232
Incremental from option 2 to option 3/S	[2] 12,513	[2] 215.86
Incremental from option 3/S to option 3	6,790	71,252
Incremental from option 3 to option 4	[3] undefined	[3] undefined
Incremental from option 4 to option 5	[3] undefined	[3] undefined

[1] Dollar values are in constant 1981 dollars for comparison with other rules.

[2] Options are ranked by increasing levels of pollutant removals. Negative cost-effectiveness numbers mean that costs have decreased from the previous option, while removals have increased, improving cost-effectiveness. This increase in removals at a lower cost makes Option 1 and Option 2 inefficient in comparison to Option 3/S.

[3] These options result in additional costs with no additional removals. Therefore, the incremental cost-effectiveness ratio (incremental cost/incremental removals) is infinite.

As can be seen from the above tables, the cost-effectiveness of Option 1 is $2.10 per pound-equivalent of pollutant removed. Option 1 is relatively cost-effective when compared to the cost-effectiveness values of other effluent limitations guidelines. Movement from Option 1 to Option 2 and from Option 2 to Option 3/S is cost-effective relative to Option 1 because costs are reduced while removals increase. Movement from Option 3/S to Option 3 is less efficient than movement from Option 1 to Option 2 or from Option 2 to Option 3/S. The average cost-effectiveness of Option 3 is $1.79 per pound-equivalent and for Option 3/S is $1.68. Options 4 and 5 are not cost-effective as they result in additional costs with no additional removals relative to Option 3. Option 3/S is the most cost-effective option. Successive improvements in weighted removals are achieved at progressively lower costs by moving from Option 1 through Option 2 to Option 3/S. Further movement from Option 3/S to Options 3, 4 or 5 provides minor additional removals at substantially higher marginal cost.

The costs and removals resulting from the two regulatory options considered for Subcategory E facilities are presented in Table 16 below. Option 1, the proposed option is expected to be met with no additional compliance costs, therefore its cost-effectiveness is zero. Option 2 requires additional costs but results in no additional removals, so its cost-effectiveness value is undefined.

TABLE 16.—NATIONAL ESTIMATES OF ANNUALIZED COSTS AND REMOVALS SUBCATEGORY E FACILITIES

Option	Annualized cost, dollar	Pound removals	Pound-equivalent removals
Option 1	$0	1.0	1.3
Option 2 [1]	1,507	1.0	1.3

[1] This Option results in additional costs with no additional removals

K. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354) calls for the Agency to prepare a Regulatory Flexibility Analysis (RFA) for regulations that have a significant impact on a substantial number of small entities. The purpose of the Act is to ensure that, while achieving statutory goals, government regulations do not impose disproportionate impacts on small entities.

The implications of the Regulatory Flexibility Act are discussed below for facilities regulated under Subcategory C. No economic impacts on small entities are projected for Subcategory E.

1. Subcategory C Facilities

EPA defines a small entity based on the U.S. Small Business Administration (SBA) standards. The SBA has established standards based on employment at firms (including all affiliates and divisions) for each SIC group. For SIC 2879 ("establishments primarily engaged in the formulation and preparation of ready-to-use agricultural and household pest control chemicals") the SBA defines a small business as one employing less than 500 people. Employment data for firms that own sample PFPR facilities were obtained largely from the Section 308 Survey and from Dun and Bradstreet's Million Dollar Directory. Based on this information, 75 percent of the firms owning PFPR facilities which use water are classified as small. Given this high

percentage of small entities, the Agency is concerned with the potential burden of this rule on small businesses. EPA therefore focused the consideration of alternative regulations on small entities that were the most significantly burdened by the regulation and whose effluent was in low quantities and had low toxicity.

a. Severity of impacts. Consistent with the other components of the EIA, significant impacts were defined as facility closures, product line conversions, or a cost-to-revenue ratio of greater than five percent. EPA evaluated the impacts on small entities under Option 3—the option that was initially considered for proposal. The option resulted in a significant number of moderate impacts on facilities owned by small entities. EPA has determined that Option 3 is economically achievable. The impacts, while considered significant, are not severe. Only one facility is expected to close. Most of the estimated impacts are related to line conversions. Even if all the lines close instead of converting to other formulating/packaging activities, job losses would not exceed 451 employees nationally.

b. Differential impacts. EPA subsequently conducted a Regulatory Flexibility Analysis. The Agency evaluated whether small business impacts were concentrated in a particular market. As Table 17 shows, impacted facilities owned by small entities usually obtain less than 25 percent of their revenue from pesticides and are most heavily concentrated in the institutional/commercial market. Further, as shown previously in Table 5, the frequency of impacted facilities in this market is much heavier than for the remainder of the PFPR industry. The Agency also evaluated the PAIs most frequently used by the impacted facilities owned by small businesses. The PAI most frequently used by these facilities is PAI #56, Hyamine 3500. As previously discussed, PAI #56 is classified in cluster R–4, "Sanitizers for use in dairies, food processing, restaurants and air treatment".

TABLE 17.—PRIMARY MARKETS OF ALL FACILITIES IMPACTED UNDER OPTION 3 OWNED BY SMALL FIRMS

Primary market	Facilities with less than 25 percent of revenue from PFPR activities	Facilities with at least 25 percent of revenue from PFPR activities
Agricultural	6	0
Institutional/ commercial	107	0
Industrial	46	0
Wood preservatives and coatings	0	0
Pesticide intermediate products	0	0
Products used as additives to non-pesticide products	0	0
Non-agricultural professional use products	0	0
Consumer home, lawn and garden	1	1
Government, for non-institutional use	0	0
Other	0	0
No primary market	0	0
Total	160	1

c. Consideration of alternative options. Because there may be a disproportionate impact on some small entities, EPA identified and considered alternative regulatory options that would still accomplish the objectives of the Clean Water Act (See Section 603 of the Reg. Flex Act).

EPA then evaluated the pollution contribution associated with small impacted facilities relative to other groups and determined that there were two distinct groups within those facilities impacted. The two groups are wastestreams containing only R–4 products and all other wastestreams. Because of the differential pollution contribution of these two groups, EPA decided to investigate alternative, less burdensome regulatory approaches for those facilities which have separable wastestreams containing the R–4 products listed above.

Option 3/S is proposed as an alternative to Option 3 that results in decreased impacts on the most heavily burdened subgroup of facilities owned by small businesses. Impacts upon facilities owned by small businesses fell from 161 under Option 3 to 126 under Option 3/S. The 3/S exemption results in a minimal increase (203 pounds and 19 toxic weighted pounds) in releases to the environment.

The relief provided for R–4 producing facilities (with separable wastestreams) falls into the dual categories of exemption based alternatives and relaxed standards for small entities. Option 3/S provides a partial exemption from certain regulatory requirements (treat and reuse) for certain classes and other small entity standards (the separable R–4 wastestreams and their producers).

2. Subcategory E Facilities

EPA certifies that the proposed regulation for Subcategory E facilities would not impose a significant economic impact on a substantial number of small entities. Therefore, the Agency did not perform a Regulatory Flexibility Analysis for the Subcategory E regulation.

L. Assessment of Economic Impacts Including Additional PAIs not on the Original List of 272 PAIs Studied for Regulation

EPA has also estimated the economic impacts of including under the proposed option all other PAIs not on the list of 272 PAIs studied in detail to develop these proposed regulations. The analysis was conducted on two separate sets of facilities: (1) facilities that formulate, package or repackage using these additional PAIs as well as the original 272 PAIs, and (2) facilities that use only the additional PAIs.

1. Facilities Using Both Original 272 PAIs and Additional PAIs

Compliance cost estimates were developed for the first set of facilities under a regulatory option to include the additional PAIs. This regulatory option, Option 3/S.1, is analogous to Option 3/S, except that Option 3/S.1 regulates additional PAIs beyond the original 272 PAIs. The estimated costs and impacts of this regulatory option, Option 3/S.1, are presented in the Table 18 below, in comparison with the costs and impacts of Option 3/S.

TABLE 18.—NATIONAL ESTIMATES OF COSTS AND IMPACTS UNDER PSES COMPARISONS OF OPTION 3/S.1 With Option 3/S

	Option 3/S (original 272 PAIs only)	Option 3/S.1 (original 272 PAIs and non-272 PAIs)
Facilities not eligible for sanitizer PAI exemption:		
Number of facilities projected to incur costs	391	391
Total annualized compliance costs (million dollars)	$24.0	$35.1
Facility closures (severe impacts)	1	1
Moderate impacts	119	126
Expected job losses	348	418
Facilities eligible for sanitizer PAI exemption:		
Number of facilities projected to incur costs	138	153
Total annualized compliance costs (million dollars)	$2.1	$5.0
Facility closures (severe impacts)	0	0
Moderate impacts	17	41
Expected job losses	7	52
All subcategory C facilities (except those using only additional non-272 PAIs):		
Number of facilities projected to incur costs	529	544
Total annualized compliance costs (million dollars)	$26.1	$40.1
Facility closures (severe impacts)	1	1
Moderate impacts	136	167
Expected job losses	355	470

Under Option 3/S.1, EPA estimates that 544 Subcategory C facilities will incur costs. The capital and annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 3/S.1 are estimated to be $102.9 and $40.1 million, respectively. One Subcategory C facility is estimated to close due to compliance with Option 3/S.1. One hundred sixty-seven facilities are estimated to incur moderate impacts. Total U.S. job losses are projected, in the worst case, to be 470 FTEs as a result of the estimated impacts.

2. Facilities Using Only the Additional PAIs

To estimate the impact on the second set of facilities, those facilities that formulate, package or repackage only non-272 active ingredients, EPA assumed that they were similar to the surveyed facilities in the following ways:

(1) They have the same proportion of water dischargers that will incur costs, (2) they have the same average cost per facility, and (3) they will have the same percent of closures and moderate impacts. Using these assumptions, the Agency projects that the non-272 PFPR facilities would incur $10.2 million in annual costs, one facility closure, and 83 moderate impacts. EPA also estimates that there could be as many as 13 additional manufacturing facilities that also formulate, package or repackage pesticide products, not included in the study of the facilities that formulate, package or repackage the 272 PAIs. EPA estimates that costs for this subgroup of 13 facilities would be $5.8 million and would result in no additional impacts. This information is summarized in Table 19. Table 19 presents only the data used to proportion costs for facilities that only make non-272 PAI products. Therefore, Table 19 does not include the estimated costs for the expanded scope production at facilities which produce both 272 PAIs and non-272 PAIs.

TABLE 19.—ESTIMATED NATIONAL IMPACTS FOR PFPR FACILITIES USING ONLY ADDITIONAL NON-272 PAIS

[Estimates for "non-272" facilities based on extrapolation of results from detailed analysis of facilities using 272 PAIs]

	Results from detailed analysis of facilities using original 272 PAIs	Percentage of facilities in indicated population groups [1] (percent)	Estimates for facilities using only additional non-272 PAIs [2]
Estimated number of facilities in business	2,404	.....	1,475
Estimated number of facilities that use water	1,794	74.6	1,101
Estimated number of facilities that discharge	656	36.6	402
Estimated number of facilities that discharge and incur compliance costs:.			
PFPR only	507	77.4	311
PFPR and manufacture	22	3.4	13
Estimated total annual compliance cost ($ million, 1988):			
PFPR only	$16.7	.....	$10.2
PFPR and manufacture	$9.4	.....	$5.8
Total	$26.1	.....	$16.0
Total annual compliance cost, average per facility ($, 1988):			
PFPR only	$32,871	.....	$32,871
PFPR and manufacture	$429,065	.....	[3] $429,065
Estimated number of facility impacts:			
PFPR only:			
Closures	1	0.2	1

TABLE 19.—ESTIMATED NATIONAL IMPACTS FOR PFPR FACILITIES USING ONLY ADDITIONAL NON-272 PAIS—Continued

[Estimates for "non-272" facilities based on extrapolation of results from detailed analysis of facilities using 272 PAIs]

	Results from detailed analysis of facilities using original 272 PAIs	Percentage of facilities in indicated population groups [1] (percent)	Estimates for facilities using only additional non-272 PAIs [2]
Moderate economic impacts	136	26.8	83
PFPR and manufacture:			
Closures	0	0.0	0
Moderate economic impacts	0	0.0	0

[1] Percentage calculations are based on findings from detailed analyses of facilities using 272 PAIs. Each percentage value indicates the share of the preceding population group (for facilities using 272 PAIs) that is estimated to fall in that row's named population category. For example, of the 2,404 PFPR facilities using 272 PAIs, 1,794 or 74.6 percent are estimated to use water.

[2] Within the 1,475 facilities estimated to use only the non-272 PAIs, the estimated number of facilities falling in each population group (e.g., water-users or facilities incurring impacts) is based on applying the relevant percentage from the analysis of PFPR facilities using the 272 PAIs. For example, of the 1,475 facilities using only non-272 PAIs, 74.6 percent or 1,101 facilities are estimated to use water.

[3] The estimates of average facility and total annual compliance cost for non-272 PAI facilities are based on the estimated average facility costs for facilities using only the original 272 PAIs. That is, the average facility annual compliance costs of $32,871 and $429,065, which were calculated from analysis of only the original 272 PAIs, are assumed to apply also for the non-272 PAI facilities. The aggregate annual compliance cost values for facilities using only non-272 PAIs were then calculated by multiplying the average costs per facility by the estimated number of facilities in the relevant non-272 PAI facility category (e.g., 311 PFPR-only facilities x $32,871/per facility = $10.2 million total annual cost for PFPR-only facilities using only non-272 PAIs).

3. Aggregate Impacts for All Facilities Using Both Original 272 and Additional PAIs

The aggregate costs and impacts of Option 3/S.1 are the combined impacts upon facilities using both the original 272 PAIs and additional PAIs and facilities using only the additional PAIs. These costs and impacts are reported in Table 20. There are 869 Subcategory C facilities that are estimated to incur costs under Option 3/S.1. The annualized total costs (which include amortized capital, annual operating and maintenance, and monitoring costs) of complying with Option 3/S.1 are estimated to be $56.1 million. Two Subcategory C facilities are expected to close due to the compliance requirement imposed by Option 3/S.1. Two hundred fifty facilities are estimated to incur moderate economic impacts. Total job losses in impacted facilities are projected, in the worst case, to be 688 as a result of the proposed Option 3/S.1 regulation. Accordingly, the Agency finds that the overall impacts of this proposed rule on all pesticide formulator, packager and repackager facilities are economically achievable.

TABLE 20.—NATIONAL ESTIMATES OF COSTS AND IMPACTS FOR UNDER PSES OPTION 3/S.1 INCLUDING SUBCATEGORY C FACILITIES USING BOTH ORIGINAL AND ADDITIONAL PAIS, AND FACILITIES USING ONLY ADDITIONAL PAIS

[Assuming Zero Cost Pass-Through]

	Option 3/S.1
Facilities Using Both Original 272 PAIs and Non-272 PAIs:	
Number of facilities projected to incur costs	544
Total annualized compliance costs (million dollars) [1]	$40.1
Facility closures: (severe economic impacts)	1
Moderate economic impacts	167
Expected job losses (FTEs)	470
Facilities Using Only Non-272 PAIs:	
Number of facilities projected to incur costs	325
Total annualized compliance costs (million dollars) [1]	$16.0
Facility closures: (severe economic impacts)	1
Moderate economic impacts	83
Expected job losses (FTEs)	218
Total—all facilities:	
Number of facilities projected to incur costs	869
Total annualized compliance costs (million dollars) [1]	$56.1
Facility closures: (severe economic impacts)	2
Moderate economic impacts	250
Estimated worst-case job losses (FTEs)	688

[1] Total annualized compliance costs are 1988 dollars and therefore differ from the costs in the cost-effectiveness section of the preamble which are in 1981 dollars for comparison with other rules.

As discussed above in Subsection 9, Labor Requirements and Possible Employment Benefits of Regulatory Compliance, EPA also recognized that the manufacture, installation, and operation of equipment for complying with the Option 3/S.1 regulation would require use of labor resources. To the extent that these labor needs translate into employment increases in complying firms, the regulation has the potential to generate employment benefits that may partially offset the employment losses that are expected to occur in facilities impacted by the rule. Using the same methodology as described in Subsection 9, EPA estimated an annual direct labor

requirement of 211 full-time equivalent positions for complying with the Option 3/S.1 regulation. This labor requirement may offset somewhat the conservatively estimated 688 employment losses in impacted PFPR facilities (see Table 21).

TABLE 21.—NATIONAL ESTIMATES OF EMPLOYMENT LOSSES AND POSSIBLE OFFSETTING EMPLOYMENT GAINS BASED ON ANALYSIS OF ALL SUBCATEGORY C FACILITIES UNDER PSES OPTION 3/S.1

	Estimated values (full-time equivalents)
Estimated employment losses under option 3/S.1:	
Employment losses from facility closures	356
Employment losses from line conversions	209
Total PFPR facility employment losses	688
Estimated labor requirements and possible offsetting employment gains under option:	
Labor requirements for manufacturing compliance equipment	115
Labor requirements for installing compliance equipment	44
Labor requirements for operating compliance equipment	52
Total labor requirements for PFPR regulatory compliance	211

4. Cost-Effectiveness of Option 3/S.1

The Agency estimated the cost-effectiveness of Option 3/S.1. The cost-effectiveness was conservatively estimated by considering the costs of removing the non-272 PAI wastewater pollutants and the 272 PAIs, but considering the number of toxic pounds removed only for the 272 PAIs. The analysis therefore understates the cost-effectiveness of the proposed option. To the extent that removals of non-272 PAI wastewater pollutants are achieved, the proposed option will be far more cost-effective than presented here.

The estimated total annualized cost of Option 3/S.1 is $43.9 million in 1981 dollars. Option 3/S achieved an estimated 12,134,045 pounds-equivalent of pollutant removals. The average cost-effectiveness of Option 3/S.1 considering only the 272 PAIs is $3.62 per pound equivalent. EPA estimates that the proposed option will remove an additional 198,519 *unweighted* pounds of non-272 PAIs that are not accounted for in the cost-effectiveness calculation. Thus, the actual cost per toxic pound-equivalent removed should be significantly less than the $3.62 presented here.

Use of toxic weighting factors provides insight into the significance of pollutant discharges under the proposed sanitizer exemption. As a result of the exemption under Option 3/S.1, total removals are reduced by 1,036 pounds relative to the zero discharge requirement of Option 3 with the additonal non 272 PAIs taken into account. However, when evaluated on a toxic-weighted basis, the reduction in removals is only 196 pounds-equivalent per year. This amount is only 0.002 percent of the industry toxic-weighted loadings of the 272 PAIs that would be removed by this regulation (about 12 million toxic weighted pounds). If toxic-weighted removals of non-272 PAIs were included in this comparison, the percentage of toxic-weighted pounds exempt from this regulation would be even less.

M. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, this action was submitted to OMB for review.

N. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no new information collection activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

XV. Water Quality Analyses

Most of the PAIs being regulated have at least one toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). Many of these pollutants have the potential to bioaccumulate and persist in the environment. Various studies have demonstrated the bioaccumulation of pesticides in aquatic life and accumulation of pesticides in sediments. Documented human health impacts at pesticide formulating, packaging, and repackaging (PFPR) facilities include respiratory disease and impaired liver function, primarily through worker exposure.

Numerous incidents of groundwater and soil contamination at refilling establishments, largely due to spills, are identified in the Office of Pesticide Programs proposed "Standards for Pesticide Containers and Containment" (59 FR 6712, February 11, 1994). According to a 1991 study, an estimated 45 to 75 percent of the refilling establishments in Wisconsin will require soil remediation and 29 to 63 percent of the commercial agrichemical facilities potentially exceed the State's groundwater standards for pesticides. An estimated 40 to 50 percent of refilling establishments in Iowa may require groundwater remediation. Seventy to 80 percent of the detections of pesticides in groundwater in Kansas can be traced back to refilling establishments. Groundwater contamination by pesticides is documented at numerous refilling establishments in Michigan, Illinois, and Utah.

The water quality benefits of controlling the indirect discharges from

PFPR facilities are evaluated by modelling the impact of those discharges on receiving streams. The effects of POTW wastewater discharges of 106 PAIs are evaluated at current and proposed treatment levels for 81 indirect discharging PFPR facilities which discharge to 74 POTWs on 72 receiving streams. Water quality models are used to project pollutant in-stream concentrations based on estimated releases at current and Option 1 levels; the in-stream concentrations are then compared to EPA published water quality criteria or to documented toxic effect levels where EPA water quality criteria are not available for certain PAIs. Instream pollutant concentrations are modelled for Options 1, the highest wastewater load option; if no effects are projected to occur for Option 1, none are projected to occur for the proposed option.

The in-stream pollutant concentration for one pollutant is projected to exceed human health criteria or human toxic effect levels in one receiving stream at current discharge levels. The in-stream pollutant concentrations for 21 pollutants are projected to exceed chronic aquatic life criteria or aquatic toxic effect levels in 18 streams at current discharge levels. No exceedances of human health or aquatic life criteria or toxic effect levels are projected to occur for Option 1; consequently, no exceedances are projected to occur for the proposed option.

The potential impacts of these indirect discharging PFPR facilities are also evaluated in terms of inhibition of POTW operation and contamination of sludge. Potential biological inhibition problems are projected to occur at five POTWs for six PAIs; no sludge contamination problems are projected to occur at current discharge conditions. No potential biological inhibition or sludge contamination problems are projected to occur for Option 1; consequently no exceedances are projected to occur for the proposed option.

The POTW inhibition and sludge values used in this analysis are not, in general, regulatory values. They are based upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Thus, EPA is not basing its regulatory approach for pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness. However, the values used in the analysis do help indicate the potential benefits for POTW operation that may result from the compliance with the proposed option.

XVI. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act call for EPA to consider the non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption.

A. Air Pollution

EPA estimates that facilities may emit 62,000 pounds of volatile priority pollutants during the treatment process and an additional 114,000 pounds may be emitted through the reuse of the wastewaters. EPA does not anticipate significant losses of active ingredients as most have low volatility. This loss would occur during the emulsion breaking, hydrolysis and/or chemical oxidation treatment steps where the addition of heat is likely to promote the release of the priority pollutants. The air emission estimate is based on the use of open vessels. Because EPA has developed costs for closed vessels, our estimate is likely to over estimate the actual losses due to volatilization from treatment. It is possible that there may be some emissions of priority pollutants during cleaning of equipment or containers, particularly if high-pressure cleaning or steam cleaning is used. EPA invites comment and data that address this possibility.

EPA estimates that without this regulation 968,000 pounds of volatile priority pollutants are being discharged to POTW's. An estimated 784,000 pounds will be lost in the form of emissions as the water is treated by POTW's. Thus, today's proposal will reduce the estimated quantity of volatile pollutants emitted by 791,000 pounds/year. In addition, the emissions would be localized and more suitable for capture and treatment. EPA is also inviting comment and data on the possible mechanisms and cost associated with capturing and treating these emissions.

B. Solid Waste

EPA estimates there will be 2,038,000 pounds of sludge generated from emulsion breaking and sulfide precipitation treatment annually. In addition 7,415,000 pounds annually of spent activated carbon will be generated annually. The sludge and spent carbon are generated from treatment through the Universal Treatment System. EPA has assumed that the sludge generated via emulsion breaking and sulfide precipitation will be hauled to hazardous waste incinerators. It is assumed that the activated carbon will be sent off-site for regeneration, which means that it would not become a waste. There is a possibility of air emissions being generated as a result of the incineration or regeneration of spent activated carbonated treatment sludges and resulting in subsequent generation of wastewater from the air pollution control scrubber usually associated with incinerators. However, hazardous waste incinerators are required to destroy contaminants up to 99.99%, thus if there are any residuals they would be at very low concentration. EPA believes this proposed regulation is consistent with the goals established for EPA's Draft Strategy for Combustion of Hazardous Waste, May 1993. This draft combustion strategy which establishes as the first goal "a strong preference for source reduction over waste management, and thereby reduce the long-term demand for combustion and other waste management facilities".

C. Energy Requirements

EPA estimates that the attainment of BAT, NSPS, PSES and PSNS will increase energy consumption by a small increment over present industry use. The main energy requirement of the proposed technologies is the generation of steam that is used in the treatment vessel to accomplish emulsion breaking and hydrolysis. Steam provides the heat energy to assist with the separation of emulsified phases and increase the rate at which active ingredients hydrolyze. It is estimated that about 120 million pounds per year of steam would be required by the Universal Treatment System. This would require approximately 26,000 barrels of oil annually; the United States currently consumes about 19 million barrels per day.

Additionally, EPA estimates that the operation of the Universal Treatment System will consume 1,760,000 kilowatt hours per year. This is expended by the pumps and agitators used in treatment and associated with the storage of water until it can be reused.

XVII. Regulatory Implementation

A. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass".

An upset, sometimes called an "excursion," is an unintentional and temporary noncompliance with technology based effluent limitations occurring for reasons beyond the reasonable control of the permittee. EPA believes that upset provisions are necessary to recognize an affirmative defense for an exceptional incident including "Acts of God". Because technology-based limitations can require only what properly designed, maintained and operated technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. (Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, 590 F.2d 1011 (DC Cir. 1978). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International Inc.* v. *Train*, 540 F.2d 973 (4th Cir. 1976)); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).)

While an upset is an unintentional episode during which effluent limitations are exceeded, a bypass is an act of intentional noncompliance during which wastewater treatment facilities are circumvented in emergency situations.

EPA has both upset and bypass provisions in NPDES permits, and has promulgated NPDES and pretreatment regulations which include upset and bypass permit provisions. (See 45 FR 33290, 33448 May 19, 1980; 40 CFR 122.60(g)(h), 40 CFR 403.16 and 403.17). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Since the limitations and standards are proposed to be set at zero discharge and there are already upset and bypass provisions in NPDES permits and pretreatment regulations, EPA will let local permit and control authorities deal with individual upsets or requests for bypass.

B. Variances and Modifications

Upon the promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to direct dischargers in the pesticide formulating, packaging or repackaging industry. In addition, the pretreatment standards are directly applicable to indirect dischargers.

For the proposed BPT effluent limitations (Subcategory E only), the only exception to the binding limitations is EPA's "fundamentally different factors" ("FDF") variance (40 CFR part 125, subpart D). This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 effluent guidelines, it is now included in the NPDES regulations and not the specific industry regulations. (See 44 FR 32854, 32893 (June 7, 1979) for an explanation of the "fundamentally different factors" variance). The procedures for application for a BPT FDF variance are set forth at 40 CFR 122.21(m)(1)(i)(A).

Dischargers subject to the BAT limitations proposed in these regulations may also apply for an FDF variance, under the provisions of sec. 301(n) of the Act, which regulates BAT, BCT, and pretreatment FDFs. In addition, BAT limitations for nonconventional pollutants may be modified under sec. 301(c) (for economic reasons) and 301(g) (for water quality reasons) of the Act. Under sec. 301(l) of the Act, these latter two statutory modifications are not applicable to "toxic" or conventional pollutants.

Dischargers subject to pretreatment standards for existing sources are also subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs, as discussed in Section XIII.E. Dischargers subject to pretreatment standards for new sources are subject only to the removal credit provision (See Section XIII.E). New sources subject to NSPS are not eligible for EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. (See *duPont* v. *Train*, supra.)

C. Relationship to NPDES Permits and Monitoring Requirements

The BAT and NSPS limitations in today's proposed rule would be applied to individual pesticide plants through NPDES permits issued by EPA or approved State agencies under section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except when variances and modifications are expressly authorized. This section adds more detail on the relation between this regulation and NPDES permits.

One issue is how this regulation will affect the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in the proposed rule to cover the typical facility for this point source category. This regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guideline, or policy.

A concern of permit writers, as well as local control authorities, may be the apparent contradiction of writing a discharge permit for a zero discharge regulation. During development of the proposed regulation, EPA contacted a few permit writers who wrote NPDES permits for facilities that reported zero discharge in the survey. EPA obtained copies of these permits, and found that because the facilities still had wastewater discharges due to sanitary wastewater or other non-PFPR operations, the permit writers were able to specify zero discharge of the PFPR process wastewater streams.

Even if a facility is totally no discharge, an NPDES permit may be requested by the facility to provide upset provisions which would not apply to discharge in the absence of a permit.

Another topic of concern is the operation of EPA's NPDES enforcement program, which was an important consideration in developing today's proposal. The Agency emphasizes that although the Clean Water Act is a strict liability statute, EPA can initiate enforcement proceedings at its discretion. EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good faith compliance.

D. Best Management Practices

Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant. Dikes, curbs, and other control measures are being used at some pesticide formulating, packaging or repackaging facilities to contain leaks and spills as part of good "housekeeping" practices. Further, as described previously, the Office of Pesticide Programs is proposing to require these secondary containment systems at refilling establishments for agricultural pesticides. Due to the variety of products, formulation types and level of sophistication in the formulating and packaging equipment, EPA believes that regulating this industry by BMPs in national effluent

guidelines regulations may not provide enough flexibility to the industry. However, on a facility-by-facility basis a permit writer may choose to incorporate BMPs into the permit.

F. Analytical Methods

Section 304(h) of the Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. These methods are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.41(j)(4) and 122.21(g)(7), and for the pretreatment program under 40 CFR 403.12(g)(4) and (h). To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some nonconventional pollutants. The five conventional pollutants are defined at 40 CFR 401.16. Table I–B at 40 CFR part 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 "Priority Pollutants." This list of Priority Pollutants is shown, for example, at 40 CFR part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants. Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants.

EPA believes that the analytical methods for pesticide active ingredients contained in the promulgated pesticide manufacturing effluent guidelines and standards (see Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater, Volumes I & II, EPA 821–R–93–010–A&B, August 1993, Revision 1) will perform equally well on treated pesticide formulating, packaging or repackaging wastewaters as on pesticide manufacturing wastewaters. Raw wastewater samples may on occasion require some separation prior to analysis, analogous to the emulsion breaking or chemically assisted clarification treatment included in EPA's costed BAT technology. Many of these methods have in fact been used on the PFPR sampled wastewaters. All of the active ingredient pollutant data that supports the proposed effluent limitations were generated using analytical methods that employ the latest in analytical technology. EPA may decide to promulgate these methods (which are contained in part 455) as allowable methods under 40 CFR part 136. However, EPA expects that monitoring of process flow will generally be the method used by permitting and Control Authorities to assure compliance with today's proposal. See section XIV of the Technical Development for a discussion of compliance monitoring.

XVIII. Solicitation of Data and Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data where possible.

EPA particularly requests comments and information on the following issues:

(1) The data collected during the study of this industry demonstrate a great potential for reusing residual wastewater in products. EPA is concerned that there may be some circumstances in which some residual wastewater volume may need to be disposed primarily through incineration. We believe these volumes will be small, however some large production facilities may have relatively large residual volumes. EPA solicits data on the magnitude of volumes, their sources, their pollutant concentrations, what actions have been taken or will be taken to reduce their volume and the amount of reduction that the action has or will accomplish and the cost of achieving such reductions.

(2) Early in the process of developing regulatory options, EPA gave some consideration to the option of allowing an exemption from regulation if a facility were able to comply with a "deminimus" volume. EPA was unable to develop this option beyond conceptualization because there was no real basis on which to make the determination what constitutes a "deminimus" volume. EPA solicits the same type of data from facilities as described above and from POTWs on the volumes, and pollutant concentrations which could be representative of a "deminimus" volume, *and* whether PFPR loadings have caused harm to POTWs.

(3) EPA requests comment and suggestions on the best approach for notifying the PFPR facilities affected by this rule about the best practices, equipment and process changes observed at facilities that lead to pollution prevention, recycle, reuse and water conservation. EPA is presently considering publishing in conjunction with the promulgated rule a separate report dealing with pollution prevention practices or perhaps producing a videotape to broadcast the message. EPA invites comments and suggestions about what would be the most effective approach, content and format to publicize the best pollution prevention practices that are used.

(4) EPA made a number of assumptions to calculate how much wastewater would either be reused in product, treated and reused as wastewater, or sent for off-site incineration. As discussed in the "Cost Estimates" section of this preamble and in the technical Development Document, if volumes of interior wastewater exceeded 50% of the total volume of inert ingredients EPA estimated the excess would either be treated and reused or treated off-site at considerable expense ($8.13/gallon). Given that this assumption does not in any way account for water conservation practices which EPA believes could be applied in many cases, (but did not attempt to apply given that site-specific information was not available), do the assumptions in the cost analysis tend to understate or overstate the costs of EPA's preferred option? Could the actual costs differ enough to suggest adoption of a non-zero discharge approach?

(5) In this proposed rule, EPA does exempt from zero discharge requirements exterior wastestreams from sanitizer pesticides. This exemption is based, in part, on the small amount of discharge that occurs from these wastewaters, the toxicity of these active ingredients, and the disproportionate impact regulating these wastestreams would have on small business. EPA solicits comment on whether any individual active ingredient, any other class of active ingredient or any sector of the pesticide formulating, packaging, and repackaging industry merits consideration of an exemption from the zero discharge standard based on any or all of the above characteristics. An example of a sector is a group of firms with a minimum 50 percent of pesticide revenue from a particular market, for example agricultural, non-agricultural professional use products, industrial, etc. as described in Table 5 of this preamble and the cost effectiveness report. Commenters are encouraged to provide additional information or data that supports different approaches for different pollutants, including

information on quantity of pollutants discharged and costs to affected parties.

EPA will conduct additional analyses of the amount of discharge (including estimating the total number of pound-equivalents removed) and any disproportionate impacts on businesses for individual active ingredients, classes of active ingredients, or sectors of industry as feasible and appropriate. Where appropriate EPA will announce the availability of this analysis in the **Federal Register.**

Appendix A to the Preamble—Abbreviation, Acronyms, and Other Terms Used in This Document

Act—The Clean Water Act.

Agency—U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as defined by section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, as defined by Section 204(b)(4) of the Act.

BMP—Best management practices, as defined by section 304(e) of the Act.

BPT—The best practicable control technology currently available, as defined by section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Conventional Pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act, including, but not limited to, pollutants classified as biochemical oxygen demand, suspended solids, oil and grease, fecal coliform, and pH.

Direct Discharger—An industrial discharger that introduces wastewater to a water of the United States with or without treatment by the discharger.

Effluent Limitation—A maximum amount, per unit of time, production or other unit, of each specific constituent of the effluent from an existing point source that is subject to limitation. Effluent limitations may be expressed as a mass loading in pound per 1,000 pound of active ingredient produced or as a concentration in milligrams per liter.

End-of-Pipe Treatment (EOP)—Refers to those processes that treat a plant waste stream for pollutant removal prior to discharge. EOP technologies are classified as primary (physical separation processes), secondary (biological processes), and tertiary (treatment following secondary) processes. Different combinations of these treatment technologies may be used depending on the nature of the pollutants to be removed and the degree of removal required.

Indirect Discharger—An industrial discharger that introduces wastewater into a publicly owned treatment works.

In-Plant Control or Treatment Technologies—Controls or measures applied within the manufacturing process to reduce or eliminate pollutant and hydraulic loadings of loadings of raw wastewater. Typical in-plant control measures include process modification, instrumentation, recovery of raw materials, solvents, products or by-products or by-products, and water recycle.

Nonconventional Pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants.

NPDES—National Pollutant Discharge Elimination system, a Federal Program requiring industry dischargers, including municipalities, to obtain permits to discharge pollutants to the nation's water, under section 402 of the Act.

OCPSF—Organic chemicals, plastics, and synthetic fibers manufacturing point source category (40 CFR part 414).

PAI—Pesticide Active Ingredient.

POTW—Publicly owned treatment works.

Priority Pollutants—The toxic pollutants listed in 40 CFR part 423, appendix A.

PSES—Pretreatment Standards for existing sources of indirect discharges, under section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect discharges under section 307(b) and (c) of the Act.

SIC—Standards Industrial Classification, a numerical categorization scheme used by the U.S. Department of Commerce to denote segments of industry.

Technical Development Document—Development Document for Effluent Limitations Gudielines and Standards for the Pesticide Chemicals Formulators, Packagers and Repackagers Point Source Category.

List of Subjects in 40 CFR Part 455

Environmental protection, Chemicals, Packaging and containers, Pesticides and pests, Waste treatment and disposal, Water pollution control.

Dated: March 31, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 455 is proposed to be amended as follows:

PART 455—PESTICIDE CHEMICALS

1. The authority citation for part 455 is revised to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

1a. Section 455.10 is proposed to be amended by adding paragraphs (g) through (j) to read as follows:

§ 455.10 General definitions.

* * * * *

(g) *Sanitizer Active Ingredients* means the pesticide active ingredients listed in Table 8 of this part.

(h) *Refilling Establishment* means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

(i) *Interior Cleaning Wastewater Sources* means wastewater that is generated from cleaning or rinsing the interior of pesticide formulating, packaging or repackaging equipment, or from cleaning or rinsing the interior of raw materials containers, shipping containers or bulk storage tanks.

(j) *Small Quantities of Sanitizer Products* means the formulating, packaging and repackaging of 265,000 pounds/year or less of all registered products containing sanitizer active ingredients and no other active ingredients at a single pesticide producing establishment.

2. Section 455.40 is proposed to be revised to read as follows:

§ 455.40 Applicability; description of the pesticide chemicals formulating, packaging and repackaging subcategory.

(a) The provisions of this subpart are applicable to discharges resulting from all pesticide formulating, packaging and repackaging operations except as provided in paragraphs (b) and (c) of this section.

(b) The provisions of this subpart do not apply to repackaging of agricultural pesticides performed at refilling establishments whose principal business is retail sales.

(c) The provisions of this subpart do not apply to wastewater discharges from the operation of employee showers, fire protection equipment test and laundry facilities.

3. New §§ 455.43, 455.44, 455.45, 455.46, 455.47, are proposed to be added to subpart C to read as follows:

§ 455.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of best conventional pollutant control technology: There shall be no discharge of process wastewater pollutants to navigable waters.

§ 455.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this Subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology: There shall be no discharge of process wastewater pollutants.

§ 455.45 New source performance standards (NSPS).

Any new source subject to this subpart which discharges process wastewater pollutants must meet the following standards: There shall be no discharge of process wastewater pollutants.

§ 455.46 Pretreatment standards for existing sources (PSES).

(a) Except as provided in paragraphs (b) and (c) of this section, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

(b) Any wastewater from the formulating, packaging and repackaging of small quantities of sanitizer products at any existing source which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants from Interior Cleaning Wastewater Sources.

(c) The provisions of this section do not apply to discharges resulting from the formulating, packaging or repackaging of the inorganic active ingredient sodium hypochlorite (also referred to as bleach).

§ 455.47 Pretreatment standards for new sources (PSNS).

(a) Except as provided in paragraph (b) of this section, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for new sources as follows: There shall be no discharge of process wastewater pollutants.

(b) The provisions of this section do not apply to discharges resulting from the formulating, packaging or repackaging of the inorganic active ingredient sodium hypochlorite (also referred to as bleach).

4. A new subpart E consisting of §§ 455.60 through 455.67 is proposed to be added to read as follows:

Subpart E—Repackaging of Agricultural Pesticides Performed by Refilling Establishments Whose Principal Business is Retail Sales

Sec.

455.60 Applicability; description of the repackaging of agricultural pesticides performed by refilling establishments whose principal business is retail sales subcategory.
455.61 Special definitions.
455.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
455.64 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.65 New source performance standards (NSPS).
455.66 Pretreatment standards for existing sources (PSES).
455.67 Pretreatment standards for new sources (PSNS).

Subpart E—Repackaging of Agricultural Pesticides Performed by Refilling Establishments Whose Principal Business is Retail Sales

§ 455.60 Applicability; description of the repackaging of agricultural pesticides performed by refilling establishments whose principal business is retail sales subcategory.

The limitations and standards of this subpart shall apply to the repackaging of agricultural pesticides performed by refilling establishments whose principal business is retail sales.

§ 455.61 Special definitions.

Process Wastewaters for this subpart shall include refillable container rinsate, wastewater generated by clean-up of leaks and spills and contaminated precipitation.

§ 455.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology: There shall be no discharge of process wastewater pollutants.

§ 455.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollution control technology: There shall be no discharge of process wastewater pollutants.

§ 455.64 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable: There shall be no discharge of process wastewater pollutants.

§ 455.65 New source performance standards (NSPS).

Any new source subject to this subpart which discharges process wastewater pollutants must meet the following standards: There shall be no discharge of process wastewater pollutants.

§ 455.66 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

§ 455.67 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

5. Table 8 is proposed to be added to part 455 to read as follows:

TABLE 8 TO PART 455—LIST OF SANITIZER ACTIVE INGREDIENTS

CAS No.	Shaughnessy codes
00121–54–0	69122 Benzethonium Chloride (Hyamine 1622).

TABLE 8 TO PART 455—LIST OF SANITIZER ACTIVE INGREDIENTS—Continued

CAS No.	Shaughnessy codes
34375–28–5	99001 2-(Hydroxymethyl) amino ethanol (HAE).
00134–31–6	59804 Oxine-sulfate.
15716–02–6	69134 Methyl dodecylbenzyltrimethyl ammonium chloride (Hyamine 2389).
68424–85–1	69105 Alkyl demethyl benzyl ammonium chloride (Hyamine 3500).
15716–02–6	69134 Methylbenzethonium chloride.
00064–02–8	39107 Tetrasodium ethylenediaminetetraacetate[1].
08008–57–9	40501 Essential oils.
07647–01–0	45901 Hydrogen chloride[1].
	46621 Alkyl-1-benzyl-1-(2-hydroxyethyl)-2-imidazolinium chloride.
08002–09–3	67002 Pine oil.
53516–76–0	69104 Alkyl dimethyl benzyl ammonium chloride.

TABLE 8 TO PART 455—LIST OF SANITIZER ACTIVE INGREDIENTS—Continued

CAS No.	Shaughnessy codes
08001–54–5	69106 Alkyl dimethyl benzyl ammonium chloride.
08045–21–4	69111 Alkyl dimethyl ethylbenzyl ammonium chloride.
53516–75–9	69112 Alkyl dimethyl 1-naphthylmethyl ammonium chloride.
68391–05–9	69119 Dialkyl methyl benzyl ammonium chloride.
68424–85–1	69137 Alkyl dimethyl benzyl ammonium chloride.
61789–71–7	69140 Alkyl dimethyl benzyl ammonium chloride.
68424–85–1	69141 Alkyl dimethyl benzyl ammonium chloride.
68989–02–6	69145 Alkyl dimethyl 3,4-dichlorobenzyl ammonium chloride.
07173–51–5	69149 Didecyl dimethyl ammonium chloride.

TABLE 8 TO PART 455—LIST OF SANITIZER ACTIVE INGREDIENTS—Continued

CAS No.	Shaughnessy codes
85409–23–0	69154 Alkyl dimethyl ethylbenzyl ammonium chloride.
	69165 Octyl decyl dimethyl ammonium chloride.
05538–94–3	69166 Dioctyl dimethyl ammonium chloride.
68607–28–3	69173 Oxydiethylenebis(alkyl dimethyl ammonium chloride).
68607–28–3	69194 Alkyl dimethyl benzyl ammonium chloride.
00497–19–8	73506 Sodium carbonate[1].
07664–38–2	76001 Phosphoric acid[1].

[1] These active ingredients shall only be considered sanitizer active ingredients when they are formulated, packaged or repackaged with the other active ingredients on this list and no other active ingredients.

[FR Doc. 94–8229 Filed 4–13–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
April 14, 1994

Part III

Corporation for National and Community Service

Local Educational Agency Applications for School-Based Grants, et al.; Notices

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Local Educational Agency Applications for School-Based Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability for school-based grants.

SUMMARY: The Corporation for National and Community Service announces the availability of funding for school-based service-learning programs in the States of Alaska, North Dakota, and South Dakota. Grants will be awarded on a competitive basis to Local Educational Agencies (LEAs) for the purposes of planning, operating, implementing, or expanding high quality school-based service-learning programs. Total funding available for each State is as follows:

Alaska—$43,348
North Dakota—$47,714
South Dakota—$55,770

DATES: Applications must be received no later than 6 p.m., Eastern Daylight Savings Time, on May 27, 1994, to be eligible.

ADDRESSES: Application materials may be obtained by contacting: Learn and Serve America: School-Based Service-Learning Programs, Corporation for National and Community Service, 1100 Vermont Avenue NW., Washington, DC 20525; (202) 606–5000, extension 438.

FOR FURTHER INFORMATION CONTACT: Ruby Anderson or Nicole Osborne at the Corporation for National and Community Service; (202) 606–5000, extension 115 or 118.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 94–9037 Filed 4–13–94; 8:45 am]

BILLING CODE 6820–BA–M

Indian Tribe and U.S. Territory Applications for School-Based Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of extension of application deadline.

SUMMARY: The Corporation for National and Community Service announces the availability of $754,800 for competitive grants to Indian Tribes and U.S. Territories for the purposes of planning, operating, implementing, or expanding high quality school-based service-learning programs.

DATES: Applications must be received no later than 6 p.m., Eastern Daylight Savings Time, on May 27, 1994, to be eligible.

Note: The deadline has been extended from April 22, 1994.

ADDRESSES: Application materials may be obtained by contacting: Learn and Serve America: School-Based Service-Learning Programs, Corporation for National and Community Service, 1100 Vermont Avenue NW., Washington, DC 20525; (202) 606–5000, extension 438.

FOR FURTHER INFORMATION CONTACT: Ruby Anderson or Nicole Osborne at the Corporation for National and Community Service; (202) 606–5000, extension 115 or 118.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 94–9038 Filed 4–13–94; 8:45 am]

BILLING CODE 6820–BA–M

federal register

Thursday
April 14. 1994

Part IV

The President

Proclamation 6667—National Public Safety Telecommunicators Week, 1994

Federal Register
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Thursday, April 14, 1994

Presidential Documents

Title 3—

The President

Proclamation 6667 of April 12, 1994

National Public Safety Telecommunicators Week, 1994

By the President of the United States of America

A Proclamation

In an emergency, most Americans depend on 9–1–1. Each day, more than half a million public safety communicators answer desperate calls for help, responding with services that save the lives and property of American citizens in need of assistance.

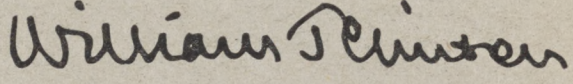
These dedicated men and women are more than anonymous voices on the telephone line. They are local police, fire, and medical professionals who use public safety telecommunications to quickly respond to emergency calls. They are also Federal public safety officials who use telecommunications for everything from drug interdiction to protecting forests to promoting conservation. We rely on their knowledge and professionalism as they make critical decisions, obtain information, and quickly dispatch needed aid.

America's public safety telecommunicators serve our citizens daily in countless ways. The work of these "unseen first responders" is invaluable in emergency situations, and each of these dedicated men and women deserves our heartfelt appreciation. Americans place their trust in these individuals, not just this week, but every day of the year. This week is a time for a grateful Nation to show its appreciation and to recognize that our health, safety, and well-being are often dependent on the commitment and steadfast devotion of public safety telecommunicators.

The Congress, by Public Law 103–221, has designated the week beginning April 11, 1994, as "National Public Safety Telecommunicators Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of April 11, 1994, as National Public Safety Telecommunicators Week. I urge all Americans to observe this week with appropriate programs, ceremonies, activities, and appreciation for these outstanding individuals.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of April, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.



[FR Doc. 94–9259
Filed 4–13–94; 11:05 am]
Billing code 3195–01–P

federal register

Thursday
April 14, 1994

Part V

Executive Office of the President

Greenhouse Gas Emissions From Personal Motor Vehicles; Intent To Form a Policy Dialog Advisory Committee

EXECUTIVE OFFICE OF THE PRESIDENT

Intent To Form a Policy Dialog Advisory Committee to Assist In the Development of Measures To Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

AGENCY: Executive Office of the President.

ACTION: Intent to Form a Policy Dialog Advisory Committee under the Federal Advisory Committee Act.

SUMMARY: To address the danger of global climate change from emissions of greenhouse gases, on April 21, 1993, President Clinton announced the nation's commitment to reduce emissions of these gases in the United States to their 1990 level by the year 2000 and to produce a cost-effective plan to continue the trend of reduced emissions thereafter. On October 19, 1993, the President released the Climate Change Action Plan (CCAP), which commits the federal government, in partnership with the private sector, to a broad range of measures in many sectors to meet the target for the year 2000. Studies of greenhouse gas emission trends leading up to the CCAP confirmed that, particularly in the years after 2000, the personal transportation sector is expected to be the fastest growing contributor to carbon dioxide emission levels, as a result of continuing fast growth of vehicle miles travelled and relatively slow improvement in vehicle fuel economy. Although the CCAP contains several measures to reduce greenhouse gas emissions from the transportation sector, there is a need for significant cost-effective longer-term efforts to reduce greenhouse gas emissions from automobiles and light duty trucks.

The CCAP directed three policy offices in the Executive Office of the President—the Office of Environmental Policy (OEP), the Office of Science and Technology Policy (OSTP) and the National Economic Council (NEC)—to co-chair a process to develop policies to significantly reduce greenhouse gas emissions from personal motor vehicles in the years after 2000. The three offices, in consultation with the Department of Transportation (DOT), Department of Energy (DOE), Environmental Protection Agency (EPA), Office of Management and Budget (OMB) and Council of Economic Advisors (CEA), have established a process under which a Policy Dialog Advisory Committee, constituted pursuant to the Federal Advisory Committee Act, will be convened. The Advisory Committee will develop recommendations on the sets of policies that would, if adopted, most cost-effectively obtain a return to 1990 levels of greenhouse gas emissions from personal motor vehicles by the years 2005, 2015 and 2025, with no upturn thereafter. This framework of achievement of 1990 emissions levels in three alternative years is designed to focus the issues and the Committee's recommendations. Decisions on the amount and timing of reductions in greenhouse gas emissions from personal motor vehicles, and the policies to attain them, remain the responsibility of the federal government. However, the Administration has stated that it is committed to significant reductions in greenhouse gas emissions from personal motor vehicles.

This notice includes the charter of the Advisory Committee. The Executive Office of the President requests public comment on whether it has properly identified interests that are affected by the issues identified and that should be seated on the Advisory Committee, and requests suggestions for potential members of the Advisory Committee.

DEADLINE FOR COMMENTS: Comments must be received by May 4, 1994.

ADDRESS FOR COMMENTS: Comments should be submitted in duplicate, if possible, to EPA Air Docket #A–94–24, room M–1500, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

For information pertaining to the substantive issues to be dealt with by the Advisory Committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, DC 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Office on Environmental Policy, phone (202) 456–6224, fax (202) 456–2710; or Alan Krupnick, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to the establishment of the Advisory Committee and associated administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, phone (202) 260–5495.

SUPPLEMENTARY INFORMATION:

Goal of the Advisory Committee

The goal of the Advisory Committee's deliberations will be to develop a consensus among major stakeholders on the sets of policies that would, if adopted, most cost-effectively return greenhouse gas emissions from cars and light trucks to 1990 levels by the years 2005, 2015, and 2025, with no upturn thereafter. (There will be three different sets of policies, one for each year.) The Advisory Committee process is structured this way to generate maximum consideration of potential policies, their interactions and trade-offs and to increase the potential to reach consensus. By law, the Advisory Committee's functions must be purely advisory. Therefore the decisions on the amount and timing of emissions reductions from personal motor vehicles and the policies to attain them, ultimately remain the responsibility of the federal government. However, in the CCAP the Administration stated its intention to take action—regulatory, legislative or otherwise—immediately after the process is completed to begin responding to the problem of increased greenhouse gas emissions from personal motor vehicles, with or without consensus among the stakeholders.

The Advisory Committee will consider a broad range of policy alternatives, including policies affecting: (i) Demand for personal vehicle travel, (ii) vehicle and fuel technology changes (including increases in vehicle and fuel system operating efficiency); and (iii) shifts in consumer choice among vehicle and fuel technology options. Policies to be considered will focus on those that can be implemented by the federal government, but such policies will be considered in the context of what can and should be accomplished at the state, local and regional levels, and by private parties, both consumers and producers. Groups of policies designed to achieve 1990 levels of greenhouse gas emissions in each of the three targeted years will be evaluated on the basis of costs and projected reductions in metric tons of carbon equivalents (greenhouse gas emissions). Policy groups will also be evaluated on the basis of the speed, reliability, sustainability and efficiency of greenhouse gas reductions; the potential impact of options on urban air pollution and on safety; the cost of alternative policies affecting this sector (including their impact on consumers, jobs, competitiveness and mobility); improvements in energy security; and the feasibility of adoption and ease of implementation.

Membership; Steering Committee

The Advisory Committee will consist of up to thirty members, appointed for a term of one year from the date of the Committee's first meeting. No employee

of the federal government will be a member of the Committee. The Advisory Committee will make recommendations to the President through a steering committee chaired by representatives of the OEP, OSTP and NEC, and consisting of representatives of the other agencies named above. A member or representative of the steering committee will serve as Executive Director of the Advisory Committee and at least one member of the steering committee will attend each meeting of the Advisory Committee and any subcommittees. The deliberations of the Advisory Committee will be assisted by a facilitator under contract to EPA, who will serve as Chair of the Advisory Committee.

Members of the Advisory Committee will be chosen by the President, upon the recommendation of the steering committee, to achieve balanced representation of the following stakeholder interests:

- State, local and regional governments and agencies, including those responsible for land use, transportation, energy use and air quality;
- Automobile and light truck manufacturers and related parties such as suppliers, dealers and the insurance industry;
- Labor;
- Transportation fuel (including potential alternative fuel) industry; and
- Public interest groups, including environmental, safety, consumer and low income groups and those representing the driving public.

This list of interests is illustrative, and is not meant to imply that each named interest will be represented by any specific number of Advisory Committee members.

We invite suggestions for members of the Advisory Committee. In making a suggestion, please indicate the interest or interests proposed to be represented. Suggestions may be in the form of groups or individuals, although names of specific individuals are preferred. Proposed members of the Advisory Committee should be prepared to devote significant time to the project and to engage in meaningful consultation and negotiation.

Operation of the Advisory Committee

The Advisory Committee will be expected to meet approximately eight times over a period of one year. Meetings are expected to be two days in duration. Although most meetings will be held in Washington, DC, one to two meetings may be held in other locations to maximize public participation. Meetings will be open to the public. To maximize the opportunities for participation by those representing the public, the federal government may pay travel expenses, including per diem in lieu of subsistence, of Advisory Committee members representing not-for-profit entities and state or local governments who would not otherwise be able to participate. On-line facilities will be used to enhance the operation of the Advisory Committee, to broaden opportunities for public participation, and to reduce costs. The Advisory Committee and steering committee will be able to work with an interagency analytical support team led by the CEA.

The Advisory Committee will issue an interim report within six months of the date of its first meeting. This report shall advise the President, through the steering committee, of the Advisory Committee's proceedings. The Committee shall submit its final report to the President, through the steering committee, within on year of the date of its first meeting, unless this period is extended by the President.

Advisory Committee Charter

Following is the charter that has been adopted for the Advisory Committee.

Charter—Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions

1. Committee's Official Designation

Advisory Committee on Personal Motor Vehicle Greenhouse Gas Reductions (the "Advisory Committee" or "Committee").

2. Authority

Presidential Review Directive NEC–1, concerning the implementation of a process to develop measures to significantly reduce greenhouse gas emissions from personal motor vehicles.

3. Objectives and Scope of Activities

The Climate Change Action Plan directed the National Economic Council (NEC), the Office of Environmental Policy (OEP), and the Office of Science and Technology Policy (OSTP) to co-chair a process to develop measures to significantly reduce greenhouse gas emissions from personal motor vehicles, including cars and light trucks. This process, called the Personal Motor Vehicle Greenhouse Gas Reduction Project, will be directed by a steering committee responsible for making recommendations to the President at the close of the project. The steering committee will consist of representatives of the NEC, OEP, OSTP, Department of Transportation, Department of Energy, Environmental Protection Agency, Office of Management and Budget and Council of Economic Advisors. A representative of the Office of the Vice President will participate in meetings of the steering committee. As set forth in section 4 of this Charter, the Advisory Committee shall provide to the President, through the steering committee, advice and recommendations concerning cost-effective groups of policies that would, if adopted, return total greenhouse gas emissions from use of personal motor vehicles to their 1990 levels by the years 2005, 2015 and 2025 (and then stabilize or continue to reduce such emissions).

4. Duties of the Committee

The duties of the Advisory Committee are solely advisory and shall be as follows:

a. The Advisory Committee shall develop recommendations concerning the most cost-effective manner in which to return greenhouse gas emissions from personal motor vehicles to their 1990 levels by the years 2005, 2015 and 2025 (and then to stabilize or continue to reduce such emissions). In developing its recommendations, the Advisory Committee shall consider a wide range of policy alternatives, including policies affecting: (i) Demand for personal vehicle travel; (ii) vehicle and fuel technology changes (including increases in vehicle and fuel system operating efficiency); and (iii) shifts in consumer choice among vehicle and fuel technology options. Policies to be considered will focus on those that can be implemented by the federal government, but such policies will be considered in the context of what can and should be accomplished at the state, local and regional levels, and by private parties, both consumers and producers.

b. In developing recommendations, the Committee shall consider the speed, reliability, sustainability and efficiency of greenhouse gas reductions; the potential impact of options on urban air pollution and on safety; the cost of alternative policies affecting this sector (including their impact on consumers, jobs, mobility and competitiveness); improvements in energy security; and the feasibility of adoption and ease of implementation.

c. The Advisory Committee may recommend analyses and studies to be undertaken by agencies of the federal government to support the deliberations of the Advisory Committee.

d. The Advisory Committee may carry out such additional functions as the steering committee may from time to time request.

5. To Whom the Advisory Committee Reports

The Advisory Committee shall report to the President through the steering committee. At least one member of the steering committee shall attend every meeting of the Advisory Committee and any subcommittees.

The Advisory Committee shall submit its final report to the President, through the steering committee, within one year of the date of the first meeting of the Advisory Committee, unless such period is extended by the President. The Advisory Committee shall issue an interim report not more than six months after the date of the first meeting of the Advisory Committee. The interim report shall advise the President, through the steering committee, of the Advisory Committee's proceedings and the likelihood that the Committee will be able to complete its duties within one year of the date of the first meeting of the Committee.

6. Duration and Termination Date

The Advisory Committee shall terminate thirty days after submission of its final report.

7. Agency Responsible for Providing Financial and Administrative Support to the Advisory Committee

Financial and administrative support shall be provided by the Department of Transportation, through an Interagency Agreement between the Department of Transportation and the Environmental Protection Agency. Financial support may include payment of travel expenses, including per diem in lieu of subsistence, of Advisory Committee members representing not-for-profit entities and state or local governments who could otherwise not participate in Advisory Committee meetings, as permitted by law for persons serving intermittently in the government service (5 U.S.C. sections 5701–5707).

8. Estimated Operating Costs

The total operating costs of the Advisory Committee shall not exceed $250,000.

9. Estimated Number and Frequency of Meetings

The Advisory Committee shall meet at the call of the Chairperson or the steering committee or otherwise as it deems necessary to complete its functions.

10. Subcommittee(s)

To facilitate functioning of the Advisory Committee, subcommittee(s) of members of the Advisory Committee may be formed. The objectives of such subcommittee(s) shall be to make recommendations to the Advisory Committee with respect to specific matters related to the responsibilities of the Advisory Committee. Subcommittee(s) shall meet as the Advisory Committee deems appropriate.

11. Consultations

The Advisory Committee is authorized to consult with public and private sector individuals, who need not be members of the Advisory Committee. If appropriate, such individuals can be consulted in workgroups. Workgroups have no authority to make decisions on behalf of the full Advisory Committee, nor can they report directly to the steering committee.

12. Members

Up to thirty Advisory Committee members shall be appointed by the President for a term of one year, which may be extended by the President. Committee members shall not be compensated for service on the Committee. Membership shall be fairly balanced in terms of points of view represented.

13. Chairperson and Executive Director

The facilitator serving the Advisory Committee shall serve as Chairperson. A member or representative of the steering committee shall serve as Executive Director.

Dated: April 13, 1993.

W. Bowman Cutter,

Deputy Assistant to the President for Economic Policy.

John H. Gibbons,

Director, Office of Science and Technology Policy.

Kathleen A. McGinty,

Director, Office on Environmental Policy.

[FR Doc. 94–9288 Filed 4–13–94; 2:30 pm]

BILLING CODE 4910–62–M

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S. 476/P.L. 103–232

To reauthorize and amend the National Fish and Wildlife Foundation Establishment Act, and for other purposes. (Apr. 11, 1994; 108 Stat. 336; 6 pages)

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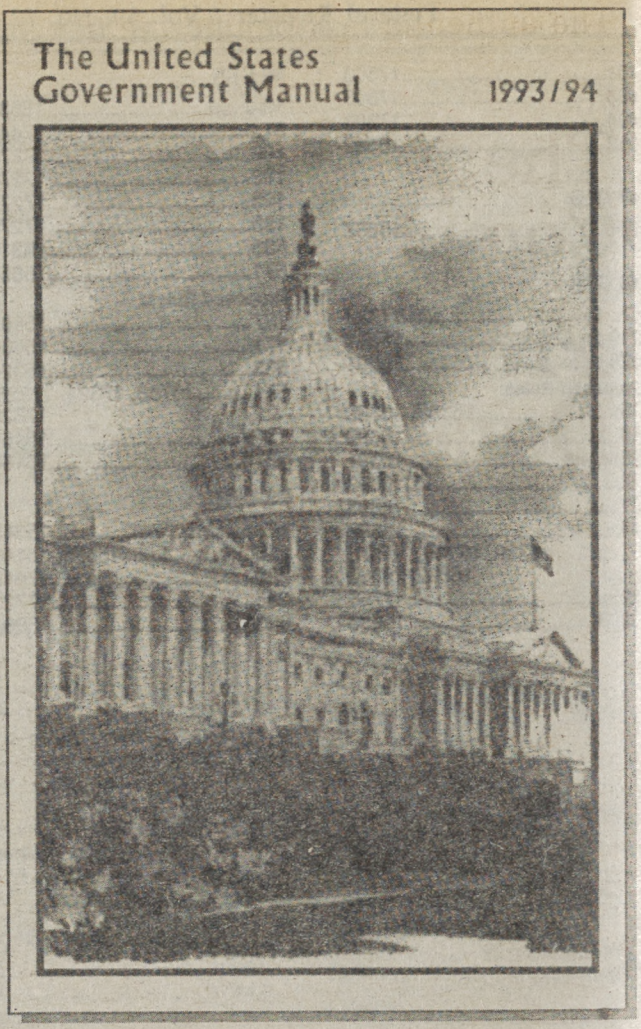
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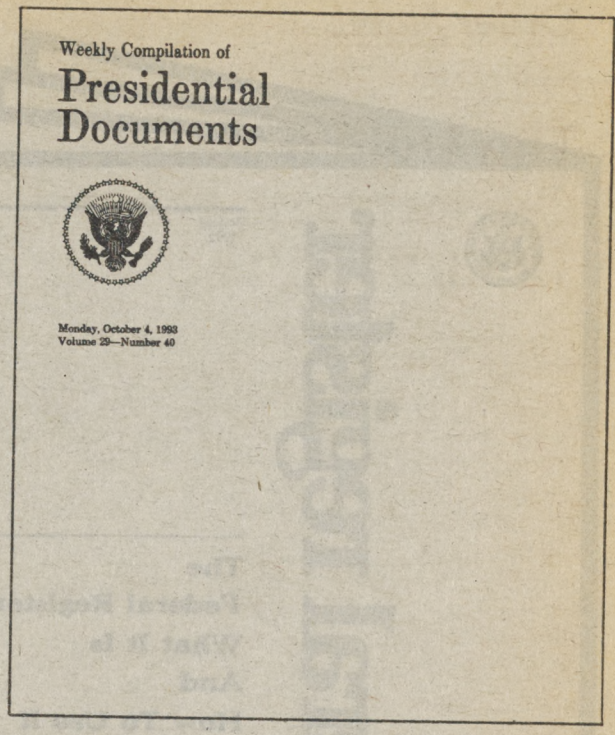
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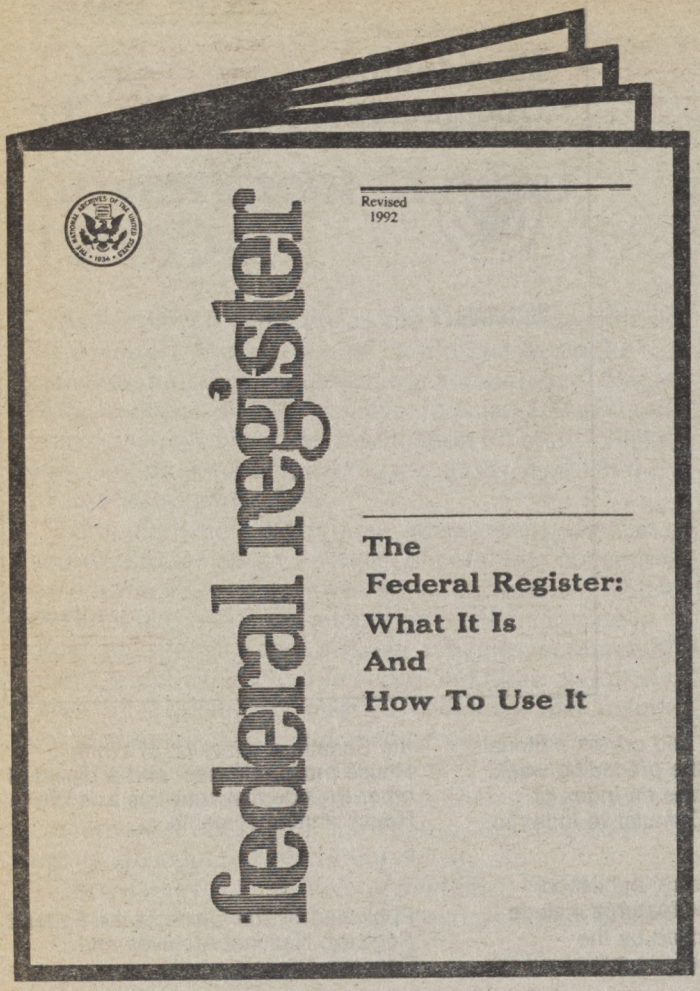
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