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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–98–302]

Table Grapes (European or Vinifera Type); Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Table Grapes (European or Vinifera Type). The Agricultural Marketing Service (AMS), in cooperation with industry and other interested parties develops and improves standards of quality, condition, quantity, grade and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language criteria for describing various levels of quality and condition as valued in the marketplace. The revision will change the specific varietal reference throughout the standard from the present "Superior Seedless" to "Sugraone." This revision will result in a benefit to the table grape industry by providing a uniform, up-to-date reference ensuring proper application of the grade standards.

DATES: This rule is effective March 29, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington D.C. 20090–6456, (202) 720–2185; E-Mail Francis_J._Osullivan@usda.gov.

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

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

AMS provides inspection and grading services and issues grade and quality standards for commodities such as grapes. The agency does not determine varietal names for such commodities. However, in February 1998, AMS received a request from Sun World International (Sun World) to replace the varietal reference "Superior Seedless" with "Sugraone" in the table grape standards in 7 CFR Part 51.880–51.914. Sun World, a grower/shipper with proprietary rights to the term "Superior Seedless," advised AMS that "Superior Seedless" was a registered trademark name and no longer the varietal name used for this table grape variety.

Sun World petitioned AMS in February 1998 to revise the United States Standards for Grades of Table Grapes (European or Vinifera Type). Sun World requested that AMS revise the standards by replacing the varietal reference of "Superior Seedless" with "Sugraone." This request appeared reasonable to AMS, because the U.S. Standards for Grades of Table Grapes (European or Vinifera Type) lists specific requirements for this variety. Although AMS is not responsible for issuing varietal names, the Agency is responsible for facilitating commerce by providing buyers, sellers, and quality assurance personnel uniform language criteria for describing various levels of quality and condition as valued in the marketplace. Accordingly, descriptions and varietal names should be used that are current and applicable for its users.

A proposed rule was issued to address this change. A proposed rule was published in the **Federal Register** on October 21, 1998 [V. 63, FR 56096]. A comment period of sixty days was issued which closed on December 21, 1998.

Only one comment was received during the comment period. This comment was from the proponent, Sun World, which offered several reasons for making the revision to the standard. These reasons include the fostering of international trade, recognition of "Sugraone" as the proper varietal name by appropriate international organizations and consistency with applicable laws and international agreements. The comments noted that on August 9, 1996, the State of California, where 100 percent of the U.S. production of Sugraone originates, revised its regulations identifying Sugraone as a grape varietal name (California Code of Regulations, Title 3, Subchapter 4, Fresh Fruits and Vegetables, Article 25, Table Grapes and Raisins, November 16, 1996).

AMS has considered this comment and based upon available information has determined that the varietal reference should be revised from "Superior Seedless" to "Sugraone." As previously stated, AMS provides inspection and grading services and issues grade and quality standards for commodities such as grapes. Even though U.S. grade standards make reference to varieties for some requirements, the agency does not determine varietal names for commodities.

However, according to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621–1627, Sec. 203 (c)], the Secretary of Agriculture is directed and authorized "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." This change should encourage uniformity and consistency in commercial practices with regard to marketing this variety of table grape.

Further, users of the standard will be certain how to apply the requirements of the standard, specifically to the Sugraone variety. Ultimately, the changes are merely technical and the actual grade requirements for this variety will remain unchanged. The references are necessary to provide inspection personnel and other parties using the grade standards with clear, concise, up-to-date information. Accordingly, the revision will have no substantive effect in the application of grade standards to regulated domestic and imported grapes under the

Agricultural Marketing Agreement Act of 1937 [7 U.S.C. 601–674], specifically those at 7 CFR part 925, and 7 CFR part 944, or grapes regulated under the Export Grape and Plum Act [7 U.S.C. 591–599].

Accordingly, in Sec. 51.882 U.S. Fancy, paragraph (i)(1)(ii), "Superior Seedless" will be changed to "Sugraone." In Sec. 51.884 U.S. No. 1 Table, paragraph (I)(1)(i), which specifies berry size for the U.S. No. 1 Table grade, "Superior Seedless" will also be changed to "Sugraone." A similar change will be made to Sec. 51.885 U.S. No. 1 Institutional, paragraph (h)(1)(i), which also references berry size for that particular grade.

In addition, as the maturity requirements specified in the standards incorporate applicable portions of The California Code of Regulations, and the State has revised these regulations by replacing "Superior Seedless" with "Sugraone," Sec. 51.888 (a)(2) of the U.S. grade standards will be revised to incorporate the new State regulations by reference to The California Code of Regulations, Title 3, Subchapter 4, Fresh Fruits, Nuts, and Vegetables, Article 25 Table Grapes and Raisins, November 16, 1996.

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, and issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have compatibility.

It is difficult to obtain an exact number of table grape handlers and producers which grow or handle the Sugraone variety or Superior Seedless brand, (primarily due to the fact that a table grape producer or handler normally grows, or handles more than just one variety). However, according to the 1997 USDA National Agricultural Statistics Service reports, there are approximately 800 fresh market table grape growers/shippers in the United States which produced 939,665 short tons of table grapes (all varieties). Of these 800 growers/handlers, approximately 650 are from California and produce approximately 80 percent (750,000 short tons) of the crop. Approximately 10 growers from Arizona produced 2 percent (23,000 short tons) of the 1997 fresh market table grape crop. The bulk of the remaining 18 percent of production was produced by the remaining three of the top five States of table grape production: Georgia, Arkansas, and New York. In 1997, California produced approximately 26,572 short tons of the "Sugraone" variety, representing approximately 3 percent of the total U.S. table grape production and 100 percent of the U.S. production of this variety.

Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The table grape industry is characterized by growers and handlers whose farming operations generally involve more than one type (such as fresh market utilization versus processed market utilization) and variety of table grape, and whose income from farming operations in not exclusively dependent on one table grape variety or even one commodity. Typical table grape growers and shippers produce multiple varieties of fresh market table grapes and juice grapes within a single year. Furthermore, table grape handlers also handle not only multiple varieties of fresh market table grapes and juice grapes within a single year, but multiple commodities. Therefore, it is difficult to obtain an exact number of table grape growers and handlers, and, more specifically, "Sugraone" table grape growers, handlers and shippers, that can be classified as small entities based on the SBA's definition. However, the majority of the producers do have annual receipts greater than $500,000. Additionally, there are approximately 127 importers that receive an average of $2.8 million in grape revenue. (Table grapes received by these importers are subject to the requirements of Section 8e of the Agricultural Marketing Agreement Act of 1937 referenced above.) Therefore, it is estimated that the majority of table grape growers do not fit the SBA's definition of a small entity while the majority of handlers/importers are small entities.

The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

Alternatives were considered for this action. One alternative would be to not issue a final rule. However, as the popularity of this variety increases, and as imports of this variety also increase, the exposure and frequency of this varietal designation will also increase. Since the purpose of these standards is to expedite the marketing of agricultural commodities, not changing this reference could result in confusion in terms of the proper application for the U.S. grade standards.

This action will make the standard more consistent and uniform with marketing trends and commodity characteristics. It will not impose any additional reporting or recordkeeping requirements on either small or large grape producers, handlers, or importers. In addition, other than discussed above, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this rule.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule 30 days after publication in the **Federal Register** because: (1) It would be pertinent to have this change in effect by the beginning of the 1999 domestic table grape crop harvest (mid April to May); (2) the changes being made in this final rule only affect growers/handlers of the Sugraone variety of table grape; (3) the proposed rule provided a 60 day comment period during which no comments opposed to this rule were received. Accordingly, AMS amends the United States Standards for Grades of Table Grapes (European or Vinifera Type) as follows.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 51.882 [Amended]

2. In § 51.882, paragraph (i)(1)(ii) is amended by removing the words "Superior Seedless" and adding in their place the word "Sugraone."

§ 51.884 [Amended]

3. In § 51.884, paragraph (i)(1)(i) is amended by removing the words "Superior Seedless" and adding in their place the word "Sugraone."

§ 51.885 [Amended]

4. In § 51.885, paragraph (h)(1)(i) is amended by removing the words

"Superior Seedless" and adding in their place the word "Sugraone."

§ 51.888 [Amended]

5. In § 51.888, paragraph (a)(2) is amended by removing the date "February 28, 1992" and adding in its place the date "November 16, 1996".

Dated: March 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–7473 Filed 3–25–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1027]

Availability of Funds and Collection of Checks.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) recognizes that banks are currently dedicating their automation resources to addressing Year 2000 and leap year computer problems and may be challenged to make and test other programming changes, including those that may be required to comply with Regulation CC's merger transition provisions, without jeopardizing their Year 2000 or other programming efforts. Therefore, the Board is amending Regulation CC to allow banks that consummate a merger on or after July 1, 1998, and before March 1, 2000, greater time to implement software changes related to the merger.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Anderson, Staff Attorney, Legal Division (202/452–3707). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: On December 2, 1998, the Board proposed amending Regulation CC to allow banks that consummate merger transactions on or after July 1, 1998, and before June 1, 1999, greater time to implement software changes related to the merger. (63 FR 66499). The proposal did not affect applications under the Bank Merger Act or the Bank Holding Company Act. The Board proposed this amendment because it recognizes that banks are currently dedicating their automation resources to addressing Year 2000 and leap year computer problems and may be challenged to make and test other programming changes, including those that may be required to comply with Regulation CC, without jeopardizing their Year 2000 or other programming efforts.

The Board received 15 comments on the proposed rule from the following types of institutions:

Banks/thrifts—3
Trade associations—3
Federal Reserve Banks—3
Clearinghouses—3
Bank holding companies—3

All of the commenters generally supported the Board's proposal and viewed it as aiding banks' efforts to focus programming resources on renovating and testing software systems to address Year 2000 rollover and leap year computer problems. Nine commenters urged the Board, however, to lengthen the proposed extension of the transition period, and generally recommended that a more liberal transition period be applicable to banks that consummate mergers in 2000.

These commenters stated that adopting an extension into the Year 2000 would enable banks to delay merger programming work so that they may focus greater resources on addressing the Year 2000 computer problem. In particular, it would enable merged banks that were Year 2000 compliant as separate entities to delay merging their systems until after key Year 2000 events (the century rollover and leap year), which would enable them to avoid reprogramming and retesting already Year 2000 compliant systems prior to spring 2000. Finally, one commenter noted that extending the period into the Year 2000 would help ensure that banks have sufficient resources to address unanticipated Year 2000 problems that may arise at the turn of the century.

For these reasons, the Board has decided to further extend the transition period. The final rule allows banks that consummate a merger on or after July 1, 1998, and before March 1, 2000, to be treated as separate banks until March 1, 2001. Beginning in March 2000, banks that merge will be subject to the normal one-year transition period.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The final rule will apply to all depository institutions regardless of size. The amendments are intended to provide relief to banks involved in mergers, including small institutions, by reducing required changes to their automation environment during the period surrounding the century rollover, and should not have a negative economic effect on small institutions. Because the amendments should not have a negative economic effect on small institutions there were no significant alternatives that would have minimized the economic impact on those institutions.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend Regulation CC, 12 CFR Part 229 as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.19, paragraph (g) is redesignated as paragraph (g)(1), a heading is added for newly designated paragraph (g)(1), and a new paragraph (g)(2) would be added to read as follows:

§ 229.19 Miscellaneous.

* * * * *

(g) *Effect of merger transaction.* (1) *In general.* * * *

(2) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

3. Section 229.40 is redesignated as § 299.40 (a), a heading is added for newly designated paragraph (a), and a new paragraph (b) would be added to . read as follows:

§ 229.40 Effect of merger transaction.

(a) *In general.* * * *

(b) *Merger transactions on or after July 1, 1998, and before March 1, 2000.* If banks have consummated a merger transaction on or after July 1, 1998, and

before March 1, 2000, the merged banks may be considered separate banks until March 1, 2001.

By order of the Board of Governors of the Federal Reserve System, March 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–7408 Filed 3–25–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–39–AD; Amendment 39–11091; AD 99–07–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series 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 Boeing Model 767 series airplanes. This action requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. This action also provides optional terminating action for the repetitive inspections. This amendment is prompted by a report that a fractured diagonal brace lug was found during a routine maintenance inspection. The actions specified in this AD are intended to detect and correct cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut.

DATES: Effective April 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that a fractured lug of the diagonal brace of the nacelle strut was found during a routine visual inspection of a Boeing Model 767 series airplane. The affected airplane had accumulated 36,247 flight hours and 17,677 flight cycles.

Such cracking has been attributed to migration of a bushing inside the lug bore. A migrated bushing could cause fretting damage to the lug bore, which could lead to the initiation of a crack. Subsequent propagation of that crack due to fatigue loading could result in complete fracture of the lug and consequent failure of the diagonal brace. Failure of the diagonal brace would place increased stress on the strut secondary load paths. Continued operation of the airplane with a failed diagonal brace could result in fatigue failure of a strut secondary load path. This condition, if not corrected, could result in separation of the engine and strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998, which describes procedures for repetitive detailed visual inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. Follow-on actions include, if cracking or damage is detected, replacement of the existing one-piece diagonal brace with a new three-piece diagonal brace, which eliminates the need for the repetitive inspections, and additional inspections of the strut secondary load paths to detect damage. For airplanes on which no cracking or damage is detected, the alert service bulletin describes procedures for optional rework of the diagonal brace, which allows repetitive inspections to be deferred, provided that the one-piece diagonal brace is replaced with a three-piece diagonal brace prior to the accumulation of 37,500 total flight cycles.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent failure of a secondary load path and loss of the engine and strut. This AD requires repetitive detailed visual inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. If no cracking or damage is detected, this AD provides for optional rework of the diagonal brace, which would allow the repetitive inspection threshold to be increased from 1,000 or 3,000 flight cycles, as applicable, to 12,000 flight cycles. If any cracking or damage is detected, this AD requires replacement of the existing one-piece diagonal brace with a new three-piece diagonal brace, which constitutes terminating action for the repetitive inspections; additional inspections of the strut secondary load paths to detect damage; and corrective actions, if necessary. This AD also provides for an optional replacement of the one-piece diagonal brace with a new three-piece diagonal brace, which constitutes terminating action for the repetitive inspection requirements of this AD. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This AD

Operators should note that the effectivity listing of the alert service bulletin is divided into four groups. However, Figure 1 of the alert service bulletin specifies procedures only for Groups 1, 2, and 3. The FAA has determined that airplanes in Group 4 are subject to the detailed visual inspection at the same threshold (12,000 total flight cycles), and the same corrective actions, if necessary, as airplanes in Groups 1 and 3.

Operators also should note that, if the optional rework of the diagonal brace is accomplished, this AD requires reinspection to detect cracking or damage of the diagonal brace lugs within 12,000 flight cycles. The alert service bulletin identifies the optional rework as "zero time rework"; however, the alert service bulletin does not

clearly specify that the detailed visual inspection of the diagonal brace lugs should be repeated within 12,000 flight cycles after accomplishment of the rework. The FAA finds that, to ensure the safety of the fleet of affected airplanes, it is necessary to clarify the requirement to repeat the inspection of the diagonal brace within 12,000 flight cycles after rework.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. The FAA currently is considering requiring the replacement of the existing one-piece diagonal brace with a new three-piece diagonal brace, which would constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for the installation of the three-piece diagonal brace is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–39–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–07–06 Boeing: Amendment 39–11091. Docket 99–NM–39–AD.

Applicability: Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut, accomplish the following:

Initial Inspection

(a) Perform a detailed visual inspection to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, on the left and right sides of the airplane, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes in Groups 1, 3, and 4: Inspect prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes in Group 2: Inspect prior to the accumulation of 24,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later.

Follow-On Actions

(b) If no cracking or damage is detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at the interval specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance

with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Repeat the inspection until the actions specified by paragraph (d) or (e) of this AD have been accomplished.

(1) For airplanes in Groups 1, 3, and 4; and for airplanes in Group 2 on which the diagonal brace has accumulated more than 32,000 total flight cycles: Repeat the inspection at intervals not to exceed 1,000 flight cycles.

(2) For airplanes in Group 2 on which the diagonal brace has accumulated 32,000 or fewer total flight cycles: Repeat the inspection at intervals not to exceed 3,000 flight cycles.

(c) If any cracking or damage is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, remove the diagonal brace and perform additional inspections to detect damage of the strut secondary load paths, in accordance with Part 4 of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; and accomplish the requirements of paragraphs (c)(1) and, if applicable, (c)(2) of this AD.

(1) Prior to further flight, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

(2) If any additional damage of the alternate load paths is detected, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes on which no cracking is detected during the inspection required by paragraph (a) of this AD, in lieu of accomplishing repetitive inspections in accordance with paragraph (b) of this AD, rework of the forward and aft lugs of the diagonal brace may be accomplished in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. If such rework is accomplished: Within 12,000 flight cycles after the rework, repeat the inspection required by paragraph (a) of this AD; and, prior to the accumulation of 37,500 total flight cycles on the diagonal brace, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

Optional Terminating Action

(e) Replacement of the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as specified by paragraph (c)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on April 12, 1999.

Issued in Renton, Washington, on March 17, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7117 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–256–AD; Amendment 39–11090; AD 99–07–05]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that requires repetitive external visual inspections and internal borescope inspections to detect discrepancies of the elevator assembly; and either repair or repair/modification of certain identified discrepancies. This amendment is prompted by a report of fretting at the diagonal truss to web joint of the elevator and cracking in the cap fillet radius adjacent to the joint, apparently due to loose fasteners as a result of local vibration. The actions specified by this AD are intended to detect and correct such fretting and cracking, which could result in reduced structural integrity of the elevator and consequent flutter instability if coupled with other structural failures.

DATES: Effective April 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes was published in the **Federal Register** on May 9, 1997 (62 FR 25565). That action proposed to require repetitive external visual inspections and internal borescope inspections to detect discrepancies of the elevator assembly; and repair/modification of any discrepancy.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed AD.

Request To Revise the Cost Estimate

One commenter states that inspection and modification of the elevator, in accordance with Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996, requires approximately 320 work hours instead of the 20 work hours specified in the service bulletin. The FAA infers that the commenter considers that the cost estimate included in the proposed AD is too low and should be revised.

The FAA does not concur. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of an "on condition" action, such as either the repair or repair/modification specified by paragraph (b) of this AD, which is required to be accomplished only if any discrepancy is detected during the required inspection. In light of this, the FAA considers that the cost estimate provided in the proposed AD is appropriate. No change has been made to this estimate in the final rule.

Request To Change the Inspection Requirements

One commenter requests that a one-time inspection be accomplished on all elevators, unless previously accomplished within the last 24 months in accordance with Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996. The commenter states that, because no damage has been found outboard of elevator station (ES) 187.5 by either the commenter or the manufacturer, inspection outside that area is unnecessary. The commenter adds that no damage has been found on airplanes having an elevator previously modified to incorporate larger (5/32-inch) fasteners in accordance with Lockheed L–1011 Service Bulletin 093–55–018, Revision 1, dated July 12, 1990. Based on these findings, the commenter maintains that those airplanes should not be subject to the inspection requirements of the proposed AD.

The FAA does not concur that a one-time inspection, instead of the repetitive inspections required by paragraphs (a) and (b) of this AD, would be adequate to detect and correct the unsafe condition. Although the FAA agrees that elevator damage has been limited to elevators on which the smaller fasteners are installed, and to the truss structure inboard of ES 187.5, Service Bulletin 093–55–031 describes only possible sources of such damage. While it appears that loose fasteners are the cause, the FAA has determined that it is possible that other factors could be involved. In light of that possibility and until the exact cause has been identified, the FAA has determined that mandating repetitive inspections is the only means to detect future damage to the elevator assembly, regardless of the fastener configuration of the truss structure. No change has been made to the repetitive inspections required by paragraph (a) of the final rule.

Requests To Change Repair/Modification Requirements

One commenter requests removal of the words "any discrepancy" from paragraph (b) of the proposed AD, because such wording would require accomplishment of the Part II inspection/modification [i.e., repair/modification] of the referenced service bulletin, even if the noted discrepancy is outside the scope of interest of this proposed AD. The commenter adds that the restriction should be limited to the repair of damages detected during inspections.

The FAA concurs and agrees that the term "any discrepancy," is too broad and needs clarification. The FAA has revised paragraph (b) of this final rule to specify that corrective action is required only for those discrepancies identified in paragraph (a) of this AD.

That same commenter requests that the repair of all damage found during inspections be accomplished prior to further flight, in accordance with the Lockheed L–1011 Structural Repair Manual (SRM), or instructions approved by a designated engineering representative (DER).

The FAA partially concurs. The FAA concurs with the commenter's request to allow repairs in accordance with the Lockheed L–1011 SRM. The FAA has reviewed the SRM procedure and finds that it may be used as an acceptable means of compliance for the repair required by paragraph (b) of this AD. However, the FAA has determined that the repair/modification (if accomplished) must be accomplished in accordance with Lockheed L–1011 Service Bulletin 093–55–031. Paragraph (b) of the final rule has been changed accordingly.

The FAA does not concur with the commenter's request to allow repair in accordance with DER-approved instructions. The FAA does not consider it appropriate for a DER to approve the repairs required by this AD. While DER's are authorized to approve certain repairs for cracking found during routine maintenance inspections or other types of inspections, the FAA considers that any cracking detected in the principal structural elements (PSE) during an inspection required by this AD indicates an airworthiness concern of a complex nature. Therefore, such cracking does not warrant "routine" handling, but requires expeditious action or a special approach to address the unsafe condition. In light of this, the FAA has determined that DER approval of repairs for AD-mandated discrepancy findings is not appropriate in this AD; therefore, DER approval is not included as an alternative source of information for accomplishing the repairs required by paragraph (b) of the final rule.

The same commenter states that modification of the elevator, in accordance with Part II of the Accomplishment Instructions of the referenced service bulletin, should not be required because the modification requires 320 work hours per "set" (two elevators) to accomplish, and that repairs with repetitive inspections would provide an equivalent level of safety.

The FAA partially concurs. The FAA agrees that the operator may have the option of accomplishing either the repair or the repair/modification, with continued inspections thereafter, and that accomplishment of either of these actions will provide an adequate level of safety. The final rule has been changed accordingly.

The FAA points out that Service Bulletin 093–55–031 specifies that accomplishment of the Part II repair/modification procedure closes out the inspection requirements. However, paragraph (a) of the final rule requires repetitive inspections after accomplishment of either the repair or the repair/modification. NOTE 2 has been added to the final rule to clarify that the inspections are to be continued after accomplishment of either of these actions.

Request To Correct the Part Number Specified in the Service Bulletin

One commenter notes that Part II A.(3) of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996, incorrectly specifies part number (P/N) HLT319–5 flush head Hi-loks as alternative parts to MS20470AD5 rivets. The commenter states that the correct specification should be "P/N HLT318–5 protruding head Hi-loks," which has been confirmed by the manufacturer.

The FAA concurs that clarification of the specified part number is necessary,

based on information received from the manufacturer. The correct part number has been added to paragraph (c) in the final rule.

Request To Add a Reporting Requirement

One commenter recommends mandatory reporting of damages found during the initial inspection because the manufacturer has not yet determined the cause and extent of failures of the inboard ribs.

The FAA does not concur. Although the FAA agrees that mandatory reporting could help identify the extent of the cracking found in the elevator truss structure, it is unlikely that such reports could identify the root cause. For this reason, the FAA has not added a reporting requirement to the final rule. However, if the commenter or other operators wish to obtain the results of such inspections and provide findings to the FAA, the FAA would consider further analysis of such data.

Conclusion

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

Cost Impact

There are approximately 235 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $140,400, or $1,200 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–07–05 Lockheed: Amendment 39–11090. Docket 96–NM–256–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fretting at the diagonal truss to web joint of the elevator, and cracking in the cap fillet radius adjacent to the joint, which could result in reduced structural integrity of the elevator and consequent flutter instability if coupled with other structural failures, accomplish the following:

Initial and Repetitive Inspections

(a) Within 12 months after the effective date of this AD, perform an external visual inspection and internal borescope inspection to detect discrepancies (i.e., loose/missing fasteners or rivets, sponginess, sheared rivets, fretting, damage, and cracking) of the elevator assembly, in accordance with Part I of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996. Repeat the inspections thereafter at intervals not to exceed 18 months.

Repair or Repair/Modification

(b) If any discrepancy described in paragraph (a) of this AD is detected during any inspection required by this AD, prior to further flight, accomplish either the repair in accordance with the applicable sections of the Lockheed L–1011 Structural Repair Manual, or the repair/modification in accordance with Part II of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months.

Note 2: This AD requires repetitive inspections after accomplishment of either the repair or the repair/modification.

Correct Part Number

(c) Part II A. (3) of the Accomplishment Instructions of Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996, incorrectly specifies the part number to be used as a replacement for ⅛-inch-diameter rivets as "HLT319–5." The correct part number and description are identified as "HLT318–5 protruding head Hi-lok." Where there are differences between the AD and the service bulletin, the AD prevails.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Lockheed L–1011 Service Bulletin 093–55–031, dated April 26, 1996. 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 Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 30, 1999.

Issued in Renton, Washington, on March 17, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7116 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–ANE–09–AD; Amendment 39–11089; AD 99–04–15]

RIN 2120–AA64

Airworthiness Directives; Dr.Ing.h.c.F. Porsche Aktiengesellschaft (Porsche) 3200N01, N02, and N03 Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–04–15 that was sent previously to all known U.S. owners and operators of Porsche PFM3200N01, N02, and N03 reciprocating engines by individual letters. This AD requires replacement of valve springs prior to further flight on PFM3200N01, N02, and NO3 engines. This amendment is prompted by reports of six cases of undetected fatigue failures of valve springs, with one valve spring failure causing an in-flight engine failure that ended in an emergency landing. The actions specified by this AD are intended to prevent an in-flight engine shutdown due to undetected fatigue failures of valve springs.

DATES: Effective April 12, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 99–04–15, issued on February 8, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–ANE–09–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Porsche Aviation Products, Inc., 1600 Holcomb Avenue, Reno, Nevada, 89502; Attn: Mr. Gary Butcher, telephone (702) 329–3937, fax (702) 329–0426. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt Authority (LBA), which is the German airworthiness authority, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Dr.Ing.h.c.F. Porsche Aktiengesellschaft (Porsche) PFM3200N01, N02, and N03 reciprocating engines. The LBA advises that they have received reports of six cases of undetected fatigue failures of valve springs with one valve spring failure causing an in-flight engine failure that ended in an emergency landing. A metallurgical analysis determined that the relative motion between the valve spring and valve spring retainer will result in fatigue cracking of the valve spring and eventual failure of the spring. This condition, if not corrected, could result in an in-flight engine shutdown.

Porsche has issued Service Bulletin (SB) No. N/105–036, dated October 8, 1998, that specifies procedures for replacing all valve springs in each engine cylinder head. The LBA has classified this SB as mandatory and has issued airworthiness directive (AD) FCAA 1998–436, dated October 8, 1998, in order to assure the airworthiness of these engines in Germany.

This engine model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. This engine model is used on a high-performance single-engine airplane. The nature of the valve spring failure is such that the pilot may not have advanced warning of engine failure. Therefore, the FAA has determined that the compliance time should reflect a reasonable degree of conservatism. The FAA has examined the findings of LBA, reviewed all available information, and determined that airworthiness directive (AD) action is necessary for products of this type design that are certificated for operation in the United States.

On February 8, 1999, the FAA issued AD 99–04–15, applicable to Porsche PFM3200N01, N02, and N03 reciprocating engines, installed on but not limited to Mooney M20L series airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD requires replacement of valve springs prior to further flight on PFM3200N0 1, N02, and N03 engines with 500 hours or more time-in-service (TIS) since new or since last overhaul after the effective date of this AD. Additionally, this AD requires replacement of valve springs by 500 hours TIS on PFM3200N01, N02, and N03 engines with less than 500 hours TIS since new or since last overhaul after the effective date of this AD. After the initial valve spring replacement, this AD requires replacement of springs at intervals not to exceed 500 hours TIS.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on February 8, 1999, to all known U.S. owners and operators of Porsche PFM3200N01, N02, and N03 reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an

amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their 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 98–ANE–09–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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–15 Dr.Ing.h.c.F. Porsche Aktiengesellschaft (Porsche) PFM: Amendment 39–11089 Docket 99–ANE–09–AD.

Applicability: Porsche PFM3200N01, N02, and N03 reciprocating engines, installed on but not limited to Mooney M20L series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight engine shutdown due to undetected fatigue failures of valve springs, accomplish the following:

(a) Prior to further flight, for engines that upon the effective date of this AD have 500 or more hours time-in-service (TIS) since new or since the last overhaul, replace all valve springs in accordance with Porsche service bulletin (SB) No. N/105–036, dated October 8, 1998, Instructions, page 2, Nos. 1–14.

(b) For engines that upon the effective date of this AD have less than 500 hours TIS since new or since the last overhaul, replace all valve springs prior to accumulating 500 hours TIS since new or since the last overhaul in accordance with Porsche SB No. N/105–036, dated October 8, 1998, Instructions, page 2, Nos. 1–14.

(c) Thereafter, at intervals not to exceed 500 hours TIS since last valve spring replacement, replace all valve springs in accordance with Porsche SB No. N/105–036, dated October 8, 1998, Instructions, page 2, Nos. 1–14.

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

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

(e) The replacement of the valve springs must be done in accordance with Porsche SB No. N/105–036, dated October 8, 1998. 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 Porsche Aviation Products, Inc., 1600 Holcomb Avenue, Reno, Nevada, 89502; Attn: Mr. Gary Butcher, telephone (702) 329–3937, fax (702) 329–0426. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective April 12, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 99–04–15, issued February 8, 1999, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 17, 1999.

Donald Plouffe,

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

[FR Doc. 99–7212 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–42–AD; Amendment 39–11092; AD 99–07–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 330J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France (Eurocopter) Model SA 330J helicopters. This action requires the visual inspection and, if any crack is found, replacement of the affected main rotor head sleeve. This amendment is prompted by the discovery of a crack through the thickness of a lower lug of a blade sleeve. The actions specified by the proposed AD are intended to prevent failure of a main rotor head sleeve that could result in the loss of a main rotor blade and subsequent loss of control of the helicopter.

DATES: Effective April 12, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–42–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone 817–222–5123, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter Model SA 330J helicopters. The DGAC advises of the discovery of a crack in the lower lug on the trailing edge of an SA 330J blade sleeve.

Eurocopter has issued Eurocopter France Service Bulletin 05.80 R1, dated February 14, 1995 (SB), which specifies the visual inspection and replacement procedures of each main rotor head sleeve lug, Part Number (P/N) 330A31.1376.00 through .05 or 330A31.1376.12 through .17 in accordance with paragraph C(1) and C(2) of the SB. The DGAC classified this SB as mandatory and issued DGAC AD 91–021–064(B)R1, dated March 15, 1995, to ensure the continued airworthiness of these helicopters in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model SA 330J helicopters of the same type design registered in the United States, the proposed AD would require the visual inspection of each main rotor head sleeve lug, P/N 330A31.1376.00 through .05 or 330A31.1376.12 through .17.

None of the Eurocopter Model SA 330J helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Should an affected helicopter be imported and placed on the U.S. Register, it will require approximately 1 work hour to accomplish each required inspection, and 1 work hour to replace a sleeve, at an average labor rate of $60 per work hour. Each main rotor head sleeve costs $19,100. Based on these figures, the cost impact of this AD will be $19,220 for inspecting and replacing one blade sleeve.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–42–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 notice and public comment are unnecessary in promulgating this regulation, that the regulation can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this

action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–07–07 Eurocopter France: Amendment 39–11092, Docket No. 97–SW–42–AD.

Applicability: Eurocopter France (Eurocopter) Model SA 330J helicopters, with main rotor head sleeves part number (P/N) 330A31.1376.00 through .05 or 30A31.1376.12 through .17 installed, certificated in any category.

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

Compliance: Required within 15 calendar days, unless previously accomplished, and thereafter at intervals not to exceed 50 hours time-in-service.

To prevent failure of a main rotor head sleeve (sleeve), P/N 330A31.1376.00 through .05 or 330A31.1376.12 through .17, that could result in loss of a main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect each main rotor head sleeve lug (lug), without removing the main rotor blades, for cracks in the area indicated in Figure 1.

Note 2: Eurocopter France Service Bulletin 05.80R1, dated February 14, 1995, pertains to the subject of this AD.

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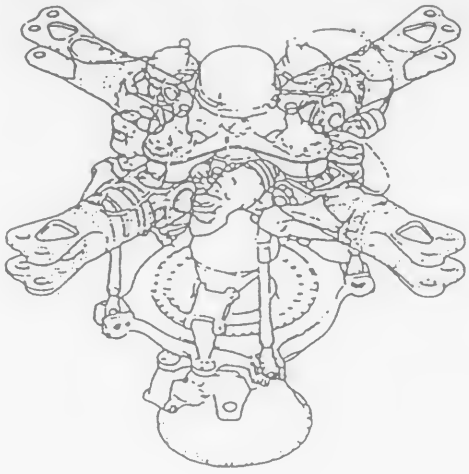

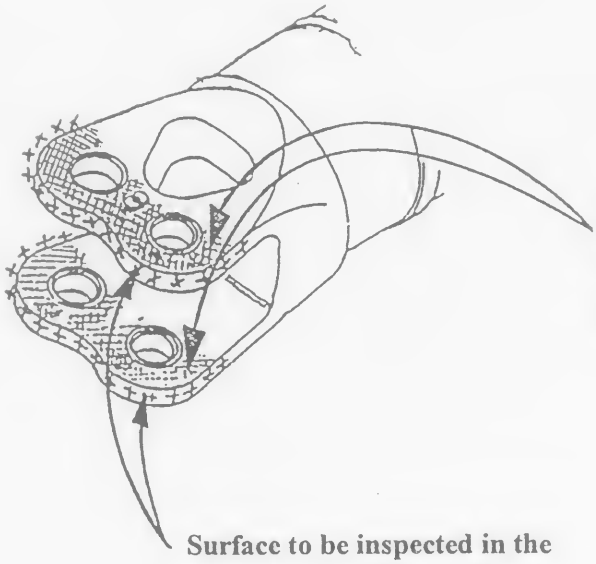

Surface to be inspected in visible areas (with main rotor blades installed) on internal and external faces of each MRH sleeve lug.

Surface to be inspected in the areas (marked +) located on the edge of each lug.

DETAIL OF AREAS TO BE INSPECTED

FIGURE 1

BILLING CODE 4910–13–C

(b) If any crack is found in a lug, prior to further flight, replace the affected sleeve with an airworthy sleeve.

(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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on April 12, 1999.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 91–021–064(B)R1, dated March 15, 1995.

Issued in Fort Worth, Texas, on March 18, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–7383 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–91–AD; Amendment 39–11094; AD 99–07–09]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain British Aerospace Jetstream Model 3201 airplanes. This AD requires replacing the nose landing gear downlock actuator, the flap actuator, the steering selector valve, the hydraulic reservoir, and the emergency selector valve. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to prevent internal corrosion of the hydraulic components on airplanes where these components were exposed to water contamination, which could result in reduced or loss of control of the airplane.

EFFECTIVE DATE: May 10, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain British Aerospace Jetstream Model 3201 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 8, 1998 (63 FR 67633). The NPRM proposed to require replacing the nose landing gear downlock actuator, the flap actuator, the steering selector valve, the hydraulic reservoir, and the emergency selector valve. Accomplishment of the proposed action as specified in the NPRM would be in accordance with the applicable maintenance manual, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Since the issuance of the NPRM, British Aerospace has revised Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998 (Revision No. 1: January 27, 1999). This service bulletin revision only corrects reference to parts, clarifies certain aspects of the subjects, and incorporates procedural changes. In addition, the service bulletins (both the original issue and Revision No. 1) only specify the replacements. The procedures for accomplishing the work are included in the maintenance manual.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined:

—That referencing the revised service information in the AD would not add any additional burden upon the public than was originally proposed; and

—That air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections.

Compliance Time of This AD

The compliance time of this AD is presented in both calendar time and hours time-in-service (TIS). Corrosion could occur on the hydraulic system components and then either continue to deteriorate the part over time regardless of airplane operation or develop into stress cracks over time based on airplane operation. In order to assure that this condition does not go undetected, a compliance time of specific hours TIS and calendar time is utilized.

Cost Impact

The FAA estimates that 9 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 33 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts to accomplish the replacements cost approximately $46,636. (Overhauled or repaired parts are available from the agencies of equipment manufacturers or from the aircraft manufacturer's agency). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $437,544, or $48,616 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–07–09 British Aerospace: Amendment 39–11094; Docket No. 98–CE–91–AD.

Applicability: Jetstream Model 3201 airplanes, constructor numbers 841, 842, 844 through 848, 851, 853 through 855, 857, 859 through 862, and 864; certificated in any category.

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

Compliance: Required at whichever of the following occurs later, unless already accomplished:

1. Upon accumulating 8,000 landings on the airplane or within 5 years since the last time the hydraulic system components were replaced (see paragraph (a) of this AD for listing of components), whichever occurs first; or

2. Within the next 12 calendar months after the effective date of this AD.

Note 2: If the number of landings is unknown, hours time-in-service (TIS) may be used by dividing 8,000 by 0.75. If hours TIS are utilized to calculate the number of landings, this would calculate the 8,000 landings compliance time to 10,667 hours TIS.

To prevent internal corrosion of the hydraulic components on airplanes where these components were exposed to water contamination, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Replace the following critical components of the hydraulic system, in accordance with the applicable maintenance manual, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, or Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, Revision No. 1: January 27, 1999:

(1) The nose landing gear downlock actuator;

(2) The flap actuator;

(3) The steering selector valve;

(4) The hydraulic reservoir; and

(5) The emergency selector valve.

Note 3: The FAA highly recommends replacing the hydraulic fluid while these system components are being replaced, as specified in Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, or Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, Revision No. 1: January 27, 1999.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, or Jetstream Alert Service Bulletin 29–A–JA 970940, Original Issue: February 4, 1998, Revision No. 1: January 27, 1999, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703.

This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in British AD 001–02–98, not dated.

(e) This amendment becomes effective on May 10, 1999.

Issued in Kansas City, Missouri, on March 18, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–7381 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–68]

Modification of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bryan, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 010° helicopter point in space approach has been developed for Community Hospitals of Williams County, Inc. Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Bryan, OH, in order to include the point in space approach serving Community Hospitals of Williams County, Inc. Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Bryan, OH (64 FR 1559). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more

above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS SIAP 010° helicopter point in space approach at Community Hospitals of Williams County, Inc. Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bryan, OH [Revised]

Bryan, Williams County Airport, OH
(Lat. 41°28′03″ N., long. 84°30′24″ W)
Bryan NDB
(Lat. 41°28′47″ N., long. 84°27′58″ W)
Community Hospitals of Williams County, Inc., OH
Point in Space Coordinates
(Lat. 41°27′47″ N., long. 84°33′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7467 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–66]

Modification of Class E Airspace; Adrian, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Adrian, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 121° helicopter point in space approach has been developed for Bixby Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Adrian, MI, in order to include the point in space approach serving Bixby Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Adrian, MI (64 FR 1564). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Adrian, MI, to accommodate aircraft executing the proposed GPS SIAP 121° helicopter point in space approach at Bixby Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Adrian, MI [Revised]

Adrian, Lenawee County Airport, MI
(Lat. 41°52′10″ N., long. 84°04′29″ W)
Bixby Hospital, MI
Point in Space Coordinates
(Lat. 41°55′03″ N., long. 84°03′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Lenawee County Airport, and within a 6.0-mile radius of the Point in Space serving Bixby Hospital.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7466 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–71]

Modification of Class E Airspace; Toledo, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Toledo, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 291° helicopter point in space approach has been developed for Fulton County Health Center Heliport, a GPS SIAP 136° helicopter point in space approach has been developed for Medical College of Ohio Hospital Heliport, A GPS SIAP 168° helicopter point in space approach has been developed for Wood County Hospital Heliport, a GPS SIAP 276° helicopter point in space approach has been developed for St. Vincent Hospital Heliport, and a GPS SIAP 306° helicopter point in space approach has been developed for Toledo Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing these approaches. This action proposes to modify existing controlled airspace for Toledo, OH, in order to include the point in space approaches serving these hospital heliports.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA Proposed to amend 14 CFR part 71 to modify Class E airspace at Toledo, OH (64 FR 1554). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Toledo, OH, to accommodate aircraft executing the proposed GPS SIAP 291° helicopter point in space approach for Fulton County Health Center Heliport, a GPS SIAP 136° helicopter point in space approach for Medical College of Ohio Hospital Heliport, a GPS 168° helicopter point in space approach for Wood County Hospital Heliport, a GPS SIAP 276° helicopter point in space approach for St. Vincent Hospital Heliport, and a GPS SIAP 306° helicopter point in space approach for Toledo Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing these approaches. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Toledo, OH [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°40′00″ N., long. 84°20′00″ W, to lat. 41°49′00″ N., long. 83°37′00″ W, to lat. 41°45′00″ N., long. 83°22′00″ W, to lat. 41°34′00″ N., long. 83°19′00″ W, to lat. 41°15′00″ N., long. 83°34′00″ W, to lat. 41°22′00″ N., long 84°05′00″ W, to lat. 41°30′00″ N., long. 84°15′00″ W, to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7465 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–65]

Establishment of Class E Airspace; Steubenville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Steubenville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 14, and a GPS SIAP to Rwy 32, have been developed for Jefferson County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action creates controlled airspace at Jefferson County Airport to accommodate the approaches.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Steubenville, OH (64 FR 1565). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CF 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Steubenville, OH, to accommodate aircraft executing the proposed GPS Rwy 14 SIAP, and GPS Rwy 32 SIAP, at Jefferson County Airport by creating controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 25 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace area extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Steubenville, OH [New]

Steubenville, Jefferson County Airport, OH
(Lat. 40° 21′ 34″ N., long. 80° 42′ 00″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Jefferson County Airport, excluding that airspace within the Wheeling, WV, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7464 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–80]

Modification of Class E Airspace; Shelbyville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Shelbyville, IN. A Global Positioning system (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, and a GPS SIAP to Rwy 19, have been developed for Shelbyville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace at Shelbyville Municipal Airport to accommodate the approaches.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal

Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, January 21, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Shelbyville, IN (64 FR 3228). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Shelbyville, OH, to accommodate aircraft executing the proposed GPS Rwy 01 SIAP, and GPS Rwy 19 SIAP, at Shelbyville Municipal Airport by increasing the radius of the existing controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyville Municipal Airport, IN
(Lat. 39°34'41" N., long. 85°48'12" W.)
Shelbyville VORTAC
(Lat. 39°37'57" N., long. 85°49'28" W.)

That airspace extending upward from 700 feet above the surface within an 6.7-mile radius of the Shelbyville Municipal Airport and within 1.8 miles each side of the Shelbyville VORTAC 340° radial extending from the 6.7-mile radius to 9.6 miles north of the VORTAC, excluding the airspace within the Mount Comfort, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7463 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–18]

Amendment to Class E Airspace; Washington, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends the Class E airspace area at Washington Municipal Airport, Washington, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18 and GPS RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve Washington Municipal Airport IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 18 and GPS RWY 36 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 18 and GPS RWY 36 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, July 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 13, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–18, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 18 and GPS RWY 36 SIAPs to serve the Washington Municipal Airport, Washington, IA. The amendment to Class E airspace at Washington, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The amendment at Washington Municipal Airport, IA, will provide

additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–18." The postcard will be date stamped and return to the commenter.

Agency Findings

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 he 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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant rule" under the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragaph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Washington, IA [Revised]

Washington Municipal Airport, IA
(Lat 41°16'34" N., long. 91°40'24" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Washington Municipal Airport and within 3.5 miles each side of the 191° bearing from the airport extending from the 7.7 mile radius to 13 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on March 8, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–7462 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–55]

Amendment to Class E Airspace; Des Moines, IA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Des Moines, IA, and corrects an error in the airspace designation for Des Moines International Airport as published in the direct final rule.

DATES: The direct final rule published at 64 FR 2823 is effective on 0901 UTC, May 20, 1999.

This correction is effective on May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: On January 19, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Des Moines, IA (FR Document 99–1096, 64 FR 2823, Airspace Docket No. 98–ACE–55). An error was subsequently discovered in the airspace designation for the Des Moines International Airport. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the airspace designation of the Des Moines International Airport and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 99–1096 published in the **Federal Register** on January 19, 1999, 64 FR 2823, make the following correction to the Des Moines, IA, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

ACE IA E Des Moines, IA [Corrected]

On page 2824, in the second column, line eleven, correct the airspace designation by removing the word "southwest" and adding "southeast."

Issued in Kansas City, MO on March 11, 1999.

Donavan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–7461 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–56]

Amendment to Class E Airspace; Burlington, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Burlington, IA.

DATES: The direct final rule published at 64 FR 2824 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 19, 1999 (64 FR 2824). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 11, 1999.

Donavan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–7460 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–50]

Amendment to Class E Airspace; Maquoketa, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Maquoketa, IA.

DATES: The direct final rule published at 64 FR 3010 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 20, 1999 (64 FR 3010). The FAA users the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 5, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–7459 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–51]

Amendment to Class E Airspace; Belle Plaine, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Belle Plaine, IA.

DATES: The direct final rule published at 64 FR 3009 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 20, 1999 (64 FR 3009). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 5, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 99–7458 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–72]

Modification of Class E Airspace; Napoleon, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Napoleon, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 186° helicopter point in space approach, has been developed for Henry County Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Napoleon, OH, in order to include the point in space approach serving Henry County Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Napoleon, OH (64 FR 1561). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Napoleon, OH, to accommodate aircraft executing the proposed GPS SIAP 186° helicopter point in space approach for Henry County Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing this approach. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Napoleon, OH [Revised]

Napoleon, Henry Count Airport, OH
(Lat. 41°22′27″ N., long. 84°04′05″ W)
Henry County Hospital, OH
Point in Space Coordinates
(Lat. 41°25′08″ N., long. 84°04′05″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Henry County Airport, and within a 6.0-mile radius of the Point in Space serving Henry County Hospital, excluding the airspace within the Toledo, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7455 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–70]

Modification of Class E Airspace; Tiffin, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Tiffin, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 203° helicopter point in space approach has been developed for Mercy Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Tiffin, OH, in order to include the point in space approach serving Mercy Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Tiffin, OH (64 FR 1559). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Tiffin, OH, to accommodate aircraft executing the proposed GPS SIAP 280° helicopter point in space approach at Mercy Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Tiffin, OH [Revised]

Tiffin, Seneca County Airport, OH
(Lat. 41°05′39″ N., long. 83°12′45″ W)
Merch Hospital, OH
Point in Space Coordinates
(Lat. 41°07′21″ N., long. 83°11′33″ W)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Seneca County Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Hospital.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7454 Filed 2–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–69]

Modification of Class E Airspace; Lima, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Lima, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 280° helicopter point in space approach has been developed for Saint Rita's Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Lima, OH, in order to include the point in space approach serving Saint Rita's Medical Center Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Lima, OH (64 FR 1557). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rule's (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Lima, OH, to accommodate aircraft executing the proposed GPS SIAP 280° helicopter point in space approach at Saint Rita's Medical Center Heliport by modifying existing controlled airspace for the heliport. This area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Lima, OH [Revised]

Lima Allen Country Airport, OH
(Lat. 40°42′25″ N., long. 84°01′36″ W)
Allen Country VOR
(Lat. 40°42′26″ N., long. 83°58′05″ W)
Saint Rita's Medical Center, OH
Point in Space Coordinates
(Lat. 40°43′58″ N., long. 84°06′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lima Allen Country Airport and within 3.0 miles each side of the Allen County VOR 090° radial, extending from the 6.4-mile radius to 7.4 miles east of the VOR, and within a 6.0-mile radius of the point in Space serving Saint Rita's Medical Center, excluding the airspace within the Findlay, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7453 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–74]

Establishment of Class E Airspace; Kelleys Island, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Kelleys Island, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 270° helicopter point in space approach, has been developed for Kelleys Island Land Field Airport, a GPS SIAP 090° helicopter point in space approach, has been developed for Middle Bass Island Airport, and a GPS SIAP 030° helicopter point in space approach, has been developed for Put In Bay Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing these approaches. This action creates controlled airspace for Kelleys Island, OH, in order to include the point in space approaches serving these airports.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kelleys Island, OH (64 FR 1562). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class F airspace at Kelleys Island, OH, to accommodate aircraft executing the proposed GPS SIAP 270° helicopter point in space approach for Kelleys Island Land Field Airport, the GPS SIAP 090° helicopter point in space approach for Middle Base Island Airport, and the GPS SIAP 030° helicopter point in space approach for Put In Bay Airport. Controlled airspace extending upward from 700 to 1200 feet AFL is needed to contain aircraft executing these approaches. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action"

under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Kelleys Island, OH [New]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°40′ 35″ N., long. 82°30′00″ W, to lat 41°30′00″ N., long. 82°30′00″ W, to lat. 41°30′00″ N., long 82°45′00″ W, to lat 41°34′00″ N., long. 83°00′00″ W, to lat. 41°40′00″ N., long. 83°00′00″ W, to lat. 41°47′00″ N., long. 82°54′05″ W, thence along the Canada/United States border to the point of beginning, excluding the airspace within the Port Clinton, OH, and Sandusky, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc 99–7452 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–77]

Modification of Class E Airspace; Grand Rapids, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Grand Rapids, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 065° helicopter point in space approach has been developed for Spectrum Medical Center/Downtown Campus Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Grand Rapids, MI, in order to include the point in space approach serving Spectrum Medical Center/Downtown Campus Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, January 19, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E Airspace at Grand Rapids, MI (64 FR 2866). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E Airspace at Grand Rapids, MI, to accommodate aircraft executing the proposed GPS SIAP 065° helicopter point in space approach at Spectrum Medical Center/Downtown Campus Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective

September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Grand Rapids, MI [Revised]

Grand Rapids, Kent County International Airport, MI
(Lat. 42° 52′ 51″N., long. 85° 31′ 22″W)
Spectrum Medical Center/Downtown Campus, MI Point in Space Coordinates
(Lat. 42°57′09″ N., long. 85°39′48″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Point in Space serving Spectrum Medical Center/Downtown Campus, excluding that airspace within the Sparta, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7451 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–73]

Modification of Class E Airspace; Port Clinton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Port Clinton, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 007° helicopter point in space approach, has been developed for Magruder Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above grand level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Port Clinton, OH, in order to include the point in space approach serving Magruder Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Port Clinton, OH (64 FR 1560). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Port Clinton, OH, to accommodate aircraft executing the proposed GPS SIAP 007° helicopter point in space approach for Magruder Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing this approach. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Napoleon, OH [Revised]

Napoleon, Henry County Airport, OH
(Lat. 41° 22′ 27″ N., long. 84° 04′ 05″ W)

Henry County Hospital, OH

Point in Space Coordinates
(Lat. 41° 25′ 08″ N., long. 84° 04′ 05″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Henry County Airport, and within a 6.0-mile radius of the Point in Space serving Henry County Hospital, excluding the airspace within the Toledo, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7450 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–67]

Modification of Class E Airspace; Defiance, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Defiance, OH. A Global

Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 320° helicopter point in space approach has been developed for Defiance Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Defiance, OH, in order to include the point in space approach serving Defiance Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Defiance, OH (64 FR 1555). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Defiance, OH, to accommodate aircraft executing the proposed GPS SIAP 320° helicopter point in space approach at Defiance Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Defiance, OH [Revised]

Defiance Memorial Airport, OH
(Lat. 41°20′15″ N., long. 84°25′44″ W)

Defiance Hospital, OH

Point in Space Coordinates
(Lat. 41°16′32″ N., long. 84°19′54″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Defiance Memorial Airport, and within a 6.0-mile radius of the Point in Space serving Defiance Hospital.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7448 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–76]

Establishment of Class E Airspace; Glencoe, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Glencoe, MN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Glencoe Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace for Glencoe Municipal Airport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 11, 1999, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Glencoe, MN (64 FR 1563). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Glencoe, MN, to accommodate aircraft executing

the proposed NDB Rwy 31 SIAP at Glencoe Municipal Airport by creating controlled airspace at the airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designation and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Glencoe, MN [New]

Glencoe Municipal Airport, MN
(Lat. 44°45′22″ N, long. 94°04′52″ W)
Glencoe NDB
(Lat. 44°45′39″ N, long. 94°05′09″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Glencoe Municipal Airport and within 2.5 miles each side of the Glencoe NDB 136° bearing, extending from the 6.3-mile radius to 7.0 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on March 16, 1999.

John A Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–7447 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–29]

RIN 2120–AA66

Modification of Jet Route J–42

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies a segment of Jet Route J–42 between the Robbinsville, NJ, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) station, and the Hartford, CT, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). The FAA is taking this action as a result of a recent flight inspection that found one of the radials used to form a segment of J–42, in the vicinity of Robbinsville, NJ, unusable for navigation. This action will enhance air traffic control service and allow for better utilization of the airspace. In addition, this action corrects the spelling of name of the Putnam, CT, VOR/DME in the legal description of J–42.

DATES: Effective 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before May 10, 1999.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 97–AEA–29, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430. Comments may be also sent electronically to the following Internet address: 9-Direct Rule-Comments@faa.dot.gov. Comments delivered must be marked Airspace Docket No. 97–AEA–29.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

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

SUPPLEMENTARY INFORMATION:

The Rule

The FAA is amending 14 CFR part 71 to modify that segment of J–42 between the Robbinsville, NJ, VORTAC, and the Hartford, CT, VOR/DME. Currently, the affected section of J–42 extends from the Robbinsville VORTAC to the La Guardia, NY VOR/DME, thence via the La Guardia VOR/DME 042°(T) radial to intercept the Hartford VOR/DME 236°(T) radial. An FAA flight inspection has found that the La Guardia 042° radial is unusable for navigation and, therefore, the route must be realigned. This amendment realigns that segment of J–42 by deleting the La Guardia VOR/DME from the route description and substituting a radial from the Robbinsville VORTAC. As amended, the affected segment of J–42 extends from the Robbinsville VORTAC, thence via the intersection of the Robbinsville VORTAC 049°(M), 039°(T), and the Hartford VOR/DME 236°(T) radials, to Hartford. This action restores that segment of J–42 for use in navigation and allows for more efficient utilization of that airspace. In addition, this action corrects the spelling of name of the Putnam, CT, VOR/DME as contained in the legal description for J–42 in FAA Order 7400.9F, "Airspace Designations and Reporting Points."

Incorporation by Reference

Jet route designations are published in paragraph 2004 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The jet route designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. An FAA flight inspection found that the La Guardia, NY, VOR/DME 042° radial, which currently forms a segment of J–42, is out of tolerance, thus rendering that segment of J–42 unusable for navigation. As a satisfactory radial based on the La Guardia VOR/DME was unavailable, the FAA decided to substitute a radial based on the

Robbinsville VORTAC to describe that segment of J–42. The new Robbinsville radial was found to be satisfactory by a flight inspection conducted on January 22, 1999. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the direct final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit an adverse or negative comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related 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 action will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AEA–29." The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) as the anticipated impact of this proposal is minimal, preparation of a Regulatory Evaluation is not necessary.

Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. Amend paragraph 2004 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1, as follows:

Paragraph 2004—Jet Routes

* * * * *

J–42 [Revised]

From Delicias, Mexico, via Fort Stockton, TX; Abilene, TX; Ranger, TX; Texarkana, AR; Memphis, TN; Nashville, TN; Beckley, WV; Montebello, VA; Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Robbinsville, NJ; INT Robbinsville 039° and Hartford, CT, 236° radials; Hartford; Putnam, CT; Boston, MA. The portion of this route outside of the United States is excluded.

* * * * *

Issued in Washington, DC. on March 19, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–7469 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ANM–23]

RIN 2120–AA66

Revocation of Restricted Area R–5704 Hermiston, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–5704 Hermiston, OR. The ammunition demilitarization operation at the Umatilla Chemical Depot has been terminated as a result of the Department of Defense Base Realignment and Closure (BRAC) 1989 initiatives. Therefore, the restricted airspace is no longer required for the US Army mission.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

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

SUPPLEMENTAL INFORMATION:

The Rule

This amendment to 14 CFR part 73 revokes Restricted Area R–5704, Hermiston, OR. The ammunition demilitarization at the Umatilla Chemical Depot has been terminated as a result of the Department of Defense

Base Realignment and Closure (BRAC) 1989 initiatives, and therefore the restricted airspace is no longer required for the US Army mission. Since this action reduces restricted airspace, the solicitation of comments would only delay the return of airspace to public use without offering any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.57 of part 73 was republished in FAA Order 7400.8F dated October 27, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action revokes the designation of a restricted area. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is categorically excluded.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.57 [Amended]

2. Section 73.57 is amended as follows:

* * * * *

R–5704 Hermiston, OR. [Removed]

* * * * *

Issued in Washington, DC, on March 19, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–7470 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

Airspace Docket No. 98–ASO–21

RIN 2120–AA66

Change Using Agency for Restricted Areas; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of the using agency for Restricted Areas R–2914A and R–2914B, Valparaiso, FL; R–2915A, R–2915B and R–2915C, Eglin AFB, FL; R–2918, Valparaiso, FL; and R–2919A and R–2919B, Valparaiso, FL. On September 30, 1998, the U.S. Air Force changed the name of the current using agency from the "Air Force Development Test Center (AFDTC)," to the "Air Armament Center." This action amends the affected restricted area descriptions to include the using agency's new organizational title.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 73 by changing the name of the using agency for restricted areas R–2914A, R–2914B, R–2915A. R–2915B, R–2915C, R–2918, R–2919A and R–2919B, from "U.S. Air Force, Commander, Air Force Development Test Center (AFDTC), Eglin AFB, FL," to "U.S. Air Force, Commander, Air Armament Center, Eglin AFB, FL." On September 30, 1998, the AFDTC was renamed the "Air Armament Center" as part of an internal realignment by the U.S. Air Force. This administrative change will not alter the boundaries, altitudes or time of designation of the restricted areas; therefore, I find that notice and public procedure under 5 U.S.C 553(b) are unnecessary.

Section 73.29 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

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

Environmental Review

This action is a minor administrative change to amend the name of the using agency of existing restricted areas. There are no changes to the dimensions of the restricted areas, or to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.29 [Amended]

2. § 73.29 is amended as follows:

* * * * *

R–2914A and R–2914B Valparaiso, FL [Amended]

By removing "Using agency. U.S. Air Force, Commander, Air Force Development Test Center (AFDTC), Eglin AFB, FL," and adding "Using

agency. U.S. Air Force, Commander, Air Armament Center, Eglin AFB, FL."

R–2915A, R–2915B, and R–2915C Eglin AFB, FL [Amended]

By removing "Using agency. U.S. Air Force, Commander, Air Force Development Test Center (AFDTC), Eglin AFB, FL," and adding "Using agency. U.S. Air Force, Commander, Air Armament Center, Eglin AFB, FL."

* * * * *

R–2918 Valparaiso, FL [Amended]

By removing "Using agency. U.S. Air Force, Commander, Air Force Development Test Center (AFDTC), Eglin AFB, FL," and adding "Using agency. U.S. Air Force, Commander, Air Armament Center, Eglin AFB, FL."

R–2919A and R–2919B Valparaiso, FL [Amended]

By removing "Using agency. U.S. Air Force, Commander, Air Force Development Test Center (AFDTC), Eglin AFB, FL," and adding "Using agency. U.S. Air Force, Commander, Air Armament Center, Eglin AFB, FL."

* * * * *

Issued in Washington, DC, on March 19, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–7468 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–9015–08]

RIN 0694–AB60

Entity List: Addition of Russian Entities; and Revisions to Certain Indian and Pakistani Entities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds to the entity list three Russian entities. Exports or reexports of all items subject to the EAR to these newly added entities now require a license, and applications will be reviewed with a presumption of denial.

EFFECTIVE DATE: This rule is effective March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports and reexports to certain end-users or end-uses (described in part 744 of the EAR) without a license. In the form of Supplement No. 4 to part 744, BXA maintains an "Entity List" to provide notice informing the public of certain entities subject to such licensing requirements. This rule adds three entities in Russia to this list. This rule also makes editorial changes and adds clarifying revisions to the Entity List.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended, as follows:

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

PART 744—[AMENDED]

2. Part 744 is amended by revising § 744.10 to read as follows:

§ 744.10 Restrictions on certain entities in Russia.

(a) *General prohibition.* Certain entities in Russia are included in Supplement No. 4 to this part 744 (Entity List). (See also § 744.1(c) of the EAR.) Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license.

(b) *Exceptions.* No License Exceptions apply to the prohibition described in paragraph (a) of this section.

(c) *License review standards.* Applications to export or reexport items subject to the EAR to these entities will be reviewed with a presumption of denial.

3. Supplement No. 4 to part 744 is amended by:

(a) Placing the Indian entity "Department of Atomic Energy (DAE) located in Mumbai (formerly Bombay) and subordinate entities specifically listed in this Supplement." in alphabetical order;

(b) Revising the Pakistani entity name "Khewra Soda Ash Plant", to read "Khewra Soda Ash Plant, Soda Ash Businesses, Soda Ash Works, Khewra Distt. Jhelum, (owned by ICI Pakistan Limited).";

(c) Revising the Russian entity name "Glavkosmos, 9 Krasnoproletarskaya st., 103030 Moscow." to read "Glavkosmos, 9 Krasnoproletarskaya St., 103030 Moscow."; and

(d) Adding, in alphabetical order, the following entries:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	*	* *	*
Russia:	Medeleyev University of Chemical Technology of Russia (including at 9 Miusskaya Sq. Moscow 125047, Russia).	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial ...	64 FR 14606 March 26, 1999.
*	* * *	*	* *	*
	Moscow Aviation Institute (MAI) (including at 4 Volokolamskoye Shosse, Moscow 125871, Russia).	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial ...	64 FR 14606 March 26, 1999.
*	* * *	*	* *	*
	The Scientific Research and Design Institute of Power Technology (a.k.a. NIKIET, Research and Development Institute of Power Engineering (RDIPE), and ENTEK) (including at 101000, P.O. Box 788, Moscow, Russia).	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial ...	64 FR 14606 March 26, 1999
*	* * *	*	* *	*

Dated: March 19, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–7438 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

RIN 0960–AD83

Benefits for Spouses, Mothers, Fathers, and Children

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations make several clarifying technical changes to correct language incorporated into the regulations when they were recodified on June 15, 1979, which could potentially result in confusion regarding the applicable law and SSA policy. They also make a technical change to one section to reflect a longstanding SSA policy and to another section to correct a cross-reference.

EFFECTIVE DATE: These regulations are effective April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713 or TTY (410) 966–5609 for information about these rules. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1979, SSA published final regulations at 44 FR 34479 reorganizing and restating in simpler language the rules on requirements for entitlement to Social Security benefits, when benefits begin and end, how benefit amounts are determined, and how we determine family relationships when benefits are sought as the insured individual's dependent or survivor. The primary purpose of the recodification was to restate the rules so that they would be easier for the public to understand and use.

We have found that when the regulations were recodified in June 1979, the rewording of §§ 404.332(b)(4), 404.341(b)(2), 404.361, and the introductory text in 404.366(b) inadvertently resulted in regulations that could be interpreted as inaccurately reflecting either the statute or the operating policies followed by SSA. Those sections could cause confusion regarding the applicable law and SSA policy. Therefore, in these final regulations, we are making clarifying technical corrections to those sections.

We are amending § 404.357 to reflect a longstanding SSA policy concerning stepchildren set forth in Social Security Ruling (SSR) 60–9, C.B. 1960–1965, p. 128. In addition, we are amending § 404.406 to correct a cross-reference.

Explanation of Revisions

Sections 202(b)(1)(E)–(K) and 202(c)(1)(E)–(K) of the Social Security Act (the Act) specify when wife's and husband's ("spouse's") benefits end, and section 202(g)(1) of the Act specifies when mother's and father's benefits end. In these final regulations, we are amending §§ 404.332(b)(4) and 404.341(b)(2) to more accurately reflect sections 202(b)(1)(I), 202(c)(1)(I) and 202(g)(1) of the Act. As revised by the June 1979 recodification, §§ 404.332(b)(4) and 404.341(b)(2) of the regulations may be incorrectly interpreted to mean that the spouse's, mother's or father's benefits will terminate when the child in that beneficiary's care becomes age 16 (unless disabled) or is no longer entitled. This is true only if there is no other child entitled to benefits on the

insured's earnings record who is under age 16 or disabled. If there is another entitled child who is not in the care of the spouse, mother or father, benefits are subject to deductions, but are not terminated, when the entitled child who is in the care of the spouse, mother or father attains age 16 or is no longer entitled. Therefore, in §§ 404.332(b)(4) and 404.341(b)(2), we clarify that benefits will end when there is no longer any child of the insured under age 16 or disabled who is entitled to benefits on the insured's record.

Section 202(d)(3) of the Act explains the circumstances under which a child will be deemed dependent on his or her natural or adopting parent. As revised by the June 1979 recodification, § 404.361 states that if a child is adopted by someone other than the natural parent ("the insured") during that natural parent's lifetime and the child files an application for benefits after that adoption, he or she must meet certain actual dependency requirements. This is not entirely correct under the statute. We are amending § 404.361 to address the situation in which the insured had a period of disability that lasted until the insured became entitled to disability or old-age benefits or died. As amended, § 404.361 will reflect that, under the Act, a child is deemed dependent on the insured, and need not meet the actual dependency requirements, if the child is adopted during the insured's lifetime by someone other than the insured after the insured's disability onset date.

We are amending the introductory text in § 404.366(b) to change the references "§§ 404.362 through 404.364" shown in that section to "§§ 404.362(c)(1) and 404.363." This will correct another technical error which occurred in the June 1979 recodification.

In order to be entitled to child's benefits, section 202(d)(1)(C) of the Act requires that an individual must be dependent (or deemed dependent) upon the insured individual at a particular time, (e.g., at the time the child applies for benefits). To meet this requirement, certain children are required by the Act to have been receiving "one-half support" from the insured individual at that time. To determine if that condition is met, SSA determines whether the insured was providing one-half support for a "reasonable period" prior to the applicable time. As stated in § 404.366(b), ordinarily, we consider a reasonable period to be the 12-month period immediately preceding the time when one-half support must be met. However, based on § 404.366(b), in some situations, SSA may set a reasonable period at less than 12 months.

In the June 1979 recodification, the introductory text in § 404.366(b) referred to "§§ 404.362 through 404.364" concerning the reasonable period for meeting the one-half support requirement for a child. These references were over-inclusive because §§ 404.362(b) and 404.364 reflect sections 202(d)(8) and (9) of the Act which mandate that dependency must be met by certain child claimants for the entire one-year period before the applicable time. The statutorily mandated period applies to a child age 18 or over who is adopted after the insured individual's entitlement and to a grandchild or stepgrandchild (except for those born during the applicable one-year period). SSA may not set a shorter period in these two situations. The revised references to §§ 404.362(c)(1) and 404.363 reflect that SSA may set a shorter period for children adopted by the insured's surviving spouse, and for the insured's stepchildren. The statute does not require dependency for an entire one year period for these children, and the "reasonable period" rules apply in determining whether one-half support is met for them.

We are also amending § 404.357 to reflect the longstanding SSA policy that a child conceived before and born after the marriage of the child's parent to an insured individual may be entitled as the stepchild of the insured, if the insured is not the child's natural parent. This policy is set forth in SSR 60–9, C.B. 1960–1965, p. 128.

Finally, we are amending § 404.406 to correct a technical error. We are changing the reference in the second sentence from § 404.607 to § 404.603, which is the correct reference.

Regulatory Procedures

Justification for Final Rules

Pursuant to section 702(a)(5) of the Act, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of the notice of proposed rulemaking and public comment procedures for these amendments to our regulations. Opportunity for public comment prior to the effectuation of the amendments is unnecessary. These amendments to the regulations contain no changes in SSA policy and only make clarifying technical changes that would correct inadvertent errors, would reflect more accurately provisions in sections 202(b)(1)(I), 202(c)(1)(I), 202(d)(1)(C), 202(d)(3), (8) and (9), 202(g)(1) and 216(e) of the Act and would reflect a longstanding SSA policy set forth in SSR 60–9, C.B. 1960–1965, p. 128. We believe that the public would have little interest in these minor, technical amendments. Therefore, we are issuing these changes to our regulations as final rules.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; and 96.004 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: March 16, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the preamble, subparts D and E of part 404 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.332 is amended by revising paragraph (b)(4) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

* * * * *

(b) * * *

(4) If you are under age 62, there is no longer a child of the insured who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record. (See paragraph (c) of this section if you were entitled to wife's or husband's benefits for August 1981 on the basis of having a child in care.) (If you no longer have in your care a child who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record, your benefits may be subject to deductions as provided in § 404.421.)

* * * * *

3. Section 404.341 is amended by revising paragraph (b)(2) to read as follows:

§ 404.341 When mother's and father's benefits begin and end.

* * * * *

(b) * * *

(2) There is no longer a child of the insured who is under age 16 or disabled and entitled to a child's benefit on the insured's earnings record. (See paragraph (c) of this section if you were entitled to mother's or father's benefits for August 1981.) (If you no longer have in your care a child who is under age 16 or disabled and entitled to child's benefits on the insured's earnings record, your benefits may be subject to deductions as provided in § 404.421.)

* * * * *

4. Section 404.357 is amended by adding a new sentence following the first sentence to read as follows:

§ 404.357 Who is the insured's stepchild?

* * * You also may be eligible as a stepchild if you were conceived prior to the marriage of your natural parent to the insured but were born after the marriage and the insured is not your natural parent. * * *

5. Section 404.361 is revised to read as follows:

§ 404.361 When a natural child is dependent.

(a) *Dependency of natural child.* If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her, except as stated in paragraph (b) of this section.

(b) *Dependency of natural child legally adopted by someone other than the insured.*

(1) Except as indicated in paragraph (b)(2) of this section, if you are legally adopted by someone other than the insured (your natural parent) during the insured's lifetime, you are considered dependent upon the insured only if the insured was either living with you or contributing to your support at one of the following times:

(i) When you applied;

(ii) When the insured died; or

(iii) If the insured had a period of disability that lasted until he or she became entitled to disability or old-age benefits or died, at the beginning of the period of disability or at the time he or she became entitled to disability or old-age benefits.

(2) You are considered dependent upon the insured (your natural parent) if:

(i) You were adopted by someone other than the insured after you applied for child's benefits; or

(ii) The insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits or died, and you are adopted by someone other than the insured after the beginning of that period of disability.

6. Section 404.366 is amended by revising the sixth sentence of the introductory text in paragraph (b) to read as follows:

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined—determining first month of entitlement.

* * * * *

(b) * * * Ordinarily we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362(c)(1) and 404.363 (for child's benefits), in § 404.370(f) (for parent's benefits) and in § 404.408a(c) (for benefits where the Government pension offset may be applied). * * *

* * * * *

7. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 425, and 902(a)(5)).

8. Section 404.406 is amended by revising the second sentence to read as follows:

§ 404.406 Reduction of maximum because of retroactive effect of application for monthly benefits.

* * * An application may also be effective (retroactively) for benefits for months before the month of filing (see § 404.603). * * *

[FR Doc. 99–7271 Filed 3–25–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 96F–0248]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Sulphopropyl Cellulose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for a change in the limitations for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. This action is in response to a petition filed by Life Technologies, Inc.

DATES: The regulation is effective March 26, 1999; written objections and requests for a hearing by April 26, 1999.

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

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 22, 1996 (61 FR 37905), FDA announced that a food additive petition (FAP 6A4502) had been filed by Life Technologies, Inc., 8400 Helgerman Ct., Gaithersburg, MD 20874 (now, 9800 Medical Center Dr., Rockville, MD 20850). The petition proposed to amend the food additive regulations in § 173.25(b)(5) *Ion-exchange resins* (21 CFR 173.25(b)(5)) to provide for a change in the temperature and pH limitations for sulphopropyl cellulose

ion-exchange resin for the recovery and purification of proteins for food use.

In the notice of filing, published in the **Federal Register** on July 22, 1996, the agency announced that it was placing the environmental assessment (EA) on display at the Dockets Management Branch for public review and comment. No comments were received. On July 29, 1997, FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. These regulations established additional categorical exclusions for a number of FDA actions. As a result, such actions would no longer require the submission of an EA. Because the agency had not completed its review of the EA submitted with the petition, the agency evaluated whether a categorical exclusion under revised § 25.32(j) would apply to this rule.

After the filing of the petition on July 22, 1996, FDA determined that the petitioned amendment of the food additive regulations in § 173.25(b)(5) also necessitated an amendment of the provisions in § 173.25(d)(2), that provide extraction requirements for the ion-exchange resin. FDA published an amended filing notice in the **Federal Register** of August 28, 1998 (63 FR 46053), to announce this change. The amended filing notice also contained the agency's determination that the proposed action would not have a significant impact on the human environment, and therefore, that neither an environmental assessment nor an environmental impact statement was required. The notice, however, incorrectly cited the categorical exclusion under § 25.32(i), rather than the exclusion under § 25.32(j).

FDA published a final rule in the **Federal Register** of April 22, 1991 (56 FR 16266), that amended the regulation under § 173.25 to provide for the use of the ion-exchange resin and starting materials used to manufacture the sulphopropyl cellulose ion-exchange resin. The amendment to the regulation was based upon information provided in FAP 6A3905. In the final rule of April 22, 1991, the agency stated that while the sulphopropyl cellulose ion-exchange resin has not been shown to cause cancer, it may contain small amounts of the starting materials, epichlorohydrin (ECH) and propylene oxide (PO), as byproducts of its production. Because the chemicals ECH and PO have been shown to cause cancer in test animals, the agency conducted a quantitative risk assessment to calculate the risk from the use of ECH and PO. Based on the results of the risk assessment, the agency concluded in the final rule of April 22, 1991, that there was a reasonable certainty of no harm from exposure to ECH (upper-bound limit of individual lifetime risk no greater than 8×10^{-15}) and PO (upper-bound limit of individual lifetime risk no greater than 1×10^{-14}) that might result from the proposed use of the additive.

As stated previously, FAP 6A4502 was submitted to amend the regulations in § 173.25(b)(5) and (d)(2) by changing the limitations for the temperature, pH, and the extraction requirements for the sulphopropyl cellulose ion-exchange resin. The petitioner did not propose any changes to the provisions under § 173.25(a)(20) for the manufacturing process, involving the starting materials ECH and PO, for the ion-exchange resin.

The agency has reviewed the information in the FAP's 6A3905 and 6A4502, and has determined that the information in FAP 6A4502 does not indicate a change in the manufacturing process. Therefore, the resin composition in FAP 6A4502 does not differ from the resin composition evaluated in the original petition (FAP 6A3905). Moreover, based on its evaluation, the agency finds that the proposed changes to the limitations for the temperature, pH, and the extraction requirements for the ion-exchange resin are expected to reduce the potential level of exposure to the residues of ECH and PO. Accordingly, the agency concludes that a recalculation of a risk assessment performed for the original petition FAP 6A3905 is not necessary to support this action.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe; (2) the additive will achieve its intended technical effect; and, therefore, (3) the regulations in § 173.25 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under § 25.32(j) 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.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at anytime on or before April 26, 1999, 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.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.25 is amended by revising paragraphs (b)(5) and (d)(2) to read as follows:

§ 173.25 Ion-exchange resins.

* * * * *

(b) * * *

(5) The ion-exchange resin identified in paragraph (a)(20) of this section is limited to use in aqueous process

streams for the isolation and purification of protein concentrates and isolates under the following conditions:

(i) For resins that comply with the requirements in paragraph (d)(2)(i) of this section, the pH range for the resin shall be no less than 3.5 and no more than 9, and the temperatures of water and food passing through the resin bed shall not exceed 25 °C.

(ii) For resins that comply with the requirements in paragraph (d)(2)(ii) of this section, the pH range for the resin shall be no less than 2 and no more than 10, and the temperatures of water and food passing through the resin shall not exceed 50 °C.

* * * * *

(d) * * *

(2) The ion-exchange resin identified in paragraph (a)(20) of this section shall comply either with:

(i) The extraction requirement in paragraph (c)(4) of this section by using dilute sulfuric acid, pH 3.5 as a substitute for acetic acid; or

(ii) The extraction requirement in paragraph (c)(4) of this section by using reagent grade hydrochloric acid, diluted to pH 2, as a substitute for acetic acid. The resin shall be found to result in no more than 25 parts per million of organic extractives obtained with each of the following solvents: Distilled water; 15 percent alcohol; and hydrochloric acid, pH 2. Blanks should be run for each of the solvents, and corrections should be made by subtracting the total extractives obtained with the blank from the total extractives obtained in the resin test.

* * * * *

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7515 Filed 3–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–121–FOR]

Pennsylvania Abandoned Mine Land Reclamation Program; Pennsylvania Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the AMLR Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment adds a new section "F" entitled Government Financed Construction Contracts (GFCC) to authorize the incidental removal of coal and coal refuse at Abandoned Mine Land (AML) sites that would not otherwise be mined and reclaimed under the Title V program, along with relevant statutory provisions authorizing the AMLR Plan amendments. The proposed amendment also includes the Program Requirements and Monitoring Requirements related to the use of GFCC for that purpose. The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the government-financed construction exemption in Section 528 of SMCRA to be applied in cases involving less than 50% financing only in the limited situation where the construction constitutes a government approved and administered abandoned mine land reclamation project under Title IV of SMCRA. The amendment is also intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Biggi, Director, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center (Amtrack) 415 Market Street, Harrisburg, Pennsylvania 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania AMLR Plan. Background on the Pennsylvania AMLR Plan, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 **Federal Register** (47 FR 33081). Subsequent actions concerning the AMLR Plan amendments are identified at 30 CFR 938.20 and 938.25.

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated November 21, 1997 (Administrative Record No. PA–855.00), the Pennsylvania Department of Environmental Protection (PADEP) submitted proposed Program Amendment No. 2 to the Pennsylvania AMLR Plan. In addition, PADEP also submitted the following documents: Introduction; Basis of Authority for the Proposed Amendment; AML Amendment Conformance with 30 CFR Section 884.13; Assistant Counsel's Opinion of Authority for GFCC; PADEP Organization Chart; the Office of Mineral Resources Management Organization Chart; and Public Participation in Part F of the Reclamation Plan (Amendment No. 2). The proposed amendment is intended to improve the efficiency of the Pennsylvania program by allowing the Government-financed construction exemption in Section 528 of SMCRA to be applied in certain cases involving less than 50% government financing. Pennsylvania also proposed to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned unreclaimed area outside of the permit area.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67590), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 28, 1998.

OSM's review of the proposed amendment determined that several items required clarification. As a result, a letter requesting clarification on three items pertaining to placement of excess spoil on Abandoned Mine Lands was sent to Pennsylvania dated June 5, 1998 (Administrative Record No. PA 855.08). Pennsylvania initially responded in its letter dated June 17, 1998, (Administrative Record No. PA 855.09), that it would require additional time to respond to OSM's request, and that it expected to provide a response by July 15. A response was received from Pennsylvania in its letter dated July 7,

1998 (Administrative Record No. PA–855.10). Therefore, OSM announced a reopening of the public comment period until August 12, 1998, in the July 28, 1998, **Federal Register** (63 FR 40237). No comments were received. However, OSM subsequently informed Pennsylvania that its program appeared to lack the statutory authority to implement the exemption for incidental coal removal pursuant to government-financed reclamation projects. Therefore, in letters, in letters dated October 8 and October 13, 1998 (Administrative Record No. PA 855.12), Pennsylvania subsequently submitted portions of its state law which it believes provides specific authorization to implement the proposed changes to AMLR Plan. Pennsylvania requested to have the statutory provisions included as part of Pennsylvania's Abandoned Mine Reclamation Plan Amendment. The proposed additions were published in the November 3, 1998, **Federal Register** (63 FR 59259), and the comment period was reopened to November 18, 1998. No comments were received. Since that time, national regulations known as the AML Enhancement Rule were published in the February 12, 1999, **Federal Register** (64 FR 7470) as a final rule to be effective March 15, 1999. OSM found that Pennsylvania's amendment did not include certain aspects of the AML Enhancement Rule. Therefore, in a letter to OSM dated March 2, 1999 (Administrative Record No. PA 855.15), Pennsylvania specified the additional requirements it proposed to be included in its amendment.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes and paragraph notations to reflect organizational changes resulting from this amendment. The proposed amendment consists of new Part F, Program Requirements, and a Monitoring Program for GFCC's, both to be added to the AMLR Plan. The proposed amendment also consists of amendments to the Pennsylvania state code, at 52 P.S. 1396.3 and 1396.4h.

AMLR Plan, Part F: Government Financed Construction Contracts

(1) *Incidental Coal Removal*—PADEP proposes to authorize the incidental removal of coal at AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and knowledge of the status of the AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands which involve some incidental removal of coal. Following are (3) examples of situations where PADEP proposes to utilize the GFCC to address AML liabilities.

(a) *Refuse Pile Reclamation*—As a result of an extensive history of mining in Pennsylvania, thousands of coal refuse piles are scattered throughout the state in both the bituminous and anthracite fields. In many cases these piles are unsightly, unsafe and are adding to the sedimentation and mine drainage pollution of Pennsylvania streams in areas that are economically deprived because of poor water quality and general aesthetics.

Depending on the method used to clean the coal and the volume of material available, these piles have varying degrees of value. Those piles that are larger in volume and higher in quality have traditionally been permitted under the Title V Program while piles of smaller, poorer quality have remained virtually untouched and are not and will not be likely candidates for permitting. These are the types of piles that are generally suitable for use in fluidized-bed combustion processes employed at congeneration plants and the types of piles that will be reclaimed under the proposed program.

(b) *Reclamation of Abandoned Deep Mines*—An example specific to this initiative would be represented by an abandoned deep mine that includes subsidence problems and acid mine drainage discharges. The reclamation of this type of site would involve the daylighting of the deep mined area, the incidental and necessary removal of any coal encountered, the placement of alkaline material over the area of deep mine affected, and the construction of some type of passive treatment system to insure the reduction of pollutional loading from the discharges. Daylighting is the method of removing coal from a deep mine by first removing the overburden. Because of the limited amount of coal available, and the potential water quality liability for the discharges, this sample site would not be a candidate for a surface mine permit under the Title V Program.

(c) *Unreclaimed High Walls Adjacent to Active Mine Sites*—Nearly all permits issued under the Title V program include varying levels of remining or are located within close proximity to previously affected areas located outside of permit boundaries. In some cases coal along the crop barrier may have gone unmined because of poor quality or high moisture content. In other cases an additional cut taken off the highwall may facilitate a reclamation plan that results in a more suitable post-mining land use or may facilitate an abatement project (alkaline addition—highwall drains, etc.) that will result in improved water quality. In those situations where a Title V permit is impractical due to limited coal recovery or poor coal quality, PADEP proposes to direct reclamation of these sites through a GFCC which allows for the incidental removal of coal to complete reclamation of the AML lands.

(2) *Placement of Excess Spoil on Adjacent AML Lands*—PADEP proposes to authorize the placement of excess spoil from active mining operations on AML sites that would not otherwise be mined and reclaimed under the Title V program. Through its management of the permitting process and the knowledge of the status of AML lands in Pennsylvania, PADEP plans to enter into agreements with mining companies and adjacent permit holders to direct the reclamation of AML lands adjacent to permitted operations. The institution of this program will allow PADEP to maximize its reclamation efforts on AML lands at no expense to the funding sources for PADEP's AML program. Savings to the AML program would be used for reclamation at other sites throughout the Commonwealth.

Pennsylvania was asked to clarify which requirements in the approved program will apply to the placement of excess spoil on abandoned mine lands as referenced in the proposed amendment at page 7 where it is stated that the placement of excess spoil on adjacent AML lands would be approved AML reclamation projects and would therefore encompass the same time-tested administrative, financial, contractual and environmental safeguards as any other approved AML projects in the Commonwealth. OSM requested Pennsylvania either require that these projects be handled in the same manner as Federally-funded AML projects, or otherwise identify the administrative, financial, contractual and environmental safeguards that will be applied to these "no-cost" GFCC's, and show how these safeguards will ensure the same level of environmental protection as that provided by Federally-funded AML projects. Pennsylvania responded that these projects will be handled in the same manner as Federally-funded AML projects. Furthermore, projects that involve the support and involvement of the District Mining Offices will be

subject to the additional administrative requirements designed to address the coordination between the Bureau of Abandoned Mine Reclamation and the District Mining Offices. Pennsylvania revised page 7 of its proposed amendment to include these clarifications. (Administrative Record No. PA–855.10).

Pennlsyvania was asked to include in its AMLR Plan provisions to ensure that excess spoil from Title V operations will not be placed on approved AML sites in amounts greater than necessary to address the AML impacts and problems. Pennsylvania responded that it modified its amendment by adding the following sentence to the end of the first paragraph on page 6, C.1; after the fourth sentence of the first full paragraph on page 7; after the first sentence of the last paragraph on page 9; after the first sentence of Part F(2) on page 13; and after the first sentence of third paragraph under Program Requirements on page 15: "The amount of excess spoil from title V operations will not exceed that amount necessary to address the AML impacts and problems." (Administrative Record No. PA–855.10).

AMLR Plan, Part F: Program Requirements

A. The Department will solicit and accept proposals to enter into a GFCC for the purpose of reclamation of abandoned mine lands, some of which may involve the incidental and necessary removal of coal.

To be an "eligible person", for purposes of entering into a GFCC, the person must clear the Department's standard compliance with the Applicant Violator System (AVS) checks. In addition, the person must clear a check through the Commonwealth's contractor responsibility program. (*See* summary of 52 P.S. 1396.4h, under the heading "STATUTORY PROVISIONS", below.)

A GFCC under the terms of this amendment, is limited to those situations where a contractor proposes to enter into an agreement to perform reclamation on abandoned mine lands with the incidental and necessary removal of coal or to use excess spoil from a permitted site to reclaim an abandoned mine land. Reclamation should also include, where feasible, the installation of passive treatment systems and/or other measures to mitigate pre-existing discharges. No processing of coal will be conducted on-site.

Coal refuse ash may be returned to the site consistent with a general permit issued by the PADEP. General permits are issued by Pennsylvania's Bureau of Water Quality Protection as authorized by its Solid Waste Management Act (35 P.S. §§ 6018.101 *et seq*) and 25 Pa Code Chapters 77, 86–90 and 271.

Sewage sludge may be utilized for site reclamation consistent with a beneficial use order or land reclamation permit. Beneficial use and land reclamation permit are also authorized by Pennsylvania's Solid Waste Management Act.

PADEP will conduct an expeditious review of the proposal for adequacy of the monitoring plan, erosion and sedimentation control plan, operation plan, and reclamation plan. Particular attention will be given to the feasibility of installing passive treatment systems and/or other measures to mitigate pre-existing discharges. Any deficiencies are to be communicated to the contractor in writing.

Even though reclamation activities under a GFCC are not subject to the barrier prohibitions of 25 Pa. Code 86.102, precautions will be designed in the operation and reclamation plans to minimize any potential adverse impacts on areas that would be considered prohibited areas under a coal mining permit.

A performance bond in an amount determined by the PADEP shall be submitted on forms provided by the PADEP for all GFCC sites where bond is required. Specifically, a performance bond will be required on GFCC's which involve coal removal which is incidental to reclamation. PADEP stated that it has developed a bond rate schedule to be used to establish the bond amount for each GFCC. The bond rate schedule is based on acreage involved and PADEP's experience in reclaiming abandoned mine lands. The authority for requiring a bond is contained in the statutes cited in the legal opinion attached to the proposed program amendment initially submitted. (Administrative Record No. PA–855.00, Exhibit 2B), PADEP revised pages 15 and 16 of its proposed amendment to include these clarifications. Should a contractor default on a GFCC or otherwise fail to perform the required reclamation, PADEP will make a demand upon the surety to fulfill its performance bond obligations to either complete the reclamation required by the GFCC or to pay that amount of bond money necessary for PADEP to hire another contractor to complete the remaining contract reclamation work.

A consent order and agreement, in conjunction with a permit condition, will be used to ensure that AML sites which receive excess spoil from a Title V site are fully reclaimed in accordance with the contract standards and/or the consent order. The permit condition will provide that the operator will use no more than that amount of excess spoil which is necessary to reclaim the AML site and that the operator's failure to complete the required reclamation of the AML site prohibits release of the bond on the Title V permit. An operator's failure to complete reclamation of the AML site would also be a violation of its permit, exposing the operator to civil penalties and/or bond forfeiture and enforcement of the consent order and agreement.

B. A proposal for a GFCC will consist of a face sheet and the following Pennsylvania Surface Mine Permitting modules as applicable:

Module #1—Ownership and Right of Entry
Module #2—Environmental Resource and Operations Map
Module #3—Hydrology
Module #4—Operational Information
Module #5—Streams
Module #25—Flyash
Module #27—Sewage Sludge

(a) The ownership and control information is to be entered into the Land Use Management Information System (LUMIS) and a compliance check/AVS check run. If a "bar" is found, the proposal is to be returned. If "no bar" is found, the proposal will be accepted and given an ID number.

(b) All proposals will be subject to the consultation requirements with other state agencies as prescribed by Pennsylvania's approved AMLR Plan.

(c) The PADEP will advertise receipt of the proposal. This notice shall be run once a week for two weeks in a newspaper local to the project area.

(d) The municipality and the county in which the site is located will be notified, by certified letter, that the PADEP received a proposal for a GFCC to perform reclamation activities within the municipality.

(e) Upon final execution of the contract, PADEP will notify the host municipality and county by certified mail of the action; notify any agencies who submitted comments; notify appropriate state Legislators, in writing, of the action; and issue a press release of the action (The Regional Community Relations Coordinator will assist in preparation of this release). If a Small Projects Permit is issued with the executed contract, notice must be made in the Pennsylvania Bulletin.

AMLR Plan, Part F: Monitoring Program for GFCC's

The PADEP will conduct monthly inspections of all GFCC's until the site is determined to be stabilized by vegetation. At that time, the PADEP will

continue to conduct regular inspections on a quarterly basis until the contract receives final approval and final bond release.

The inspection forms and related instructions to be utilized to monitor the GFCC program are part of the amendment.

According to the PADEP, the proposed program amendment would offer solutions to the following problems that exist throughout Pennsylvania's coal field:

(1) Conditions which create a risk of fire. landslide, subsidence, cave-in or other unsafe, dangerous or hazardous conditions, including but not limited to any unguarded or unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools, or other property used in or resulting from surface mining operations. or other serious hazards to public health or safety.

(2) AMD pollution and sedimentation into Pennsylvania's streams.

(3) Unsightly, and unproductive property that has been largely unreclaimed through either the AML or active mining programs.

(4) Inadequate funding to address the above three Pennsylvania reclamation liabilities.

Generally speaking, the above conditions exist in areas that are economically depressed and environmentally damaged. The necessary reclamation represents an AML liability well in excess of hundreds of millions of dollars. The proposed program offers an additional solution to Pennsylvania's obligation to provide clean water and a safe and healthy environment to its citizens.

Statutory Provisions

At 52 P.S. 1396.3, Pennsylvania proposes to modify its definition of the term "surface mining activities", to add four exceptions. The effect of the modification will be that the excepted activities" will not be required to apply for and receive surface coal mining permits, and will not be required to comply with the full panoply of performance standards contained in the Pennsylvania surface coal mining regulatory program. Currently, Pennsylvania's definition of "surface mining activities" is as follows:

"Surface mining activities" shall mean the extraction of coal from the earth or from waste or stockpiles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The proposed amendment, which includes four exceptions to the definition of "surface mining activities" states that:

"Surface mining activities" shall not include any of the following: (1) Extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8 [52 P.S. 1396.4h]. (2) Extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board. (3) The reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department. (4) Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations. The Director finds that exception number two, the extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board, is substantively identical to, and therefore no less stringent than, SMCRA Section 528(2), and she is therefore approving it. Prior to implementation of this exception, however, Pennsylvania must submit to OSM and receive OSM approval of the implementing regulations promulgated by the Environmental Quality Board. The Director finds that exception number three, the reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department, is not inconsistent with the Federal definition of "surface coal mining operations" at SMCRA Section 701(28), and she is therefore approving it. The Director finds that exception number four, activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations, is not inconsistent with SMCRA or the Federal regulations, and she is therefore approving it. Prior to implementing this exception, however, Pennsylvania must submit to and receive from OSM approval of any implementing regulations it promulgates. Exception number one, extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8 [52 P.S. 1396.4h], is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Also at 52 P.S. § 1396.3, Pennsylvania proposes to define the term "government-financed reclamation contract", as follows:

"Government-financed reclamation contract" shall mean:

(1) For the purposes of Section 4.8 [52 P.S. 1396.4h], a Federally-funded or state-funded and approved abandoned mine reclamation contract entered into between the department and an eligible person or entity who has obtained special authorization to engage in incidental and necessary extraction of coal refuse pursuant to government-financed reclamation which is either:

(i) a State-financed reclamation contract less than or equal to fifty thousand dollars ($50,000) total project costs, where up to five hundred (500) tons of coal is extracted, including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract;

(ii) a State-financed reclamation contract authorizing the removal of coal refuse, including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area;

(iii) a State-financed reclamation contract greater than fifty thousand dollars ($50,000) total project costs or a federally-financed abandoned mine reclamation project: Provided, That the department determines in writing that extraction of coal is essential to physically accomplish the reclamation of the project area and is incidental and necessary to reclamation, or

(iv) federally financed or state-financed extraction of coal which the department determines in writing to be essential to physically extinguish an abandoned mine fire that poses a threat to the public health, safety and welfare.

(2) For purposes of determining whether or not extraction of coal is

incidental and necessary under section 4.8, the department shall consider standard engineering factors and shall not in any case consider the economic benefit deriving from extraction of coal. Necessary extraction of coal shall in no case include:

(i) the extraction of coal in an area adjacent to the previously affected area which will be reclaimed; or

(ii) the extraction of coal beneath the previously affected area which will be reclaimed. This definition is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Also at 52 P.S. 1396.3, Pennsylvania proposes to define the term "no-cost reclamation contract," as follows:

"No-cost reclamation contract" shall mean a contract entered into between the department and an eligible person for the purpose of reclaiming unreclaimed abandoned mine lands and which does not involve the expenditure of Commonwealth funds. This definition is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Finally, at 52 P.S. 1396.4h [also referred to as "section 4.8"], Pennsylvania proposes to add a new section entitled "Government-financed reclamation contracts authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse" which states that:

(a) No person may engage in the extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract without a valid surface mining permit issued pursuant to this act unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The department shall not be required to grant a special authorization to any eligible person. The department may, however, in its discretion, grant a special authorization allowing incidental and necessary extraction of coal or allowing removal of coal refuse pursuant to a government-financed reclamation contract in accordance with this section.

(b) Only eligible persons may secure special authorization to engage in incidental and necessary extraction of coal or to engage in removal of coal refuse pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:

(1) The contractor or any related party or subcontractor which will act under its direction has no history of past or continuing violations which show the contractor's lack of ability or intention to comply with the acts or the rules and regulations promulgated thereunder, whether or not such violation relates to any adjudicated proceeding agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor.

(2) The person has submitted proof that any violation related to the mining of coal by the contractor or any related party or subcontractor which will act under its direction of any of the acts, rules, regulations, permits or licenses of the department has been corrected or is in the process of being corrected to the satisfaction of the department, whether or not the violation relates to any adjudicated proceeding, agreement, consent order or decree or which resulted in a cease order or civil penalty assessment. For purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor.

(3) The person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

(4) The person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the act of June 22, 1937 (Pub. L. 1987, No. 394), known as "The Clean Streams Law" (35 P.S. § 691.1 *et seq.*), in connection with either surface mining or reclamation activities.

(5) The person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

(c) Any eligible person who proposes to engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. The department may issue the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction of coal or authorizing removal of coal refuse and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provision of this section. A special authorization shall only be granted by the department prior to the commencement of extraction of coal or commencement of removal of coal refuse on a project area. In order to be considered for a special authorization by the department, an eligible person must demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned mine lands.

(2) The extraction of coal will be incidental and necessary, or the removal of coal refuse will be required, to accomplish the reclamation of abandoned mine lands pursuant to a government-financed reclamation contract.

(3) Incidental and necessary extraction of coal or in removal of coal refuse will be confined to the project area being reclaimed.

(4) All extraction of coal or in removal of coal refuse and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:

(i) The applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the government-financed reclamation contract; and

(ii) Additional conditions included in the government-financed reclamation contract by the department.

(d) The contractor will pay any applicable per-ton reclamation fee established by OSM for each ton of coal extracted pursuant to a government-financed reclamation project.

(e) Prior to commencing extraction of coal or commencement of removal of coal refuse pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, "The Clean Streams Law", the act of January 8, 1960 (1959 P.L. 2119, No. 787) (35 P.S. section 4001 *et seq.*), known as the "Air Pollution Control Act", the act of September 24, 1968 (P.L. 1040, No. 318) (52 P.S. § 30.51 *et seq.*), known as the "Coal Refuse Disposal Control Act," where applicable, the act of November 26, 1978 (P.L. 1375, No. 325) (32 P.S. § 693.1 *et seq.*), known as the "Dam Safety and Encroachments Act", and, where applicable, the act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. § 6018.101 *et seq.*), known as the "Solid Waste Management Act". An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts herein above enumerated. For government-financed reclamation contracts other than a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above. The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

(f) The department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of Section 4.2 (52 P.S. § 1396.4b.), except as surface coal mining is allowed pursuant to that section.

(g) Any person engaging in extraction of coal pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

(h) Extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

This new section is discussed below in the section of this finding entitled "Analysis of Proposal to Allow Incidental Coal Removal Pursuant to GFCC's."

Analysis of Proposal To Allow Incidental Coal Removal Pursuant to GFCC's

Section 528(2) of SMCRA provides an exemption from the requirements of SMCRA for coal extraction incidental to government-financed highway or other construction under regulations established by the regulatory authority. The amendments to Pennsylvania's statutes and to its AMLR Plan would allow incidental coal extraction pursuant to the reclamation of abandoned sites without the need of a surface coal mining permit. The State contends that this amendment is consistent with the provisions of section 528(2) of SMCRA and, therefore, not subject to SMCRA.

The Federal regulations at 30 CFR Part 707 set forth the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and the Federal regulations because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction. Under 30 CFR 707.5, government-financed construction, generally, means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. However, OSM has recently promulgated a revision to the definition of "government financed construction" at 30 CFR 707.5. The new revision allows incidental coal extraction to be performed pursuant to approved reclamation projects under Title IV of SMCRA, even where the government funding portion is less than 50%. 64 FR 7470, February 12, 1999. Therefore, Pennsylvania's proposed statutory and AMLR Plan amendments are no less than the newly promulgated revision to the Federal definition of "government financed construction", insofar as the State provisions apply to approved Title IV projects. The Director also finds that the AMLR plan amendment is no less effective than the federal regulations at 30 CFR 707.12, pertaining to the information required to be maintained on site, with respect to approved Title IV projects. However, other new Federal provisions were enacted in the same rulemaking. These new provisions, at 30 CFR 874.17, contain consultation responsibilities and concurrence obligations, as well as documentation requirements, for the Title IV and Title V divisions of State Regulatory Authorities as a prerequisite to approval of incidental coal extraction without a permit, on approved Title IV reclamation projects which are less than 50% government financed. Pennsylvania's proposed amendment already contained counterparts to the requirements contained in 30 CFR 874.17(b), (d)(3) and (d)(4). Also, since our approval of the incidental extraction of coal on projects which are less than 50% government financed is limited to approved AML projects under Title IV, the projects will necessarily be conducted in accordance with 30 CFR Subchapter R, thereby fulfilling the requirement at 30 CFR 874.17(d)(2). Finally, in a letter dated March 2, 1999 (Administrative Record No. PA–855.15), Pennsylvania proposed to amend its AML Plan to require that any Title IV reclamation projects to require compliance with the remaining portions of 30 CFR 874.17. Therefore, the Director finds that the amendment submitted by Pennsylvania, including the March 2, 1999, modification, complies with 30 CFR 874.17, to the extent that it applies to the incidental extraction of coal on approved Title IV projects which are less than 50% government financed.

A discussion of the support statutory revisions follows.

At 52 P.S. 1396.3, Pennsylvania proposes an exception from the definition of "surface mining activities" for the extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract. Also at 52 P.S. 1396.3, Pennsylvania proposes a definition of "government-financed reclamation contract." (This definition is summarized above.) To the extent that these provisions apply to the incidental extraction of coal pursuant to approved AML projects, they are no less stringent than Section 528(2) of SMCRA, for the reasons discussed in the preceding paragraphs under this heading. These projects may be less than 50% government financed, and may be approved by Pennsylvania at any time after the effective date of this final rule. Our approval includes state financed reclamation projects, which receive no federal AML funding, so long as those projects are approved under title IV and the federal regulations at 30 CFR Subchapter R. In other words, the State need not actually use federal AML moneys to fund these projects, but the projects must first comply with the criteria in SMCRA and the federal regulations which govern eligibility for federal funding. Projects that are State financed, but that do not receive Title IV approval, qualify for the government financed construction exemption only if they are at least 50% government financed. Therefore, the director is not approving the definition of "government-financed reclamation contract" to the extent that it proposes to allow incidental coal removal, pursuant to state financed reclamation contracts which are less than 50 percent government financed, on sites which have not been approved as Title IV AML projects.

In addition, the Director is not approving the portions of the definition of "government-financed reclamation contract" which refer to "no-cost contracts." (*See* the proposed definition of "no-cost reclamation contract", which is set forth in its entirety, above.) In order to qualify as "government-financed construction", projects must receive some funding through appropriations from the government financing agency's budget. Any expenses incurred directly or indirectly by the AML agency, including the costs of project design, solicitation, management and oversight, qualify as government financing. However, Pennsylvania defines no-cost contracts as those contracts that do not involve the expenditure of any government funding, either as direct payments or as indirect expenses such as those listed above. Therefore, Pennsylvania's definition of "government financed reclamation contract" is less effective than the Federal definition of "government-financed construction", at 30 CFR 707.5, to the extent that it would allow incidental coal extraction or coal refuse removal, without a permit, pursuant to no-cost contracts. Specifically, the Director is not approving the following language in the definition of "government-financed reclamation contract":

In paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and,

In paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area."

In addition, the Director is not approving the definition of "no-cost reclamation contract", at 52 P.S. 1396.3.

Finally, the Director is requiring Pennsylvania to amend 52 P.S. 1396.3 to delete the above-referenced language.

At 52 P.S. 1396.4h, also known as "Section 4.8", which is set forth in its entirety above, Pennsylvania has established criteria for determining eligibility for receipt of a special authorization to conduct incidental coal extraction or coal refuse removal pursuant to a government-financed reclamation contract. This provision also requires eligible persons to demonstrate that coal extraction or refuse removal will be incidental and necessary to reclamation, which shall be the primary purpose of the contract, and that it will comply with environmental protection performance standards listed in the contract. Next, the provision requires that applicable reclamation fees be paid for each ton of coal extracted, sets forth criteria for the posting of performance bonds, prohibits the incidental extraction of coal and removal of coal refuse in areas subject to other restrictions on coal extraction, pursuant to 52 P.S. 1396.4b, and requires surface owner consent for right of entry and for extraction of coal. These provisions, which are contained in subsections "a" through "d", "f" and "h" of 52 P.S. 1396.4h, have no Federal counterparts. However, they are not inconsistent with Section 528(2) of SMCRA or 30 CFR Part 707, and add restrictions to the issuance of "special authorizations" which should help to ensure that proposed projects which are truly "surface mining activities" will be required to obtain full surface mining permits. Therefore, the Director is approving these subsections. She is also approving subsection "e" for the same reasons, except for the following language, pertaining to "no-cost contracts", which is not approved:

> For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

Also, the Director is not approving any portion of subsection "g", since it pertains solely to extraction of coal pursuant to no-cost contracts. Finally, the Director is requiring the State to amend 52 P.S. 1396.4h to delete the above-quoted portion of subsection "e", and to delete subsection "g" in its entirety.

Analysis of Proposal to Allow Placement of Excess Spoil on Adjacent AML Lands

Placement of excess spoil on adjacent abandoned mine land has been addressed previously in other rulemaking. Specifically, in a July 9, 1991, letter to Ohio (Administrative Record No. OH–1546), the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. OSM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981; and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, **Federal Register** announcing approval of the West Virginia program (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under Title V of SMCRA. In the May 23, 1990, **Federal Register** (55 FR 21329), OSM found that West Virginia's proposed

disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore approximate original contour (AOC) on or otherwise reclaim the active mine. In addition, as stated in the May 23, 1990, **Federal Register**, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the possibility that "no-cost reclamation" contracts, which allow spoil disposal on AML sites not included in Federally funded grants, could be approved in the future. In order to gain OSM approval, however, "no-cost reclamation" amendments would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore AOC and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. *See* OSM Director's July 9, 1991, letter to Ohio (Administrative Record No. OH–1546). In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project.

The Director finds that Pennsylvania's proposal regarding placement of excess spoil, at Part F, meets these requirements, for the reasons set forth below.

First, Pennsylvania's proposal requires that the amount of excess spoil placed on an abandoned site will not exceed that required to restore that site to AOC. Also, the proposal limits the amount of excess spoil placed on AML sites to that amount needed to address the AML impacts and problems. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited would exceed that necessary to address the AML impacts and problems.

Second, the proposal requires that the plan for excess spoil placement pursuant to a GFCC will be developed and implemented in the same manner as is done for Federally funded AML projects. The environmental safeguards that therefore will apply to GFCC's should ensure that the excess spoil is placed in an environmentally sound fashion, and that placement will not destroy or degrade features of environmental value.

Third, and finally, the Director finds that the proposal contains sufficient performance incentives to require compliance with all applicable requirements, since a consent order and agreement, in conjunction with a permit condition, will be used to ensure that AML sites which receive excess spoil from a Title V site are fully reclaimed. The permit condition will provide that the operator will use no more than that amount of excess spoil which is necessary to reclaim the AML site and that the operator's failure to complete the required reclamation of the AML site prohibits release of the bond on the Title V permit. An operator's failure to complete reclamation of the AML site would also be a violation of its permit, exposing the operator to civil penalties and/or bond forfeiture and enforcement of the consent order and agreement. Finally, the PADEP always has AML grant funds available to reclaim these sites in the event that the operator defaults on the terms of its contract.

General Findings

Pursuant to 30 CFR 884.15(a), an AMLR Plan amendment which changes the scope, objectives or major policies followed by the State in the conduct of its reclamation program must meet the requirements of 30 CFR 884.14 before OSM may approve it. Accordingly, OSM makes the following findings:

1. OSM offered the public an opportunity for a public hearing on the amendment in the December 29, 1997, **Federal Register** Notice, (62 FR 67590), thereby complying with the requirement of 30 CFR 884.14(a)(1);

2. In both the December 29, 1997 (62 FR 67590) and July 28, 1998 (63 FR 40237) **Federal Register** Notices, OSM solicited the views of other Federal agencies having an interest in the AMLR Plan amendment, and OSM considered the views of those agencies in reaching its decision, thereby complying with the requirements of 30 CFR 884.14(a)(2);

3. PADEP has provided evidence of the State's legal authority, policies and administrative structure necessary to carry out the proposed AMLR Plan amendment, thereby complying with the requirements of 30 CFR 884.14(a)(3);

4. The AMLR Plan amendment meets all of the requirements of the Federal Regulations at Title 30, Chapter VII, Subchapter R, "Abandoned Mine Land Reclamation", including the newly promulgated "AML Enhancement Rule" at 30 CFR 874.17, and therefore complies with the requirements of 30 CFR 884.14(a)(4);

5. Pennsylvania has an approved State regulatory program, as announced in the July 30, 1982, **Federal Register** Notice (47 FR 33050), as required by 30 CFR 884.14(a)(5); and,

6. The AMLR Plan amendment is in compliance with all applicable State and Federal laws and regulations, and therefore complies with the requirements of 30 CFR 884.14(a)(6).

Based upon all of the above considerations, the Director is approving Part F.

IV. Summary and Disposition of Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Comments were received from the Pennsylvania Coal Association, the Anthracite Region Independent Power Producers Association, and the Indiana Coal Council, Inc. (Administrative Record Nos. PA–855.05, 855.06 and 855.07, each dated January 28, 1998, respectively). In each case, comments regarding the proposed amendment were favorable and supportive, and encouraged OSM's approval. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 884.14(a)(2), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania AMLR Plan. The Mine Safety and Health Administration (MSHA) responded in its letter dated December 15, 1997, (Administrative Record No. PA–855.03) that it saw no conflict with Coal Mine Safety and Health Impoundment or Refuse Pile Regulations under 30 CFR 77.214, 215 and 216. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

Based on the above finding(s), the Director approves the proposed

amendment as submitted by Pennsylvania on November 21, 1997, clarified on July 7, 1998, and revised on October 8 and October 13, 1998, and March 2, 1999 with the exceptions noted below. In particular, the Director is approving Part F, which authorizes the use of GFCCs which involve incidental coal removal, or which allow the placement of excess spoil on adjacent Abandoned Mine Lands. In addition, the Director is approving the statutory provisions submitted by the State, consisting of portions of 52 P.S. 1396.3 and a new section, 52 P.S. 1396.4th, with the exceptions noted below.

The Director is not approving the definition of "government-financed reclamation contract", at 52 P.S. 1386.3, to the extent that it proposes to allow incidental coal removal, pursuant to state financed reclamation contracts which are less than 50 percent government financed, on sites which have not been approved as Title IV AML project. Projects that are state financed, but that do not receive Title IV AML approval, can include incidental coal removal if the project are at least 50% government financed. In addition, the Director is not approving the portions of the definition of "government-financed reclamation contract" which refer to "no-cost contracts." Specifically, the Director is not approving the following language in the definition of "government-financed reclamation contract":

In paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and,

In paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area."

In addition, since the Director is not approving the use of no-cost reclamation contracts that involve incidental extraction of coal or coal refuse, she is also not approving the definition of "no-cost reclamation contract", at 52 P.S. 1396.3.

Also, the Director is not approving the following portions of subsection "e" of 52 P.S. 1396.4h:

> For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mine lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

Finally, the Director is not approving any portion of 52 P.S. 1396.4h., subsection "g", since it pertains solely to extraction of coal pursuant to no-cost contracts.

The Director is requiring Pennsylvania to amend 52 P.S. 1396.3 and 1396.4h to delete the above-referenced language.

The Federal regulations at 30 CFR part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State AMLR Plans and State Regulatory Program amendment processes and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standard is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, no by OSM. These standards are also not applicable to the actual language of state regulatory programs and program amendments for the same reason. Decisions on State and Tribal abandoned mine land reclamation 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 Federal regulations at 30 CFR Part 884. Similarly, under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(1), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation 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)), and since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 5, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

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

2. Section 938.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
October 8, 1998	March 26, 1999	52 P.S. §§ 1396.3, 1396.4h.

3. Section 938.16 is amended by adding new paragraphs (cccc), (dddd), (eeee) and (ffff) to read as follows:

(cccc) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the following portions of the definition of "government-financed reclamation contract", at 52 P.S. § 1396.3: in paragraph (1)(i), the phrase "including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract"; and, in paragraph (1)(ii), the phrase "including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material of the project area."

(dddd) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the definition of "no-cost reclamation contract", at 52 P.S. § 1396.3.

(eeee) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete the following language contained in subsection "e" of 52 P.S. § 1396.4h:

For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years the bond amount shall be a per acre fee, which is equal to the department's average per acre cost to reclaim abandoned mines lands; provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation.

(ffff) By May 26, 1999, Pennsylvania must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to delete, in its entirety, subsection "g" of 52 P.S. § 1396.4h.

4. Section 938.25 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 938.25 Approval of Pennsylvania abandoned mine reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
November 21, 1997	March 26, 1999	Part F—Government Financed Construction Contracts.

[FR Doc. 99–7282 Filed 3–25–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 556

Private Organizations on Department of the Army Installations

AGENCY: U.S. Army Community and Family Support Center, DOD.

ACTION: Final rule.

SUMMARY: This document removes the Department of the Army's Private Organizations on Department of the Army Installations regulation codified in 32 CFR, part 556. The part has served its purpose and no longer supports other related rules currently in existence. The Army is in the process, however, of revising its policies and procedures concerning authorization and operation of private organizations operating on Army installations and will announces a future proposed rule for public comment.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT:

Margaret McMullen, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22302, phone (703) 681–7434.

SUPPLEMENTARY INFORMATION: Additionally, removal of Part 556 is based on the inconsistency of text with revised DODI 1000.15, Private Organizations on DOD Installations, and DOD 5500.7–R, Joint Ethics Regulations.

List of Subjects in 32 CFR Part 556

Federal buildings and facilities.

PART 556—[REMOVED AND RESERVED]

Accordingly, under the authority of 5 U.S.C. 301, 32 CFR Part 556 is removed.

Lloyd E. Mues,

Chief of Staff.

[FR Doc. 99–7475 Filed 3–25–99; 8:45 am]

BILLING CODE 3710–08–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT10–1–6700a; UT–001–0014a; UT–001–0015a; FRL–6314–8]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Foreword and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning and Nonsubstantive Changes; and Foreword and Definitions, Addition of Definition for PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah. On July 11, 1994, the Governor submitted a SIP revision for the purpose of establishing a modification to the definition for "Sole Source of Heat" in UACR R307–1–1; this revision also made a change to UACR R307–1–4, "Emissions Standards." On February 6, 1996, a SIP revision to UACR R307–1–2 was submitted by the Governor of Utah which contains changes to Utah's open burning rules, requiring that the local county fire marshal has to establish a 30-day open burning window in order for open burning to be allowed in areas outside of nonattainment areas. Other minor changes are made in this revision to UACR R307–1–2.4, "General Burning" and R307–1–2.5, "Confidentiality of Information." In addition, on July 9, 1998, SIP revisions were submitted that would add a definition for "PM_{10} Nonattainment Area" to UACR R307–1–1. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on May 26, 1999 without further notice, unless EPA receives adverse comment by April 26, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: On July 11, 1994, February 6, 1996, and July 9, 1998, the State of Utah submitted formal revisions to its State Implementation Plan (SIP). The July 11, 1994, SIP submittal consists of a modification to the definition for "Sole Source of Heat" in UACR R307–1–1, as well as a nonsubstantive change to UACR R307–1–4, "Emissions Standards." The February 6, 1996, submittal made revisions to UACR R307–1–2 and contains changes to Utah's open burning rules to require that the local county fire marshal establish a 30-day open burning window in order for open burning to be allowed in areas outside of nonattainment areas. Other minor changes are made in this revision to UACR R307–1–2.4, "General Burning" and R307–1–2.5, "Confidentiality of Information." The July 9, 1998, submittal adds a definition for "PM_{10} Nonattainment Area" to UACR R307–1–1.

I. Background

On July 11, 1994, the definition for "Sole Source of Heat" was revised in UACR R307–1–1 such that households with only small portable heaters are included in the definition to allow these households to burn during mandatory no-burn periods. Revisions were also made to UACR R307–1–4 to include a new sub-section on "PM_{10} Contingency Plans;" these plans were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. EPA returned the portions of these plans with a letter to the Governor on January 29, 1999. However, a nonsubstantive change was made in this section as a result of the revision. This change moves section 4.13.3 D to section 4.13.3.E. For the purposes of ease and efficiency for the State, the revised sub-section numbering is being approved.

On February 6, 1996, the State of Utah submitted its revised open burning regulations in order to make them more consistent with Utah Code 65A–8–9. The State rules that were approved earlier in the SIP allow for more leniency with respect to open burning windows than does the Utah Code.

The following are requirements for open burning under Utah Code 65A–8–9 which pertain to the rule change addressed by the SIP:

1. June 1 through October 31 of each year is to be a closed fire season throughout the State.

2. The state forester has jurisdiction over the types of open burning allowed with a permit during the closed fire season.

The open burning requirement that was previously in the Utah SIP pertaining to this rule change is as follows:

For areas outside of Salt Lake, Davis, Weber, and Utah Counties (nonattainment areas), open burning is allowed during the periods of March 30 through May 30 and September 15 through October 30 with a permit issued by the authorized local authority.

The open burning requirement that was adopted by the Utah Air Quality Board on September 6, 1995 is as follows:

For areas outside of the designated nonattainment areas, open burning is allowed during the March 30 through May 30 period and the September 15 through October 30 period if the local county fire marshal has established a 30-day window for such open burning to occur with a permit issued by the authorized local authority and the state forester has allowed for such permit to be issued.

On July 9, 1998, the State submitted a revision to UACR R307–1–1, "Foreword and Definitions." The State of Utah's new definition is such that, "'PM_{10} Nonattainment Area' means Salt Lake County, Utah County, or Ogden City." This definition was included in the State rules in order to ensure that all requirements for PM_{10} nonattainment areas remain in effect after the revocation of the pre-existing NAAQS for PM_{10}.

II. Summary of SIP Revision

A. Review of Revisions

1. Review of the Changes to "Foreword and Definitions" Regulations Concerning the Definition for "Sole Source of Heat"

The residential woodburning regulation revision was developed by the Utah Division of Air Quality with input from local governments and the public. The Air Quality Board approved two changes to the woodburning rule at the December 9, 1993, hearing which were later submitted by the Governor. The revision to R307–1–1 redefines the definition for "Sole Source of Heat." This change defines which households may continue burning during woodburning bans so that those households with small portable heaters still qualify under the definition of households for which wood or coal burning is the only source of heat. The second revision which was made to the residential woodburning regulations under R307–1–4.13, specifies the actions which must be taken if contingency measures are implemented in the Salt Lake, Davis or Utah County nonattainment areas. These plans were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. EPA returned the portions of these plans with a letter to the Governor on January 29, 1999. However, a nonsubstantive change was made in this section as a result of the revision. This change moves section 4.13.3 D to section 4.13.3.E. For the purposes of ease and efficiency for the State, the revised subsection number is being approved, and thus, there will be no section 4.13.3.D.

2. Review of the Changes to General Requirements Regulations Concerning Open Burning Regulations and Minor Changes to Rules

Utah made revisions to its open burning regulations for areas outside of nonattainment areas because they were found to be in conflict with Utah Code 65A–8–9. The Code prohibits open burning between June 1 and October 31, unless a permit has been issued, whereas the open burning regulations allowed burning between March 30 and May 30 and between September 15 and October 30 in areas outside of nonattainment areas. The change to the open burning rule requires that the local county fire marshal establish a 30-day window during the spring and fall open burning windows in areas outside of Salt Lake, Davis, Weber, and Utah Counties in order for open burning to occur. In regards to the fall window, upon the decision of the state forester under Section 65A–8–9 of the Utah Code, the local county fire marshal may establish a 30-day period between September 15 and October 30 as an open burning period in which permits are required to conduct open burning. These changes were made under UACR R307–1–2.4.4. The proposed changes had originally not included the fall open burning window, but after adverse public comment the proposed rule was changed to allow for fall burning under the above provisions.

Other minor changes were made to the open burning regulations as well. Section R307–1–2.4, "General Burning" has had numbers added to it to make it more consistent with Utah Code 19–2–114. Section R307–1–2.4.3.C is corrected to refer to Subsection R307–17–3 in place of section 4.13.3 of the regulations. More minor changes were also made throughout the open burning regulations to change capitalization and to correct references.

Minor changes were also made under R307–1–2.5, "Confidentiality of Information" including a changed statutory reference in R307–1–2.5.1.B. Additional changes were made to correct references and capitalization of section headings.

3. Review of the Changes to "Foreword and Definitions" Regulations Concerning the Addition of a Definition for PM_{10} Nonattainment Areas

On January 7, 1998, the Air Quality Board approved the addition of the definition for "PM_{10} Nonattainment Area." This revision ensures that the currently designated nonattainment areas within the State for PM_{10} will be held to the same requirements after the pre-existing PM_{10} NAAQS are revoked as they were prior to the revocation of the NAAQS. This action is important in order to prevent the areas from backsliding during the interim period between the revocation of the NAAQS and the designation of the areas under the revised standards for PM_{10}.

B. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA provides that each SIP revision be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA. EPA has evaluated each of the above Governor's submittals and discusses them below.

1. July 11, 1994 submittal: Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "Foreword and Definitions" and "Emissions Standards" on October 5, 1993, October 6, 1993, October 7, 1993, and October 13, 1993. The changes to the State's rules were adopted by the Air Quality Board on December 9, 1993 and became effective on January 31, 1994; the revision was formally submitted by the Governor on July 11, 1994. EPA determined the submittal was complete on September 22, 1994. A portion of this revision included PM_{10} contingency plans which were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. EPA returned this portion of the submittal with a letter to the Governor on January 29, 1999.

2. February 6, 1996 submittal: Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "General Requirements" on July 14 (two separate hearings), 17, 18, and 19, 1995. The changes to the State's rule were adopted by the Air Quality Board on September 6, 1995 and became effective on October 31, 1995; the new open burning regulations, along with the other nonsubstantive changes to "General Requirements," were formally submitted by the Governor on February 6, 1996. EPA determined the submittal was complete on August 14, 1996.

3. July 9, 1998 submittal: Copies of the proposed changes were made available to the public and the State held public hearings for the changes to "Foreword and Definitions" on December 16, 1997 and January 5, 1998. The changes to the State's rule were adopted by the Air Quality Board on January 7, 1998 and became effective on January 8, 1998; the new definition was formally submitted by the Governor on July 9, 1998. EPA determined the submittal was complete on October 16, 1998.

III. Final Action

EPA is approving the Governor's submittal of July 11, 1994, to revise the definition for "Sole Source of Heat" to define which households may continue burning during woodburning bans so that those households with small portable heaters still qualify under the definition of households for which wood or coal burning is the only source of heat. EPA is also approving a change made under "Emissions Standards," which moves section 4.13.3 D to section 4.13.3.E. EPA is approving the submittal of February 6, 1996, which made changes to Utah's open burning regulations (in "General Burning") to require that the local county fire marshal establish a 30-day window

during which open burning activities may occur in areas outside of nonattainment areas during the spring and fall closed burning seasons. This applies to all areas in the State outside of Salt Lake, Davis, Weber, and Utah Counties where the state forester has permitted the local county fire marshal to establish the open burning window. Minor changes were also made to R307–1–2.4, "General Burning" as well as R307–1–2.5, "Confidentiality of Information." Lastly, EPA is approving the Governor's submittal of July 9, 1998, adding a definition for "PM_{10} Nonattainment Area" in R307–1–1 to ensure that requirements for nonattainment areas are retained in Salt Lake County, Utah County, and Ogden City after the pre-existing PM_{10} NAAQS are revoked.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 26, 1999 without further notice unless the Agency receives adverse comments by April 26, 1999. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

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

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

D. Executive Order 13084

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

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

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the

aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 1999. 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 11, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

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 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(41) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(41) On July 11, 1994 the Governor of Utah submitted revisions to the Utah State Implementation Plan (SIP) to revise the definition for "Sole Source of Heat" under UACR R307–1–1, "Foreword and Definitions," to allow the exemption of those households with small portable heating devices from mandatory no-burn periods. This revision also made changes to the residential woodburning regulations under UACR R307–1–4.13.3 "No-Burn Periods," which specifies the actions which must be taken if contingency measures are implemented in the Salt Lake, Davis or Utah County nonattainment areas. These plans were requested to be withdrawn by the Governor in a November 9, 1998, letter to the Regional Administrator. EPA returned the portions of these plans with a letter to the Governor on January 29, 1999. A nonsubstantive change was made in this section as a result of the revision which moves section 4.13.3 D to section 4.13.3.E; this change was also approved by EPA. On February 6, 1996 the Governor of Utah submitted revisions to the Utah State Implementation Plan to revise Utah's open burning regulations, under UACR R307–1–2.4, to require that the local county fire marshal establish 30-day open burning windows during the spring and fall closed burning seasons in areas outside of Salt Lake, Davis, Weber, and Utah Counties as granted by the state forester. There were also minor changes made to the open burning regulations under UACR R307–1–2.4, "General Burning" and minor changes made to UACR R307–1–2.5 "Confidentiality of Information." On July 9, 1998 the Governor of Utah submitted revisions to the Utah SIP to add a definition for "PM_{10} Nonattainment Area," under UACR R307–1–1, "Foreword and Definitions," to ensure that all requirements for nonattainment areas are retained in Salt Lake County, Utah County and Ogden City after the pre-existing PM_{10} standards are revoked.

(i) Incorporation by reference.

(A) UACR R307–1–1, a portion of "Foreword and Definitions," revision of definition for "Sole Source of Heat," as adopted by Utah Air Quality Board on December 9, 1993, effective on January 31, 1994.

(B) UACR R307–1–4, a portion of "Emissions Standards," as adopted by Utah Air Quality Board on December 9, 1993, effective on January 31, 1994.

(C) UACR R307–1–2, a portion of "General Requirements," open burning changes and nonsubstantive wording changes, as adopted by Utah Air Quality Board on September 6, 1995, effective on October 31, 1995.

(D) UACR R307–1–1, a portion of "Foreword and Definitions,' addition of definition for "PM_{10} Nonattainment Area," as adopted by Utah Air Quality Board on January 7, 1998, effective on January 8, 1998.

(ii) Additional Material.

(A) July 20, 1998, fax from Jan Miller, Utah Department of Air Quality, to Cindy Rosenberg, EPA Region VIII, transmitting Utah Code 65A–8–9, regarding closed fire seasons.

(B) October 21, 1998, letter from Richard R. Long, Director, EPA Air and Radiation Program, to Ursula Trueman, Director, Utah Division of Air Quality, requesting that Utah withdraw the submitted Salt Lake and Davis County PM_{10} Contingency Measure SIP revisions, the Utah County PM_{10} Contingency Measure SIP revisions, and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision.

(C) November 9, 1998, letter from the Governor of Utah, to William Yellowtail, EPA Region VIII Administrator, requesting that the submitted Salt Lake and Davis County and Utah County PM_{10} Contingency Measure SIP revisions and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision be withdrawn.

(D) December 16, 1998, letter from Larry Svoboda, EPA Region VIII, to Ursula Trueman, Utah Department of Air Quality, clarifying revisions that were made to UACR R307–1–4.

(E) January 5, 1999, letter from Ursula Trueman, Utah Department of Air Quality, to William Yellowtail, EPA Region VIII Administrator, concurring on EPA's clarification of revisions that were made to UACR R307–1–4.

(F) January 29, 1999, letter from William Yellowtail, EPA Region VIII Administrator, to the Governor of Utah returning the Salt Lake and Davis County and Utah County PM_{10} Contingency Measure SIP revisions and the Residential Woodburning in Salt Lake, Davis and Utah Counties PM_{10} Contingency Measure SIP revision.

[FR Doc. 99–7424 Filed 3–25–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0074, FRL–6307–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action is an administrative change which revises the definitions in Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 102, Definitions, and South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions.

DATES: This rule is effective on May 26, 1999, without further notice, unless EPA receives adverse comments by April 26, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

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

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are: SBCAPCD Rule 102, Definitions, submitted on March 10, 1998 and SCAQMD Rule 102, Definition of Terms, submitted on March 10, 1998, by the California Air Resources Board.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included Santa Barbara County and the South Coast Air Basin, see 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the Santa Barbara County APCD and South Coast AQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). In response to the SIP call and other requirements, the SBCAPCD and SCAQMD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for SBCAPCD Rule 102, Definitions, and SCAQMD Rule 102, Definition of Terms. These rules were adopted by SBCAPCD and SCAQMD on April 17, 1997 and June 13, 1997, respectively, and submitted by the State of California for incorporation into its SIP on March 10, 1998. These rules were found to be complete on May 21, 1998, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V [1] and is being finalized for approval into the SIP. These rules were originally adopted as part of SBCAPCD and SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.[2]

EPA previously reviewed many rules from the SBCAPCD and SCAQMD agencies and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. The following revisions were made in SBCAPCD and SCAQMD definitions rule.

Santa Barbara County APCD

Rule 102 has been revised to add new and amended definitions which apply to the entire rule book. Among the more significant new definitions are: Actual Emission Reductions, Affected Pollutants, Air Quality Impact Analysis, Air Quality Related Value, Attainment Pollutant, Authority to Construct, Baseline Air Quality, Best Available Control Technology, Best Available Retrofit Control Technology, California Coastal Waters, CFR, Class I Area, Class I Impact Area, Class II Area, Clean Air Act, Construction, Contiguous Property, Emission Reduction Credit, Emission Reduction Credit Certificate, Emission Unit, Federally Enforceable; Fugitive Emission, Hazardous Air Pollutant, Large Source, Major Modified Stationary Source, Major Stationary Source, Medium Source, Nonattainment Pollutant, Open Burning in Agricultural Operations, Outer Continental Shelf Source, Pollutant, Portable Internal Combustion Engine, Potential to Emit, Precursor, Quarterly, Reasonable

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

Further Progress, Reconstructed Source, Secondary Emissions, Small Source, Stationary Source, Installation, "Building, Structure, or Facility", Common Operations, Total Suspended Particulates, and Zones of Santa Barbara County. These definitions are not expected to change substantive requirements.

South Coast AQMD

Rule 102 has been revised to add tetrachloroethylene (perchloroethylene), 3,3-dichloro-1,1,1,2,2,-pentafluoropropane (HCFC 225ca), 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC 225cb), and 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC–43–10mee) to the "Exempt Compound" definition. Perchloroethylene is being added as a Group II Exempt Compound. The other three compounds are being added to the list of Group I Exempt Compounds. Definitions for "Clean Air Solvent" and "Ozone Depleting Compounds" are being added to Rule 102. The addition of these two definitions is administrative and is not expected to change substantive requirements.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SBCAPCD Rule 102, Definitions and SCAQMD Rule 102, Definition of Terms, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Future action by EPA on prohibitory, new source review, or other SBCAPCD rules may require changes to these definitions.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 26, 1999 without further notice unless the Agency receives relevant adverse comments by April 26, 1999.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 26, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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: February 23, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(254)(i)(C) and (c)(254)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(254) * * *

(i) * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102 amended on April 17, 1998.

(D) South Coast Air Quality Management District.

(*1*) Rule 102 amended on June 13, 1997.

* * * * *

[FR Doc. 99–7422 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300820; FRL–6069–5]

RIN 2070–AB78

Quinclorac; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of quinclorac, 3,7-dichloro-8-quinoline carboxylic acid in or on wheat and sorghum. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 26, 1999. Objections and requests for hearings must be received by EPA on or before May 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300820], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300820], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300820]. No Confidential Business

Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 305–6224, miller.joanne @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1998 (63 FR 66535) (FRL–6043–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) 7F4870 for a tolerance by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.463 be amended by establishing tolerances for residues of the herbicide quinclorac 3,7-dichloro-8-quinoline carboxylic acid, in or on the raw agricultural commodities wheat and sorghum as follows: 0.5 part per million (ppm) (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 0.75 ppm (wheat germ), 6.0 ppm (sorghum, grain, grain), 3.0 ppm (sorghum, grain, forage), 1.0 ppm (sorghum, grain, stover) and 1,200 ppm (aspirated grain fractions). Based on the estimated dietary burden from the established tolerances and the proposed uses in this petition the following revised tolerances are also established: fat of cattle, goats, hogs, horses and sheep at 0.7 ppm and the meat byproducts of cattle, goats, hogs, horses and sheep at 1.5 ppm.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of quinclorac and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of 3,7-dichloro-8-quinoline carboxylic acid on the raw agricultural commodities wheat and sorghum as follows: 0.5 ppm (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 0.75 ppm (wheat germ), 6.0 ppm (sorghum, grain, grain), 3.0 ppm (sorghum, grain, forage), 1.0 ppm (sorghum, grain, stover) and 1,200 ppm (aspirated grain fractions). Based on the estimated dietary burden from the established tolerances and the proposed uses in this petition the following revised tolerances are also established: fat of cattle, goats, hogs, horses and sheep at 0.7 ppm and the meat byproducts of cattle, goats, hogs, horses and sheep at 1.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. Acute toxicology studies place technical-grade quinclorac in Toxicity Category III for all routes of exposure. It is a dermal sensitizer.

2. A 21–day dermal toxicity study in NZ White rabbits was conducted at doses of 0, 200 or 1,000 milligrams/kilograms/day (mg/kg/day). No dermal or systemic toxicity was seen following 21 daily dermal applications of quinclorac at doses of 0, 200, or 1,000 mg/kg/day. The no observed adverse effect level (NOAEL) is greater than 1,000 mg/kg/day.

3. A 13–week feeding study in mice was conducted at doses of 0, 4,000, 8,000, or 16,000 ppm; equivalent to 0, 1,000, 2,202 or 4,555 mg/kg/day for males and 0, 1,467, 2,735 or 5,953 mg/kg/day for females. The lowest observed adverse effect level (LOAEL) is 1,000 mg/kg/day for males and 1,467 mg/kg/day for females based on decreased body weight gains in males and females (17.6 and 18.7%, respectively).

4. A 13–week feeding study in mice was conducted at doses of 0 or 500 ppm (equivalent to 0 or 75 mg/kg/ day). The NOAEL is 75 mg/kg/day.

5. A 3–month feeding study in rats was conducted at doses of 0, 1,000, 4,000, or 12,000 ppm (0, 76.8, 302.3 or 929.9 mg/kg/day in males and 0, 86.7, 358, or 1,035.4 mg/kg/day in females). The NOAEL is 302 mg/kg/day(male); 358 mg/kg/day (female). The LOAEL is 930 mg/kg/day (male); 1035 mg/kg/day (female), based on decreased body weight gain, food consumption, and increased water intake in males and females, increased SGOT, SGPT and focal chronic interstitial nephritis in males.

6. A 1–year feeding study in dogs was conducted at doses of 0, 1,000, 4,000, or 12,000 ppm (0, 34, 142, or 513 mg/kg/day in males and 0, 35, 140, or 469 mg/kg/day in females). The NOAEL is 142 mg/kg/day (male); 140 mg/kg/day (female). The LOAEL is 513 mg/kg/day (male); 469 mg/kg/day (female), based on reduced body weight gain, increased liver and kidney weights, reduced food efficiency, reduced HgB, RBC, MCH, and MCV, and kidney degeneration.

7. A 2–year chronic/carcinogenicity study in rats at doses of 0, 1,000, 4,000, 8,000 or 12,000 ppm (0, 56, 186, 385, or 487 mg/kg/day in males and 0, 60, 235, 478, or 757 mg/kg/day in females). The NOAEL is 385 mg/kg/day (male); 478 mg/kg/day (female). The LOAEL is 487 mg/kg/day (male); 757 mg/kg/day (female), based on decreased body weight in females and increased incidence of pancreatic acinar cell hyperplasia in males.

8. An 18–month carcinogenicity study in mice was conducted at doses of 0, 250, 1,000, 4,000, or 8,000 ppm (0, 37.5, 150, 600, or 1200 mg/kg/day). The NOAEL is 37.5 mg/kg/day and the LOAEL is 150 mg/kg/day based on decreased body weight in both sexes.

9. A developmental toxicity study in rats was conducted at gavage doses of 0, 24.4, 146, or 438 mg/kg/day during gestation. The maternal toxicity NOAEL is 146 mg/kg/day. The maternal toxicity LOAEL is 438 mg/kg/day, based on increased mortality, decreased food consumption, and increased water consumption. The developmental toxicity NOAEL is equal to or greater than 438 mg/kg/day.

10. A developmental toxicity study in rabbits was conducted at gavage doses of 0, 70, 200, or 600 mg/kg/day during gestation. The maternal toxicity NOAEL is 70 mg/kg/day. The maternal toxicity LOAEL is 200 mg/kg/day, based on decreased body weight gains and food consumption. The developmental toxicity NOAEL is 200 mg/kg/day. The developmental toxicity LOAEL is 600 mg/kg/day, based on increased resorption rate, post-implantation loss, decreased number of live fetuses, and reduced fetal body weight.

11. A 2–generation reproduction study in rats was conducted at dietary levels of 0, 1,000, 4,000, or 12,000 ppm (0, 50, 200, 600 mg/kg/day). The parental toxicity NOAEL is 200 mg/kg/day. The parental toxicity LOAEL is 600 mg/kg/day, based on reduced body weight in both sexes during premating and lactating periods. The reproductive toxicity NOAEL is equal to or greater than 600 mg/kg/day. The developmental toxicity NOAEL is 200 mg/kg/day. The developmental toxicity LOAEL is 600 mg/kg/day, based on decreased pup weight and viability, and developmental delays.

12. A metabolism (biodisposition) study in rats was conducted at single oral doses of 15 or 600 mg/kg; and multiple doses of unlabeled quinclorac for 14 days followed by ^{14}C quinclorac. Quinclorac was rapidly absorbed and eliminated in the urine. Urinary elimination accounted for 91 to 98% of the dose, with 1 to 4% in the feces. None was demonstrated in the expired air.

13. Biliary excretion studies in rats were conducted at single oral doses of 15 or 600 mg/kg. Biliary excretion was significant (11.5 to 14.5% of the dose) in 600 mg/kg treated rats but was reabsorbed from the intestine and eliminated in the urine.

14. A plasma level study was conducted at single oral doses of 15, 100, 600, or 1,200 mg/kg; and a multiple dosing study at 15 and 600 mg/kg/day for 7 days. Mean ^{14}C residues were detected in plasma 30 minutes after dosing in single dose animals at 15, 100, and 600 mg/kg or 15 mg/kg/day for 7 days. Most of this radioactivity was the parent compound. Peak plasma levels of radioactivity in animals receiving 1,200 mg/kg and 600 mg/kg/day for 7 days were noted at 7 to 48 hours post-dosing.

15. Tissue level studies were conducted at daily oral doses of 15 mg/kg or 1,200 mg/kg for 7 days. In both studies, the highest concentration of radioactivity in tissues was found 30 minutes after administration of the final dose.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, an acute Reference Dose (RfD) of 2.0 mg/kg/day has been selected, based on the developmental NOAEL of 200 mg/kg/day, from the rabbit developmental toxicity study and an uncertainty factor of 100 (10X for inter-species differences and 10X for intra-species variability). The endpoint is based on increased incidence of fetal resorptions, decrease in the number of live fetuses, and reduced fetal body weight at the LOAEL of 600 mg/kg/day. The population subgroup at risk is females of child-bearing age (13+years). For the general population, no appropriate endpoint attributable to a single exposure was identified from the oral toxicity studies, including the rat and rabbit developmental toxicity studies.

2. *Short- and intermediate-term toxicity.* Short and intermediate-term toxicity endpoints are not established since no dermal or systemic toxicity was observed in a 21–day dermal toxicity study in New Zealand White rabbits.

3. *Chronic toxicity.* EPA has established the chronic RfD for quinclorac at 0.4 mg/kg/day. This RfD is based on decreased body weights in male and female mice observed in the mouse carcinogenicity study with a NOAEL of 37.5 mg/kg/day.

4. *Carcinogenicity.* After considering an equivocal increase of acinar cell adenomas of the pancreas in male Wistar rats, quinclorac is classified as "Group D --not classifiable as to human carcinogenicity".

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.463) for the residues of 3,7-dichloro-8-quinoline carboxylic acid, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from quinclorac as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary risk assessment was performed for quinclorac. The analysis was conducted using the acute RfD of 2.0 mg/kg/day, based on increased incidence of fetal resorptions and post-implantation loss, decreased number of live fetuses and reduced fetal body weight observed in the rabbit developmental toxicity study. For the population subgroup of concern, females 13 years and older, the estimated 95th percentile of exposure occupies 0.4% of the acute RfD. The analysis is conservative since it assumes that 100% of wheat and sorghum - derived foods contain residues at the tolerance levels (0.5 and 6.0 ppm, respectively); tolerance level residues on all commodities with established quinclorac tolerances; and, 100% crop-treated.

ii. *Chronic exposure and risk.* A chronic dietary risk assessment was performed for quinclorac. The analysis used the chronic RfD of 0.4 mg/kg/day and assumed that 100% of wheat and sorghum - derived foods contain residues at tolerance levels (0.5 and 6.0 ppm, respectively); tolerance level residues on all commodities with established quinclorac tolerances; and, 100% crop-treated. Based on these assumptions, no more than 2% of the chronic RfD was occupied by any population subgroup.

2. *From drinking water.* No Maximum Contaminant Level or health advisory levels have been established for residues of quinclorac in drinking water. EPA used its SCI-GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the estimated environmental concentration (EEC) for quinclorac in ground water. The GENEEC (Generic Estimated Environmental Concentration) screening model and environmental fate data were used to determine the EECs for quinclorac in surface water. EECs in ground water reflecting the maximum yearly application rate of 0.75 pounds of active ingredient per acre were 21 parts per billion (ppb;ug/L). EECs in surface water were 40 ppb for acute exposure scenarios and 38 ppb for chronic exposure scenarios. The computer generated EECs represent conservative estimates and should be used only for screening.

i. *Acute exposure and risk.* EPA has calculated a drinking water level of comparison (DWLOC) for acute

exposure to quinclorac in drinking water for the relevant population subgroup, females 13+ years of age. The DWLOC is 60,000 ug/L.

To calculate the DWLOCs for acute exposure relative to an acute toxicity endpoint, the acute dietary food exposure from the DEEM (Dietary Exposure Evaluation Model) analysis was subtracted from the ratio of the acute RfD to obtain the acceptable acute exposure to quinclorac in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

For purposes of risk assessment, EPA used 40 ppb as the estimated maximum concentration of quinclorac in drinking water. The estimated maximum concentrations in water are less than EPA's level of concern (60,000 ppb) for quinclorac residues in drinking water as a contribution to acute aggregate exposure. Therefore, taking into account the use proposed in this action, EPA concludes with reasonable certainty that residues of quinclorac in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

ii. *Chronic exposure and risk.* EPA has calculated drinking water levels of comparsion (DWLOCs) for chronic exposure to quinclorac in drinking water. For chronic (non-cancer) exposure to quinclorac in drinking water, the drinking water levels of comparison are 14,000 ug/L and 3,900 ug/L for the U.S. population and the subgroup children (1–6 years old), respectively.

To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from the DEEM analysis) was A subtracted from the chronic RfD to obtain the acceptable chronic (non-cancer) exposure to quinclorac in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

The estimated average concentration of quinclorac in drinking water is 38 ppb. The DWLOCs are 14,000 ppb for the U.S. population and 3,900 ppb for the subgroup, children (1–6 years old). The estimated average concentration of quinclorac in drinking water is less than EPA's level of concern for quinclorac in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the use proposed in this action, EPA concludes with reasonable certainty that residues of quinclorac in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* Quinclorac is currently registered for use on the following residential non-food sites: residential lawns. The residential use on lawns poses the potential for dermal exposure for both children and adults and for oral exposure (incidental and/or hand-to-mouth ingestion) for children. However, since there was no observed dermal or systemic toxicity in a rabbit 21–day dermal study with quinclorac, short-, intermediate- or long-term dermal or inhalation endpoints are not being established. An acute dietary endpoint (applicable to the general population, including infants and children) is not being established since there was no observed toxicity in the database, from a single exposure. Thus, residential exposure risk assessments were not conducted.

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

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

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

1. *Acute risk.* For the population subgroup of concern, females 13+ years old, the acute dietary (food) exposure does not exceed 0.4% of the acute RfD. The drinking water level of comparison (DWLOC) for acute exposure to quinclorac residues is 60,000 ug/L for females (13+ years). The maximum estimated environmental concentration (EEC) of quinclorac in drinking water (40 ug/L) is less than EPA's level of concern for quinclorac in drinking water as a contribution to acute aggregate exposure. EPA concludes with reasonable certainty that residues of quinclorac in drinking water will not contribute significantly to the aggregate acute human health risk and that the acute aggregate exposure from quinclorac in food and water will not exceed the Agency's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to quinclorac from food will utilize no more than 1% of the RfD for the U.S. adult population. The major identifiable subgroup with the highest aggregate exposure, infants or children is "discussed below". EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to quinclorac in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The residential use on lawns poses the potential for dermal exposure for both children and adults and for oral exposure (incidental and/or hand-to-mouth ingestion) for children. However, risk assessments were not required for short- and intermediate-term aggregate exposures due to a lack of observed toxicity in the quinclorac database.

4. *Aggregate cancer risk for U.S. population.* Quinclorac is classified as a "Group D -- not classifiable as to human carcinogenicity" chemical.

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

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

1. *Safety factor for infants and children.*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of quinclorac, EPA considered data from developmental toxicity studies in the rat

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

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

ii. *Pre- and post-natal sensitivity.* There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2–generation rat reproductive toxicity study.

iii. *Conclusion.* There is a complete toxicity database for quinclorac and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the data base and the toxicity data regarding pre-and post-natal sensitivity, EPA concludes, based on reliable data, that use of the standard margin of safety will be safe for infants and children without addition of another tenfold factor.

2. *Acute risk.* Fetuses are addressed by examining exposure to the mother and those exposures are acceptable.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to quinclorac from food will utilize no more than 2% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to quinclorac in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants (sorghum grain, wheat, rice), ruminants, and poultry is adequately understood. The residue of concern is quinclorac per se.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas liquid chromotography with an electron capture detector) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of quinclorac 3,7-dichloro-8-quinoline carboxylic acid are not expected to exceed the following tolerances on the raw agricultural commodities wheat and sorghum as follows: 0.5 ppm (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 0.75 ppm (wheat germ), 6.0 ppm (sorghum, grain, grain), 3.0 ppm (sorghum, grain, forage), 1.0 ppm (sorghum, grain, stover) and 1200 ppm (aspirated grain fractions). Based on the estimated dietary burden from the established tolerances and the proposed uses in this petition the following revised tolerances are also established fat of cattle, goats, hogs, horses and sheep at 0.7 ppm and the meat byproducts of cattle, goats, hogs, horses and sheep at 1.5 ppm.

D. International Residue Limits

There are no Codex or Mexican maximum residue limits (MRLs) established for quinclorac residues on wheat or sorghum grain. Canada has an established MRL of 0.5 ppm for residues of quinclorac on "wheat". The tolerance BASF is proposing on wheat grain is in harmony with this MRL.

E. Rotational Crop Restrictions

The label restrictions are: Do not plant any crop other than wheat or sorghum grain for 309 days (10 months) following application. For flax, peas, lentils, and sugar beets, do not replant for 24 months.

IV. Conclusion

Therefore, the tolerances are established for residues of 3,7-dichloro-8-quinoline carboxylic acid in the raw agricultural commodities wheat and sorghum as follows: 0.5 ppm (wheat grain), 0.1 ppm (wheat straw), 1.0 ppm (wheat forage), 0.5 ppm (wheat hay), 0.75 ppm (wheat germ), 6.0 ppm (sorghum, grain, grain), 3.0 ppm (sorghum, grain, forage), 1.0 ppm (sorghum, grain, stover) and 1200 ppm (aspirated grain fractions). Based on the estimated dietary burden from the established uses in this petition the following revised tolerances are also established fat of cattle, goats, hogs, horses and sheep at 0.7 ppm and the meat byproducts of cattle, goats, hogs, horses and sheep at 1.5 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For

additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300820] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation

with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

VIII. Submission to Congress and the Comptroller General

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

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 15, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.463 is amended as follows:

a. By revising the section title to read as set forth below:

b. By alphabetically adding the entries aspirated grain fractions; sorghum, grain, forage; sorghum, grain, grain; sorghum, grain, stover; wheat forage; wheat germ; wheat grain; wheat hay; and wheat straw to the table in paragraph (a)(1) and;

c. By revising the entries for cattle, fat; cattle, mbyp; goats, fat; goats, mbyp; hogs, fat; hogs, mbyp; horses, fat; horses, mbyp; and sheep, fat; and sheep, mbyp to the table in paragraph (a)(1) as set forth below:

§ 180.463 Quinclorac; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of quinclorac (3,7-dichloro-8-quinoline carboxylic acid) in or the following food commodities:

Commodity	Parts per million
Aspirated grain fractions	1200
* * * * *	
Cattle, fat	0.7
Cattle, mbyp	1.5
* * * * *	
Goats, fat	0.7
Goats, mbyp	1.5
* * * * *	
Hogs, fat	0.7
Hogs, mbyp	1.5
* * * * *	
Horses, fat	0.7
Horses, mbyp	1.5
* * * * *	
Sheep, fat	0.7
Sheep, mbyp	1.5
* * * * *	
Sorghum, grain, forage	3.0
Sorghum, grain, grain	6.0
Sorghum, grain, stover	1.0
Wheat forage	1.0
Wheat germ	0.75
Wheat grain	0.5
Wheat hay	0.5
Wheat straw	0.1

* * * * *

[FR Doc. 99–7435 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300822; FRL–6069–7]

RIN 2070–AB78

Arsanilic acid [(4-aminophenyl) arsonic acid]; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of arsanilic acid [(4-aminophenyl) arsonic acid] in or on grapefruit. Fleming Laboratories, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire on February 28, 2001.

DATES: This regulation is effective March 26, 1999. Objections and requests for hearings must be received by EPA on or before May 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300822], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300822], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or

ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300822]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 305–7740, giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 1998 (63 FR 40273) (FRL–5799–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP 4G4276) for tolerance in connection with an Experimental Use Permit (EUP) for (4-aminophenyl) arsonic acid by Fleming Laboratories, Inc., P.O. Box 34384, Charlotte, NC 28234. This notice included a summary of the petition prepared by Fleming Laboratories, Inc., the registrant. There were comments received from two citrus growers supporting the approval of the EUP in order to further develop and test (4-aminophenyl) arsonic acid. Both growers are directors of consulting companies.

The petition requested that 40 CFR part 180 be amended by establishing a time-limited tolerance for residues of the plant growth regulator used as a ripening enhancement agent arsanilic acid [(4-aminophenyl) arsonic acid], in or on grapefruit at 0.5 part per million (ppm). The temporary tolerance on grapefruit is requested for fruit resulting from the experimental use of arsanilic acid to evaluate enhancement of ripening. The chemical will be tested on 50 acres of grapefruit in the state of Florida for a period of 2 years. This tolerance will expire on February 28, 2001.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of arsanilic acid [(4-aminophenyl) arsonic acid] and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of (4-aminophenyl) arsonic acid in/on grapefruit at 2.0 ppm (not to exceed 0.7 ppm total arsenic). EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute oral toxicity study.* Groups of Sprague-Dawley rats (5/sex) were given a single oral administration of arsanilic acid at doses of 500 (females), 750, 1,000, 1,250, or 1,500 milligrams/kilogram (mg/kg) (males). Clinical signs consisted of: piloerection, hypoactivity, soiled coat, hunched appearance, labored breathing, diarrhea, ataxia, subdued behavior, stained perigenital area, emaciation, and red nasal discharge. Oral LD_{50} results were as follows:

LD_{50} = 1,411 mg/kg (males)
LD_{50} = 976 mg/kg (females)
LD_{50} = 1,461 mg/kg (combined)

2. *Acute dermal toxicity study.* Groups of New Zealand White rabbits (5/sex/dose) were given a single dermal application of arsanilic acid at doses of 500, 1,000, or 2,000 mg/kg (Limit-Dose). Clinical signs of toxicity observed at all dose levels included: ataxia, diarrhea, dark urine, decreased defecation, convulsions, tremors, hindlimb paralysis, hyper salivation, vocalization, red eyes, piloerection, labored breathing, weight loss, hunched posture, and low food consumption primarily 2–8 days post-dosing. Dermal LD_{50} results were as follows:

LD_{50} = 922 mg/kg (males)
LD_{50} = 909 mg/kg (females)
LD_{50} = 921 mg/kg (combined)

3. *Acute inhalation toxicity study.* Groups of Sprague-Dawley rats (5/sex) were exposed to aerosol concentrations of arsanilic acid 99.5% at a maximum attainable analytical concentration of 5.3 mg/L for four hours. Rats exhibited respiratory depression, subdued appearance, and piloerection during exposure. Inhalation LC_{50} results were as follows:

LC_{50} > 5.3 mg/L (both sexes).

4. *Primary eye irritation study.* Arsanilic acid was instilled into the conjuctival sac of male New Zealand White rabbits. The results of this study indicate that arsanilic acid is a slight ocular irritant to rabbit.

5. *Primary dermal irritation study.* New Zealand White rabbits (6 males) were exposed to arsanilic acid on the intact skin for 4 hours. No erythema or edema was observed in any of the test animals. The primary Irritation Index is 0.0. The results of this study indicate that arsanilic acid is a non-irritant to the skin of rabbits.

6. *Dermal sensitization study.* The dermal sensitization potential of arsanilic acid was evaluated in 20 male Hartley guinea pigs receiving dermal applications of 0.5 mL of the test material at concentrations of 25%, 10%, 5%, or 2% w/v on three consecutive days for three weeks (Induction Phase), followed by a 25% w/v application to the original and virgin skin site four weeks later (Challenge Phase). None of the treated animals exhibited any irritation when challenged; the average skin reaction score for the virgin site was 0.0. Under the conditions of this

study, arsanilic acid 99.5% was not shown to be a sensitizer in guinea pigs.

7. *Developmental toxicity battery* —i. *Rat study.* Pregnant Crl:CD rats (25/dose) were administered arsanilic acid via oral gavage at dose levels of 0, 10, 30, or 60 mg/kg/day during gestation days 6–15. The test material in the powder form was mixed with Mazola corn oil for administration to the test animals. Maternal toxicity was observed at the highest dose tested (60 mg/kg/day) in the form of soft stool, decreased defecation, mucoid feces and/or mucoid diarrhea, alopecia on the abdomen or thorax, and red material around the nose. At the 30 mg/kg/day doses, alopecia on the hindlimbs and abdomen was seen at an increased frequency when compared to controls. Mean body weights were significantly decreased at 60 mg/kg/day on gestation days 8, 9, and 1–14, with a loss in mean body weight gain seen during gestation days 6–9. At 30 mg/kg/day, mean body weights were significantly decreased on gestation days 7, 8, 12, 13, and 15; mean body weight gain was significantly decreased during days 6–16. At 60 mg/kg/day, a significant decrease in food consumption was noted throughout the treatment period followed by a significant recovery during the post-treatment period. In the 10 and 30 mg/kg/day dose groups, significant decreases in food consumption were noted throughout the treatment period when compared to controls. Arsanilic acid did not induce developmental toxicity at any of the doses tested. Based on these results, the following is concluded:

Maternal No observable adverse effect level (NOAEL) = 6 mg/kg/day

Maternal Lowest observable adverse effect level (LOAEL) = 30 mg/kg/day (based on decreased body weight gain and food consumption, and clinical signs)

Developmental NOAEL = 60 mg/kg/day Highest dose tested (HDT)

ii. *Rabbit study.* Arsanilic acid in carboxymethyl cellulose was administered by gavage to 20 New Zealand White female rabbits/dose at dose levels of 0, 1, 3, or 6 mg/kg/day from days 7 through 19 of gestation. Maternal clinical toxicity included slightly increased clinical signs (diarrhea, discolored feces, decreased defecation), decreased bodyweight gains, and decreased food consumption in the high-dose group. No treatment-related differences in clinical signs, bodyweight gain, or food consumption were observed in the mid- and low-dose groups. The numbers of corpora, total implantations, and viable fetuses were decreased in a dose-dependent fashion compared to concurrent controls, but were within historical control ranges. Pre-implantation losses were increased in a dose-dependent fashion; however, the standard deviations were large and historical control data were not provided. The extent of resorptions, post-implantation losses, and mean fetal weights were similar between control and treated groups. Although the observed maternal toxicity was marginal, the dose levels used in this developmental study were adequate. In a range finding study in which rabbits were dosed with arsanilic acid at 5–80 mg/kg/day from days 7–19 of gestation, all animals in the 20, 40 and 80 mg/kg/day groups and three animals in the 10 mg/kg/day group died, were euthanized, or aborted prior to the scheduled necropsy. Clinical signs, and differences in bodyweight gains and food consumption were detected in the 5 and 10 mg/kg/day groups. Based on these results, the following is concluded:

Maternal NOAEL = 3 mg/kg/day

Maternal LOAEL = 6 mg/kg/day (Based on clinical signs, decreased body weight gain, and decreased food consumption)

Developmental NOAEL ≥6 mg/kg/day (HDT)

8. *Mutagenicity battery* — i. *Ames study.* In two independently performed *Salmonella typhimurium*/mammalian microsome plate incorporation assays, strains TA1535, TA1537, TA98, and TA100 were exposed to 33, 100, 333, 1,000, 3,333, or 10,000 µg/plate arsanilic acid with or without S9 activation. The S9 fraction was prepared from Arochlor 1254-induced rat livers and arsanilic acid was delivered to the test system in dimethyl sulfoxide (DMSO). No cytotoxicity or mutagenicity was observed in any strain at any dose either in the presence or absence of S9 activation.

ii. *Mouse lymphoma mutation study.* There were two independently performed mouse lymphoma forward mutation assays. Target cells exposed to arsanilic acid at doses of 112, 225, 450, 900, or 1,800 µg/mL with or without S9 activation were evaluated in the initial assay. Non-activated 600, 900, 1,200, 1,500, or 1,800 µg/L or S9-activated 800, 1050, 1,300, 1,550, or 1,800 µg/mL were assessed in the confirmatory test. S9 activation was derived from Arochlor 1254-induced rat livers and the test material was delivered in DMSO. Arsanilic acid was positive with S-9 activation at 1,800 µg/mL in both independent trials. Under non-activated conditions, a positive response was observed only at high cytotoxicity (4% relative suspension growth) in the initial assay, and the confirmatory assay was negative. Although the mutation assay was repeated several times due to widely varying cytotoxicity data, the results were consistent between the two acceptable assays and could be at least partially explained by a steep cytotoxicity curve. Findings with the positive controls confirmed the sensitivity of the test system to detect mutagenesis. Colony sizing at the high dose indicated that the predominant mutations induced were large chromosome deletions.

iii. *Micronucleus assay study.* In a mouse micronucleus assay, groups of five CD-1 mice/sex/dose received single oral gavage administrations of 0, 100, 200, or 400 mg/kg/day arsanilic acid for three consecutive days. Dosing solutions of the test material were prepared in 0.5% carboxymethyl cellulose. Mortalities, other clinical signs of toxicity (piloerection, hunched appearance, hypothermia, and cyanosis), and target tissue cytotoxicity were observed in the high-dose group. There was, however, no significant increase in the micronucleated polychromatic erythrocytes in bone marrow cells harvested 24 or 48 hours post-treatment with the high dose or 24 hours post-administration of the mid or low doses.

9. *General metabolism study.* The study demonstrated that arsanilic acid is rapidly absorbed, distributed, and excreted following oral administration in pigs and roosters. In four pigs administered 1.9–3.1 mg/kg ^{14}C-arsanilic acid, total 3- or 4-day recovery of the radioactivity was 92.3–97% of the administered dose, with higher recovery in the urine (47.7–65.8% of the administered dose) than in the feces (18.2–42.2% of the administered dose). Data suggested that biliary excretions was a minor elimination route; only 4.7% of the administered dose was recovered in the bile of a pig 3 days after administration of ^{14}C-arsanilic acid, recovery of radioactivity in the excreta (63.4% of administered dose in urine, 26.6% in feces) was similar to that of the pigs; however, biliary excretion was not determined. Tissue distribution and bioaccumulation of arsanilic acid is low in pigs and roosters as indicated by low recoveries of radioactivity in tissues 3 or 4 days after oral administration. The metabolism of arsanilic acid does not appear to be extensive. Unmetabolized parent compound and the metabolite, *N*-acetylarsanilic acid, represented the highest amount of urinary radioactivity in pigs; therefore, the major biotransformation reaction of arsanilic acid in pigs appeared to be *N*-acetylation. Unmetabolized arsanilic acid was the only radioactive

component identified from the urine of roosters. Radioactivity in the feces was not characterized for pigs or roosters.

10. *Subchronic battery (90–day dog) study.* Arsanilic acid was administered to four beagle dogs/sex/dose group at dietary concentrations of 0, 50, 100 or 200 ppm (equivalent to 0, 1.5, 3.2 or 6.9 mg/kg/day in males and 0, 1.7, 3.1 or 6.8 mg/kg/day in females) for 13 weeks. Because a NOAEL was not established in males of this initial phase, an add-on phase was conducted in which arsanilic acid was administered to four males/dose group at dietary concentrations of 0, 10 or 25 ppm (equivalent to 0, 0.3 or 0.7 mg/kg/day). In the initial phase, the kidney was the target organ, based on microscopic kidney alterations in all treated males and all 200 and 100 ppm group females. The incidence and severity of kidney alterations increased with dose. All treated male groups and both 100 and 200 ppm female groups had at least one animal whose kidneys displayed tubule regeneration, tubule dilatation, chronic inflammation, interstitial fibrosis, and papillary necrosis. Kidneys of all 200 ppm group dogs had a granular/pitted/rough appearance, irregular shape, dilated pelvis, pale material, pale area, and/or enlarged size. The severity of the kidney alterations ranged from slight in the 50 ppm group males to almost severe in the 200 ppm group males and females. Renal function was impaired in the 200 ppm male and female treatment groups, based on increased urea nitrogen at Weeks 4, (138–207%), 8 (78–92%), and 13 (78–128%) compared to the control values, and increased creatinine levels (1.0–1.3 mg/dL) compared to the control and the 50 and 100 ppm group dogs (0.7–0.9 mg/dL) at Weeks 4, 8, and 13. Though not statistically significant, all treated male groups had absolute and relative (to body weight) kidney weights around 20% higher than those of the control group. On the other hand, the 200 ppm group males and females were anemic, based on 11–16% decreased mean erythrocyte counts, hemoglobin, and hematocrit relative to the control values at Weeks 8 and 13; the decreases were significant ($p \leq 0.05$) except for erythrocyte counts in males and hemoglobin in females. No treatment-related effects were seen in the 50 ppm group females. In the add-on phase, the 25 and 10 ppm group males were not adversely affected by treatment and there were no treatment-related differences in hematology or clinical chemistry. In both phases, no animals died and there were no treatment-related differences in appearance, behavior, body weights, body weight gains, food consumption, ophthalmology, and absolute or relative remaining organ weights. Based on these results, the following is concluded:

NOAEL = 0.7 mg/kg/day (males)
NOAEL = 1.7 mg/kg/day (females)
LOAEL = 1.5 mg/kg/day (males - based on microscopic kidney alterations)
LOAEL = 3.1 mg/kg/day (females - based microscopic kidney alterations)

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary exposure, a maternal NOAEL of 6 mg/kg/day was selected from a developmental toxicity study in rats. The observed effects at the LOAEL of 30 mg/kg/day were decreased body weight gain and food consumption and clinical signs. Using an uncertainty factor of 100, the acute dietary reference dose (Acute (RfD)) is 0.06 mg/kg/day. The additional 10x FQPA safety factor for infants and children was removed.

2. *Short - and intermediate-term toxicity.* For non-dietary short-term dermal exposure, an endpoint of 6 mg/kg/day was selected. This endpoint was selected based on the developmental toxicity study in rats and it was assumed that dermal absorption was 5%. For non-dietary intermediate-term dermal exposure, an endpoint of 0.7 mg/kg/day was selected. The result was selected based on the 13-week feeding study in dogs and it was assumed that dermal absorption was 5%.

3. *Chronic toxicity.* EPA has established the RfD for arsanilic acid at 0.0007 mg/kg/day. This RfD is based on 13-week dog study that had NOAELs of 0.7 mg/kg/day for males and 1.7 mg/kg/day for females and an uncertainty factor of 1000. The uncertainty factor was calculated based on extrapolation from a subchronic dog study to a chronic scenario. The LOAEL (1.5 mg/kg/day (males)/3.1 mg/kg/day (females)) caused microscopic kidney alterations.

4. *Carcinogenicity.* There is no endpoint. This chemical has not been classified yet.

C. Exposures and Risks

1. *From food and feed uses.* Currently, there are no tolerances established for residues of arsanilic acid in or on any raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from arsanilic acid as follows:

i. *Acute dietary (food only) exposure and risk (Acute RfD = 0.06 mg/kg/day).* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

A Tier 1 acute Dietary Exposure Evaluation Model (DEEM) analysis was performed reflecting the Theoretical Maximum Residue Concentration (TMRC). The DEEM detailed acute analysis estimates of the distribution of single-day exposures for the overall United States (U.S.) population and certain subgroups. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–91 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of arsanilic acid in the commodity supply.

The acute exposure estimates at the 99.9 percentile and their associated percentage of the acute reference dose (% Acute RfD) for the general U.S. population and those populations within subgroups with the highest exposure were calculated. None of the subgroups exceed 100% of the acute RfD. The exposure estimates were as follows (from highest to lowest): U.S. population (Spring) at 4% with 0.0026 mg/kg/day, children (1–6 years) at 4% with 0.0021 mg/kg/day, males (20+ years) at 4% with 0.0021 mg/kg/day, U.S. population (48 states) at 3% with 0.0019 mg/kg/day, females (13+ years, nursing) at 3% with 0.0020 mg/kg/day and infants with no exposure. Therefore, the risk from acute dietary exposure (food only) does not exceed the level of concern.

ii. *Chronic dietary (food only) exposure and risk (chronic RfD = 0.0007 mg/kg/day).* The chronic exposure estimates and their associated percentage of the chronic reference dose (% Chronic RfD) for the general U.S. population and those populations within subgroups with the highest exposure were calculated. None of the subgroups exceed 100% of the Chronic RfD. The exposure estimates were as follows (from highest to lowest): U.S. Population (Winter) at 5% with 0.000033 mg/kg/day, seniors (55+ years) at 5% with 0.000035 mg/kg/day, U.S. population (48 states) at 3% with 0.000018 mg/kg/day, females (20+ years, not pregnant, not nursing) at 3% with 0.000024 mg/kg/day, children (7–12 years) at 2% with 0.000012 mg/kg/day, and infants with no exposure. Therefore, the risk from chronic dietary exposure (food only) does not exceed the level of concern.

2. *From drinking water.* Tentative summary data show that arsanilic acid is persistent in soil and water, as evidenced by 1) its stability in water, 2) spectroscopic inference of stability

against photolytic breakdown in water and soil, and 3) aerobic and anaerobic soil "half-lives" roughly estimated to be about 600 and 900 days, respectively. All degradates were accounted for, but not identified, as they are, individually, less than 2% of the applied radioactivity. However, as arsanilic acid slowly and inevitably degrades, various arsenic containing moieties may enter the complex, natural, arsenic biogeochemical cycle. In general, chemicals in the cycle include highly toxic inorganic arsenicals and moderately toxic organic arsenicals. These associated chemicals are slowly produced in relatively low concentrations and, except for repeated annual applications, would eventually be converted to near background levels of locally dominant arsenic containing species in the various environmental compartments (soil, water, air).

Although arsanilic acid is highly water soluble (approximately 5,000 ppm), this property is attenuated in the environment by the compound's intermediate sorption to, or reaction with, soil mineral and/or organic constituents (apparent or effective K_{oc} values ranging from approximately 4,000 to 11,000 mL/g; desorption coefficients are significantly higher). With the combination of persistence and intermediate mobility, arsanilic acid has potential for runoff into surface water, with comparable amounts partitioned to runoff water and eroding soil. For exposure to nontarget organisms, surface water screening level concentrations based on GENEEC model are 22 and 37 ppb for acute (instantaneous) effects and 8.3 and 14 ppb for chronic (56–day value) effects for use on pink/red and white grapefruit varieties, respectively.

In most areas of the U.S., leaching of arsanilic acid to groundwater is not expected to be significant. However, in the proposed growing areas of Florida, groundwater contamination could be problematic if application of this compound becomes widespread. Sandy soils, shallow depth to groundwater, Karst strata and groundwater-surface water interaction zones present a special situation for which SCI-GROW, the current groundwater screening model, is not well-suited and may be not be sufficiently conservative. The groundwater concentration estimated from SCI-GROW is 0.080 ppb for pink/red and 0.13 ppb for white grapefruit varieties. USGS NAWQA monitoring data for Dade County, Florida, reveal concentrations of total arsenic in shallow groundwater over 1,000 times the maximum contaminant level (MCL) of 50 ppb, far above the SCI-GROW prediction. The extent and possible sources and reasons for this contamination are under investigation at this time. Arsenicals such as MSMA and cacodylic acid are among possible sources.

The water solubility (polarity) of arsanilic acid would indicate little tendency for bioconcentration. The reported sorption to soil, which serves as a measure of potential bioconcentration for many compounds, indicates that some bioconcentration may occur. With this indication, and because of arsanilic acid's persistence and potential for toxic concentrations in south Florida water bodies and sediment, the Agency has recommended that additional bioconcentration studies using oysters as the test organism be conducted. This study is needed to show whether arsanilic acid is likely to concentrate in shellfish, snails, etc., at levels which would pose dietary risks to aquatic wildlife, including habituating birds and mammals.

3. *From non-dietary exposure.* Arsanilic acid is not registered for use on residential non-food sites.

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

Arsanilic acid is a member of the of the arsonic acid group of arsenical herbicides (Ware, G.W. 1994. The Pesticide Book, 4th edition). EPA does not have, at this time, available data to determine whether the arsonic acid group has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, the arsonic acid group does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that arsanilic acid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk (food + water).* The acute risk for "food only" does not exceed the level of concern. The lowest acute drinking water level of comparison (DWLOC) was for the infants/children subgroup at 580 µg/L. The maximum surface water screening level concentration for acute effects is 37 µg/L. Therefore, acute exposure to residues of arsanilic acid should not exceed the level of concern.

2. *Chronic risk (food + water + residential).* There are no current registered residential uses. The chronic drinking water level of comparison (DWLOC) for the U.S. population is 23 µg/L. The lowest DWLOC was for the infants/children subgroup at 7 µg/L. The highest surface water screening level concentration for chronic effects is 14 µg/L. However, the Agency believes that the GENEEC model overstimates average residues in drinking water at least 3-fold. Therefore, chronic exposure to residues of arsanilic acid should not exceed the level of concern.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Arsonic acid has no registered residential uses. Therefore, short- and intermediate-term aggregate risk assessments were not performed.

4. *Aggregate cancer risk for U.S. population.* Aggregate cancer risk was not determined since cancer studies are not required for pesticides to be tested under an Experimental Use Permit (EUP).

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

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

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

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

ii. *Conclusion.* There is a complete toxicity database for an EUP for arsanilic acid and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Therefore, the additional 10x FQPA safety factor for infants and children was removed.

2. *Acute risk.* The acute risk for "food only" does not exceed the level of concern. The lowest acute DWLOC was for the infants/children subgroup at 580 µg/L. The maximum surface water screening level concentration for acute effects is 37 µg/L. Therefore, acute exposure to residues of arsanilic acid should not exceed the level of concern.

3. *Chronic risk.* Using the conservative exposure assumptions described in this unit, EPA has concluded that aggregate exposure to arsanilic acid from food will utilize 4% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to arsanilic acid in drinking water (see discussion under U.S. population), EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to arsanilic acid residues.

4. *Short- and intermediate risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Arsanilic acid has no registered residential uses. Therefore, short- and intermediate-term aggregate risk assessments were not performed.

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

III. Other Considerations

A. Metabolism In Plants and Animals

An interim report from a study examining the metabolism and distribution of arsanilic acid in grapefruit showed that arsanilic acid and eleven metabolites were found in water extracts of the peel, pulp, and juice fractions of the grapefruit. These compounds account for 83% of the total radioactive residue (TRR) in/on grapefruit. The remaining residues occur as organo-, acid-, or base-soluble components. Identification of the metabolites is underway and one has been tentatively identified as *N*-acetyl arsanilic acid. The majority of the residues occur as arsanilic acid in/on the peel (26% TRR), as Metabolite II in the pulp (3.8% TRR), and as Metabolite I in the juice (7.3% TRR). On a whole-fruit basis, 29% of the TRR was unmetabolized arsanilic acid with four metabolites of potential concern (≥ 10% TRR) making up 51% of the TRR. The nature of the residues in plants is not adequately understood. However, for purposes of this EUP only, arsanilic acid per se will be considered the residue of concern.

As part of the proposed EUP labeling, grapefruit treated with arsanilic acid will be restricted to fresh-market use only. Thus, animal metabolism studies are not required for establishment of the time-limited tolerances.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is not available to enforce the tolerance expression. A GC/ECD method is under development for the determination of arsanilic acid in whole grapefruit. This method currently demonstrates good extraction efficiency but suffers from poor reproducibility during derivatization and chromatography. The limit of quantitation for the method is expected to be 0.05 ppm arsanilic acid in whole grapefruit. For purposes of tolerance enforcement for this time-limited tolerance only, the Agency will accept a method for the analysis of whole-fruit total arsenic by atomic absorption. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Results of arsanilic acid field trial data are not yet available. The registrant has proposed a whole-fruit tolerance of 0.5 ppm arsanilic acid per se, based on data in the metabolic fate interim study summary. Because this value was obtained from a non-replicated, greenhouse study, the Agency believes that a tolerance of 0.5 ppm, as proposed by the registrant, is not adequately supported. Previously-submitted data indicate a tolerance of 2.0 ppm is appropriate. As a result of this EUP, residues of arsanilic acid are not expected to exceed 2 ppm in/on grapefruit. A time-limited tolerance should be established at this level. This tolerance is equivalent to 0.7 ppm arsenic, assuming arsanilic acid is the only source of arsenic. EPA is finalizing this tolerance using a tolerance level at variance with that requested in the petition based on consideration of all residue data available, the relatively low risk presented by this tolerance, and the limited exposure expected under the EUP connected with this tolerance.

Due to label restrictions, residues of arsanilic acid are not expected in the juice, oil, or dried pulp of treated grapefruit as no processed commodities are associated with this experimental use permit. Secondary residues of arsanilic acid are not expected in animal commodities as no feed items are associated with this experimental use permit due to label restrictions.

D. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances established for arsanilic acid on grapefruit. Thus, international harmonization is not an issue for these time-limited tolerances.

E. Rotational Crop Restrictions

Grapefruit are not rotated to other crops, therefore, residues in or on rotational crops are not expected to occur.

IV. Conclusion

Therefore, the tolerance is established for residues of arsanilic acid in /on grapefruit at 2.0 ppm (not to exceed 0.7 ppm total arsenic).

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300822] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior

consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

VIII. Submission to Congress and the Comptroller General

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

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 17, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.550 is adding to read as follows:

§ 180.550 Arsanilic acid [(4-aminophenyl) arsonic acid]; tolerances for residues.

(a) *General.* A time-limited tolerance is established for residues of the plant growth regulator arsanilic acid [(4-aminophenyl) arsonic acid], in or on the following food commodities in connection with the use of the pesticide under section 5 experimental use permit. The tolerance will expire on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Grapefruit	2 ppm (not to exceed 0.7 ppm total arsenic)	2/28/01

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

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

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

[FR Doc. 99–7434 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 95–102; FCC 98–293]

Establishing a Very Short Distance Two-Way Voice Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration and clarification.

SUMMARY: This action denies two petitions for reconsideration and clarifies that, within the Family Radio Service ("FRS") rules, an antenna must be non-detachable to be an "integral antenna".

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at jalford@fcc.gov or (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum, Opinion and Order,* released on November 9, 1998. The full text of this *Memorandum, Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

Summary of Memorandum Opinion and Order

1. On May 10, 1996, the Commission adopted a *Report and Order,* 61 FR 28768, June 6, 1996, 11 FCC Rcd 12977 (1996), in WT Docket No. 95–102 in which the Commission established the FRS, a very short distance, two-way voice personal radio service.

2. In a Petition for Reconsideration filed July 5, 1996, The Personal Radio Steering Group (PRSG) requests a series of additional rules and rule changes which it argues are primarily designed to provide greater assurance that the FRS is used for its intended purposes. It also expresses concern that some users of FRS units may not share spectrum responsibly with other users, and requests that we adopt rule changes to maintain the integrity of the FRS as

a short distance, occasional use service for individuals. PRSG also requests that we relax interference standards when FRS units are transmitting on channels with the General Mobile Radio Service ("GMRS").

3. In a Petition for Partial Reconsideration, filed July 3, 1996, Michael C. Trahos (Trahos) requests that we conform the GMRS to the FRS rules by amending the GMRS rules to permit GMRS stations to communicate with FRS units. PRSG and Trahos assert that the GMRS rules restrict GMRS stations to communications with other GMRS stations.

4. In addition, PRSG filed a Petition for Stay ("Stay") requesting the implementation of the new FRS rules be stayed pending resolution of its reconsideration petition, and Motorola has filed a Request for Clarification requesting that we clarify that an antenna must be a non-detachable antenna to be an "integral antenna" within the meaning of the FRS rules.

5. We conclude that revision of the FRS rules as requested by PRSG is unnecessary. PRSG essentially seeks to impose on FRS a much more restrictive regulatory environment than is warranted, based in large part on its speculative prediction that individuals may misuse the FRS. We note that during the two years that FRS has been authorized, the Bureau has not received any complaints of misuse of FRS units or harmful interference to GMRS users sharing channels with FRS. We further conclude that PRSG's and Trahos' requests to amend the GMRS rules stem from a misreading of the GMRS rules. Accordingly, we deny both petitions for reconsideration. We also deny PRSG's Petition for Stay and grant, in part, Motorola's request that we clarify that an integral antenna is not a detachable antenna.

Ordering Clauses

6. This action is taken pursuant to the authority found in Sections 4(i), 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 405, and sections 1.106 and 1.429 of our rules, 47 CFR 1.106 and 1.429.

7. *Accordingly, It is ordered* that the Petition for Reconsideration submitted by the Personal Radio Steering Group, Inc. and the Petition for Partial Reconsideration submitted by Michael C. *Trahos Are hereby denied.*

8. *It is further ordered* that the Request for Clarification filed by Motorola *Is hereby granted* to the extent indicated herein.

9. *It is further ordered* that the Petition for Stay filed by the Personal Radio Steering Group, Inc. *Is hereby denied.*

10. *It is further ordered* that this proceeding *Is terminated.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–7496 Filed 3–25–99; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1835 and 1872

NASA Internal Programmatic Approval Documentation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule changes the NASA FAR Supplement (NFS) to ensure that no affected solicitation is released prior to the approval of key programmatic documentation required by NASA Procedures and Guidelines (NPG) 7120.5, NASA Program and Project Management Processes and Requirements. This final rule prohibits release of affected solicitations until the required approvals have been obtained or authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358–0491, kenneth.sateriale@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

NPG 7120.5 establishes the management system for processes, requirements and responsibilities for implementing NASA Policy Directive 7120.4, Program and Project Management. This management system governs the formulation, approval, implementation, and evaluation of all Agency programs and projects established under the Provide Aerospace Products and Capabilities (PAPAC) process. The policy and guidelines require approvals at various programmatic stages and decision points. Before a program or project formulation may commence, a Formulation Authorization document must be approved. Before program implementation may commence, a Program Commitment Agreement and a Program Plan must be approved. Before project implementation may commence, a Program Commitment Agreement, Program Plan, and Project Plan must be approved. Approval to commence any of these activities without the required documentation must be obtained from the chair of the Governing Program Management Council or designee.

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5. U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 1804, 1807, 1835 and 1872

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1807, 1835 and 1872 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1807, 1835 and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Section 1804.7301, is revised to read as follows:

1804.7301 General.

(a) Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when—

(1) Such action is necessary to meet critical program schedules;

(2) Program authority has been issued and funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) The procurement officer authorizes such action in writing before solicitation issuance; and

(4) The solicitation includes the clause at FAR 52.232–18, Availability of Funds. The clause shall be deleted from the resultant contract.

(b) The contracting office shall not issue either a draft or final solicitation until a PR, either planning or final, has been received that contains an NPG 7120.5 certification. That certification must be made by the project or program office that initiated the PR, or the PR approval authority when there is no project or program office. The certification must state that either—

(1) The requested action is not in support of programs and projects subject to the requirements of NPG 7120.5, or

(2) The requested action is in support of programs and projects subject to the requirements of NPG 7120.5, and

(i) All NPG 7120.5 required documentation is current and has been approved; or

(ii) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

PART 1807—ACQUISITION PLANNING

3. In section 1807.105, paragraph (a)(2) is added to read as follows:

1807.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(2) NPG 7120.5 shall be an integral part of acquisition planning for programs and projects subject to its requirements. If the NPG does not apply, the acquisition plan shall clearly state that fact. If the NPG does apply, specify whether all required NPG 7120.5 documentation is current and approved (see 1804.7301(b)(2)(i)). If not, describe the approach for obtaining approval or the authority to proceed without approval before release of draft or final solicitations. For programs and projects under the NPG, all draft or final solicitations subject to, or directly or substantially in support of, those programs or projects shall clearly identify the program or project of which they are part.

* * * * *

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

4. In section 1835.016, paragraph (a)(iii) is added to read as follows:

1835.016 Broad agency announcements.

(a) * * *

(iii) Draft or final versions of any form of BAA that directly or substantially supports a program subject to NASA Procedures and Guidelines (NPG) 7120.5 shall not be released unless—

(A) All applicable NPG 7120.5 required documentation (see 1804.7301(b)(2)(i)) is current and has been approved (e.g., Formulation Authorization Document, Program Commitment Agreement, Program Plan, or Project Plan); or

(B) Authority to proceed without the required documentation has been granted by the Chair of the Governing Program Management Council or designee.

* * * * *

PART 1872—ACQUISITIONS OF INVESTIGATIONS

5. In section 1872.102, paragraph (a)(1) is revised to read as follows:

1872.102 Key features of the system.

(a)(1) Use of the system commences with the Enterprise Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested scientific and technical communities. The AO is a form of broad agency announcement (BAA) (see FAR 35.016 and 1835.016 for general BAA requirements). This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee, serving as staff to the Enterprise Associate Administrator or designee when source selection authority is delegated, reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

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[FR Doc. 99–7499 Filed 3–25–99; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 64, No. 58
Friday, March 26, 1999

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 944

[Docket No. FV–97–916–1 PR]

Fruits; Import Regulations; Proposed Nectarine Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish minimum quality, size, and maturity requirements for fresh nectarines offered for importation into the United States during the months of April through October. The proposed import requirements would be implemented in accordance with Section 8e of the Agricultural Marketing Agreement Act of 1937, which requires that whenever certain specified commodities, including nectarines, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, quality, size, and maturity requirements as those in effect for the domestically produced commodity.

DATES: Comments must be received by May 26, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; FAX # (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax # (202) 720–5698. Small businesses may request information on complying with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698, or E-mail: Jay_N_Guerber@usda.gov. You may also view our web site: http://www.ams.usda.gov/fv/moab8e.html.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," which provides that whenever certain specified commodities, including nectarines, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, quality, size, and maturity requirements as those in effect for the domestically produced commodities.

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule would establish minimum quality, size, and maturity requirements for fresh nectarines offered for importation into the United States from April 1 through October 31 each year. The proposed import requirements would be implemented in accordance with section 8e of the Act.

Virtually all U.S. commercial shipments of fresh nectarines are regulated under Marketing Order No. 916 (order) which covers nectarines grown in California. The order has been in effect for more than 37 years. Grade, quality, size, and maturity requirements are in effect under the order for fresh market shipments during the period April 1 through October 31. These requirements are designed to increase nectarine sales by providing stable marketing conditions and ensuring that good quality fruit is shipped, thus promoting consumer satisfaction. The California nectarine season begins April 1 and ends October 31. The current handling regulation for these nectarines appears at 7 CFR 916.356. The most recent revisions to that regulation were published at 63 FR 16032, 63 FR 44363, 63 FR 50461, and 63 FR 60209. Proposed revisions to that regulation were published in the **Federal Register** on March 8, 1999, at 64 FR 11346.

There is no other Federal marketing order in effect for nectarines produced in the United States. Thus, the requirements for imported nectarines would be based on those in effect for California nectarines.

Most nectarines imported into the United States originate in Chile. The Chilean fresh nectarine season extends from November through mid-April, with most active shipments to the United States occurring between January and March. Fresh nectarine imports from Chile, while relatively small when compared with total domestic production, fill to a great extent the gap in supplies during the winter months. Most Chilean imports enter the United States when there are no domestic nectarine shipments and no regulations are in effect.

This proposed action would add a new § 944.800 under 7 CFR Part 944—Fruits; Import Regulations to establish minimum quality, size, and maturity requirements for fresh nectarines imported into the United States.

This proposed rule would provide that from April 1 through October 31 of each year, fresh nectarines imported into the United States would be subject to minimum quality, size, and maturity requirements. This is the same period that such requirements are in effect for fresh California nectarines under the order. Imports arriving before the domestic commodity's shipping season begins or after the domestic commodity's shipping season ends would not be subject to the proposed import requirements. In recent seasons, nectarines have been imported beginning in November and ending in mid-April. Most imported nectarines

would, therefore, not be covered by these proposed requirements.

This rule proposes that nectarines imported into the United States meet a minimum quality requirement of "CA Utility," which is established under the order. Under the order, containers of such quality fruit must be clearly labeled "CA Utility." No such labeling requirement is being proposed for nectarines imported into the United States, however, because section 8e of the Act does not authorize container regulations for imports.

This action also proposes that nectarines imported into the United States meet minimum size requirements. The minimum size requirement for each nectarine variety would specify a maximum number of nectarines permitted in a 16-pound sample. Under the order, minimum size requirements are specified by variety, and are based on the maximum number of nectarines permitted in a 16-pound sample of each variety. The minimum size requirement for an imported nectarine variety would be the same fruit count per 16-pound sample as that specified for that variety under the domestic handling regulation for nectarines.

The maximum number of nectarines in a 16-pound sample would range from a count of 67 to 100, depending on the variety. The nectarines in the 16-pound sample would have to be representative of the nectarines in the package or container and, to meet minimum requirements, the sample could not contain more than the specified number of nectarines for that variety. For the purposes of simplification, this proposed rule lists alphabetically, in a table under proposed § 944.800, the nectarine varieties with their corresponding 16-pound sample counts.

Nectarine varieties not specifically listed in the size table would also be subject to minimum size requirements, which would vary by time of year. From April 1 through May 31, the maximum number of such nectarines in a 16-pound sample would be 90; from June 1 through June 30, the maximum number would be 83; and from July 1 through October 31, the maximum would be 67 nectarines. This is comparable to the requirements under the California nectarine order.

Under the order, nectarines must be "mature" as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) (Standards). The Standards define "mature" to mean that the nectarine has reached the stage of growth that will insure a proper completion of the ripening process. A higher level of maturity, called "well-matured," is also defined in the order. For certain varieties, the minimum size requirements are based upon the degree of maturity of the fruit, with smaller nectarines being authorized for shipment if they meet the higher maturity standard. For example, a 16-pound sample of the Fantasia variety may not have more than 67 nectarines if the fruit is mature. However, if the fruit is "well-matured," the sample may have up to 75 nectarines.

Under the order, maturity guides known as color chips are used to determine whether certain specified varieties of nectarines meet the well-matured standard. It would be impractical to use these particular color chips to determine whether imported nectarines meet the well-matured requirement, because the color chips were assigned based on the nectarine growing conditions occurring in California. Chile is the principle source of nectarines imported into the United States. Climatic differences between Chile and California make it inappropriate to use the color chips developed for California nectarines as a measure of maturity of imported nectarines.

This proposed rule provides for the same minimum size requirements as those in place for California nectarines. This includes different minimum size requirements for certain varieties depending on the level of maturity. While color chips are not included as maturity guides, there are other criteria used to determine the level of maturity of California nectarines that are appropriate for use in ascertaining the maturity of imported nectarines as well.

For example, the characteristics of "mature" nectarines are that they are light green in color and their shoulders are well-rounded and filled out. Such fruit is normally unyielding to ordinary hand pressure, and exhibit a slight resistance to a knife cut. These nectarines have flesh that is somewhat granular in appearance and is light green to breaking yellow.

Fruit determined to be "well-matured" are light greenish yellow to yellow in color, with well-rounded shoulders that are completely filled out. "Well-matured" nectarines give slightly to ordinary hand pressure and exhibit little or no resistance to a knife cut. The flesh shows little or no granulation and is yellow or straw-colored.

This rule also proposes a procedure to be used in determining whether nectarines meet the minimum size requirements specified for each size category when applying the 16-pound sample requirement. Requirements for use of an 8-pound sample are provided under the marketing order. Under this procedure, a sample consisting of one-half of the specified number of fruit for a 16-pound sample for a particular size category would be used, provided such sample weighs at least 8 pounds. The count in the 8-pound sample would be multiplied by 2 to determine if it meets the 16-pound requirement. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit would be used to determine the sample weight. If a sample failed with respect to minimum size requirements on the basis of an 8-pound sample, a full 16-pound sample would be used to determine if the fruit meets the minimum size requirements.

Importers would be responsible for arranging for the required inspection and certification of such nectarines prior to importation. Importation is defined to mean release from custody of the United States Customs Service. Such inspection services are available on a fee-for-service basis. This action could, therefore, result in increased costs associated with importing fresh nectarines. The additional costs should be offset, however, by the benefits accrued by ensuring that only acceptable quality fruit is present in the United States marketplace. Such quality assurance promotes buyer satisfaction and increased sales.

This proposed rule would provide a limited quantity exemption from the import requirements specified herein. Individual shipments of 200 pounds or less would be excluded from the proposed quality, size, maturity, and inspection requirements. Additionally, fresh nectarines imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products would be exempt from the proposed import requirements. Similar exemptions are provided under the order.

To ensure that fresh nectarines imported exempt from the quality, size, and maturity requirements are used in exempt outlets, this rule proposes that such nectarines be subject to the safeguard procedures for imported fruit established in § 944.350.

Under these procedures, an importer wishing to import nectarines covered herein for exempt uses would complete, in quaduplicate, an "Importer's Exempt Commodity Form (FV–6)." The first copy would be presented to the U.S. Customs Service at the port of entry. The second copy would be mailed or sent via fax to the Marketing Order Administration Branch (MOAB) within

2 days of the entry of the shipment. The third copy would accompany the exempt lot to the receiver, who would certify that the lot has been received and it will be used in an exempt outlet. After the certification is signed by the receiver, the form would be returned to MOAB by the receiver within 2 days of receipt of the lot. The fourth copy would be retained by the importer.

The FV–6 form is currently used by importers of many other fruits and vegetables. The proposed rule could increase the reporting burden for a small number of importers and receivers of nectarines who would complete the FV–6 form, taking about 0.166 hour to complete each report. The additional burden is already accounted for in the information collection submitted for the FV–6 form. This form has been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581-0167. Because of the different domestic (April–October) and import (November–April) seasons, the impact of the 8e requirements should be insignificant. Since imports of nectarines end during April, the impact of this action on importers would be minimal.

FV–6 forms can be obtained from MOAB by calling (202) 720–2491 or sending a fax to (202) 720–5698. The form would be completed at the time the commodity enters the United States. Information called for on the "Importer's Exempt Commodity Form" includes:

(1) The commodity and the variety (if known) being imported,

(2) The date and place of inspection if used to enter failing product or culls as exempt, (include a copy of the inspection certificate),

(3) Identifying marks or numbers on the containers,

(4) Identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,

(5) The name and address of the importer,

(6) The place and date of entry,

(7) The quantity imported (in pounds or kilograms),

(8) The name and address of the intended receiver (e.g., processor, charity, or other exempt receiver),

(9) The intended use of the exempt commodity,

(10) The U.S. Customs Service entry number and harmonized tariff code number, and

(11) Such other information as may be necessary to ensure compliance with this regulation.

Lots that are exempt from the quality, size, and maturity requirements of the nectarine import regulation would not be subject to the inspection and certification requirements in such regulation. An imported lot intended for nonexempt uses, or any portion of such a lot, which fails established quality, size, and maturity requirements, could be exported, disposed of in an exempt outlet, or destroyed.

This proposed rule would also amend paragraph (a) of § 944.400 (7 CFR part 944). That paragraph designates the organizations to perform inspection and certification of imported fresh fruits specified in section 8e of the Act. That paragraph also specifies procedures to be followed for obtaining the required inspections. This proposed rule would designate the Federal or Federal-State Inspection Service and the Canadian Food Inspection Agency as the organizations authorized to inspect and certify foreign produced nectarines as meeting import requirements issued pursuant to section 8e.

Paragraphs (b), (c), and (d) of § 944.400, which specify additional procedures for obtaining inspection and certification of the imported fruits listed in that section, would remain unchanged. These procedures are followed by importers who obtain inspection and certification of those fresh fruits specified in section 8e that are offered for importation into the United States.

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

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

Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000.

There are an estimated 35 importers of nectarines. During the 1996/97 season, about 2,885,000 packages (18 pounds each) of nectarines were imported from Chile. Prices ranged from $8.00 to $28.00 per package, depending on such factors as the time of year and size of the fruit. Assuming an average quantity of 82,428 packages at a price of $18.00 per package (mid-point in the range), the average nectarine receipts per importer would be $1,483,704. However, there is a variation in size among the importers, and many handle other commodities in addition to nectarines. While it is not possible to determine how many nectarine importers fall within SBA's definition of a small entity, it is safe to assume that some of the 35 importers could be classified as such.

Section 8e of the Act provides that when certain domestically produced commodities, including nectarines, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, quality, size, and maturity requirements.

Under section 8e, this rule would establish quality, size, and maturity requirements for imported nectarines during the period April 1 through October 31. Imported nectarines would be required to be inspected and certified as meeting these requirements. However, only a tiny fraction of the nectarines imported into the United States enter during the proposed period of regulation. For example, during the 1996–97 Chilean season, approximately 26,000 tons of nectarines were imported. Of these, only 27 tons were imported between April and October. Thus, less than 1 percent of nectarines imported that season would have been subject to the requirements, including inspection, proposed herein. This amount, which is slightly less than 1½ truckloads of nectarines (at 40,000 pounds per truckload), is less than 1 twentieth of 1 percent of the California nectarines which were regulated during 1997.

Similarly, during the 1995–96 Chilean season, approximately 20,000 tons were imported into the United States, but less than 1 percent would have been subject to these regulations. During the 1994–95 Chilean season, slightly less than 35,000 tons of nectarines were imported into the United States, but, again, less than 1 percent would have been regulated.

Since inspection is available on a fee-for-service basis, this action could result in increased costs associated with importing fresh nectarines during the regulated period. Because the amount coming in during this time is so small, however, the total cost of meeting the inspection requirement should be negligible.

Inspection fees vary, depending on such factors as the location of the inspection, the size of the lot to be

inspected, and whether there are multiple commodities in the lot to be inspected. It is estimated that the cost of inspecting nectarines at the Port of Philadelphia in accordance with the provisions of 7 CFR Part 51 (where the majority of nectarine imports enter the country) ranges from 1½ to 3½ cents per container. In recent seasons, f.o.b. prices for Chilean nectarines during the month of April (the time covered by this proposed rule) ranged from $8.00 to $16.00 per package. Inspection fees would therefore account for less than one half of 1 percent of the value of the nectarines being imported.

These slight additional costs should be offset by the benefits accrued by ensuring that only acceptable quality fruit is available in the United States marketplace during the regulated period, and allowing the Chilean fruit to equally compete with the California fruit.

This action is intended to ensure that imported nectarines are subject to the same quality requirements as domestically produced nectarines, but because it would apply only to the few nectarines that are presented for importation during the domestic shipping season, it should have only a minimal effect on the market.

The alternative to this action is to continue to allow nectarines to be imported during the domestic shipping season without having to meet similar quality, size, and maturity requirements. This alternative is not in accordance with the requirements of the Act.

Interested persons are invited to comment on this initial regulatory flexibility analysis, and submit information on the regulatory and informational impacts this proposed action would likely have on small businesses.

The information collection requirements contained in this proposed rule have been previously approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and have been assigned OMB number 0581–0167.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day period is provided to allow interested persons to comment on this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Nectarines, Olives, Oranges.

For the reasons set forth above, 7 CFR Part 944 is proposed to be amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 944.350 is amended by adding the word "nectarines" after the word "limes" in the section heading and in paragraphs (a)(1) and (a)(2).

3. In § 944.400, the section heading and paragraph (a) introductory text are revised to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes that are imported into the United States. The Canadian Food Inspection Agency is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of nectarines and prune variety plums (fresh prunes) only. Inspection by the Federal or Federal-State Inspection Service or the Canadian Food Inspection Agency, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR Part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes should make arrangements for inspection through the applicable one of the following offices, at least the specified number of the days prior to the time when the fruit will be imported:

* * * * *

4. A new § 944.800 is added to read as follows:

§ 944.800 Nectarine import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], the importation into the United States of any nectarines, during the period April 1 through October 31 of each year, is prohibited unless:

(1) Such nectarines meet at least "CA Utility" quality requirements. The term *CA Utility* means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No.1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more well healed cracks which, either singly or in the aggregate, are more than ⅜ inch in length; mold, brown rot, and decay which has affected the edible portion; and

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes. Damage to any nectarine is serious when it causes a waste of 10 percent or more, by volume, of the individual nectarine.

(iii) Tolerances. Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this paragraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

(2) Such nectarines of any variety of nectarines listed in Column A of Table I of this paragraph are of a size that a 16-pound sample representative of the size of the nectarines contains not more than the number of nectarines listed for the variety in Column B or C of said table: *Provided,* That the following procedure shall be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section applying the 16-

pound sample. A sample consisting of one-half of the specified number of fruit for a particular size category shall be used, provided such sample weighs at least eight pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit shall be used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a 16-pound sample shall be used to determine if the fruit meets the minimum size requirements.

TABLE I

Column A Variety	Column B Maximum No. of nectarines per 16-lb. sample if mature	Column C Maximum No. of nectarines per 16-lb. sample if well-matured
Alshir Red	68	75
Alta Red	68	75
April Glo	100	100
Arctic Glo	83	83
Arctic Pride	68	75
Arctic Queen	68	75
Arctic Rose	83	83
Arctic Snow	68	75
Arctic Star	83	83
Arctic Sweet	68	75
August Glo	68	75
August Lion	68	75
August Red	68	75
August Snow	68	75
Autumn Delight	68	75
Big Jim	68	75
Brite Pearl	68	75
Crystal Rose	68	75
Diamond Brite	83	83
Diamond Ray	68	75
Earliglo	90	90
Early Diamond	90	90
Early May	83	83
Early Red Jim	68	75
Fairlane	68	75
Fantasia	68	75
Firebrite	68	75
Fire Pearl	68	75
Flame Glo	68	75
Flaming Red	68	75
Flavortop	68	75
Flavortop I	68	75
Grand Diamond	68	75
Grand Pearl	68	75
Grand Sun	90	90
Honey Kist	68	75
How Red	68	75
Johnny's Delight	90	90
July Red	68	75
Juneglo	83	83
June Pearl	83	83
Kay Diamond	68	75
Kay Glo	83	83
King Jim	68	75
Late Red Jim	68	75
May Diamond	83	83
May Grand	83	83
May Jim	90	90
May Kist	90	90
May Lion	83	83
Mayfire	100	100
Mayglo (before May 6)	100	100
Mayglo (after May 5)	90	90
Mid Glo	68	75
Niagara Grand	68	75
P–R Red	68	75
Prima Diamond IV	83	83
Prima Diamond IX	68	75
Prima Diamond XIII	83	83
Prima Diamond XVI	68	75
Prima Diamond XIX	68	75

TABLE I—Continued

Column A Variety	Column B Maximum No. of nectarines per 16-lb. sample if mature	Column C Maximum No. of nectarines per 16-lb. sample if well-matured
Prima Diamond XXIV	68	75
Prince Jim	83	83
Red Delight	83	83
Red Diamond	68	75
Red Glen	68	75
Red Glo	83	83
Red Jim	68	75
Red May	78	78
Rio Red	68	75
Rose Diamond	83	83
Royal Giant	68	75
Royal Glo	83	83
Ruby Diamond	68	75
Ruby Pearl	68	75
Scarlet Red	68	75
September Red	68	75
Sparkling June	68	75
Sparkling May	83	83
Sparkling Red	68	75
Spring Bright	68	75
Spring Diamond	68	75
Spring Red	68	75
Star Brite	83	83
Summer Beaut	68	75
Summer Blush	68	75
Summer Bright	68	75
Summer Diamond	68	75
Summer Fire	68	75
Summer Grand	68	75
Summer Lion	68	75
Summer Red	68	75
Sun Diamond	68	75
Sunburst	68	75
Sunny Red	68	75
Super Star	68	75
Terra White	68	75
White Jewel	68	75
Zee Glo	68	75
Zee Grand	83	83
491–48	68	75

(3) Such nectarines of any variety not specifically listed in Table I of paragraph (a)(2) of this section are of a size that a 16-pound sample, using the procedure in paragraph (a)(2) of this section, contains: During the period April 1 through May 31, not more than 90 nectarines; during the period June 1 through June 30, not more than 83 nectarines; and during the period July 1 through October 31, not more than 67 nectarines or, if the nectarines are "well-matured", not more than 75 nectarines.

(b) The importation of any individual shipment which, in the aggregate, does not exceed 200 pounds net weight, is exempt from the requirements specified in this section.

(c) The quality, size, and maturity requirements of this section shall not be applicable to nectarines imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, but such nectarines shall be subject to the safeguard provisions in § 944.350.

(d) The term *nectarines* means all varieties of Prunus Amygdalus Nectarina, commonly called nectarines.

(e) The term *importation* means release from custody of the United States Customs Service.

(f) The terms *U.S. No. 1* and *mature* mean the same as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 to 51.3160). *Well-Matured* means a condition distinctly more advanced than *mature*.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedures for obtaining inspection and certification (7 CFR Part 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, may be exported, disposed of in an exempt outlet, or destroyed.

(i) As specified in this section, it is determined that fresh nectarines imported into the United States shall meet the same or comparable minimum quality, size, and maturity requirements as those established for fresh nectarines grown in California under Marketing Order No. 916 (7 CFR Part 916).

Dated: March 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–7474 Filed 3–25–99; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7656, 34–41189, IC–23745; File No. S7–10–99; International Series Release No. 1188]

RIN 3235–AH32

Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a new rule that would permit foreign securities to be offered to U.S. participants in certain Canadian tax-deferred retirement accounts and sold to those accounts without being registered under the Securities Act of 1933. The Commission also is proposing a new rule that would permit foreign investment companies to offer securities to those U.S. participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act of 1940. These rules would enable investors who hold securities in certain Canadian tax-deferred retirement accounts, and who reside or are temporarily present in the United States, to manage their investments within those accounts.

DATES: Comments must be received on or before May 28, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–10–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Cynthia Gurnee Pugh, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0506, or Paul M. Dudek, Chief, at (202) 942–2990, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0302.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for public comment rule 237 (17 CFR 230.237) under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act"), rule 7d–2 (17 CFR 270.7d–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"), and amendments to rule 12g3–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a) (the "Exchange Act").

Table of Contents

Executive Summary

In Canada, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"), which operate in a manner similar to Individual Retirement Accounts ("IRAs") in the United States. Individuals themselves can decide how to invest the assets held in the accounts, but contributions and withdrawals are subject to strict limits. Individuals who have established Canadian retirement accounts and later moved to the United States ("Canadian/U.S. Participants" or "participants") have encountered obstacles to the continued management of their retirement investments in those accounts. Most securities held in these accounts, and the investment companies ("funds") that issue many of those securities, are not registered in the United States, and issuers therefore cannot publicly offer and sell those securities to Canadian/U.S. Participants. As a result, these participants have not been able to make changes in their retirement accounts to carry out the financial planning needed to meet their individual retirement goals.

The Commission is proposing two rules that would enable Canadian/U.S. Participants to continue to manage the assets in their Canadian retirement accounts. The proposed rules would provide relief from the U.S. registration requirements, under certain conditions, for offers of securities to these participants and sales to their accounts. Under the proposals, (i) securities of foreign issuers, including securities of foreign funds, could be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act or the Exchange Act and (ii) foreign funds could offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act. The offer and sale of these securities, however, would remain fully subject to the antifraud provisions of the U.S. securities laws.

I. Introduction

More than half of all Canadian households invest retirement savings through some form of Canadian retirement account.[1] Canadian retirement accounts, like IRAs in the United States,[2] encourage retirement saving by permitting individuals to invest savings on a tax-deferred basis.[3]

[1] *See, e.g.,* Royal Trust Seventh Annual RRSP Survey (1997), available at <http://www.royalbank.com/rt-wealth/01survey/01fk.html> (visited Dec. 22, 1998). Assets held in Canadian retirement accounts represent a sizable portion of Canadian pension assets. *See* The Conference Board of Canada, *Maximizing Choice: Economic Impacts of Increasing the Foreign Property Limit* at Table 1 (Jan. 1998), available at <http://www.ific.ca/eng/frames.asp?l1=Regulation__and__Committees> (through the "Current Issues & Initiatives" and the "Impact of the Foreign Property Rule" hyperlinks) (visited Dec. 22, 1998). In addition, a 1998 survey reports that approximately half of Canadian retirement account holders plan to invest the greatest proportion of their annual contributions in mutual funds. *See* Royal Trust Eighth Annual RRSP Survey (1998), available at <http://www.royalbank.com/rt-wealth/01survey/01h3.html> (visited Dec. 28, 1998).

[2] *See* 26 U.S.C. 408, 408A (providing for Individual Retirement Accounts under U.S. tax law). Canadian retirement accounts are established and governed by the Income Tax Act of Canada and the regulations thereunder. *See generally* Income Tax Act, R.S.C. 1985, ch. 1 (5th Supp.) (Can.) (as amended) ("Canadian Income Tax Act"); Income Tax Regulations, C.R.C., ch. 945 (1997) (Can.) ("Canadian Income Tax Regulations").

[3] Contributions to a Canadian retirement account and earnings on those contributions are not subject to Canadian income tax until withdrawn. A

Similar to U.S. law, Canadian law restricts the amount of money that a participant may contribute to a Canadian retirement account, and early withdrawals by a participant are subject to immediate taxation.[4] Unlike U.S. law, Canadian law also restricts the investments that may be held in a Canadian retirement account to certain "qualified investments," which must consist primarily of Canadian securities.[5] A participant who violates any of these restrictions may face significant adverse tax consequences.[6]

Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States often continue to hold their retirement assets in their Canadian retirement accounts rather than prematurely withdrawing (or "cashing out") those assets, which would result in immediate taxation in Canada.[7] Once in the United States, however, these participants (*i.e.*, Canadian/U.S. Participants) may not be able to manage their Canadian retirement account investments.[8] Most securities and most funds that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Funds and other issuers therefore generally cannot offer and sell those securities in the United States without violating the registration requirements of the Securities Act[9] and, in the case of securities of an unregistered fund, the Investment Company Act.[10] As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants have not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.[11]

The Commission and its staff have interpreted section 7(d) to generally prohibit a foreign fund from making a U.S. private offering if that offering would cause the securities of the fund to be beneficially owned by more than 100 U.S. residents. See Resale of Restricted Securities, Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (Apr. 30, 1990)] at text following n.64; Investment Funds Institute of Canada, SEC No-Action Letter (Mar. 4, 1996); Touche Remnant & Co., SEC No-Action Letter (Aug. 27, 1984). Given the large number of Canadian/U.S. Participants, it is unlikely that a Canadian fund could sell securities to Canadian retirement accounts of Canadian/U.S. Participants without exceeding the limit of 100 U.S. beneficial owners.

The Commission and its staff have received numerous inquiries from Canadian/U.S. Participants concerned about their inability to manage retirement assets held in their Canadian retirement accounts. In addition, the Investment Funds Institute of Canada ("IFIC"), an association representing Canadian mutual funds, has filed a petition for rulemaking requesting that the Commission adopt rules to permit Canadian mutual funds to offer securities to Canadian/U.S. Participants and sell securities to their accounts, without registering those securities under the Securities Act or registering as investment companies under the Investment Company Act ("IFIC Petition").[12]

II. Discussion

The Securities Act's registration and disclosure requirements are premised on the notion that investors in a public offering are best protected if they are provided with full and fair disclosure of material information needed for an informed investment decision.[13] Securities offered publicly in the United States generally must be registered with the Commission, and a prospectus must be delivered to investors.[14] Congress recently amended the Securities Act to authorize the Commission to adapt its regulations, including its registration requirements, to the changing circumstances in which securities are offered and traded.[15] Under these

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Canadian retirement account typically is structured as a trust and must be registered with the Canadian Minister of National Revenue and maintained with a qualified Canadian financial institution, such as a trust company, insurance company, or bank. *See generally* Canadian Income Tax Act ¶¶ 146(1), 146.3(1). The most common types of Canadian retirement accounts are Registered Retirement Savings Plans ("RRSPs") and Registered Retirement Income Funds ("RRIFs"). *See* Canadian Income Tax Act ¶¶ 146 (RRSPs), 146.3 (RRIFs). RRSPs and RRIFs may be "self-directed," in which the individual participant decides how to invest account assets, or "single vendor," in which a Canadian trustee or plan manager invests the account assets. The rules proposed in this release do not cover the offer or sale of securities to single vendor and other types of Canadian retirement accounts whose assets are managed exclusively in Canada. *See infra* note 26.

[4] Contributions to an RRSP Canadian retirement account are subject to an annual limit of 18 percent of an individual's "earned income" (*i.e.*, generally income from Canadian employment or self-employment) for the previous year (up to a maximum of $13,500 (Can.)), less certain pension adjustments. *See* Canadian Income Tax Act ¶ 146(1) ("earned income," "RRSP deduction limit," "RRSP dollar limit"). Early withdrawals are subject to withholding tax and must be included in taxable income in the year withdrawn. *See*, e.g., *id.* ¶¶ 146(8) (benefits taxable), 153(1)(j) (withholding).

[5] Canadian Income Tax Act ¶¶ 146(1), 146.3(1) (defining "qualified investment" for RRSPs and RRIFs); Canadian Income Tax Regulations § 4900 (qualified investments). At least 80 percent of the book value of a Canadian retirement account must be invested in Canadian securities. *See generally* Foreign Property of Registered Plans, Revenue Canada Bulletin No. IT–412R2 (Jan. 16, 1995).

[6] For example, excess contributions to a Canadian retirement account generally are subject to a penalty tax of one percent per month of the excess contributions. *See* Contributions to Registered Retirement Savings Plan, Revenue Canada Bulletin No. IT–124R6 (Jan. 31, 1995), at ¶ 30. Non-qualified investments held in a Canadian retirement account are subject to a penalty tax of one percent per month of the market value of the non-qualified investments, and earnings on non-qualified investments are subject to Canadian income tax. *See, e.g.*, Canadian Income Tax Act ¶¶ 146(10.1), 207.1(1).

[7] *See supra* note 4.

[8] The Commission believes that a significant number of Canadian/U.S. Participants may face this predicament. At the end of 1995, approximately 660,000 U.S. residents were either Canadian citizens or former Canadian citizens. Bureau of the Census, U.S. Dep't of Commerce, March 1996 Current Population Survey. In addition, U.S. citizens who live and work in Canada on a temporary basis may be able to establish Canadian retirement accounts, and so may face this predicament upon returning to the United States.

[9] Absent an exemption, all securities offered or sold through use of the U.S. mails or other means of interstate commerce must be registered under the Securities Act. *See* section 5(a) of the Securities Act (15 U.S.C. 77e(a)).

[10] The Investment Company Act requires a foreign fund to obtain an order from the Commission permitting it to register under that Act before it uses the U.S. mails or any means of interstate commerce in connection with a public offering of its securities. *See* section 7(d) of the Investment Company Act (15 U.S.C. 80a–7(d)). The Commission may issue this type of order only if it finds both that registration of the foreign fund is consistent with the public interest and protection of investors and that it is legally and practically feasible to enforce the provisions of the Investment Company Act against the fund. *Id.* Rule 7d–1 (17 CFR 270.7d–1) specifies the conditions that a Canadian fund may meet to satisfy the standards of section 7(d). Only one Canadian fund currently is registered with the Commission.

[11] The registration requirements of the Securities Act generally would not preclude Canadian/U.S. Participants from purchasing some types of securities for their Canadian retirement accounts in secondary market transactions on stock exchanges or in other markets. As discussed below, however, Canadian broker-dealers that effect transactions, including secondary market transactions (*i.e.*, those involving securities that are not required to be registered under the Securities Act), for Canadian/U.S. Participants are subject to the broker-dealer registration requirements of the Exchange Act, absent an exemption. *See infra* note 24. In addition, there are generally no secondary markets for the securities of open-end management funds (or "mutual funds"), which continuously publicly offer and redeem securities. The requirement that public offers be registered under the Securities Act thus deters most foreign mutual funds from offering securities to Canadian/U.S. Participants.

[12] The IFIC Petition is available for inspection and copying in the Commission's Public Reference Room in File No. 4–407 and File No. S7–10–99. The proposed rules respond to the issues raised in that petition.

[13] *See* Securities Act Concepts and Their Effects on Capital Formation, Securities Act Release No. 7314 (July 25, 1996) (61 FR 40044 (July 31, 1996)) at text accompanying n.13; *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 124 (1953).

[14] Section 5 of the Securities Act (15 U.S.C. 77e).

[15] Section 28 of the Securities Act (15 U.S.C. 77z–3) (enacted as part of the National Securities

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amendments, the Commission may exempt persons, securities or transactions from any provision of the Securities Act, if necessary or appropriate in the public interest and consistent with the protection of investors.[16] Congress intended the Commission to use this authority to address, among other things, developments in the securities markets that "do not fit neatly into the existing regulatory framework."[17]

The growth of self-directed Canadian retirement accounts, the migration of participants to the United States, and the need of these participants to manage their retirement investments by buying and selling Canadian and other foreign securities for their accounts, appear to be developments that do not fit neatly into the existing regulatory framework of the Securities Act. According to some Canadian/U.S. Participants, the registration requirements of the Securities Act have operated to impede rather than promote their interests. These participants have purchased securities in Canada pursuant to a Canadian retirement program and, as a result, have the protections of the Canadian securities laws and regulatory system with respect to those investments. In light of the need for these investors to be able to manage their Canadian retirement account assets,[18] and the existence of a well-developed legal system in Canada, the Commission believes that it may be in the public interest and consistent with the protection of investors to exempt from the registration requirements of the Securities Act offers of foreign securities to Canadian/U.S. Participants and sales to their retirement accounts. The Commission therefore is proposing new rule 237 under the Securities Act to exempt these transactions from Securities Act registration, under certain conditions discussed below.[19]

The registration requirement of the Investment Company Act is an additional regulatory provision that can prevent Canadian/U.S. Participants from purchasing securities of foreign funds in the course of managing their Canadian retirement accounts. A foreign fund that publicly offers securities in the United States not only must register its securities under the Securities Act, but also must obtain an order permitting it to register as an investment company under the Investment Company Act.[20] Because most Canadian funds have not obtained such an order (and cannot be expected to do so[21]), Canadian/U.S. Participants have not been able to purchase securities of Canadian funds for their Canadian retirement accounts. As a result, participants who hold securities of Canadian funds through their Canadian retirement accounts cannot exchange those securities for other Canadian fund securities as, for example, they age and their financial needs change.[22] In order to allow Canadian/U.S. Participants to manage their Canadian retirement accounts, the Commission is proposing new rule 7d–2 under the Investment Company Act, which would permit a foreign fund to make offers to these participants and sales to their retirement accounts without registering as an investment company under the Investment Company Act.[23]

The provisions of proposed rules 237 and 7d–2 are substantially the same. They are designed to permit offers of foreign securities to Canadian/U.S. Participants and sales to their accounts, and to permit participants to receive prospectuses and other informational materials necessary for managing their investments, without permitting the types of additional sales or communications that could result in a more generalized public offering of securities in circumvention of the registration requirements of the U.S. securities laws.[24] The proposed rules would strictly limit the activities of persons making offers or sales in reliance on the rules, and would in no way limit the application of the antifraud provisions of the U.S. securities laws or the provisions of any state laws that may govern the offer or sale of securities to Canadian retirement accounts.

A. Proposed Securities Act Rule[25]

1. Scope of the Rule

Proposed rule 237 under the Securities Act would exempt from the registration requirements of that Act the offer of a foreign issuer's securities to a "participant" and the sale of those securities to his or her Canadian retirement account.[26] The rule would

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Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416).

[16] *Id.*

[17] S. Rep. No. 293, 104th Cong., 2d Sess. 15 (1996).

[18] Financial planning experts stress the importance of periodically reallocating retirement investments to reflect the investor's changing age and income needs. *See, e.g.*, Laird H. Shuart & Michael E. Ruhlman, Planning for Retirement in the 21st Century—A New Approach 77–78 (1991); Timothy E. Johnson, Investment Principles 452–53 (1978). Some analysts also have suggested that, due to increasing life expectancies and health care costs, the careful management of individual retirement investments may be more important than ever. *See, e.g.*, Employee Benefit Research Institute, Fundamentals of Employee Benefit Programs 179, 196 (5th ed. 1997).

[19] *See infra* Part II.A.2. The Commission anticipates that this proposed exemption from the Securities Act's registration requirements would be used primarily in connection with offers and sales of securities of Canadian mutual funds, although other foreign issuers may use the exemption for offers and sales to Canadian/U.S. Participants in connection with public offerings.

[20] As noted above, section 7(d) of the Investment Company Act requires a foreign fund to obtain an order from the Commission permitting it to register under that Act before it uses the U.S. mails or any means of interstate commerce in connection with a public offering of its securities. *See supra* note 10. The requirement that a foreign fund register under the Investment Company Act before making a public offering in the United States is intended to subject foreign funds that access the U.S. markets to the same type and degree of regulation as domestic funds. *See* S. Rep. No. 1775, 76th Cong., 3d Sess. 13 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 13 (1940).

[21] According to IFIC, a Canadian fund that satisfies the conditions necessary to obtain such an order likely would not be able to continue to operate as a registered mutual fund under Canadian law. *See* IFIC Petition, *supra* note 12, at n.34.

[22] This is true even for Canadian/U.S. Participants who already own securities of the other funds in their retirement accounts.

[23] Proposed rule 7d–2 would deem a foreign fund's offer of securities to Canadian/U.S. Participants, and the sale of securities to their Canadian retirement accounts, not to be a "public offering" for purposes of section 7(d) of the Investment Company Act, under the conditions discussed below. As noted earlier, the Commission and its staff have interpreted section 7(d) to generally prohibit a foreign fund from making a U.S. private offering if that offering would cause the securities of the fund to be beneficially owned by more than 100 U.S. residents. *See supra* note 10. Ownership by Canadian/U.S. Participants of foreign fund shares through their Canadian retirement accounts, however, would not count toward the 100 U.S. investors under this interpretation of section 7(d).

[24] Purchases or sales of securities held through Canadian retirement accounts generally are effected through Canadian securities dealers. Absent an exemption, however, Canadian broker-dealers that effect securities transactions for Canadian/U.S. Participants with respect to their Canadian retirement accounts are subject to the broker-dealer registration requirements of section 15 of the Exchange Act (15 U.S.C. 78o). Although rule 15a–6 under the Exchange Act (17 CFR 240.15a–6) provides several conditional exemptions from this registration requirement for foreign broker-dealers, additional relief may be required to permit Canadian broker-dealers to engage in activities generally necessary to maintain participants' Canadian retirement accounts without registration under the Exchange Act. The Commission has received a request for exemptive relief from the broker-dealer registration requirements of the Exchange Act for certain Canadian broker-dealers that effect transactions for Canadian/U.S. Participants with respect to their Canadian retirement accounts. Letter from Susan E. Pravda, Epstein, Becker & Green, to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission (Jan. 7, 1999). The Commission will be considering this request for exemptive relief.

[25] The following discussion focuses on the scope and conditions of proposed rule 237. The scope and conditions of proposed rule 7d–2, as noted above, are largely identical. *See infra* note 47 and accompanying text.

[26] The definition of "Canadian retirement account" would include self-directed individual retirement accounts that are both established and qualified for tax-advantaged treatment under Canadian law. Proposed rule 237(a)(2). The

define a "participant" as any individual in the United States who is entitled to receive the income and assets from a Canadian retirement account.[27] Typically, a participant would be an individual who established a Canadian retirement account while living and working in Canada and has moved to the United States either permanently or temporarily.[28] The exemption would be available for offers and sales of securities of any type of issuer.[29] To qualify for the exemption, however, the securities must be eligible for investment by Canadian retirement accounts, and they also must be available for purchase by Canadian investors other than participants.[30]

The proposed rule would exempt sales to a Canadian/U.S. Participant's retirement account in connection with an exchange or re-allocation of existing Canadian retirement account investments, as well as sales in connection with new investments made with additional contributions to the account. The Commission believes that most Canadian/U.S. Participants would not be permitted to make significant additional contributions to their Canadian retirement accounts, because Canadian tax law penalizes contributions greater than a specified percentage of an individual's Canadian earned income (*i.e.*, income that is earned and taxable in Canada), which an individual residing in the United States ordinarily would not have.[31] The Commission requests comment whether this view of Canadian tax law is accurate. If participants generally would be able to make significant additional contributions to their Canadian retirement accounts, should the proposed exemption exclude additional purchases? If additional purchases are excluded, would persons relying on the exemption be able to adequately monitor whether purchase requests from participants. or their broker-dealers, represent the exchange or re-allocation of previous Canadian retirement account investments, rather than additional acquisitions with new contributions?

2. Conditions of the Rule

a. Limitations on Marketing Activities. Proposed rule 237 includes conditions that limit the activities of persons relying on the rule, in order to prevent the exemption from being used as an avenue for a distribution of securities in the United States beyond the rule's limited purpose. Thus, a person relying on the rule would be permitted to solicit a Canadian/U.S. Participant only if that person is an authorized agent of the participant.[32] Persons relying on the rule would be limited to (i) processing transaction requests from participants,[33] (ii) paying dividends and distribution on securities held in a Canadian retirement account,[34] (iii) delivering

definition would exclude Canadian retirement accounts that are not self-directed, because those accounts are managed entirely in Canada and generally would not entail U.S. registration requirements. The proposed definition therefore does not include Registered Pension Plans (Canadian Income Tax Act ¶ 147.1), Deferred Profit Sharing Plans (Canadian Income Tax Act ¶ 147), single vendor RRSPs and RRIFs, and other Canadian tax-advantaged plans whose investments are managed by trustees or other fiduciaries in Canada.

[27] Proposed rule 237(a)(6). Participants, for example, would include individuals who have established Canadian retirement accounts with Canadian earned income and are in the United States (i) permanently, (ii) as a result of being stationed or transferred by an employer, or (iii) only during the winter months. An individual's status as a participant would not depend on the length of his or her stay in the United States. A participant would be an "annuitant" of a Canadian retirement account as provided by Canadian law. *See* Canadian Income Tax Act ¶¶ 146(1), 146.3(1) (defining "annuitant" as the individual, or a spouse in certain cases, for whom a RRSP or RRIF will provide retirement income).

[28] Certain "deemed" Canadian residents (*i.e.*, Canadian government and military personnel) may be able to establish Canadian retirement accounts with income earned while living and working in the United States. *See infra* note 31.

[29] Persons relying on the exemption would be persnns that engage in transactions not otherwise exempt from the registration requirements of section 5 of the Securities Act (*i.e.*, issuers, underwriters or dealers under U.S. law). *See, e.g.*, section 4(1) of the Securities Act (15 U.S.C. 77d(1)).

[30] The types of securities that are qualified investments for Canadian retirement accounts are identified in the Canadian Income Tax Act and the Canadian Income Tax Regulations. *See supra* note 5 and accompanying text. The proposed rule would be available only for "eligible securities" issued by a "qualified company." Eligible securities would be securities issued by a qualified company that (i) are offered to participants or sold to their Canadian retirement accounts in reliance on the proposed rule and (ii) may also be purchased by Canadians other than participants. Proposed rule 237(a)(3)(i), (ii). The rule would define a qualified company as a foreign issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian retirement account under Canadian law. Proposed rule 237(a)(7). A "foreign issuer" would include any issuer that is a foreign government, a national of any foreign country or a corporation or other organization incnrporated or organized under the laws of any foreign country, except for an issuer that has a substantial presence in the United States as described in the rule. Proposed rule 237(a)(5). This definition is modeled on the definitions of "foreign issuer" and "foreign private issuer" in rule 405 under the Securities Act (17 CFR 230.405).

As noted above, the proposed exemption would be available only for offers and sales of eligible securities of qualified companies. No condition of the rule, however, would require that a participant's Canadian retirement account comply with the other requirements of Canadian tax law, such as the limitations on contributions. *See generally supra* notes 4—5 and accompanying text (discussing certain restrictions on Canadian retirement account contributions and investments).

[31] *See* Canadian Income Tax Act ¶ 146(1) (defining "earned income"). *See also supra* notes 4, 6 (describing restrictions on Canadian retirement account contributions and certain penalties on excess contributions). Taxation in Canada generally depends on an individual's residence in Canada. Whether a Canadian/U.S. Participant's income is subject to Canadian tax or U.S. tax typically would depend on several factors, including (i) the permanence and purpose of the stay in the United States, (ii) residential ties to Canada, (iii) residential ties to the United States, and (iv) regularity and length of return visits to Canada. *See generally* Determination of an Individual's Residence Status, Revenue Canada Bulletin No. IT–221R2 (Feb. 25, 1983). Under the United States-Canada Tax Treaty and Canadian law, Canadian government employees, diplomats, and military personnel stationed in the United States are "deemed" to be Canadian residents, and their income remains subject to Canadian tax, despite their residence in the United States. *See* Convention with Respect to Taxes on Income and on Capital, Sept. 26, 1980, U.S.-Can., art. IV, para. 5, T.I.A.S. No. 11,087 (as amended by protocols); Canadian Income Tax Act ¶ 250(1) (deemed residents of Canada). Because most Canadian/U.S. Participants, other than deemed Canadian residents, who relocate to, maintain primary residence in, or spend most of their time in, the United States would no longer be residents of Canada for tax purposes, the Commission believes that they would not be able to contribute significant additional income to their Canadian retirement accounts. For individuals who are deemed residents of Canada, however, additional contributions to a Canadian retirement account may be the only mechanism for making a Canadian tax-advantaged retirement investment while in the United States.

[32] Proposed rule 237(b)(3). Generally, a "solicitation" would include any contact (*i.e.*, telephone calls, mailings, facsimile transmissions, electronic mail or similar communications) with a participant that is intended to generate interest in, or induce the purchase of, eligible securities. The exception for solicitations by authorized agents is intended to permit Canadian broker-dealers relying on the rule to continue to provide investment advice to their Canadian/U.S. Participant customers. For example, a broker-dealer relying on the rule would not be prohibited from providing investment advice, prospectuses or other similar materials to an *existing* client who is a participant about possible investments in the participant's Canadian retirement account. Of course, to the extent persons relying on the rule are engaged in broker-dealer activity in the United States, they would be required to register as broker-dealers under section 15 of the Exchange Act, absent an available exemption. *See supra* note 24.

[33] Proposed rule 237(b)(1)(i). A person relying nn the rule also would be permitted to effect routine transactions in securities held in a participant's Canadian retirement account. *Id.* Routine transactions would include routine or mechanical transfers of securities held in the account, such as transfers caused by a participant's death or divorce, and rollovers or other transfers of assets among Canadian retirement accounts as required or allowed under Canadian law. The Commission believes that generally these types of transfers would not entail registration under the Securities Act in any event.

[34] Proposed rule 237(b)(1)(ii). The payment of dividends would include the issuance of securities under a dividend reinvestment plan. For guidance on whether registration of securities issued pursuant to a dividend reinvestment plan would be required absent the proposed exemption, *see, e.g.*, Securities Act Release No. 929 (July 29, 1936) (11 FR 10957 (1936)); Investment Company Act Release No. 6480 (May 10, 1971) (36 FR 9627 (May 1971)); Interpretation of the Division of Corporation Finance Relating to Dividend Reinvestment and

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written offering materials upon the request of a participant,[35] and (iv) delivering updated offering materials, proxy statements, account statements and other materials typically provided to other security holders regarding securities held in a Canadian retirement account.[36] Persons relying on the rule could not engage in activities that would condition the U.S. market for the securities, such as advertising the securities in the United States,[37] or that would facilitate secondary trading in the securities, such as arranging for dealers to make a secondary market in the United States when there was no pre-existing U.S. market.[38]

As noted above, under the rule the only updated written offering materials or other informational materials that could be delivered to a Canadian/U.S. Participant would be those that concern securities already held in the participant's retirement account.[39] The Commission requests comment whether Canadian funds commonly use joint prospectuses or other joint informational materials to offer and sell securities of several affiliated funds or different classes or series of the same fund. If so, should rule 237 specifically permit persons relying on the rule to deliver updated joint prospectuses and other joint materials that concern both securities that are held in a participant's retirement account and securities that are not held in the account?

Under the proposed rule, offering materials for eligible securities must prominently disclose that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws.[40] This disclosure requirement would apply to all written offering materials, including prospectuses, advertisements and newsletters that are sent to participants in reliance on the proposed exemption. Comment is requested on this disclosure requirement.

The Commission also requests comment whether the rule should prohibit resales in the United States of securities offered and sold in reliance on the proposed exemption.[41] Is a restriction on resales necessary to ensure that unregistered securities sold to Canadian retirement accounts in reliance on the proposed exemption are not later transferred to persons in the United States who are not Canadian/U.S. Participants?

b. Restriction on Disclaiming Canadian or U.S. Law or Jurisdiction. Proposed rule 237 is premised on, among other things, the availability of the investor protections afforded by Canadian law for Canadian retirement account investments. We believe that, because these accounts were opened and remain in Canada, Canadian law would be applicable and Canadian courts would have jurisdiction. Nonetheless, we are proposing to include in the rule the condition that a person relying on the rule not disclaim the applicability of Canadian law or jurisdiction in any proceeding involving eligible securities.[42] The Commission requests comment on this proposed condition.

As noted above, offers and sales of securities made in reliance on the proposed rule would remain fully subject to the antifraud provisions of the U.S. securities laws. The proposed rule therefore also would include the condition that a person relying on the rule not disclaim the applicability of U.S. law, or the jurisdiction of the courts of the United States, in any proceeding involving eligible securities.[43] Comment is requested on this proposed condition of the rule.

The Commission also requests comment whether it would be unduly burdensome for rule 237 to require any person that relies on the rule to provide the Commission, upon request, with information, documents, testimony and assistance relating to their offers and sales of securities in reliance on the rule.[44] This type of provision could facilitate the Commission's ability to investigate allegations of fraud. In the alternative, should the rule require any person relying on the rule to designate an agent for service of process in the United States?[45] Finally, comment is requested whether persons relying on rule 237 should be required to obtain from each participant who desires to purchase securities offered and sold in reliance on the rule a written acknowledgment that those securities are not subject to the registration provisions of the U.S. securities laws.

B. Proposed Investment Company Act Rule

Proposed rule 7d–2 under the Investment Company Act would deem a foreign fund's offer of securities to Canadian/U.S. Participants and sale to their accounts not to be a "public offering" that would require the fund to register as an investment company under that Act.[46] The scope of this proposed rule, and the conditions that must be met by a foreign fund relying on the rule, would be substantially the same as the proposed scope and conditions of rule 237 under the Securities Act.[47] The Commission requests comment whether any specific provisions of proposed rule 7d–2 should differ from those of rule 237. Are any provisions of proposed rule 7d–2 broader than necessary to achieve the intended purpose of permitting Canadian/U.S. Participants to manage their Canadian retirement account investments? Comment also is requested whether rule 7d–2 should address the other issues on which comment was solicited in the discussion of proposed rule 237.[48]

Similar Plans, Securities Act Release No. 5515 (July 22, 1974) (39 FR 28520 (Aug. 8, 1974)).

[35] Proposed rule 237(b)(1)(iii).

[36] Proposed rule 237(b)(1)(iv).

[37] Proposed rule 237(b)(4). Activities with respect to an eligible security that constitute "directed selling efforts" for purposes of Regulation S under the Securities Act (17 CFR 230.901–.905) generally would be considered to "condition" the U.S. market for purposes of proposed rule 237. *See* 17 CFR 230.902(c); Offshore Offers and Sales, Securities Act Release No. 6863 (Apr. 24, 1990) (55 FR 18306 (May 2, 1990)), at nn.47–72 and accompanying text.

[38] Proposed rule 237(b)(4).

[39] *See supra* note 36 and accompanying text.

[40] Proposed rule 237(b)(2).

[41] For example, the rule could provide that securities offered and sold in reliance on the exemption may not be eligible for resale other than in accordance with the requirements of Regulation S under the Securities Act, which generally excludes from Securities Act registration offers and sales of securities that occur in offshore transactions and do not involve U.S. marketing activities. A Canadian/U.S. Participant who desires to sell eligible securities thus might be required either to sell the securities in the Canadian or other foreign markets or, with respect to securities of a Canadian mutual fund, to tender the securities to the fund for redemption.

[42] Proposed rule 237(b)(5). The rule would define "Canadian law" to include the federal laws of Canada, the laws of any province or territory of Canada, and the rules of any Canadian federal or provincial regulator or self-regulatory authority, depending upon the applicability of each. Proposed rule 237(a)(1).

[43] Proposed rule 237(b)(5).

[44] For example, persons relying on the rule could be required to provide the Commission with the types of information, documents, testimony, and assistance described in rule 15a-6(a)(3)(i)(B) under the Exchange Act [17 CFR 240.15a-6(a)(3)(i)(B)], with respect to offers and sales of securities made in reliance on the rule.

[45] For example, rule 237 could require issuers, underwriters and other persons that rely on the rule to file a form similar to Form F–X under the Securities Act [17 CFR 239.42] identifying a U.S. agent for service of process. Designating an agent for service of process also might facilitate the ability of Canadian/U.S. Participants to pursue antifraud remedies in the United States.

[46] *See generally supra* notes 20–23 and accompanying text.

[47] *See supra* Part II.A (discussion of the scope and conditions of proposed rule 237). The one substantive difference is that proposed rule 7d-2 would require written offering materials for eligible securities to disclose prominently not only that the securities are not registered with the Commission, but also that the foreign fund that issued those securities is not registered with the Commission. Proposed rule 7d–2(b)(2).

[48] *See supra* Part II.A.

C. Proposed Amendments to Exchange Act Rule 12g3–2

Section 12(g)(1) of the Exchange Act provides that an issuer whose securities are traded by any means of interstate commerce must register its equity securities with the Commission under the Exchange Act if it has more than 500 shareholders and total assets over $1 million.[49] The Exchange Act authorizes the Commission to exempt securities of foreign issuers from this registration requirement.[50] Under this authority, the Commission has adopted rule 12g3–2(a), which exempts securities of a foreign private issuer from the registration requirement if fewer than 300 shareholders reside in the United States.[51] Rule 12g3–2(b) exempts securities of a foreign private issuer that has 300 or more shareholders resident in the United States if the issuer notifies the Commission that it is electing to be exempt under that rule, furnishes certain information to the Commission that it provides to shareholders in its home country, and meets certain other requirements.[52]

The registration requirements under the Exchange Act were designed to assure that U.S. investors would have available adequate information about publicly held issuers. In the case of Canadian retirement accounts, participants already have a source of information through the administrators of their retirement accounts. Thus, it appears that counting Canadian/U.S. Participants toward the 300 shareholder limit of rule 12g3–2(a) is not necessary with respect to Canadian/U.S. Participants.[53] The Commission therefore is proposing to amend rule 12g3–2 to provide that participants who hold shares of a foreign private issuer only through their Canadian retirement accounts should not be counted for purposes of determining whether the issuer has fewer than 300 shareholders who reside in the United States.[54]

D. General Request for Comments

The Commission requests comment on the proposed rules and rule amendments that are the subject of this Release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(b) of the Securities Act and section 3(f) of the Exchange Act.[55] The Commission encourages commenters to provide data to support their views. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[56] the Commission also requests information regarding the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The proposals would provide substantial benefits to Canadian/U.S. Participants. Because most securities that are held in Canadian retirement accounts, and the Canadian funds that issue many of those securities, are not registered under the U.S. securities laws, those securities generally cannot be sold by issuers to persons in the United States without violating the registration requirements of the Securities Act and, in the case of securities of an unregistered fund, the Investment Company Act.[57] As a consequence, Canadian/U.S. Participants have not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs. Proposed rules 237 and 7d–2 would permit offers of a foreign issuer's securities to a Canadian/U.S. Participant and sales to his or her account, under certain conditions consistent with the protection of investors. The proposals thus would benefit these investors by making it possible for them to manage their Canadian retirement account investments.

Proposed rules 237 and 7d–2 also would benefit foreign issuers and other persons that offer securities of foreign issuers (including securities of foreign funds) to Canadian/U.S. Participants and sell those securities to Canadian retirement accounts. Absent the proposals, these persons likely would forego offering foreign securities to Canadian/U.S. Participants and selling foreign securities to their accounts, because securities that are not registered under the U.S. securities laws may not be publicly offered or sold in the United States. Under the proposed rules, these persons would be able to sell those securities to participants' Canadian retirement accounts, because the proposals would permit (i) foreign securities, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their accounts without being registered under the Securities Act and (ii) foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their accounts without registering as investment companies under the Investment Company Act.

Foreign issuers and other persons may incur costs when relying on the proposed rules to offer or sell securities. The proposed rules require that any written offering materials delivered to a Canadian/U.S. Participant in reliance on the rules include a prominent statement that the securities are not registered with the Commission and, in the case of securities issued by a foreign fund, that the fund also is not registered with the Commission. To meet these requirements, the foreign issuer, underwriter or broker-dealer may redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. It appears that the associated costs likely would be minimal and are justified by the benefits of the relief provided by the proposed new rules. Comment is requested on the costs associated with these proposed disclosure requirements.

Proposed rules 237 and 7d–2 also could result in some U.S. issuers, including some U.S. funds, incurring costs in the form of lost new business from Canadian/U.S. Participants who, absent the proposals, might cash out their Canadian retirement accounts and invest those assets in securities that are registered in the United States. Based on

[49] 15 U.S.C. 78*l*(g)(1). Rule 12g–1 under the Act (17 CFR 240.12g–1) exempts an issuer from this section 12(g)(1) registration requirement if its total assets at fiscal year end do not exceed $10 million and, with respect to a foreign private issuer, the securities were not quoted in an automated inter-dealer quotation system.

[50] Section 12(g)(3) of the Exchange Act (15 U.S.C. 78*l*(g)(3)) provides that the Commission may exempt any security of a foreign issuer from this registration requirement if the Commission finds that an exemption is in the public interest and consistent with the protection of investors.

[51] Exchange Act rule 12g3–2(a) (17 CFR 240.12g3–2(a)).

[52] *See* Exchange Act rule 12g3–2(b) (17 CFR 240.12g3–2(b)).

[53] In fact, counting these shareholders toward the 300 shareholder limit may hinder foreign issuers or broker-dealers from selling foreign securities to Canadian/U.S. Participants' retirement accounts out of concern that the issuer might not have complied with the requirements of section 12(g).

[54] Proposed rule 12g3–2(a)(2).

[55] Section 2(b) of the Securities Act (15 U.S.C. 77b(b)) and section 3(f) of the Exchange Act (15 U.S.C. 78c(f)) require the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[56] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[57] *See supra* notes 9–11.

inquiries that the Commission has received from Canadian/U.S. Participants, however, it appears that many currently do not choose this investment strategy because of the adverse tax consequences that likely would result from such action. It therefore appears that the proposals would not significantly affect the number of participants that may cash out their Canadian retirement accounts in order to invest their retirement assets in U.S.-registered securities. The proposed rules thus should not result in significant costs for U.S. issuers, including U.S. funds, in the form of lost new business. Because the proposed rules primarily will affect foreign issuers and other foreign persons, it appears that the proposals also would not cause any other costs or benefits for U.S. issuers. Comment is requested on these assumptions, and in particular whether the proposals would result in significant costs, in the form of lost new business or otherwise, for U.S. issuers.

The proposed amendments to rule 12g3–2(a) would provide that a foreign issuer need not count the Canadian/U.S. Participants who hold its securities only through their Canadian retirement accounts for purposes of determining whether the issuer has fewer than 300 shareholders resident in the United States and thus qualifies for the exemption from Exchange Act registration afforded by the rule. These proposed amendments would benefit any foreign issuer whose securities might not qualify for the rule 12g3–2(a) exemption from Exchange Act registration if it were required to count participants who hold its securities in Canadian retirement accounts for purposes of determining whether it has fewer than 300 U.S. shareholders. The proposed amendments also may benefit Canadian/U.S. Participants, because without the amendments foreign issuers and broker-dealers might be reluctant to sell foreign securities to participants' Canadian retirement accounts out of concern that those sales might make the foreign securities subject to registration under section 12(g). There would appear to be no significant costs to foreign issuers, domestic issuers, or investors associated with these proposed amendments.

The Commission requests comment on the potential costs and benefits of the proposals and any suggested alternatives to the proposals. Specific comment is requested on the potential costs or benefits of these proposals to U.S. issuers, including U.S. funds. Data is requested concerning these costs and benefits.

IV. Paperwork Reduction Act

Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and the Commission has submitted the proposed rules to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d). The titles for the collections of information are: "Exemption for offers and sales to certain Canadian tax-deferred retirement savings accounts" and "Definition of 'public offering' as used in section 7(d) of the Act with respect to certain tax-deferred retirement savings accounts." An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Proposed rule 237 would permit securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their accounts without being registered under the Securities Act. The rule would require written offering materials for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration. Proposed rule 7d–2 under the Investment Company Act would permit foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their accounts without registering as investment companies under the Investment Company Act. The rule would require written offering materials for securities offered or sold in reliance on the rule to make the same disclosure concerning those securities as required by proposed rule 237, and in addition to disclose prominently that the foreign fund that issued those securities is not registered with the Commission. The purpose of these disclosure requirements is to ensure that participants are aware that those securities are not subject to the protections afforded by registration under the U.S. securities laws.

The burden under either rule associated with adding this disclosure to written offering materials should be minimal and is non-recurring. The foreign issuer, underwriter or broker-dealer may redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement. The staff estimates the annual burden as a result of the disclosure requirements of proposed rules 7d–2 and 237 as follows.

A. Proposed Rule 7d–2

The staff understands that there are approximately 1,300 publicly offered Canadian funds that potentially may rely on proposed rule 7d–2 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without registering under the Investment Company Act. The staff estimates that during the first year that proposed rule 7d–2 is in effect, approximately 910 (70 percent) of these Canadian funds are likely to rely on the rule. The staff further estimates that each of those 910 Canadian funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 2,730 offering documents.[58]

The staff therefore estimates that during the first year that proposed rule 7d–2 is in effect, approximately 910 respondents[59] would be required to make 2,730 responses by adding the new disclosure statements to approximately 2,730 written offering documents. Thus, the staff estimates that the total annual burden associated with this disclosure requirement in the first year after rule 7d–2 becomes effective would be approximately 455 hours (2,730 offering documents × 10 minutes per document).

In each year following the first year that proposed rule 7d–2 is in effect, the staff estimates that approximately 65 (5 percent) additional Canadian funds may rely on the rule to offer securities to Canadian/U.S. Participants and sell securities to their accounts, and that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 195 offering documents. The staff therefore estimates that in each year after the first year that proposed rule 7d–2 becomes effective,

[58] Because Canadian tax law effectively precludes non-Canadian funds from being held in a Canadian retirement account, it is unlikely that any funds from countries other than Canada will rely on proposed rule 7d–2 to sell their shares to the Canadian retirement accounts of Canadian/U.S. Participants.

[59] This estimate of respondents assumes that all respondents are Canadian funds that redraft existing offering documents to add the required disclosure. The number of respondents may be greater if foreign underwriters or broker-dealers draft a sticker or supplement to add the required disclosure to an existing offering document.

approximately 65 respondents[60] would make 195 responses by adding the new disclosure statement to approximately 195 written offering documents. The staff therefore estimates that after the first year, the annual burden associated with the rule 7d–2 proposed disclosure requirement would be approximately 32.5 hours (195 offering documents × 10 minutes per document).

B. Proposed Rule 237

Canadian issuers other than Canadian funds. The Commission understands that there are approximately 3,500 Canadian issuers other than funds that potentially may rely on proposed rule 237 to make an initial public offering of their securities to Canadian/U.S. Participants.[61] The staff estimates that in any given year approximately 35 (or 1 percent) of those issuers are likely to rely on proposed rule 237 to make a public offering of their securities to participants, and that each of those 35 issuers, on average, distributes 3 different written offering documents concerning those securities, for a total of 105 offering documents.

The staff therefore estimates that during each year that proposed rule 237 is in effect, approximately 35 respondents[62] would be required to make 105 responses by adding the new disclosure statements to approximately 105 written offering documents. Thus, the staff estimates that the total annual burden associated with the proposed rule 237 disclosure requirement would be approximately 17.5 hours (105 offering documents × 10 minutes per document).

Other foreign issuers. In addition, issuers from foreign countries other than Canada could rely on proposed rule 237 to offer securities to Canadian/U.S. Participants and sell securities to their accounts without becoming subject to the registration requirements of the Securities Act. Because Canadian law strictly limits the amount of foreign investments that may be held in a Canadian retirement account, however, the staff believes that the number of issuers from other countries that might rely on proposed rule 237, and that therefore would be required to comply with the proposed offering document disclosure requirements, would be negligible.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the staff's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0609, with reference to File No. S7–10–99. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rules 237 and 7d–2, and the proposed amendments to rule 12g3–2. The following summarizes the IRFA.

A. Reasons for the Proposed Action

In Canada, individuals can invest a portion of their earnings in tax-deferred Canadian retirement accounts, which operate in a manner similar to IRAs in the United States. Individuals who establish Canadian retirement accounts while living and working in Canada and who later move to the United States ("Canadian/U.S. Participants" or "participants"), however, have encountered difficulties managing their Canadian retirement account investments. Most securities and most funds that are "qualified investments" for Canadian retirement accounts are not registered under the U.S. securities laws. Issuers, therefore, cannot publicly offer and sell those securities in the United States without violating the registration requirements of the Securities Act and, in the case of securities of an unregistered fund, the Investment Company Act. As a result of these registration requirements of the U.S. securities laws, Canadian/U.S. Participants have not been able to purchase or exchange securities for their Canadian retirement accounts as needed to meet their changing investment goals or income needs.

B. Objectives

To enable Canadian/U.S. Participants to manage the assets in their Canadian retirement accounts, the Commission is proposing two new rules that would provide relief from the U.S. registration requirements, under certain conditions, for offers of foreign securities to Canadian/U.S. Participants and sales to their accounts. Proposed rule 237 under the Securities Act would permit securities of foreign issuers, including securities of foreign funds, to be offered to Canadian/U.S. Participants and sold to their accounts without being registered under the Securities Act. Proposed rule 7d–2 under the Investment Company Act would permit foreign funds to offer securities to Canadian/U.S. Participants and sell securities to their accounts without registering as investment companies under the Investment Company Act.

The Commission also is proposing to amend rule 12g3–2 under the Exchange Act. Section 12(g)(1) of the Exchange Act provides that an issuer whose securities are traded by any means of interstate commerce must register its equity securities with the Commission under the Exchange Act if it has more than 500 shareholders and total assets over $1 million.[63] The Commission is authorized to exempt securities of foreign issuers from this registration requirement, and has adopted rule 12g3–2 to exempt (i) securities of a foreign private issuer if the issuer has fewer than 300 shareholders resident in

[60] *See supra* note 59.

[61] Canadian funds would rely on both proposed rule 7d–2 and proposed rule 237 to offer securities to participants and sell securities to their Canadian retirement accounts without violating the registration requirements of the Investment Company Act or the Securities Act. Proposed rule 237, however, would not require any disclosure in addition to that required by proposed rule 7d–2. Thus, the disclosure requirements of proposed rule 237 would not impose any burden on Canadian funds in addition to the burden imposed by the disclosure requirements of rule 7d–2. To avoid double-counting this burden, the staff has excluded Canadian funds from the estimate of the hourly burden associated with proposed rule 237.

[62] This estimate of respondents assumes that all respondents are foreign issuers that redraft existing offering documents to add the required disclosure. The number of respondents may be greater if foreign underwriters or broker-dealers draft a sticker or supplement to add the required disclosure to an existing offering document.

[63] Rule 12g–1 under the Act exempts an issuer from this section 12(g)(1) registration requirement if its total assets at fiscal year end do not exceed $10 million and, with respect to a foreign private issuer, the securities were not quoted in an automated inter-dealer quotation system.

the United States (rule 12g3–2(a)); and (ii) securities of a foreign private issuer with 300 or more shareholders resident in the United States if the issuer furnishes certain information to the Commission that it provides to shareholders in its home country, and meets certain other requirements (rule 12g3–2(b)).

The registration requirements under the Exchange Act were designed to assure that U.S. investors would have available adequate information about publicly held issuers. In the case of Canadian retirement accounts, however, Canadian/U.S. Participants already have a source of information through the administrators of their retirement accounts. Because it appears that counting Canadian/U.S. Participants toward the 300 shareholder limit of rule 12g3–2(a) would serve little purpose with respect to Canadian/U.S. Participants, the Commission is proposing to amend rule 12g3–2(a) to provide that participants who hold shares of a foreign private issuer only through their Canadian retirement accounts need not be counted for purposes of determining whether the foreign issuer has fewer than 300 shareholders resident in the United States.

C. Legal Basis

The Commission is proposing rule 237 pursuant to the authority set forth in sections 19(a) and 28 of the Securities Act (15 U.S.C. 77s(a); 77z–3) and is proposing rule 7d–2 pursuant to section 38(a) of the Investment Company Act (15 U.S.C. 37(a)). Rule 12g3–2 is proposed to be amended pursuant to the authority set forth in section 19(a) of the Securities Act and section 12(g)(3) of the Exchange Act (15 U.S.C. 78*l*(g)(3)).

D. Small Entities Subject to the Rules

Proposed rules 237 and 7d–2 primarily will affect foreign issuers and other persons that offer securities to participants and sell securities to their retirement accounts. Foreign businesses, however, are not small entities for purposes of the Regulatory Flexibility Act.[64] Therefore, these proposals are unlikely to have a significant economic impact on a substantial number of small entities.

It is possible, however, that some domestic issuers could be affected by proposed rules 237 and 7d–2, because they may lose potential new business from Canadian/U.S. Participants who, absent the proposals, might choose to cash out their Canadian retirement accounts and invest those assets in securities registered under the U.S. securities laws. Based on inquiries that the Commission has received from Canadian/U.S. Participants, however, it appears that many participants currently do not choose this investment strategy because of the adverse tax consequences that likely would result from such action. It is likely, therefore, that the proposals would not significantly affect the number of participants that may cash out their Canadian retirement accounts, and thus that the proposals should not have any significant affect on U.S. issuers, including U.S. funds, in the form of lost new business. Moreover, even if absent the proposals some Canadian/U.S. Participants would cash out their Canadian retirement accounts and invest those assets in domestic issuers, including domestic funds, we have no basis for predicting whether they would invest in domestic issuers that are small entities.[65] Therefore, it appears that these proposals are unlikely to have a significant economic impact on a substantial number of domestic issuers that are small entities.

The proposed amendments to rule 12g3–2 would affect only foreign private issuers whose securities might not qualify for the exemption from Exchange Act registration afforded by rule 12g3–2(a) if the issuers are required to count Canadian/U.S. Participants who hold their securities in Canadian retirement accounts for purposes of determining whether they have fewer than 300 U.S. shareholders. Because foreign businesses are not small entities for purposes of the Regulatory Flexibility Act, it appears that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

E. Reporting, Recordkeeping, and Other Compliance Requirements

Proposed rules 237 and 7d–2 each would require written offering documents relating to securities that are offered and sold in reliance on the rule to disclose prominently that those securities are not registered with the Commission and, in the case of securities of a non-U.S. fund, that the fund also is not registered with the Commission. These proposed rules, however, are only available for offers and sales of securities of foreign issuers. Because foreign businesses are not small entities for purposes of the Regulatory Flexibility Act, this compliance requirement would have no impact on small entities. Proposed rules 237 and 7d–2, and the proposed amendments to rule 12g3–2, do not involve any other reporting, recordkeeping, or compliance requirements. The Commission has not identified any overlapping or conflicting rules or forms.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant economic impact on small entities. Virtually all of the entities that would be affected by proposed rules 237 and 7d–2, and the proposed amendments to rule 12g3–2, however, are foreign, and foreign businesses are not considered small entities for purposes of the Regulatory Flexibility Act. As noted above, it appears that the only potential impact that any of the proposals may have on U.S. issuers, including those that are small entities, is the potential loss of new business from Canadian/U.S. Participants as a result of proposed rules 237 and 7d–2. As explained above, it appears that any such impact would not be significant. Therefore, alternatives to the proposed rules, including (i) establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; or (iv) exempting small entities from coverage of all or part of the rule, would not minimize any impact that the proposals may have on small entities.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposals and the impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IRFA may be obtained by contacting Cynthia Gurnee Pugh, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

[64] *See* 13 CFR 121.105 (defining "business concern" for purposes of the Small Business Administration's definition of "small business").

[65] For purposes of the proposed rules, a domestic issuer (other than an investment company) that has total assets of $5 million or less and that is engaged or proposes to engage in small business financing is considered a small entity. 17 CFR 230.157. A domestic investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less is considered a small entity. 17 CFR 270.0–10.

VI. Statutory Authority

The Commission is proposing rule 237 pursuant to authority set forth in sections 19(a) and 28 of the Securities Act (15 U.S.C. 77s(a); 77z–3), rule 7d–2 pursuant to authority set forth in section 38(a) of the Investment Company Act (15 U.S.C. 37(a)), and the amendments to rule 12g3–2 pursuant to authority set forth in section 19(a) of the Securities Act and section 12(g)(3) of the Exchange Act (15 U.S.C. 78*l*(g)(3)).

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.237 is added to read as follows:

§ 230.237 Exemption for offers and sales to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a "Registered Retirement Savings Plan" or "Registered Retirement Income Fund" administered under Canadian law, that is self-directed and:

(i) Operated exclusively to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident*, as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States, or is temporarily present in the United States, and currently is entitled to receive the income and assets from a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Exemption.* The offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities by any person is exempt from section 5 of the Act (15 U.S.C. 77e) if the person:

(1) Limits its activities with respect to Participants and their Canadian Retirement Accounts to the following:

(i) Processing requests from a Participant (or his or her authorized agent) for the purchase, sale, exchange, or redemption of an Eligible Security, and effecting other routine transactions under Canadian law;

(ii) Paying dividends and distributions on securities of a Qualified Company held in a Canadian Retirement Account;

(iii) Delivering, upon request, written offering materials or other informational materials concerning an Eligible Security; and

(iv) Delivering updated written offering materials, shareholder reports, account statements, proxy statements, or other materials concerning securities of a Qualified Company held in a Canadian Retirement Account.

(2) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security is not registered with the U.S. Securities and Exchange Commission and may not be offered or sold in the United States or to any person in the United States unless registered, or an exemption from registration is available.

(3) Has not directly or indirectly solicited the Participant concerning the Eligible Security, unless the person was an authorized agent of the Participant at the time of the solicitation.

(4) Has not directly or indirectly engaged in activities that are intended or could reasonably be expected to condition the market in the United States or to facilitate secondary market trading in the United States with respect to an Eligible Security.

(5) Has not asserted that Canadian or U.S. law, or the jurisdiction of the courts of Canada (or a province or territory of Canada) or of the United States, does not apply in a proceeding involving an Eligible Security.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.12g3–2 is amended by revising paragraph (a) to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

(a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next

fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph:

(1) Securities held of record by persons resident in the United States shall be determined as provided in § 240.12g5–1 except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Persons in the United States who hold the security only through a Canadian Retirement Account (as that term is defined in rule 237(a)(2) under the Securities Act of 1933 (§ 230.237(a)(2) of this chapter)), may not be counted as holders resident in the United States.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The general authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

6. Section 270.7d–2 is added to read as follows:

§ 270.7d–2 Definition of "public offering" as used in section 7(d) of the Act with respect to certain Canadian tax-deferred retirement savings accounts.

(a) *Definitions.* As used in this section:

(1) *Canadian law* means the federal laws of Canada, the laws of any province or territory of Canada, and the rules or regulations of any federal, provincial, or territorial regulatory authority, or any self-regulatory authority, of Canada.

(2) *Canadian Retirement Account* means a trust or other arrangement, including, but not limited to, a "Registered Retirement Savings Plan" or "Registered Retirement Income Fund" administered under Canadian law, that is self-directed and:

(i) Operated exclusively to provide retirement benefits to a Participant; and

(ii) Established in Canada, administered under Canadian law, and qualified for tax-deferred treatment under Canadian law.

(3) *Eligible Security* means a security issued by a Qualified Company that:

(i) Is offered to a Participant, or sold to his or her Canadian Retirement Account, in reliance on this section; and

(ii) May also be purchased by Canadians other than Participants.

(4) *Foreign Government* means the government of any foreign country or of any political subdivision of a foreign country.

(5) *Foreign Issuer* means any issuer that is a Foreign Government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country, except an issuer meeting the following conditions:

(i) More than 50 percent of the outstanding voting securities of the issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(iii) For purposes of this definition, the term *resident,* as applied to security holders, means any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(6) *Participant* means a natural person who is a resident of the United States, or is temporarily present in the United States, and currently is entitled to receive the income and assets from a Canadian Retirement Account.

(7) *Qualified Company* means a Foreign Issuer whose securities are qualified for investment on a tax-deferred basis by a Canadian Retirement Account under Canadian law.

(8) *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

(b) *Public Offering.* For purposes of section 7(d) of the Act (15 U.S.C. 80a–7(d)), the term "public offering" does not include the offer to a Participant, or the sale to his or her Canadian Retirement Account, of Eligible Securities issued by a Qualified Company, if the Qualified Company:

(1) Limits its activities with respect to Participants and their Canadian Retirement Accounts to the following:

(i) Processing requests from a Participant (or his or her authorized agent) for the purchase, sale, exchange, or redemption of an Eligible Security, and effecting other routine transactions under Canadian law;

(ii) Paying dividends and distributions on securities of a Qualified Company held in a Canadian Retirement Account;

(iii) Delivering, upon request, written offering materials or other informational materials concerning an Eligible Security; and

(iv) Delivering updated written offering materials, shareholder reports, account statements, proxy statements, or other materials concerning securities of a Qualified Company held in a Canadian Retirement Account.

(2) Includes in any written offering materials delivered to a Participant, or to his or her Canadian Retirement Account, a prominent statement that the Eligible Security, and the Qualified Company that issued the Eligible Security, are not registered with the U.S. Securities and Exchange Commission, and that the Eligible Security may not be offered or sold in the United States or to any person in the United States unless the security and the Qualified Company are registered, or exemptions from registration are available.

(3) Has not directly or indirectly solicited the Participant concerning the Eligible Security, unless the person was an authorized agent of the Participant at the time of the solicitation.

(4) Has not directly or indirectly engaged in activities that are intended or could reasonably be expected to condition the market in the United States or to facilitate secondary market trading in the United States with respect to an Eligible Security.

(5) Has not asserted that Canadian or U.S. law, or the jurisdiction of the courts of Canada (or a province or territory of Canada) or of the United States, does not apply in a proceeding involving an Eligible Security.

Dated: March 19, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7237 Filed 3–24–99; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–005–ROP; FRL–6315–6]

Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, Revision to the 15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in the Clean Air Act. We are proposing changes to the control strategy for the 15 percent ROP demonstration. The proposed changes delete or add to the control strategy measures that have already been adopted in the Phoenix area; we are not proposing any new emission control regulations. This proposal does not alter our basic conclusion in the 1998 FIP that the Phoenix metropolitan area will meet the 15 percent ROP requirement as soon as practicable. We also discuss our policies on the contingency measures required by the Clean Air Act for the Phoenix ozone nonattainment area. Finally, we are proposing to revise the transportation conformity budget set in the 1998 FIP.

DATES: Comments on this proposal must be received in writing by April 26, 1999. Please address your written comments to the contact listed below. You may also request the opportunity to submit oral comments as allowed under Clean Air Act section 307(d)(5). EPA must receive your request for a public hearing by April 5, 1999. If we schedule a hearing, the record will remain open for 30 days after the hearing for submission of supplemental or rebuttal information only.

ADDRESSES: Written comments and requests for public hearing should be addressed to Frances Wicher at the EPA Region 9 address below.

EPA has placed copies of the draft technical support document (TSD) and other documents relied on for this proposal in a docket. You may inspect this docket during normal business hours at the following locations and may request copies of any document contained in the docket. A reasonable fee may be charged for any requested copies.

U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

We have also posted copies of this proposal, the draft TSD, and EPA's 1998 plan and its TSD in the air programs section of EPA Region 9's website, www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248, wicher.frances@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

What Is EPA Proposing in This Action?

EPA is proposing minor changes to its 1998 15 percent rate of progress federal implementation plan (1998 15 percent ROP FIP or 1998 FIP) for the metropolitan Phoenix (Arizona) ozone nonattainment area. We published the 1998 FIP in the **Federal Register** on May 27, 1998 at 63 FR 28898 (Reference 1). The 1998 FIP contains a demonstration that the Phoenix metropolitan area has in place or will have in place sufficient measures to meet the 15 percent rate of progress (ROP) requirement in section 182(b)(1) of the Clean Air Act (CAA) as soon as practicable. For the complete background to our 1998 FIP, please see section I.B. of the technical support document (TSD) for the 1998 FIP (Reference 2).

In this action, we are specifically proposing to change the control strategy (that is, the list of control measures) that makes up the 15 percent ROP demonstration for the Phoenix area by deleting the National Architectural Coatings Rule and adding Arizona's Clean Burning Gasoline (CBG) program. Neither of these proposed changes will affect our basic conclusion in the 1998 15 percent ROP FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1) as soon as practicable. We are proposing these changes under our federal planning authority in CAA section 110(c).

Later in this preamble, we will also discuss in more detail our policies on the contingency measures required by CAA section 172(c)(9) for most ozone nonattainment area plans.

Finally, we will describe our proposed revisions to the transportation conformity budget set in the 1998 FIP.

Why Is EPA Proposing This Action?

In the 1998 15 percent ROP FIP, we included emission reductions from three proposed national consumer and commercial product rules in the ROP demonstration. Since the 1998 FIP was published, EPA has finalized these rules. The final rules varied from the proposals in ways that affected either the amount or timing of the emission reductions that we assumed for them in the 15 percent ROP demonstration. We stated in the 1998 FIP that if the final rules did not result in all the emission reductions we expected, we would take appropriate action to revise the plan. We are proposing the necessary revisions in this document.

We are also taking this action to comply with the voluntary remand that we requested and were granted from the Ninth Circuit Court of Appeals in order to address two issues raised in a petition to review the 1998 FIP. This petition, *Aspegren* v. *Browner,* No. 98–70824, asked the court to review two aspects of the 1998 FIP and then require us to take certain actions to revise the plan. The petitioners first asked the court to require EPA to evaluate the effects of the final federal rules on the Phoenix 15 percent ROP demonstration and to adopt any additional rules needed to assure that the 15 percent ROP is met. Second, the petitioners asked the court to require EPA to adopt and include in the FIP contingency measures consistent with CAA section 172(c)(9) and EPA guidance. See page 22 of the petitioners' brief in the case (Reference 3).

We have, therefore, reviewed the effect of the final federal rules on the 15 percent ROP demonstration in the 1998 FIP and are proposing changes to the control strategy. We are also responding to the petitioners' arguments regarding the Clean Air Act and our guidance requirements for contingency measures.

II. Background on the 15 Percent ROP FIP for Phoenix

What Is the CAA 15 Percent Rate of Progress Requirement?

Clean Air Act section 182(b)(1) requires each ozone nonattainment area with a classification of moderate or above to develop a plan to reduce volatile organic compounds (VOC) emissions (a contributor to ozone) in the area by 15 percent from 1990 levels. This plan is referred to as the 15 percent

rate of progress plan or the 15 percent ROP plan. The 15 percent ROP requirement applies only to areas that are not meeting the one-hour national ozone ambient air quality standard.

In 1991, we classified the Phoenix ozone nonattainment area as moderate and in 1997 reclassified the area to serious. Therefore the Phoenix area must meet the 15 percent ROP requirement.

For an area to show that it meets the 15 percent ROP requirement, it must show that future emissions in the area will be equal to or less than a target level of emissions that meets the 15 percent reduction. CAA section 182(b)(1) has detailed instructions and several restrictions for calculating the required target level.

We calculated the 15 percent ROP target for the Phoenix area in the 1998 FIP. This calculation is documented in sections II.B. and III.B. in the Technical Support Document (TSD) for the 1998 FIP (Reference 2). The target level for the Phoenix area is not affected by the changes we are proposing to the control strategy and remains the same as in the 1998 FIP.

The Clean Air Act requires ozone nonattainment areas to show the 15 percent ROP by November 15, 1996. Even though that date has passed, the Act's 15 percent ROP requirement still applies to the Phoenix area. However, because the date has passed, in order to show that the Phoenix area meets the 15 percent ROP requirement, we now have to show that the 15 percent ROP will be met "as soon as practicable." In summary, this means that we have to show the plan includes all available measures that could meaningfully advance when the 15 percent ROP is met in Phoenix. For a more detailed description of the "as soon as practicable" requirement for 15 percent ROP, please see page 3687 of the proposal for the 1998 FIP (Reference 4).

What Is in the 1998 15 Percent ROP FIP?

The 1998 FIP included our demonstration that the Phoenix area would have sufficient controls in place to meet the 15 percent rate of progress requirement for the Phoenix area by no later than April 1, 1999. The FIP also showed that April 1, 1999 is the earliest date by which the 15 percent reduction could be met considering the availability of practicable measures for the Phoenix area. See page 3689 in the proposal for the 1998 FIP (Reference 4).

In the demonstration, we relied on a set of promulgated and proposed federal measures as well as numerous State measures that we had previously approved. These measures and their expected emission reductions are identified in Table 5 of the proposed FIP, see page 3690 in the proposal for the 1998 FIP (Reference 4).

The proposed federal rules that we included in the 15 percent ROP demonstration are three rules that reduce emissions from certain consumer and commercial products: (1) architectural coatings (e.g., paints, stains, and finishes), (2) automobile refinish coatings, and (3) consumer products (e.g., household cleaning products, personal grooming products). At the time we issued the 1998 15 percent ROP FIP in May 1998, we had proposed these rules and were required by a court order to finalize them by mid-August 1998. We had been developing these rules for several years and had issued guidance memoranda allowing states to take a specified emission reduction credit for each measure in their 15 percent plans. For a further discussion of these measures and the credit allowed for them, see page 3691 in the proposal for the 1998 FIP (Reference 4).

The 1998 15 percent ROP FIP also included a "as soon as practicable" analysis which showed that the applicable implementation plan contains all VOC control measures that are practicable for the Phoenix area and that meaningfully accelerate the date by which the 15 percent level is achieved. For the 1998 FIP, we defined "to meaningfully accelerate the date by which the 15 percent is demonstrated" to mean to advance the demonstration date by three or more months. For a more detailed description of how we applied the "as soon as practicable" requirement in the 1998 15 percent ROP FIP, please see page 3691 in the proposal for the 1998 FIP (Reference 4).

III. Proposed Changes to the 1998 15 Percent ROP FIP

How Did the Changes to the Final National Rules Affect the Emission Reductions Included in the 1998 FIP?

In the FIP, EPA estimated that the proposed national rules would reduce emissions in the Phoenix area by 4.5 metric tons per day (mtpd) by April 1, 1999.

The final rules were published in the **Federal Register** on September 11, 1998. We made changes to the final rules in response to public comments that we received on the proposals. Most of the changes had no effect on the expected emission reductions from the rules. A few changes, however, did reduce slightly the emission reductions expected from the autobody coatings rule and delayed all or some of the emission reductions from the other two rules beyond April 1, 1999. See section II.B. in the draft TSD for this proposal (Reference 5).

Table 1 presents the effects of these rule changes on the anticipated emission reductions in the 1998 15 percent ROP FIP. In total, the rule changes reduce emission reductions creditable by April 1, 1999 from the national rules by 1.3 mtpd. For the detailed analysis of these changes, see section II.B. in draft TSD for this proposal (Reference 5).

TABLE 1.—SUMMARY OF CHANGES TO EMISSION REDUCTIONS FROM NATIONAL RULES FOR APRIL 1, 1999

[Metric Tons per Day]

Rule	Change	Reductions assumed in 1998 FIP	Reductions from rules	Net loss in emission reductions
Architectural Coatings (most limits effective 9/11/99).	Delay in effective date to 9/11/99	0.6	0	−0.6
Automobile Refinish Coatings (most limits effective 1/11/99).	Reduction in effectiveness from 37% to 33%	1.4	1.2	−0.2
Consumer Products (most limits effective 12/10/98).	Delay in effective date for pesticides until 12/10/99.	2.5	2	−0.5
Total		4.5	3.2	−1.3

What Effect Do These Changes in Emission Reductions Have on the 15 Percent ROP Demonstration in the 1998 FIP?

Because the federal measures are slightly less effective than we originally assumed, total emissions in the Phoenix area will be 1.3 mtpd higher than we expected in the 1998 FIP. We originally projected that the Phoenix area would meet the 15 percent ROP target emissions level on April 1, 1999 with 0.3 mtpd to spare. Increasing total emissions in the area by 1.3 mtpd will mean that instead of demonstrating the 15 percent ROP on April 1, 1999 with a small cushion of excess emission reductions, the area will be 1.0 mtpd short of its 15 percent ROP target level on that date.

How Is EPA Proposing To Revise the 1998 FIP To Account for the Changes to the National Rules?

We are proposing to revise the control strategy in the 1998 FIP to assure that the 15 percent ROP continues to be demonstrated as soon as practicable in the Phoenix area. We are proposing to revise the control strategy by deleting the National Architectural Coatings Rule and adding, in its place, Arizona's Clean Burning Gasoline (CBG) program.

We are proposing to delete the National Architectural Coatings Rule because emissions from this rule will no longer be relied on in the Phoenix 15 percent ROP demonstration. Emissions reductions from this rule will not occur until September 11, 1999, well after the date the 15 percent ROP will be met in the Phoenix area. We are proposing to add Arizona's CBG rule to the control strategy to make up the emission reductions lost or delayed from the national rules.

Table 2 lists the measures in the proposed revised control strategy.

TABLE 2.—PROPOSED REVISED CONTROL STRATEGY FOR THE 1998 15 PERCENT PLAN ROP FIP FOR THE METROPOLITAN PHOENIX OZONE NONATTAINMENT AREA

Category	Approval status	Adjusted 1996 reduction (mtVOC/d)
Arizona Vehicle Emissions Inspection Program	Approved 60 FR 22518 (May 8, 1995)	3.3
Arizona Summertime Gasoline Volatility Limitation (7.00 psi RVP) (on-road and nonroad).	Approved 62 FR 31734 (June 11, 1997)	13
Federal RFG—Phase I (on-road and nonroad)	Approved June 3, 1997 (62 FR 30260)	6
National Phase I Non-Road Engines Standards	Promulgated July 3, 1995 (60 FR 34582)	9.1
MCESD Rules 331, 336, 337, 342, 346, and 351	Approval signed 1/20/97	11.3
Stage II vapor recovery	Approved 11/1/94 (59 FR 54521)	9.8
MCESD Rule 335 Architectural coatings	Approved 1/6/92 (57 FR 354)	2.9
Autobody refinishing (national rule)	Promulgated September 11, 1998 (63 FR 48806).	1.2
Consumer products (national rule)	Promulgated September 11, 1998 (63 FR 48819).	2
Additional Increment for CBG (partial credit)	Approved 2/10/98 (63 FR 6653)	2

On February 10, 1998, EPA approved into the Arizona state implementation plan, the State's Cleaner Burning Gasoline (CBG) program for the Phoenix nonattainment area. 63 FR 6653. The CBG program requires gasoline to be reformulated to reduce emissions of VOCs from automobiles. The program is being implemented in two stages. From June to September of 1998, gasoline sold in the Phoenix area had to meet standards similar to the federal phase I reformulated gasoline (RFG) program or California's Phase II RFG program. California Phase II RFG is generally considered to reduce emissions more in the Phoenix area than federal RFG. Starting May 1, 1999, gasoline sold in the Phoenix area has to meet standards similar to EPA's *Phase II* RFG program or California's Phase II RFG program.

The switch from a fuel similar to federal phase I RFG to a fuel similar to federal phase II RFG will result in additional emissions reductions of 2.0 mtpd from Phoenix on-road motor vehicles as of May 1, 1999. Please see, section III.A. and Appendix A of the draft TSD for this proposal (Reference 5) for the complete documentation of this emissions reduction.

How Does This Proposed Revision Affect When the 15 Percent ROP Will Be Demonstrated in the Phoenix Area?

We concluded in the 1998 FIP that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement as soon as practicable (ASAP) and that there were no other measures for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP was demonstrated. We estimated the "as soon as practicable" demonstration date to be April 1, 1999. See page 3689 of the proposal for the 1998 FIP (Reference 4).

The second stage of the Arizona CBG program will not produce the additional 2.0 mtpd reduction until it begins on May 1, 1999. The 15 percent ROP target level on May 1, 1999 is 231.2 mtpd. Total Phoenix-area VOC emissions on May 1, 1999 before reductions from the CBG program are factored in will be 232.0 mtpd, 0.8 mtpd above the target level. When the 2-ton reduction from the CBG program is factored in, total emissions in the Phoenix area will be 230.0 mtpd, well below the 231.2 mtpd target level. See section III.A. in the draft TSD for this proposal (Reference 5). Therefore, our proposal to revise the 1998 FIP to replace the lost reductions from the federal rules with reductions from the CBG rule will cause the date on which the 15 percent ROP is demonstrated in the Phoenix area to move from April 1, 1999 to the CBG stage II start date of May 1, 1999.

Will the 15 Percent ROP Goal Still Be Achieved as Soon as Practicable?

Because the demonstration date is later, we must re-evaluate the basic conclusion in the 1998 FIP that sufficient creditable measures are in place in the Phoenix area to assure that the 15 percent ROP goal will be met as soon as practicable.

The revised demonstration date is less than 2 months away. This time period is so short that we can not complete this rulemaking prior to May 1, 1999 and still provide an adequate period for the public to comment and then for sources

to comply with any new rules. We are, therefore, proposing to conclude that the Phoenix metropolitan area has in place sufficient measures to meet the 15 percent rate of progress requirement as soon as practicable and that there were no other measures available for the Phoenix area that could meaningfully advance the date by which the 15 percent ROP is demonstrated.

IV. CAA Section 172(C)(9) Contingency Measures

What Are the Clean Air Act's Requirements for Contingency Measures?

Section 172(c)(9) of the Clean Air Act requires that states submit contingency measures for their ozone nonattainment areas that will be implemented if their nonattainment plans fail to meet a ROP goal or to attain the national ozone standard by the required attainment date. The Act also requires that a state be able to implement its selected contingency measures without taking any further actions. We have discussed the Act's requirements for the section 172(c)(9) contingency measures and their role in nonattainment plans in more detail in section IV of the draft TSD for this proposal (Reference 5).

Other sections of the Act require contingency measures for other specific potential failures such as a failure of a serious or above ozone nonattainment area to meet a ROP goal (see section 182(c)(9)). We are not concerned here with these other requirements because they did not apply to the Phoenix area at the time its 15 percent ROP plan was due.

What Is EPA's Guidance for the Section 172(c)(9) Contingency Measures in Ozone Nonattainment Areas?

The Clean Air Act does not say how many contingency measures are required, what emission reductions they must achieve, or when a state must submit them. To fill this gap in the Act, we addressed these issues in our guidance documents.

For ozone nonattainment areas, we established guidelines that contingency measures should presumptively provide a VOC emission reduction of 3 percent of 1990 levels. We reason that the contingency measures should ensure an appropriate rate of progress in reducing emissions while a state revised its nonattainment plan following a failure to meet a ROP goal or to attain. We consider 3 percent an appropriate reduction because it is the annual rate of progress required by the Act after 1996. See pages 13510–13511 of our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (the General Preamble) (Reference 6).

We also set the submittal date for the contingency measures as not later than November 15, 1993. We used our general authority in CAA section 172(b) to set this date. Section 172(b) allows us to establish submittal dates where the Act does not provide a specific date; however, the section limits how long we can give a state to submit a required element of a nonattainment plan. This limit in section 172(b) meant that we could have set a date earlier than, but not any later than November 15, 1993 for submittal of the section 172(c)(9) contingency measures. We decided that November 15, 1993 was the appropriate submittal date for the section 172(c)(9) contingency measures "since States must demonstrate attainment of the 15 percent milestone at this time." See page 13511 of the General Preamble (Reference 6).

Are the 172(c)(9) Contingency Measures a Required Part of 15 Percent ROP Plans?

The commenter on the 1998 FIP proposal read the Clean Air Act and EPA guidance to require contingency measures as a necessary part of a complete 15 percent ROP plan submittal. The commenter also stated his position that we could not act on a 15 percent ROP plan without concurrently acting on contingency measures. The commenter provided no discussion or references in support of his position. See comment letter from the Arizona Center for Law in the Public Interest (ACLPI) (Reference 7).

The *Aspegren* petitioners, in seeking review of our 1998 FIP, also relied on this reading to request the court to order us to include contingency measures in the 1998 15 percent ROP FIP. The petitioners, however, provided an extended argument for their position. The commenter's and petitioners' reading of the Act and our guidance is incorrect.

The Clean Air Act requires states to submit *nonattainment plans* that consist of numerous individual items that work together to provide progress toward and attainment of an air quality standard in a nonattainment area. While the various plan items may (and occasionally need to) refer to and/or depend on each other, each has its own unique Clean Air Act mandate and approval criteria and, therefore, each is a separate and distinct element of a nonattainment plan.

One of these individual plan items is contingency measures; another is a 15 percent ROP demonstration. The Act does not require that each individual element of a nonattainment plan, such as the 15 percent ROP demonstration, contain contingency measures. The Act's structure also allows us to approve or disapprove contingency measures independently from our actions on the 15 percent ROP plan.

Our guidance also does not treat the section 172(c)(9) contingency measures as a necessary part of a complete and approvable 15 percent ROP plan. As we discussed above, we could have set a due date for the contingency measures that was earlier than the one set in the CAA for the 15 percent ROP plans. The fact that we elected to require contingency measures to be submitted on the same date the CAA required submittal of the 15 percent ROP plans does not mean that one of these items is a subpart of the other.

The *Aspegren* petitioners point to two EPA guidance documents to support their reading. The first of these guidance documents is the General Preamble (Reference 6) which gives our preliminary interpretation of the Clean Air Act's requirements for nonattainment areas. The second is *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans* (Reference 8) which provides detailed technical guidance on preparing 15 percent ROP demonstrations and certain other Clean Air Act requirements.

The petitioners list a total of four statements in these two guidance document which they interpret to require contingency measures in 15 percent ROP plans. Two of these statements simply give our rationale for selecting the November 15, 1993 submittal date for the contingency measures. We discussed this rationale above.

The other two statements use the term "15 percent rate-of-progress plans" as a compact reference to all the multiple submittals due at the same time as the 15 percent ROP plans. Along with the 15 percent ROP plan submittal and the section 172(c)(9) contingency measures submittal, states were also required to submit their attainment demonstrations for moderate ozone areas, and the section 182(c)(9) contingency measures for serious and above ozone nonattainment areas on November 15, 1993.

EPA has issued numerous guidance documents in addition to the ones cited by the petitioners that address the 15 percent ROP plans and the other submittals that were also due November 15, 1993. None of these documents states or even implies that the contingency measures are part of 15 percent ROP plans. Please see the draft

TSD for this action (Reference 5) for a complete discussion of the statements cited by the *Aspegren* petitioners, our other guidance documents, and other documents cited by the petitioners. See also section IV of the draft TSD for this proposal (Reference 5).

While the petitioners may dispute this interpretation of our guidance documents, we believe as the Agency that wrote the documents, we are best able to interpret them. See, e.g., *Arkansas* v. *Oklahoma*, 503 U.S. 91, 110, 112 (1992) and *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512 (1994). We have consistently treated the section 172(c)(9) contingency measures as separate from the 15 percent ROP plan not only in our numerous guidance documents but also in our application of this guidance to rulemakings approving individual 15 percent plans across the country. In these rulemakings, we have consistently evaluated the approvability of the 15 percent plans without regard to the presence, absence, or approvability of contingency measures. Some of these rulemakings are listed in Appendix B to the draft TSD for this proposal (Reference 5).

V. Proposed Transportation Conformity Budget

What Are Transportation Conformity and a Transportation Conformity Budget?

Section 176(c) of the Clean Air Act requires that federally funded or approved transportation actions in nonattainment areas "conform" to, that is support, the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in the area's air quality plans and are known as the "transportation conformity budget."

What Transportation Conformity Budget Is EPA Proposing?

We are proposing to establish a transportation conformity budget of 87.1 metric tons of VOC per average summer day. This proposed budget has been calculated as described in section V of the draft TSD for this proposal (Reference 5). It reflects all on-road mobile source control measures that will be in place by May 1, 1999: the implementation of Arizona's enhanced vehicle inspection program, the State's limitation on the volatility of gasoline sold in the Phoenix area, and Phase II of the State's Cleaner Burning Gasoline program.

This proposed budget will replace the 76.7 metric tons of VOC per average summer day budget set in the 1998 FIP. See page 28903 of the 1998 FIP (Reference 1).

Why Is the Proposed Budget Higher Than the Budget in the 1998 FIP?

We erred in calculating the budget in the 1998 FIP. We are proposing to correct that error here and to include the reductions from the State CBG program in the budget.

We calculated total on-road motor vehicle emissions in the 1998 FIP by multiplying the vehicle miles traveled in the Phoenix area in 1996 by motor vehicle emission factors for 1999. This calculation followed our policies for demonstrating the 15 percent ROP after 1996 which require that the ROP demonstration be based on 1996 activity levels and the controls in the 15 percent ROP plan even if emission reductions from those controls did not happen until after 1996. We then used the resulting on-road motor vehicle emissions total as the emissions budget for transportation conformity.

This budget number, however, is the product of 1996 travel levels and 1999 control levels. The combination of travel levels from one year and control levels from another year does not happen in reality and therefore does not create real a emissions level against which the conformity of a transportation plan can be judged. To create a real emissions level for conformity that reflects the controls in the 15 percent ROP plan, the budget should be a product of travel and control levels for the same year. Because the Act requires the 15 percent ROP plan to address growth only through 1996, the appropriate year for calculating the conformity budget in 15 percent ROP plans is 1996. The proposed conformity budget is, therefore, a product of 1996 travel and 1996 control levels. These 1996 control levels however, account for all the on-road motor vehicle controls in the proposed revisions to the 15 percent ROP FIP. Please see section V of the draft TSD for this proposal (Reference 5) for the fuller discussion of the error and the correction.

Consultation Process

Our transportation conformity rules require that we consult with appropriate local, State and federal transportation agencies as well as local and state air pollution control agencies before setting a final transportation conformity budget. Therefore, between this proposal and our final action, we will be consulting with these agencies on this proposed transportation conformity budget and the methods and assumption we used to calculate it.

VI. Conclusion

Under our authority in CAA section 110(c) and for the reasons discussed above, EPA is proposing to determine that the Phoenix metropolitan area has in place sufficient control measures to meet the 15 percent rate of progress requirement in CAA section 182(b)(1)(A) as soon as practicable. This proposed determination is based on our analysis of the effect of the final federal measures (which were originally relied on in proposed form) on the 1998 15 percent ROP FIP and the proposed addition of Arizona's Cleaner Burning Gasoline Program and proposed deletion of the National Architectural Coatings Rule from the control strategy for the 15 percent ROP demonstration. It is also based on our reanalysis of the "as soon as practicable" demonstration in that previous FIP.

EPA is also proposing to revise the transportation conformity budget to 87.1 metric tons of VOC per average summer day.

VII. Administrative Requirements

A. Executive Order 12866

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

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order

12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure of $100 million or more in any one year by state, local, and tribal governments, in aggregate, or by the private sector. Section 203 requires EPA to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This proposed rule does not include a Federal mandate and will not result in any expenditures by State, local, and tribal governments or the private sector. Therefore, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because it imply proposes a revision to a demonstration based on previously established requirements and contains no additional requirements applicable to small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

E. Applicability of Executive Order 13045: Children's Health Protection

This rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This proposal will not create a mandate on State, local or tribal governments. The rule will not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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

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

This proposal will neither create a mandate nor impose any enforceable duties on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. The National Technology Transfer and Advancement Act

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

This proposed rule does not include technical standards for exposure limits; therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: March 19, 1999.

Carol M. Browner,

Administrator.

References

1. 63 FR 28898–28904 (May 27, 1998); *Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory*; Final rule.

2. Air Division, U.S. EPA, Region 9, "Final TSD for the Notice of Final Rulemaking on

the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Area," May 18, 1998.

3. Brief for the Petitioners, *Carolyn Aspegren and David Matusow* vs. *Carol Browner, Administrator, and U.S. EPA* (No. 98–70824), October 13, 1998.

4. 63 FR 3687–3693 (January 26, 1998); *Approval and Promulgation of Implementation Plans; Phoenix Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory;* Proposed rule.

5. Air Division, U.S. EPA, Region 9, "Draft Addendum to the Technical Support Document for the Notice of Final Rulemaking on the Clean Air Act Section 182(b)(1) 15 Percent Rate of Progress Requirement for the Phoenix Metropolitan Ozone Nonattainment Area," March 18, 1999.

6. 57 FR 13498 (April 16, 1992). *State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.* General Preamble for future proposed rulemakings.

7. Letter, David S. Baron, Assistant Director, ACLPI, to Frances Wicher, EPA Region 9, February 24, 1998.

8. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate of Progress Plans,* Office of Air Quality Planning and Standards, U.S. EPA. EPA–452/R–93–002, March 1993.

[FR Doc. 99–7336 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT10–1–6700b; UT–001–0014b; UT–001–0015b; FRL–6314–9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Forward and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning; and Forward and Definitions, Addition of Definition for PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah on July 11, 1994, for the purpose of establishing a modification to the definition for "Sole Source of Heat" in UACR R307–1–1, as well as to make a nonsubstantive change to UACR R307–1–4, Emissions Standards. On February 6, 1996, a SIP revision to UACR R307–1–2 was submitted by the Governor of Utah which contains changes to Utah's open burning requirements to require that the local county fire marshal has to establish 30-day open burning windows in order for open burning to occur. Other minor changes are made in this revision to UACR R307–1–2.4, "General Burning" and R307–1–2.5, "Confidentiality of Information." In addition, on July 9, 1998, SIP revisions were submitted that would add a definition for "PM_{10} Nonattainment Area" to UACR R307–1–1. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as a noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received in writing on or before April 26, 1999.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah, 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: March 11, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–7425 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–207–0074b; FRL–6306–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action is an administrative change which revises various definitions in Santa Barbara Air Pollution Control District (SBCAPCD) Rule 102, Definitions and South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms.

The intended effect of proposing approval of this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. EPA is proposing approval of this revision to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 26, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules are available for public inspection at EPA's Region 9

office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

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

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

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189

SUPPLEMENTARY INFORMATION: This document concerns Santa Barbara County Air Pollution Control District Rule 102, Definitions, and South Coast Air Quality Management District Rule 102, Definition of Terms. These rules were submitted to EPA on March 10, 1998 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

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

Date Signed: February 23, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–7423 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1002–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and location for the second meeting and the dates for the third and fourth meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. These meetings are open to the public.

The purpose of this committee is to develop a proposed rule that establishes a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act (BBA) of 1997.

DATES: The second meeting is scheduled for April 12 and 13, 1999 from 9:00 a.m. until 5 p.m. and April 14, 1999 from 8:30 a.m. until 4 p.m. E.S.T.

Two further meetings are scheduled for May 24 and 25, 1999 and June 28 and 29, 1999.

ADDRESSES: The 3-day April meeting will be held at Doyle's Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. 20036; (202) 483–6000.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these meetings should be addressed to Bob Niemann (410) 786–4569 or Margot Blige (410) 786–4642 for general issues related to ambulance services or to Lynn Sylvester (202) 606–9140 or Elayne Tempel (207) 780–3408, facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the Balanced Budget Act (BBA), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to the Secretary with respect to the text and content of a proposed rule that establishes a fee schedule for the payment of ambulance services under Part B of the Medicare program.

The Committee held its first meeting on February 22, 23, and 24, 1999. At this meeting, the Committee discussed in detail how the negotiations will proceed, the schedule for subsequent meetings, and how the Committee will function. The Committee agreed to ground rules for Committee operations, determined how best to address the principal issues, and began to address those issues.

During the April meeting the committee will finalize descriptions of the issues to be negotiated, committee members will present a description of their interests, and a representative from HCFA's Actuarial and Health Cost Analysis Group will describe the methodology for determining the amount that would have been paid for ambulance services had the fee schedule not been implemented.

The announced future meetings are open to the public without advanced registration. Interested parties can file statements with the committee. Location of future meetings will be published in the **Federal Register** at a later date.

Public attendance at the meetings may be limited to space available. A summary of all proceedings will be available for public inspection in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), or can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Section 1834(l)(1) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 19, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–7366 Filed 3–25–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3110, 3120, 3130, 3140, 3150, 3160, 3170, and 3180

[WO–310–1310–00–2I–IP]

RIN 1004–AC94

Onshore Oil and Gas Leasing and Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period and notice of public hearings.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period on a Notice of Proposed Rule, published in the **Federal Register** on December 3, 1998 (63 FR 66840). The proposed rule would revise BLM's oil and gas leasing and operations regulations. The rule uses performance standards in certain instances in lieu of the current prescriptive requirements. It would also cite industry standards and incorporate them by reference rather than repeat those standards in the rule itself. Also, BLM's onshore orders and national notices to lessees would be incorporated into the regulations to eliminate overlap with existing regulations. The rule would increase certain minimum bond amounts and would revise and replace BLM's current unitization regulations with a more flexible unit agreement process. Finally, the proposed rule would eliminate redundancies, clarify procedures and regulatory requirements, and streamline processes. In response to public requests for additional time, BLM extends the comment period 60 days from the original comment period closing date of April 5, 1999, to the extended comment period's closing date of June 4, 1999. BLM will also hold public hearings on the proposal.

DATES:

Comments. Send your comments to BLM on or before June 4, 1999. BLM will consider comments received or postmarked on or before this date in preparing the final rule.

Public hearings. BLM will hold public hearings on this proposed rule. The dates and times of the hearings are in the **SUPPLEMENTARY INFORMATION** section under "Public hearings."

ADDRESSES: Please send your comments to the Bureau of Land Management Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240, or hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington D.C. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address."

Public hearings. The locations of the public hearings that BLM is holding on this proposed rule are in the **SUPPLEMENTARY INFORMATION** section under "Public hearings."

FOR FURTHER INFORMATION CONTACT: John Duletsky of BLM's Fluid Minerals Group at (202) 452–0337 or Ian J. Senio of BLM's Regulatory Affairs Group at (202) 452–5049. If you require a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic access and filing address

You can view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You can also comment via the Internet at: WOComment@wo.blm.gov. Please include "Attention: AC94" and your name and return address in your Internet message. If you do not receive a confirmation from our system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule should:

(A) Be specific;

(B) Be confined to issues pertinent to the proposed rule;

(C) Explain the reason for any recommended change; and

(D) Reference the specific section or paragraph of the proposal you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

You can review comments, including names, street addresses, and other contact information of respondents at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. BLM will also post all comments on its Internet home page (www.blm.gov) at the end of the comment period. If you are an individual respondent you may request confidentiality. If you request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Public Hearings

The hearings will take the form of a question and answer workshop. BLM will hold the public hearings at the following locations on the dates and local times specified.

Location	Date and time	BLM contact
California Hearing, Doubletree Hotel, Buena Vista Room, 3100 Camino Del Rio Court, (at the intersection of U.S. Highway 99 and State Highway 58 in Bakersfield), Bakersfield, California.	April 7, 1999, 1:00 p.m	Leroy Mohorich (916) 978–4363.
Montana Hearing, Bureau of Land Management, Montana State Office, Sixth Floor Conference Room, 222 North 32nd Street, Billings, Montana.	April 7, 1999, 8:00 a.m.	Jim Albano (406) 255–2849.
Texas Hearing, Midland Center, Room 5, 105 North Main, Midland, Texas.	April 14, 1999 2:00 p.m	Rick Wymer (505) 438–7411.
Colorado Hearing, Bureau of Land Management, Colorado State Office, Fourth Floor Conference Room, 2850 Youngfield Street, Lakewood, Colorado.	April 14, 1999 1:00 p.m	Sherri Thompson (303) 239–3758.
Utah Hearing, Western Park Center, 300 East, 200 South, Vernal, Utah.	April 14, 1999 1:00 p.m	Howard Cleavinger (435) 781–4480.
Washington, D.C. Hearing, Washington Plaza Hotel, State Suites, 10 Thomas Circle, NW (14th and Massachusetts Avenue) Washington, D.C..	April 20, 1999 1:00 p.m	Kermit Witherbee (202) 452–0335.
Wyoming Hearing, The Wyoming Oil and Gas, Conservation Commission Building, 777 West 1st Street, Casper, Wyoming.	April 20, 1999 1:00 p.m	Michael Madrid (307) 775–6201.
New Mexico Hearing, Civic Center, Exhibit Hall 3, 200 West Arrington, Farmington, New Mexico.	April 21, 1999 2:00 p.m	Rick Wymer (505) 438–7411.

Location	Date and time	BLM contact
Eastern States Hearing, Holiday Inn, Downtown/Riverfront Pavilion I, 102 Lake Street (exit Spring Street at I–20), Shreveport, Louisiana.	May 12, 1999 1:00 p.m	Dave Stewart (703) 440–1728.

The meeting sites are accessible to individuals with disabilities. If you have a disability and will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, you must notify one of the persons listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: March 22, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 99–7440 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

RIN 0991–AB00

Revision of the Department of Health and Human Services Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed revisions to the Department's Freedom of Information regulations. The regulations have been streamlined and condensed, in accord with principles of the National Performance Review, and incorporated more "user-friendly" language wherever possible. These proposed revisions also contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996.

DATES: Submit comments on this proposed regulation on or before May 26, 1999.

ADDRESSES: Address all comments concerning this proposed rule to Rosario Cirrincione, Freedom of Information and Privacy Acts Division, Office of the Assistant Secretary for Public Affairs, U.S. Department Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201–0004.

FOR FURTHER INFORMATION CONTACT: Rosario Cirrincione (202) 690–7453.

SUPPLEMENTARY INFORMATION: These comprehensive revisions of 45 CFR part 5 incorporate changes to the language and structure of the regulations and add new provisions to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231). The Department's current Freedom of Information Act regulations are no longer in compliance with the law in that they do not reflect the provisions of the 1996 Amendments. This revised regulation is intended to bring the Department into compliance and to inform the public as to how we will implement the law in the light of the Amendments.

New Provisions

A. The following new definitions are added to the regulation:

1. *Electronic mail* or *e-mail* means a communication of information electronically from one personal computer user to another.

2. *Expedited processing* means placing a request in a special queue for processing ahead of requests which had been received earlier. Within any special queue as well as within any regular queues we may also maintain, requests will continue to be processed on a "first in, first out" basis.

3. *Form* means the medium in which the record is physically incorporated (e.g., paper, floppy disk, CD–ROM, etc.).

4. *Format* means a particular manner of storing or presenting the information within a given medium, such as a particular computer software used to generate or reproduce the record.

5. *Reproduction* means duplicating an existing record for release, in whole or in part, to a requester under the Freedom of Information Act. As appropriate to the medium of release, records may be photocopied, microfilmed, or electronically copied onto tape or disc.

B. Response Times. The proposed regulation reflects the expanded time frame, from 10 working days to 20 working days, permitted for routine responses.

C. Expedited Processing. Expedited processing is provided in cases where the requester demonstrates that failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, when the requester is a person primarily engaged in disseminating information, a showing is made that there exists an urgency to inform the public concerning an actual or alleged Federal Government activity. Other requests for expedited processing will be considered on a case by case basis. The decision to grant expedited processing rests with the FOI Officer, but may be appealed.

D. What Is Not A FOIA Request. The proposed regulation attempts to correct a common misunderstanding by clarifying that the Freedom of Information Act is not the proper mechanism to seek answers to specific questions of program policy, appeal adjudication of program or administrative decisions, or to provide input into HHS program decision making.

E. Electronic Records. The proposed regulation emphasizes that electronic records, including e-mail, are also subject to the Act, and that every reasonable effort will be made to provide records in the form and format requested.

F. Listing of FOIA Exemptions. Because they are a matter of law, not regulation, and are readily available elsewhere, the proposed regulation does not repeat the listing of FOIA exemptions contained in the previous regulation.

Similar revisions to the Freedom of Information Act Regulations of Executive Branch Agencies are occurring throughout the Government. Public hearings are not planned but public comment on the proposed rule is invited. Instructions as to where to mail public comments are included, above.

We have examined the impacts of this proposal under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 to 612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the

Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1532) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

HHS has reviewed this rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. With respect to the Regulatory Flexibility Act, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, HHS is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

List of subjects in 45 CFR Part 5

Administrative practices and procedure, Freedom of information.

Dated: December 10, 1998.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, the Secretary proposes to revise 45 CFR part 5 to read as follows:

PART 5—FREEDOM OF INFORMATION REGULATIONS

Subpart A—Basic Policy

Sec.

Subpart B—Obtaining a Record

Subpart C—Release and Denial of Records

Subpart D—Fees

Subpart E—Records Available for Public Inspection

Subpart F—Predisclosure Notification for Certain Kinds of Commercial/Financial Records

Authority: 5 U.S.C. 552, 18 U.S.C. 1905, 31 U.S.C. 9701, 42 U.S.C. 1306(c), E.O. 12600.

Subpart A—Basic Policy

§5.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make FOIA requests; who can release records and who can decide not to release them; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and to then go to court if we still refuse to release records.

§5.2 Policy.

As a general policy, HHS follows a balanced approach in administering the FOIA. We recognize the right of the public to access records in the possession of the Department but also realize that some materials are nonetheless protected by the statute. In addition, we recognize the legitimate interests of persons or organizations who have submitted material to the Department or who would otherwise be affected by the release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, which we are prohibited by law from releasing. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality recognized in the Freedom of Information Act. In particular, the Department encourages a "pro-active" approach to making information available through press releases, public information programs, and to the greatest degree possible, electronically, through the large number of web sites sponsored and maintained by HHS components.

§5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you will be able to get copies from our Freedom of Information Officers.

§5.4 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and this rule apply to all HHS records, including those covered by the Privacy Act. The Privacy Act, 5 U.S.C. 552a, applies only to records that are about individuals but only if those records are in a system of records. "Individuals" and "system of records" are defined in the Privacy Act and in our Privacy Act regulation, part 5b of this title.

(b) *Requesting your own records.* If you are an individual and request records, then to the degree that you are requesting your own records in a Privacy Act system of records, we will handle your request under the Privacy Act and part 5b of this title. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provisions, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and this rule. *Routine use* is defined in the Privacy Act and in part 5b of this title.) If we handle your request under the FOIA and this rule and the FOIA does not require releasing the records to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 5.5 Definitions.

As used in this part,

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession of HHS or its agents, such as Medicare health insurance carriers and intermediaries.

Commercial use means, when referring to a request, that the request is from or on the behalf of someone who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (e.g., individual, non-profit corporation, for profit corporation) or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's new dissemination function is not considered a commercial use.

Department or *HHS* means the U.S. Department of Health and Human Services. It includes Medicare health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microfilm, audio visual materials, and magnetic tape, cards, and discs.

Educational institution means a preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocation education, which operates a program of scholarly research.

Electronic mail or *e-mail* means a communication of information electronically from one personal computer user to another.

Expedited Processing means placing a request in a special queue for processing ahead of other requests which had been received earlier. Within any special queue as well as within any regular queues we may also maintain, requests will continue to be processed on a "first in/first out basis," except for requests expedited on the basis of an imminent threat to the life or safety of a specific person, which will always be placed at the head of the queue.

Form means the medium in which the record is physically maintained (e.g., paper, floppy diskette, CD–ROM, etc.)

Format means a particular manner of storing or presenting the information within a given medium, such as a particular computer software used to generate or reproduce the record.

Freedom of Information or *FOIA* means section 552 of Title 5, United States Code.

Freedom of Information Officer means any HHS official who has been delegated the authority to release or withhold records, and assess, waive, or reduce fees in response to FOIA requests.

Multitrack Processing means a system of separate processing queues into which requests are placed based on their complexity and scope. HHS components may establish such processing systems if, in their judgement, such an arrangement will enable them to provide better service to requesters.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for the purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Records means any handwritten, typed, printed or electronic documents (such as memoranda, letters, studies, tables, charts, drafts, transcripts, and minutes) and documentary material in other forms (such as magnetic tapes, cards or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, office equipment, duplicating machines, computers or audiovisual processing materials. In particular, it does not include such objects or articles even to the extent that there is information inscribed or imprinted on them, or electronic instructions embedded in them. Nor does it include books, magazines, brochures, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of newspapers or periodicals who distribute or make their products available for purchase or subscription by the general public, and those who may disseminate information to the general public, by subscription, through electronic means. We will treat freelance journalists as representatives of a news media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and a requester's past publication record may provide such a basis.

Reproduction means duplicating an existing record for release, in whole or in part, to a requester under the Freedom of Information Act. As appropriate to the medium of release, records may be photocopied, microfilmed, or electronically copied onto tape or disc.

Request means asking for records, whether or not you specifically refer to the Freedom of Information Act. Requests from other Executive Branch agencies and Federal court orders for documents are not included within this definition. Judicial subpoenas from other than Federal courts are requests to the extent provided by part 2 of this title.

Review means, when used in connection with processing records for a commercial use request, examining records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial response stage, nor does it include the process of researching or resolving general legal or policy issues regarding exemptions.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, manually searching hard copy paper files, electronically searching automated files and data bases, and page-by-page and line-by-line examination to identify responsive portions of a document. It does not include, however, line-by-line examination where merely duplicating an entire page would be a less expensive

and quicker way to comply with a request.

Subpart B—Obtaining a Record

§ 5.21 How to request records.

(a) *General.* Our policy is to answer all requests as accurately and completely as possible from existing records. In order to accomplish this most efficiently and with a minimum of misunderstanding, we require all requests to be submitted in writing, by postal service, facsimile or messenger. All requests, no matter how submitted, must be signed by the person making the request and contain the postal address of the requester and the name of the person responsible for the payment of any fees that may be charged. A phone number where we can reach the requester to get clarification of the request or resolve other issues concerning the request, is strongly recommended. Providing the request in writing assures that all the rights provided by the FOIA and these regulations are protected (for example, the right to administratively appeal any denials we may make and the right to have our decisions reviewed in Federal court).

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Information Officer of the HHS component that is most likely to have the records you want. (See § 5.31 of this part for a list of HHS Freedom of Information Officers.) If you cannot determine who is most likely to have the records you seek, send the request to: HHS Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and on the letter.

(c) *Details in the letter.* You should provide all the details you can that will help us identify and locate the records you want. A request submitted without details, such as one for "all records you have on (a particular subject)," is likely to require a great deal of search time and be very expensive, even if we find few or no records. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

§ 5.22 Expedited processing.

You may ask that your request be handled in an expedited fashion.

(a) *Reasons for expedited processing.* We will expedite the processing of your request if you demonstrate:

(1) That failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of a specific individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, that there exists an urgency to inform the public concerning actual or alleged Federal Government activity. (A routine publication deadline, of itself, shall not constitute urgency.)

(3) We will consider other reasons for expedited processing on a case-by-case basis. (One situation that may warrant expedited processing in some cases occurs where lack of such processing will deprive you of information for which you have a substantial need for purposes of litigation with a governmental agency. If you ask for expedited processing on this basis, you must show that you submitted the request as soon as possible after learning of the need for the records.)

(b) *Process for asking for expedited processing.* You must make your request for expedited processing in writing. You must include a complete explanation of the reasons that you believe justify expediting the processing of your request. You must certify in writing that the explanation is true and correct to the best of your knowledge and belief. Such a certification is required, but it does not, by itself, entitle you to expedited processing. You must address the request for expedited processing to the FOI Officer whose component has the records you want. (See § 5.31 of this part for a list of FOI Officers in HHS.) If the records are in more than one component of HHS, you must address your request for expedited processing to the HHS FOI Officer.

(c) *The decision.* The FOI Officer will decide whether to expedite the processing of your request for records. The decision will be made, and notice of the decision will be sent to you, within ten calendar days after the date of your request for expedited processing. The date of your request will be the date it is received in the FOI office of the component maintaining the records requested.

(d) *Granting the request.* Granting a request for expedited processing does not constitute a promise to meet any particular deadline that you may try to impose on us for responding to your request for records.

(e) *Denying the request.* If we deny your request for expedited processing, we will process your request for records with other non-expedited requests for records, on a first-in/first-out basis. You may appeal a decision to deny expedited processing. The denial letter will explain the appeal process and will identify the official authorized to decide an appeal of the decision. You must address the appeal to the official identified in the denial letter. We will make a decision on your appeal expeditiously and we will notify you promptly of that decision. If we deny your appeal, you may seek judicial review of that decision in the United States District Court in the district where you reside or have your principal place of business, in the district where the records are situated, or in the District of Columbia.

§ 5.23 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and this regulation to the extent that it asks for records that are currently available, either from HHS or another part of the Federal Government, under a statute other than the FOIA that provides for charging fees for those records. For example, we will not handle your request under the FOIA and these regulations to the extent that it asks for records currently available from the Government Printing Office or the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent that it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the National Institutes of Health.

(c) We will not handle your request under the FOIA and this regulation to the extent that it asks for specific answers to questions regarding program policies of any component of HHS, seeks adjudication of decisions made in the administration of any our programs, or attempts to circumvent established procedures providing for input into our decision making processes. There are other mechanisms available to address each of these kinds of concerns.

§ 5.24 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another Federal agency, we may refer the records and your request (or the portion of your request which would be answered by those records) to that agency for response. We may likewise refer your request for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request (or that portion of your request) under that agency's regulations. You will not need

to make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.25 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes, it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. You will find further information about the retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook; Files Maintenance and Records Disposition.

(b) *Furnishing records.* As stated above, the Department is required to furnish copies only of those records we have or can retrieve. We need not ask or compel state governments or other entities to produce records not in our possession in order to respond to a FOIA request. Neither are we required to create records, perform research, or aggregate data from a variety of unrelated sources. We will, however, conduct electronic searches of electronic files and/or data bases when they are likely to contain the requested records, unless such a search would significantly interfere with the operation of the electronic information system. We will provide the records in the form or format you request, if the existing record is readily reproducible in that form or format. Requesters will be required to pay the actual costs of reproducing a record in a form or format in which it is not already maintained by the responding Departmental component, including the cost of programming to produce an electronic record. We will not, however, purchase special equipment or software for the sole purpose of satisfying a requester's desire for a specific form or format, nor will we ship records from one organizational or geographic component to another for the sole purpose of reproducing them in the form or format asked for by the requester. Regardless of the form or format in which the responsive records are provided, we will usually provide only one copy of the record to the requester.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency throughout HHS in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records, or waive or reduce FOIA fees.

(1) HHS Freedom of Information Officer. Only the HHS Freedom of Information Officer may determine whether to release or deny records, or waive or reduce FOIA fees, in any of the following situations:

(i) The records you seek include records addressed to, sent from, or created by an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Administration for Children and Families, including its regional offices, or any organizational unit of HHS not specifically identified below;

(iii) The records you seek include records of more than one of the HHS components listed below and are not limited to the components listed in paragraph (a)(3)(iii), (v)–(vi), (viii)–(xi) of this section.

(2) PHS Freedom of Information Officer. If the records you seek are exclusively records of the Office of Public Health and Science, or of the Parklawn components of the Program Support Center, or if the records involve more than one of the components listed in paragraph (a)(3)(iii), (v)–(vi), (viii)–(xi) of this section, including records in the regional offices, only the PHS Freedom of Information Officer may determine whether to release or deny those records, or waive or reduce associated FOIA fees.

(3) Except as indicated above, each of the Operating Divisions of the Department has its own Freedom of Information Officer to process requests for records which are exclusively records of that Operating Division. Because organizational titles vary from component to component and may change as the result of organizational realignments, we will not use the specific organizational titles of officials who serve as the Operating Divisions' Freedom of Information Officers. Regardless of titles, Freedom of Information Officers are so designated by the Heads of their respective Operating Divisions and are frequently, but not necessarily, the primary Public Affairs officials or Chief Information Officers of those Operating Divisions. These officials may, with the concurrence of the Assistant Secretary for Public Affairs, delegate their authority to release or deny records, or reduce or deny FOIA fees. The persons to whom these authorities are delegated are also known as Freedom of Information Officers. The addresses and telephone numbers of Departmental Freedom of Information Officers are listed below.

(i) HHS Freedom of Information Officer, Room 645–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 690–7453.

(ii) PHS Freedom of Information Officer, Room 13–C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–5252.

(iii) Freedom of Information Officer, Agency for Health Care Policy and Research, Executive Office Center, Suite 501, 2101 East Jefferson Street, Rockville, Maryland 20852. Tel: (301) 594–1364, ext. 1342.

(iv) Freedom of Information Officer, Administration on Aging, Room 4655, 330 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 205–2814.

(v) Freedom of Information Officer, Centers for Disease Control and Prevention, and/or the Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Tel: (770) 639–7270.

(vi) Freedom of Information Officer, Food and Drug Administration, Room 12–A–16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 827–6500.

(vii) Freedom of Information Officer, Health Care Financing Administration, Room N2–20–16, North Building, 7500 Security Boulevard, Baltimore, Maryland 21244. Tel: (410) 786–5353.

(viii) Freedom of Information Officer, Health Resources and Services Administration, Room 1134, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–2865.

(ix) Freedom of Information Officer, Indian Health Service, Suite 450, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20857. Tel: (301) 443–1116.

(x) Freedom of Information Officer, National Institutes of Health, Room 2B39, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892. Tel: (301) 496–5633.

(xi) Freedom of Information Officer, Substance Abuse and Mental Health Services Administration, Room 12–C–15, Parklawn Building, 5600 Fishers

Lane, Rockville, Maryland 20857. Tel: (301) 443–8956.

(b) [Reserved]

§ 5.32 Release of Records.

(a) *Records previously released.* If we have released a record, or part of a record, to others in the past, we will ordinarily release it to you also. We will not release it to you, however, if a statute forbids this disclosure to you, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations. For example, a record about himself/herself, released to a requester, may contain personal information which would be removed if that record had to be released to another party.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) of this section, does not apply to any release of material which was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note the poor quality in our reply.

§ 5.33 Denial of Requests.

(a) *Information found but records denied in whole or in part.* All official denials are in writing and are signed by the person who made the decision to deny all or part of your request. The denial will include the following details, to the extent that we can do so without revealing information that is protected by the FOIA: an estimate of the volume of material that is being denied, a description of the withheld material in general terms, the reasons for the denial (including references to the specific exemption(s) of the FOIA authorizing the withholding or deletion), and an explanation of your right to appeal the decision (including the identity of the official to whom you should address any appeal). If we deny information by deleting it from a record and releasing the remaining portion of the record, we will indicate on the released portion the amount of the deleted material to the extent that we can do so without revealing information that is protected by the FOIA. We will indicate this at the place of the deletion if that is technically feasible.

(b) *Unproductive searches.* We will make a diligent search for records to satisfy your request. Nevertheless, we may not be able to find the records you want using the information you provided, or the records may not exist. If we advise you that we have been unable to find the records you seek despite a diligent search, although we do not consider this to be a denial of your request, we will also advise you of your right to appeal the adequacy of our search.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request, our failure to find records responsive to your request or a denial of your request for expedited processing or a waiver of fees. To do so, you must put your appeal in writing and send it to the appeal official identified in the letter denying the records, or expedited processing, or a waiver of fees, or informing you that we could not find responsive records. You must send your appeal within 30 days from the date you receive that letter or from the date you received any records released as a partial grant of your request.

(b) *Letter of appeal.* The appeal letter should state the reason why you believe that the FOIA exemption(s) we cited does not apply to the records you requested, or give reasons why they should be released regardless of whether the exemption(s) applies. If you are appealing the adequacy of our search, you should explain why you believe the records actually do exist and where you believe they may be found.

(c) *Review process.* Before making a decision on any FOIA appeal, the designated reviewing official will consult with the Office of the General Counsel to ensure that the rights and interests of all parties affected by the appeal decision are protected. The concurrence of the Assistant Secretary for Public Affairs is also required on all appeal decisions. The response to an appeal made by the reviewing official constitutes the Department's final action on the request. If the reviewing official grants your appeal of a denial of records, in whole or in part, we will send the releasable documents to you promptly or else explain the reasons for any delay and inform you of the approximate date you can expect to receive copies of newly released materials. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* The FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet these deadlines, you may proceed as if we had denied your request or appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we may contact you to determine if a more focused request might satisfy your needs. If a narrower scope will not suffice, or still will not permit us to process your request within the basic time limits, we will inform you of the actual time we estimate that it will take to answer your request. Time limits begin when your request is initially received in the office of the FOIA Officer responsible for releasing or denying those records, or of the official responsible for deciding the appeal. FOIA and appeals offices acknowledge receipt of requests and appeals when they are received, so if you have not heard from us within a reasonable time (usually about two weeks), you should call or write to be sure that your request or appeal was not misaddressed or misrouted.

(b) *Time allowed.*

(1)We will decide whether to release the records within twenty (20) working days after your request reaches the appropriate FOIA office, as identified in § 5.31. When we decide to release records, we will provide the records or let you know when you can expect them, or will make arrangements with you to inspect them, as soon as possible after that decision.

(2)We will decide an appeal within twenty (20) working days after the appeal reaches the appropriate appeal official.

(c) *Extension of time limits.* FOIA Officers or review officials may extend the time limits in unusual circumstances. Extensions at the request stage and at the appeal stage may not exceed a total of 10 working days, except as provided by paragraph (d) of this section. We will notify you in writing of any extension. "Unusual circumstances" include situations when we must:

(1) Search for and collect records from field facilities, storage centers, or locations other than the office processing the request;

(2) Search for, collect, or examine a great many records in response to a single request;

(3) Consult with another office or agency that has a substantial interest in the determination of the request;

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

(d) *Extensions longer than 10 days.* If unusual circumstances, as defined in paragraph (c) of this section, exist, and if we do not believe that we can process your request even within the extra ten-day period described in paragraph (c) of this section, we will notify you of that conclusion. We will also give you the

opportunity to narrow the scope of your request so that it can be processed in a shorter time, and/or to agree on a time frame longer than the extra ten working days for our processing of your request.

(e) *Aggregating requests.* If a group of requests by the same requester, or by a group of requesters acting together, involve related matters and appear to actually constitute a single request, we may aggregate them in order to determine whether unusual circumstances, as defined above, exist.

Subpart D—Fees

§ 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. For each of these categories, however, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45, or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of records. Also, HHS will not charge you the copying costs for the first 100 pages of duplication or its equivalent, depending on the medium involved.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) or (b) of this section, HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time, or for the copying costs of the first 100 pages of duplication or its equivalent.

§ 5.42 Fees to be charged—general provisions.

(a) We may charge you search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and the search is done electronically (including doing computer programming), we will charge you search costs only to the extent that they exceed the equivalent of two hours salary for a search of paper records calculated as prescribed in § 5.43.

(c) If we are not charging you for the first 100 pages of duplication, under § 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or if the record is provided in another form, the cost of duplication will be reduced by an amount equivalent to the cost of photocopying 100 standard size pages.

(d) We will not charge you any fee at all if the costs of billing and processing the fee are likely to equal or exceed the amount of the fee. These amounts vary significantly from component to component. For requests processed by the HHS Freedom of Information Office, this amount was $25 as of May 1998.

(e) If we determine that you (acting alone or in concert with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purpose of calculating the fees to be charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of part 30 of this title in assessing interest, administrative costs and penalties, and in taking actions to encourage payment.

§ 5.43 Fee schedule.

HHS charges the following fees:

(a) *Manual searching for or reviewing of records*—When the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November, 1998, these rates were $14, $29, and $52, respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each, multiplied by the amount of time that person was involved in the search.

(b) *Computer searching and printing*—If we need to use a computer for any purpose involving searching for or copying records, or providing them in a different form or format, we will charge the actual cost of operating the computer, and charge for the time spent by the operator and/or programmers at the rate given in paragraph (a) of this section.

(c) *Photocopying standard size pages*—$0.10 per page. FOIA Officers may charge less than $0.10 per page for particular documents where—

(1) The document has already been printed in large numbers;

(2) The program office determines that using existing stock to answer this request, and other anticipated FOIA requests, will not interfere with program requirements; and

(3) The FOIA Officer determines that the lower fee to be charged is adequate to recover the prorated share of the original printing costs.

(d) *Photocopying odd-size documents (such as blueprints), or reproducing other records, (such as duplicating tapes or disks)*—the actual cost of operating the machine, plus the actual cost of materials involved, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) *Certifying that records are true copies.* This service is not required by the FOIA. If we agree to provide it, we will charge $10 per certification.

(f) *Sending records by express mail or other special methods.* This service is not required by the FOIA. If we agree to provide it, we will only send the records by a method which allows the requester to directly pay or be directly charged by the special method carrier.

(g) *Performing any other special service that you request and we agree to*—Actual costs of operating any machinery, plus actual cost of any materials involved, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed that limit, and we will ask you whether you nevertheless want us to proceed with the processing of your request.

(b) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review indicates that we will be charging you fees exceeding $250, we will require you to pay your past due fees, including penalties, and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 of this part (i.e., 20 working days from receipt of initial requests and from receipt of appeals of initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of

fees, or decide that a fee waiver or reduction is appropriate.

(c) *Billing and payment.* Except as indicated in paragraph (b) of this section, we will begin processing your request upon receipt. However, we will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions provided by the person who responds to your request.

§ 5.45 Waiver or reduction of fees.

(a) *Standard.*(1) We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both the following tests:

(i) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) It is not primarily in the commercial interest of the requester.

(2) These two tests are explained in paragraphs (b) and (c) of this section. The burden of proof of meeting these tests rests with the requester.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to the public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors:

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything that is not already public knowledge? Are these or essentially equivalent records already available to the public through some other source or mechanism?

(3) Will disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? This is a critical factor under which we may consider whether the requester is in a position to contribute to public understanding. For example, what is the requester's expertise in the subject area of the request? Is the requester's intended use of the information likely to disseminate the information among the public at large? Does the requester have the ability to affect such dissemination? An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether the commercial interest outweighs the advancement of that specific public interest. In applying this second test, we will consider the following factors:

(1) Would the disclosure further a commercial interest of the requester or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, or profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further the commercial interest of the requester, would that effect outweigh the advancement of the public defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. In some cases, however, we may decide only to reduce the fees. For example, we may do this when some, but not all of the requested records pass the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOIA Officers may make the decision whether to waive or reduce fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our letter for denying your request. The process prescribed in § 5.34 of this part will apply to these appeals.

Subpart E—Records Available for Public Inspection

§ 5.51 Records available.

Records of general interest. We will make available the following records of general interest for your inspection and copying. Before releasing them, however, we may delete the names of individuals or any information that would identify these individuals if release would invade their personal privacy to a clearly unwarranted degree (see § 5.67 of this part). Records of these sorts created on or after November 1, 1996, will be made available through electronic means.

(a) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office of Civil Rights in civil rights complaints.

(b) Statements of policy and interpretations that we have adopted but have not published in the **Federal Register**.

(c) Administrative staff manuals and instructions to staff that affect the public (we will not make available, however, manuals or instructions that reveal unique investigative or audit procedures).

(d) Records that we have already released in response to a FOIA request, and that we believe are being or will be requested frequently by other requesters.

§ 5.52 Indices of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indices of the records described in § 5.51 (a) through (c). We will also publish and distribute copies of the indices unless we announce in the **Federal Register** that it is unnecessary or impractical to do so. For assistance in locating indices maintained by the Department, you may contact the HHS FOIA Officer at the address and phone number shown in § 5.31.

(b) *Major information and records locator systems.* HHS participates in the Government Information Locator Service (GILS) program which makes this information available through a variety of media.

(c) *Electronic listing.* On or, in some cases, before December 31, 1999, a full listing of records made available under § 5.51 of this section will be available electronically.

(d) *Record citation as precedent.* We will not cite any record described in

§ 5.51 (a) through (c) as a precedent for action against a person unless we have published the record or have made it available electronically or by other means, or unless the person has timely notice of the record.

Subpart F—Predisclosure Notification for Certain Kinds of Commercial/ Financial Records

§ 5.61 General.

(a) *Designation of commercial information as confidential.* A person who submits records to the government may designate part or all of the information in such records as information that the person claims is exempt from disclosure under exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(b) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (a) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that the information in the records could reasonably be considered exempt under exemption 4 of the FOIA. Certain exceptions to these procedures are stated in paragraph (c) of this section.

(1) When we receive a request for such records, and we determine that we may be required to release them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it, or by sending the notice to a person or persons who we reasonably expect will give appropriate notification to the submitters or who will act on their behalf.

(2) The submitter will have five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for the objections. At the discretion of the FOIA Officer, extensions of the time within which to respond may be granted, when requested by the submitter. These extensions shall not exceed an additional five working days.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain his/her objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this subsection, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (b)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (b)(3) of this section, we will notify the requester of this fact.

(c) *Exceptions to predisclosure notification.* The notice requirements in paragraph (b) of this section do not apply in the following situations:

(1) We decide not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies certain narrow categories of records that are to be disclosed upon request. However, a submitter may still designate such records as described in paragraph (a) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (b) of this section.

(4) The designation appears to be obviously frivolous. We will still, however, give the submitter the written notice as described in paragraph (b)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (b)(5) of this section.

[FR Doc. 99–7222 Filed 3–25–99; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD–99–5038]

RIN 2133–AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking; Extension of deadline for comments.

SUMMARY: On January 28, 1999, the Maritime Administration (MARAD) Advance Notice of Proposed Rulemaking (ANPRM) soliciting public comment concerning whether MARAD should amend its cargo preference regulations governing the carriage of agricultural exports was published in the **Federal Register** [64 FR 4382].

DATES: The deadline for submitting comments concerning this ANPRM is extended to April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thoms W. Harrelson, Director, Office of Cargo Preference 202–366–5515.

By order of the Maritime Administrator.

Dated: March 19, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–7265 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system

in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment. This proposed rule, if made final, would extend the Act's protection to the Alabama sturgeon.

DATES: Send your comments to reach us on or before May 26, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive requests for public hearings by May 10, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (telephone 601/965–4900, extension 25; facsimile 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon (*Scaphirhynchus suttkusi*) is a small, freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. This sturgeon is an elongate, slender fish growing to about 80 centimeters (cm) (30 inches (in)) in length. A mature fish weighs 1 to 2 kilograms (kg) (2 to 3 pounds (lb)). The head is broad and flattened shovel-like at the snout. The mouth is tubular and protrusive. There are four barbels (whisker-like appendages used to find prey) on the bottom of the snout, in front of the mouth. Bony plates cover the head, back, and sides. The body narrows abruptly to the rear, forming a narrow stalk between the body and tail. The upper lobe of the tail fin is elongated and ends in a long filament. Characters used to distinguish the Alabama sturgeon from the closely-related shovelnose sturgeon (*Scaphirhynchus platorynchus*) include larger eyes, orange color, number of dorsal plates, dorsal fin ray numbers, and spines on snout.

The earliest specimens of Alabama sturgeon in museum collections date from about 1880. The first mention of the fish in the scientific literature, however, was not until 1955, when a report of the collection of a single specimen from the Tombigbee River was published by Chermock. In 1976, Ramsey referred to the Alabama sturgeon as the "Alabama shovelnose sturgeon," noting that it probably was distinct from the shovelnose sturgeon which is found in the Mississippi River Basin, and was also historically known from the Rio Grande. In 1991, Williams and Clemmer formally described the species based on a comparison of relative sizes and numbers of morphological structures of Alabama and shovelnose sturgeons.

The methods used by Williams and Clemmer (1991) to justify species designation for the Alabama sturgeon have been criticized. In unpublished manuscripts, (e.g., Blanchard and Bartolucci 1994, Howell *et al.* 1995), and in one published paper (Mayden and Kuhajda 1996), several authors identified a variety of statistical and methodological errors and limitations [e.g., small sample size, clinal variation, allometric growth (growth of parts of an organism at different rates and at different times), inappropriate statistical tests, and others] that appeared in the analyses used in the original description. Howell *et al.* (1995) in an unpublished manuscript, reexamined the data set used by Williams and Clemmer (1991), corrected certain errors, and recommended that *S. suttkusi* be synonymized with *S. platorynchus*. Mayden and Kuhajda (1996), in a peer-reviewed paper published in the journal *Copeia*, reevaluated the morphological distinctiveness of the Alabama sturgeon using improved statistical tests and new data derived from examination of additional shovelnose sturgeon specimens from a larger geographic area. Mayden and Kuhajda (1996) identified eight new diagnostic characters, found that there was little evidence of geographic clinal variation in these diagnostic features, and concluded that the Alabama sturgeon was a distinct and valid species. Bartolucci *et al.* (1998) showed the Alabama and shovelnose sturgeon to be indistinguishable using principal component analyses, as published in a peer-reviewed statistical journal.

Genetic analyses of sturgeon DNA used in attempts to clarify taxonomic findings have met with limited success. In an unpublished report, Schill and Walker (1994) used tissue samples from the Alabama sturgeon collected in 1993 to compare the three nominal *Scaphirhynchus* species. Based on estimates of sequence divergence at the mitochondrial cytochrome *b* locus, they concluded that the Alabama, shovelnose, and pallid sturgeons were indistinguishable. Other studies have also found that the cytochrome *b* locus was not useful for discriminating among some congeneric fish species which were otherwise distinguished by accepted morphological, behavioral, and other characteristics (Campton *et al.* 1995).

In two unpublished reports for us and the U.S. Army Corps of Engineers (Corps) by Genetic Analyses Inc. (1994, 1995), nuclear DNA fragments were compared among the three *Scaphirhynchus* species. The three Alabama sturgeon specimens examined proved genetically divergent from pallid and shovelnose, while there were no observed differences of DNA fragments between the pallid and shovelnose sturgeons. However, the 1995 study also noted that two of the Alabama sturgeon differed substantially from the third, and recommended additional studies to examine genetic diversity within the Alabama sturgeon population.

A comparative study of the mitochondrial DNA d-loop of *Scaphirhynchus* species has also been completed (Campton *et al.* 1995). The d-loop is considered to be a rapidly evolving part of the genome. Campton *et al.* (1995) found that haplotype (genetic markers) frequencies of the d-loop from the three *Scaphirhynchus* species were significantly different, with the Alabama sturgeon having a unique haplotype. However, the relative genetic differences among the three species was small, suggesting that the rate of genetic change in the genus is relatively slow and/or they have only recently diverged. The genetic similarity between the pallid and shovelnose sturgeon has been suggested to be due to interbreeding that has recently occurred as a result of niche overlap resulting from widespread habitat losses (Carlson *et al.* 1985, Keenlyne *et al.* 1994).

We acknowledge that there is some disagreement concerning the Alabama sturgeon's taxonomic status. However, the description of the Alabama sturgeon (*S. suttkusi*) complies with the rules of the *International Code of Zoological Nomenclature* (§ 17.11(b)). Furthermore, our analysis of the best available evidence supports its consideration as a species in this proposed rule.

Very little is known of the life history, habitat, or other ecological requirements

of the Alabama sturgeon. Observations by Burke and Ramsey (1985) indicate the species prefers relatively stable gravel and sand substrates in flowing river channels. Verified captures of Alabama sturgeon have primarily occurred in large channels of big rivers; however, at least two historic records were from oxbow lakes (Williams and Clemmer 1991). Examination of stomach contents of museum and captured specimens show that these sturgeon are opportunistic feeders, preying primarily on aquatic insect larvae (Mayden and Kuhajda 1996). Mayden and Kuhajda (1996) deduced other aspects of Alabama sturgeon life history by a review of spawning habits of its better known relative, the shovelnose sturgeon. Life history of the shovelnose sturgeon has also been recently summarized by Keenlyne (1997). These data indicate that Alabama sturgeon are likely to migrate upstream during late winter and spring to spawn. Downstream migrations may occur to search for feeding and summer refugia areas. Eggs are probably deposited on hard bottom substrates such as bedrock, armored gravel, or channel training works in deep water habitats, and possibly in tributaries to major rivers. The eggs are adhesive and require current for proper development. Sexual maturity is believed to occur at 5 to 7 years of age. Spawning frequency is influenced by food supply and fish condition, and may occur every 1 to 3 years. Alabama sturgeon may live up to 15 years of age.

The Alabama sturgeon's historic range consisted of about 1,600 km (1,000 mi) of river habitat in the Mobile River Basin in Alabama and Mississippi. There are records of sturgeon captures from the Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers (Burke and Ramsey 1985, 1995). The Alabama sturgeon was once common in Alabama, and perhaps also in Mississippi. The total 1898 commercial catch of "shovelnose" sturgeons (i.e., Alabama sturgeon) from Alabama was reported as 19,000 kg (42,900 lb) in a statistical report to Congress (U.S. Commission of Fish and Fisheries 1898). Of this total, 18,000 kg (39,500 lb) came from the Alabama River and 1,000 kg (2,300 lb) from the Black Warrior River. Given that an average Alabama sturgeon weighs about 1 kg (2 lb), the 1898 commercial catch consisted of approximately 20,000 fish. These records indicate a substantial historic population of Alabama sturgeon.

Between the 1898 report and 1970, little information was published regarding the Alabama sturgeon. An anonymous article published in the *Alabama Game and Fish News* in 1930 stated that the sturgeon was not uncommon; however, by the 1970's, it had become rare. In 1976, Ramsey considered the sturgeon as endangered and documented only six specimens from museums. Clemmer (1983) was able to locate 23 Alabama sturgeon specimens in museum collections, with the most recent collection dated 1977. Clemmer also found that commercial fishermen in the Alabama and Tombigbee rivers were familiar with the sturgeon, calling it hackleback, buglemouth trout, or devilfish.

During the mid-1980's Burke and Ramsey (1985) conducted a status survey to determine the distribution and abundance of the Alabama sturgeon. Interviews were conducted with commercial fishermen on the Alabama and Cahaba rivers, some of whom reported catch of Alabama sturgeon as an annual event. However, during their collection efforts in areas identified by fishermen, Burke and Ramsey were able to collect only five Alabama sturgeons, including two males, two gravid females, and one juvenile about 2 years old. Burke and Ramsey (1985) concluded that the Alabama sturgeon had been extirpated from 57 percent (950 km or 600 mi) of its range and that only 15 percent (250 km or 150 mi) of its former habitat had the potential to support a good population. An additional sturgeon was taken in 1985 in the Tensaw River and photographed, but the specimen was lost (Mettee, Geologic Survey of Alabama, pers. comm. 1997).

In 1990 and 1992, biologists from the Alabama Department of Conservation and Natural Resources (ADCNR), with the assistance of the Corps, conducted searches for Alabama sturgeon using a variety of sampling techniques, without success (Tucker and Johnson 1991, 1992). However, some commercial and sports fishermen continued to report recent catches of small sturgeon in Millers Ferry and Claiborne reservoirs and in the lower Alabama River (Tucker and Johnson 1991, 1992).

In 1993, our biologists and the ADCNR conducted another extensive survey for Alabama sturgeon in the lower Alabama River. On December 2, 1993, a mature male was captured alive in a gill net downstream of Claiborne Lock and Dam, at river mile 58.8 in Monroe County, Alabama (Parauka, U.S. Fish and Wildlife Service, pers. comm. 1995). This specimen represented the first confirmed record of Alabama sturgeon in about 9 years. This fish was moved to a hatchery where it later died.

On April 18, 1995, an Alabama sturgeon captured by fishermen below Claiborne Lock and Dam was turned over to ADCNR and Service biologists. This fish was carefully examined, radio-tagged, and returned to the river where it was tracked for 4 days before the transmitter switched off (Parauka, pers. comm. 1995). In June 1995, it was determined that the tag had dislodged. On May 19, 1995, our biologists took another Alabama sturgeon in Monroe County, Alabama, near the 1993 collection site. Unfortunately, shortly after the fish was tagged and released, it was found entangled and dead in a vandalized gill net lying on the river bottom (Parauka, pers. comm. 1995). On April 26, 1996, a commercial fisherman caught, photographed, and released an Alabama sturgeon (estimated at about 51 to 58 cm (20 to 23 in) total length and 1 kg (2.5 lb) weight in the Alabama River, 5 km (3 mi) south of Millers Ferry Lock and Dam (Reeves, ADCNR, pers. comm. 1996).

During the spring of 1996, members of the Mobile River Basin Recovery Coalition began discussions to develop and implement a conservation plan for the Alabama sturgeon that could receive wide support. A draft plan was subsequently endorsed by the ADCNR, Service, Mobile District Corps of Engineers, and representatives of the Alabama-Tombigbee Rivers Coalition. The draft plan identified the need to develop life history information through capture, tagging, and telemetry; capture of broodstock for potential population augmentation; construction of hatchery facilities for sturgeon propagation; and habitat identification and quantification in the lower Alabama River.

In March 1997, the ADCNR implemented the collection component of the conservation plan. The Geological Survey of Alabama, Corps, Waterways Experiment Station, Alabama Power Company, and the Service also participated in the effort. Up to four crews were on the river at any one time using gill nets and trot lines. Most of the effort focused on the lower Alabama River where recent previous captures had been made. Personnel from the ADCNR caught one small sturgeon (1 kg (2 lb) weight) on April 9, 1997, immediately below Claiborne Lock and Dam.

The ADCNR continued fishing for sturgeon through the fall and winter and collected another sturgeon below Miller's Ferry Lock and Dam on December 10, 1997. This fish was also transported to the Marion Fish Hatchery, where both fish are being held for potential use as broodstock. In January 1998, the two fish were

biopsied to determine sex. The April specimen was found to be a mature female with immature eggs, whereas the December fish was a mature male.

Alabama broodstock collection efforts in 1998 resulted in the capture of a single fish on November 12, 1998. A biopsy performed in December found the specimen to be a reproductively inactive male. The two 1997 fish were also biopsied at this time, and were determined to be candidates for propagation in the spring.

The chronology of commercial harvest, scientific collections, and incidental catches by commercial and sport fishermen demonstrate a significant decline in both the population size and range of the Alabama sturgeon in the past 100 years. Historically the fish occurred in commercial abundance and was found in all major coastal plain tributaries of the Mobile River system. The Alabama sturgeon has apparently disappeared from the upper Tombigbee, lower Black Warrior, lower Tallapoosa, and upper Cahaba, where it was last reported in the 1960's; the lower Coosa, last reported around 1970; the lower Tombigbee, last reported around 1975; and lower Cahaba, last reported in 1985 (Clemmer 1983; Burke and Ramsey 1985, 1995; Williams and Clemmer 1991; Mayden and Kuhajda 1996). The fish is known from a single 1985 record in the Mobile-Tensaw Delta; however, no incidental catches by commercial or recreational fishermen have been reported since that time. Recent collection efforts indicate that very low numbers of Alabama sturgeon continue to survive in portions of the 216 km (130 mi) length of the Alabama River channel below Millers Ferry Lock and Dam.

The historic population decline of the Alabama sturgeon was probably initiated by unrestricted harvesting near the turn of the century. Although there are no reports of commercial harvests of Alabama sturgeon after the 1898 report, it is reasonable to assume that sturgeon continued to be affected by the commercial fishery. Keenlyne (1997) noted that in the early years of this century, shovelnose sturgeon were considered a nuisance to commercial fishermen and were destroyed when caught. Interviews with commercial and recreational fishermen along the Alabama River indicate that Alabama sturgeon continued to be taken into the 1980's (Burke and Ramsey 1985). Studies of other sturgeon species suggest that newly exploited sturgeon fisheries typically show an initial high yield, followed by rapid declines. There may be little or no subsequent recovery with continued exploitation and habitat loss, even after nearly a century (National Paddlefish and Sturgeon Steering Committee 1993, Birstein 1993).

Although unrestricted commercial harvesting of the Alabama sturgeon may have significantly reduced its numbers and initiated a population decline, the present curtailment of the Alabama sturgeon's range is the result of 100 years of cumulative impacts to the rivers of the Mobile River Basin (Basin) as they were developed for navigation. Navigation development of the Basin affected the sturgeon in major ways. This development significantly changed and modified extensive portions of river channel habitats; blocked long-distant movements, including migrations; and fragmented and isolated sturgeon populations.

The Basin's major rivers are now controlled by more than 30 locks and/or dams, forming a series of lakes that are interspersed with short, free-flowing reaches. Within the sturgeon's historic range, there are three dams on the Alabama River (built between 1968 and 1971); the Black Warrior has two (completed by 1959); and the Tombigbee six (built between 1954 and 1979). These 11 dams affect and fragment 970 km (583 mi) of river channel habitat. Riverine (flowing water) habitats are required by the Alabama sturgeon to successfully complete its life cycle. Alabama sturgeon habitat requirements are not met in impoundments, where weak flows result in accumulations of silt making bottom habitats unsuitable for spawning and, perhaps, for the bottom-dwelling invertebrates on which the sturgeon feed.

Prior to widespread construction of locks and dams throughout the Basin, Alabama sturgeon could move freely between feeding areas, and from feeding areas to sites that favored spawning and development of eggs and larvae. Additionally the sturgeon may have sought thermal refuges during summer months, when high water temperatures became stressful. Such movements might have been extensive, since other *Scaphirhynchus* species of sturgeons are known to make long distance movements exceeding 250 km (150 mi) (Moos 1978, Bramblett 1996). Locks and dams, however, fragmented the sturgeons' range, forming isolated metapopulations between the dams where all the species' habitat needs were not necessarily met. With avenues of movement and migration restricted, these metapopulations also became more vulnerable to local declines in water and habitat quality caused by riverine and land management practices and/or polluting discharges.

Most of the major rivers within the historic range of the Alabama sturgeon have also been dredged and/or channelized to make them navigable. For example, the 740-km (460-mi) long Warrior-Tombigbee Waterway channel was originally dredged to 45 meters (m) by 2 m (150 feet (ft) by 6 ft) and later to 61 m by 2 m (200 ft by 9 ft). The lower Alabama and Tombigbee rivers are routinely dredged in areas of natural deposition to maintain navigation depths. Dredged and channelized river reaches, in comparison to natural river reaches, have reduced habitat diversity (e.g., loss of shoals, removal of snags, removal of bendways, reduction in flow heterogeneity, etc.), which results in decreased aquatic diversity and productivity (Hubbard *et al.* 1988 and references therein). The deepening and destruction of shoals and shallow runs or other historic feeding and spawning sites as a result of navigation development likely contributed to local and overall historic declines in range and abundance of the Alabama sturgeon.

Dams constructed for navigation and power production also affected the quantity and timing of water moving through the Basin. Water depths for navigation are controlled through discharges from upstream dams, and flows have also been changed as a result of hydroelectric production by upstream dams (Buckley 1995; Freeman and Irwin, U.S. Geological Survey, pers. comm. 1997).

The construction and operation of dams and development of navigation channels were significant factors in curtailment of the historic range of the Alabama sturgeon and in defining its current distribution. While these structures and activities are likely to continue to influence the ecology of this species and others, the present effects of the operation of existing structures, flow regulation, and navigation maintenance activities on the sturgeon are poorly understood. This is due in large part to lack of specific information on the behavior and ecology of the Alabama sturgeon.

In summary, the Alabama sturgeon has undergone marked declines in population size and range during the past century. Over-fishing and navigation development were significant factors in the sturgeon's historic decline. The Alabama sturgeon currently inhabits only about 15 percent of its historic range, and the species is known to survive only in the Alabama River channel below Millers Ferry Lock and Dam.

Previous Federal Actions

The Alabama sturgeon was included in **Federal Register** notices of review for candidate animals in 1982, 1985, 1989, and 1991. In the 1982 and 1985 notices (47 FR 58454 and 50 FR 37958), this fish was included as a category 2 species (a species for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support a proposed rule). We discontinued designation of Category 2 species in the February 28, 1996, notice of review (61 FR 7956). In the 1989 and 1991 notices (54 FR 554 and 56 FR 58816), the Alabama sturgeon was listed as category 1 candidate species (a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule).

On June 15, 1993, we published a proposed rule to list the Alabama sturgeon as endangered with critical habitat (58 FR 33148). On July 27, 1993, we published a notice scheduling a public hearing on the proposed rule (58 FR 40109). We published a notice on August 24, 1993 (58 FR 44643), canceling and rescheduling the hearing. On September 13, 1993 (58 FR 47851), we published a notice re-scheduling the public hearing for October 4, 1993, and extending the comment period to October 13, 1993. The October 4 public hearing was held on the campus of Mobile College, Mobile, Alabama. On October 25, 1993 (58 FR 55036), we published a notice announcing a second public hearing date, reopening the comment period, and stating the availability of a panel report. This second public hearing was canceled in response to a preliminary injunction issued on November 9, 1993.

On January 4, 1994 (59 FR 288), we published a notice rescheduling the second public hearing and extending the comment period. However, this hearing was subsequently rescheduled in a January 7, 1994, notice (59 FR 997). We held the second public hearing on January 31, 1994, at the Montgomery Civic Center, Montgomery, Alabama.

We published a 6-month extension of the deadline and reopening of the comment period for the proposed rule to list the Alabama sturgeon with critical habitat on June 21, 1994 (59 FR 31970). On September 15, 1994 (59 FR 47294), we published another notice that further extended the comment period and sought additional comments on only the scientific point of whether the Alabama sturgeon still existed. We withdrew the proposed rule on December 15, 1994, (59 FR 64794) on the basis of insufficient information that the Alabama sturgeon continued to exist. On September 19, 1997, after capture of several individuals confirming that the species was extant, we included the Alabama sturgeon in the candidate species notice of review (62 FR 49403). A candidate species is defined as a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

We published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). That guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal lists are found in section 4 of the Act and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alabama sturgeon (*Scaphirhynchus suttkusi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Alabama sturgeon has apparently disappeared from 85 percent of its historic range. Its decline has been associated with construction of dams, flow regulation, navigation channel development, other forms of channel modification, and pollution. Dams in the Alabama River have reduced the amount of riverine habitat, impeded migration of Alabama sturgeon for feeding and spawning needs, and changed the river's flow patterns. The species is now restricted to a 216 km (130 mi) reach of the Alabama River below Millers Ferry Lock and Dam. It is unknown if the quantity of fluvial (stream) habitat currently available to the species in this river reach is adequate to meet all of its ecological needs.

Changes in natural river flow regimes by operation of hydroelectric dams are known to be detrimental to other sturgeon species (e.g., Khoroshko 1972, Zakharyan 1972, Veshchev 1982, Veshchev and Novikova 1983, Auer 1996). Flow quantity is believed to be adequate to sustain the sturgeon in the lower Alabama River (Biggins 1994). The Alabama Power Company currently releases 57 cubic meters per second (cms) (2000 cubic feet per second (cfs)) seasonal minimum flow from Jordan Dam into the lower Coosa River, and 34 cms (1200 cfs) minimum flow from Thurlow Dam into the lower Tallapoosa River. These two releases provide a combined 91 cms (3200 cfs) minimum flow to the upper Alabama River for passage through the three Alabama River locks and dams. Alabama River flows are further augmented by generating flows from Jordan, Thurlow, and Bouldin dams, as well as other Alabama River tributary flows. The average daily flows measured over the last decade downstream of Claiborne Lock and Dam have ranged from over 100 cms to nearly 7,000 cms (4,000 to 240,000 cfs). While there is no evidence to suggest that the Alabama sturgeon is limited by water quantity below Robert F. Henry and Millers Ferry locks and dams, these dams house hydropower facilities and neither is required to maintain a minimum flow. Current low flow releases from these two facilities can be as little as 3 hours of generation timed according to peaking needs, plus lockage releases. The effect of such daily flow fluctuations below Millers Ferry Lock and Dam on Alabama sturgeon reproductive, larval, or juvenile habitat requirements may be negative; however, the importance of the area between Robert F. Henry and Claiborne lock and dams for sturgeon reproduction is currently unknown.

The most visible continuing navigation impact within presently occupied Alabama sturgeon habitat is maintenance dredging of navigation channels. At this time, there is no evidence that it currently constitutes a limiting factor to the sturgeon (Biggins 1994). The Corps has constructed 67 channel training works (jetties) at 16 locations in the lower Alabama River, eliminating about 60 percent of dredging requirements at those locations. In the Mississippi River drainage, such channel training works are believed to be used as spawning areas by other sturgeon species (Mayden and Kuhajda 1996).

Maintenance dredging continues to be necessary in the Alabama River to remove seasonally accumulated material from deposition areas within the navigation channel. Dredged materials are usually placed on natural deposition features adjacent to the navigation channel, such as point bars or lateral bars. Due to the natural dynamics of river channels and annual sediment movement, maintenance areas have remained fairly constant over time, with the same areas repeatedly dredged or used for disposal. Recent investigations by us, the Corps, and ADCNR indicate that the distribution of stable benthic (bottom) habitats in the riverine portions of the Alabama River has been, and continues to be, strongly influenced by historical dredge and disposal practices. Changes in disposal practices could disrupt the existing equilibrium. For example, river channels are strongly influenced by the amount of sediment moving through them. Increases in sediment budget can cause aggradation (filling) of the channel, while decreases in sediment can cause degradation (erosion). With the upstream dams forming barriers to the movement of sediment through the Alabama River, additional reduction of sediment availability (e.g., through upland disposal) could increase river bed and bank erosion, including areas that are now important, stable habitats. In consideration of this, significant changes in current disposal methods in the Alabama River could adversely affect the Alabama sturgeon.

Recent investigations by us and ADCNR biologists have documented the presence of high quality, stable river bottom habitats interspersed within and between dredge and disposal sites in the lower Alabama River (Hartfield and Garner 1998). These included stable sand and gravel river bottom supporting freshwater mussel beds, and bedrock walls and bottom. Mussel beds are excellent indicators of riverine habitat stability because freshwater mussels may live in excess of 30 years and mussel beds require many decades to develop (Neves 1993). Clean bedrock has been identified as potential Alabama sturgeon spawning habitat (Mayden and Kuhajda 1996). The significance of such areas of stability are suggested by the location of recent and historic Alabama sturgeon capture sites below Millers Ferry and Claiborne locks and dams. Dive surveys at 19 capture sites dating back to 1950 found 17 in the vicinity of dense mussel beds (15 sites) and/or clean bedrock riverine habitat (11 sites) (Hartfield and Garner 1998). Depths at these areas (5 to 15 m (15 to 45 ft)) are well below the minimum navigation maintenance depth of 3 m (9 ft).

Sand and gravel mining has had historic impacts on riverine habitats in the lower Tombigbee and Alabama river channels. Instream dredging for sand and gravel can result in localized biological and geomorphic changes similar to those caused by channelization and navigation channel development. For example, mining of rivers has been shown to reduce fish and invertebrate biomass and diversity, and can induce geomorphic changes in the river channel both above and below mined areas (Simons *et al.* 1982, Brown and Lyttle 1992, Kanehl and Lyons 1992, Hartfield 1993, Patrick and Dueitt 1996). Sand and gravel dredging of the Tombigbee and Alabama river channels within the historic and current range of the Alabama sturgeon has occurred periodically since the 1930's (Simons *et al.* 1982). We are not aware of any currently active sand and gravel dredging operations in the Alabama River; however, future mining of gravel from stable river reaches used by the Alabama sturgeon would be detrimental to the species.

Pollution may adversely impact sturgeon (Ruelle and Keenlyne 1993), and it was likely a factor in the decline of the Alabama sturgeon, especially prior to implementation of State and Federal water quality regulations. Presently, the major sources of water pollution in Alabama are agriculture, municipal point sources, resource extraction, and contaminated sediments, in order of decreasing importance based on numbers of miles impaired (Alabama Department of Environmental Management 1994). Water quality in the lower Alabama River is generally good; however, two localized river segments above Claiborne Lock and Dam have been reported as occasionally impaired due to excess nutrients and organic enrichment (Alabama Department of Environmental Management 1994). Sources of impairment were broadly identified as the combined effects of industrial and municipal discharges, and runoff from agriculture and silviculture. These river segments are also affected by hydropower discharges from Millers Ferry Lock and Dam.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As discussed in the "Background" section of this proposed rule, the Alabama sturgeon was commercially harvested around the turn of the century. Alabama State law (sect. 220–2—.26–4) now protects the Alabama sturgeon and other sturgeons requiring that "* * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm." As a result, sturgeon are not currently pursued by commercial or recreational fishermen. Nonetheless, Alabama sturgeon are occasionally caught by fishermen in nets or trot lines set for other species. For example, one of the Alabama sturgeons caught in 1995 was hooked by a fisherman on a trot line, and the Alabama sturgeon caught in 1996 was trapped in a hoop net; both of these fish were released. Doubtless there have been additional, undocumented incidental captures by commercial and sport fishermen; however, the surveys and collection efforts of the past decade have shown such captures to be rare.

C. *Disease or predation.* There are no known threats from disease or natural predators. To the extent that disease or predation occurs, it becomes a more important consideration as the total population decreases in number.

D. *The inadequacy of existing regulatory mechanisms.* As we discussed in factor B, Alabama State law (sect. 220–2-.26–4) protects the Alabama sturgeon and other sturgeons requiring that "* * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm." As a result, sturgeon are not currently pursued by commercial or recreational fishermen. There is currently no requirement within the scope of other environmental laws or Alabama State law to specifically consider the Alabama sturgeon or ensure that a project will not jeopardize its continued existence.

E. *Other natural or manmade factors affecting its continued existence.* The primary threat to the immediate survival of the Alabama sturgeon is its apparent inability to offset mortality rates with current reproduction rates. As noted in the "Background" section, incidents of capture of Alabama sturgeon have been steadily diminishing for the past two decades, indicating declining population numbers over this time. Recent studies suggest that below some minimum population size, termed "minimum viable population" (MVP), a species is unable to offset mortality rates with natural reproduction and recruitment (Soule 1987). In such cases, the species becomes more vulnerable to extinction from natural or human-induced random events (e.g., droughts, floods, competition, variations in prey abundance, toxic spills, etc.), which further reduce recruitment or increase mortality. Estimates of the MVP in vertebrates range from hundreds to thousands of reproducing individuals

(Belovsky 1987, Shaffer 1987, Lande and Barrowclough 1987).

Sturgeons may be especially sensitive to MVP effects (likely to become extinct) for several reasons. Age at first spawning (ranging from 5 to 7 years for shovelnose sturgeon) is much delayed in comparison to other fishes, and female sturgeons may not spawn for intervals of several years (Wallus *et al.* 1990). Thus, the effective population size (number of adult males and females capable of reproducing in a given year) is much smaller than it would be if reproduction began earlier and took place annually. Also, recruitment success in fish is subject to considerable natural variability owing to fluctuations of environmental conditions, and there can be several years between periods of good recruitment.

Currently, there are no population estimates for the Alabama sturgeon. Recent collection efforts demonstrate its increasing rarity. For example, beginning in the spring of 1997 through 1998, up to four crews of professional fisheries biologists have expended approximately 3,000 man-hours of fishing effort in the lower Alabama River to capture Alabama sturgeon for use as broodstock. This effort resulted in the capture of only three Alabama sturgeon. During this time, commercial and recreational fishermen encountered on the Alabama River were interviewed, and asked to report any captures of sturgeon to the ADCNR. No incidental catches were reported. Thus, approximately 18 months of fishing by professional, commercial, and recreational fishermen resulted in the capture of only three Alabama sturgeon. Compared to the estimated 20,000 Alabama sturgeon reported in the 1898 harvest, the amount of effort currently required to capture Alabama sturgeon indicates that the species' population numbers are extremely low. This strongly suggests that the Alabama sturgeon is highly vulnerable to MVP effects.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Alabama sturgeon in determining to propose this rule. Based on this evaluation, the preferred action is to list the Alabama sturgeon as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the Alabama sturgeon due to the extensive curtailment of its range and extremely low population numbers.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) Such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not presently prudent for the Alabama sturgeon.

Critical habitat receives consideration under section 7 of the Act. Section 7(a)(2) requires Federal agencies to consult with the Service to ensure that any action they carry out, authorize, or fund does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. The Service's implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species by reducing the reproduction, numbers, or distribution of that species." Destruction or adverse modification of habitat means a "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild." Common to both definitions is an appreciable detrimental effect to both the survival and recovery of a listed species.

For any listed species, an analysis to determine jeopardy under section 7(a)(2) would consider impacts to the species resulting from impacts to habitat. Therefore, an analysis to determine jeopardy would include an analysis closely parallel to or, for the Alabama sturgeon, equivalent to an analysis to determine adverse modification of critical habitat. For the Alabama sturgeon, any modification to suitable habitat within the species' range has the potential to affect the species. Actions that may affect the habitat of the Alabama sturgeon in the lower Alabama River include those with impacts on river channel morphology, bottom substrate composition, water quantity and quality, and stormwater runoff. Any activity that would be determined to cause an adverse modification to critical habitat also would jeopardize the continued existence of this fish given its restricted distribution and imperiled status.

Critical habitat designation within a species' occupied range heightens the awareness of Federal agencies to the potential presence of the species, and encourages consideration of the effects of Federal actions on the species' habitat. We have worked closely with Federal agencies, particularly the Corps, in evaluating Federal agency actions and their potential effects to the Alabama sturgeon (Biggins 1994). All potentially affected Federal agencies are currently aware of the location and extent of habitat occupied by the Alabama sturgeon. In addition, should the species be listed, Federal actions that might affect occupied sturgeon habitat would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat is designated. Therefore, habitat protection for the Alabama sturgeon can be accomplished through the section 7 jeopardy standard and there is no benefit in designating occupied habitat as critical habitat.

Designation of unoccupied habitat as critical habitat may, in certain instances, provide additional protection to that afforded by the jeopardy standard. Specific areas outside the geographic area occupied by a species at the time it is listed may be designated as critical habitat, if it is determined that such areas are essential for the conservation of the species. The ecological requirements of the Alabama sturgeon are so poorly known, its historical habitats are so severely modified and fragmented, and its population numbers are so small, that extensive research

over an extended period of time would be required to identify any existing essential unoccupied habitats (see "Background" and "Summary of Factors Affecting the Species" sections).

Though critical habitat designation directly affects only Federal agency actions, this process can arouse public concern and resentment. Although Alabama sturgeon are currently protected from commercial or recreational fishing, they are occasionally captured (see factor B). Publicity or controversy accompanying critical habitat designation may increase the potential for illegal take. For example, on June 15, 1993, the Alabama sturgeon was initially proposed for endangered status with critical habitat (59 FR 33148). Proposed critical habitat included the lower portions of the Alabama, Cahaba, and Tombigbee rivers in south Alabama. The proposal generated thousands of comments with the primary concern that the proposed listing and designation of these rivers as critical habitat would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon.

The primary threat to the Alabama sturgeon has been identified as its small numbers and its apparent inability to offset mortality rates with current reproduction rates (see factor E). As noted in the "Available Conservation Measures" section, a collaborative effort by public and private partners to address this threat and conserve the Alabama sturgeon was initiated in 1997. Essential to this effort is the collection of sturgeon for use as broodstock for hatchery propagation, and for telemetry studies on habitat and behavior. Commercial and recreational fishermen have caught two of the seven fish captured over the past decade. Their continued cooperation is important to on-going Alabama sturgeon conservation efforts. The loss of the cooperation of fishermen and other private partners, as a result of proposed designation of unoccupied habitat as critical habitat, would be detrimental to the survival and recovery of the species.

It should also be noted that regardless of critical habitat designation, Federal agencies are required by section 7(a)(1) of the Act to utilize their authorities in furtherance of the Act's purposes by carrying out conservation activities for listed species. We have been working with the Corps and other partners to assess habitat quantity, quality, and accessibility within the historic range of the Alabama sturgeon. Such studies, along with ongoing broodstock collection efforts, hatchery propagation, and other activities have focused attention on the sturgeon, its habitat, and threats to its existence, and will continue should the species be listed. Thus, any benefit that might accrue from designation of unoccupied habitat as critical is being accomplished under the existing coordination process.

Based on the above analysis, we have concluded critical habitat designation would provide no additional benefit for the Alabama sturgeon beyond that which would accrue from listing under the Act. In addition, we also conclude that any potential benefit from such a designation would be outweighed by a loss of cooperation by fishermen and other partners in current conservation efforts, and an increased level of vulnerability to illegal take. Therefore, the designation of critical habitat for the Alabama sturgeon is not prudent.

Available Conservation Measures

The ADCNR has implemented a conservation plan for the sturgeon that addresses the immediate threat to the species, its depressed population size, and seeks to develop information on the species and its habitat needs. A variety of public and private groups, including the Service, Army Corps of Engineers, Geological Survey of Alabama, Auburn University, the Alabama-Tombigbee Rivers Coalition, and the Mobile River Basin Coalition are participating in, and/or endorse, implementation of this plan. The immediate focus of the plan is to prevent extinction through a captive breeding program and release of propagated fish. Other objectives of the plan include habitat restoration and determining life history information essential to effective management of the species. A freshwater sturgeon conservation plan working group composed of scientists and resource managers from a variety of Federal and State agencies, industry, and local universities was formed in September 1996 to establish collection and handling protocols, and to recommend and participate in research efforts. Implementation of the conservation plan began in March 1997, with broodstock collection efforts. A female and two male sturgeon have been collected and are being held at the Marion Fish Hatchery. The hatchery has been upgraded to accommodate sturgeon propagation. An attempt to spawn the captive sturgeon is planned for spring 1999. Coordinated studies are currently in progress by us, the ADCNR, and the Corps to identify and quantify stable riverine habitat in the Alabama River, and to develop strategies for its management. Life history and habitat studies in progress include habitat characterization at historic sturgeon collection sites, prey density studies, and larval sturgeon surveys.

The Mobile River Basin Aquatic Ecosystem Recovery Coalition, a partnership comprised of diverse business, environmental, private landowner, and agency interests, has been meeting regularly to participate in recovery planning for 15 listed aquatic species in the Basin (U.S. Fish and Wildlife Service 1998). The Coalition promotes increased stewardship awareness by private landowners throughout the Basin, and encourages the control of nonpoint source pollution through the implementation of Best Management Practices. All aquatic habitats, including Alabama sturgeon habitat, will benefit from such efforts.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the Alabama sturgeon include, but are not limited to, the carrying out or the issuance of permits for reservoir

construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. It has been our experience that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if this species is listed. The intent of this policy is to increase public awareness as to the effects of these proposed listings on future and ongoing activities within a species' range.

Activities that we believe are unlikely to result in a violation of section 9 for the Alabama sturgeon are:

(1) Discharges into waters supporting the sturgeon, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to section 404 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES)).

(2) Maintenance dredging of unconsolidated sediments undertaken or approved by the Corps of Engineers.

(3) Development and construction activities designed and implemented pursuant to State and local water quality regulations and implemented using approved Best Management Practices.

(4) Lawful commercial and sport fishing.

(5) Actions that may affect the Alabama sturgeon and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act.

Activities that we believe could potentially result in "take" of the Alabama sturgeon, if it becomes listed, include:

(1) Illegal collection of the Alabama sturgeon.

(2) Unlawful destruction or alteration of the Alabama sturgeon's habitat (e.g., un-permitted instream dredging, channelization, discharge of fill material).

(3) Violation of any discharge or water withdrawal permit in waters supporting the Alabama sturgeon.

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the Alabama sturgeon.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should the sturgeon become listed. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities will constitute a violation of section 9, should the sturgeon be listed, to the Field Supervisor of our Jackson Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Send requests for copies of regulations regarding listed species and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (telephone 404/679–7313; facsimile 404/679–7081).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the lower Alabama River and their possible impacts on this species.

We will take into consideration your comments and any additional information received on this species when making a final determination regarding this proposal. We will also submit the available scientific data and information to appropriate, independent specialists for review. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful in understanding the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a

currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author: The primary author of this document is Paul Hartfield (see **ADDRESSES** section)(601/965–4900, extension 25).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend section 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sturgeon, Alabama ..	*Scaphirhynchus suttkusi.*	U.S.A.(AL, MS)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: March 18, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–7387 Filed 3–23–99; 9:43 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 58
Friday, March 26, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Warm Springs Ridge Vegetation Management Project, Boise National Forest, Boise County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Boise National Forest will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposed vegetation management project on Warm Springs Ridge, located within the Lower Grimes Creek, Upper and Middle Mores Creeks Watersheds.

The Idaho City Ranger District of the Boise National Forest proposes to treat approximately 14,500 acres of forested lands and shrublands using timber harvest, silvicultural thinning, and prescribed fire. Approximately 350 acres of forested lands is under Bureau of Land Management jurisdiction. Timber harvest would occur on approximately 6,000 acres of overstocked Douglas-fir and ponderosa pine stands utilizing a combination of silvicultural treatments such as commercial thinning, shelterwood, seed tree, and sanitation activities. Noncommercial silviculture thinning treatments would also occur within portions of the above acres. Yarding systems to implement the harvest would include tractor/jammer, skyline, and helicopter. In addition, approximately 2,600 acres of overstocked, noncommercial stands (trees less than 8 inches in diameter) would be thinned. Cable yarding systems to remove the material from these stands to existing roads would occur on approximately 1,300 acres. Prescribed fire activities would occur on approximately 13,500 acres to reduce fuel loads from timber management activities, reduce national fuels and the threat of uncharacteristic fire to the urban interface, and to improve wildlife forage and habitat. Included in this proposed action are road construction, reconstruction, and stabilization activities to facilitate timber harvest and reduce current and long-term sediment delivery from existing and proposed roads. Approximately 5 miles of new road segments would be constructed to facilitate timber harvest. Approximately 13 miles of existing roads would be reconstructed to facilitate timber harvest, and reduce sediment delivery. Approximately 12 miles of existing roads would be stabilized and/or closed to reduce sediment delivery.

Comments: Written comments concerning the scope of the analysis described in this Notice should be received by April 26, 1999 to ensure timely consideration. No scoping meetings are planned at this time. Send written comments to Kathy Ramirez, Project Coordinator, Idaho City Ranger District, P.O. Box 129, Idaho City, ID 83631.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Kathy Ramirez at 208–392–6681.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Serivce invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

Information received will be used in preparation of the draft and final EIS. For the most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register.** The Responsible Official is David D. Rittenhouse, Forest Supervisor, Boise National Forest. The lead agency is USDA, Forest Service. The cooperating agency is USDI, Bureau of Land Management. The decisions to be made are whether timber harvest, noncommercial thinning, road system management, and prescribed fire should be implemented on National Forest System and Bureau of Land Management lands. The preliminary issue identified is increased sediment levels from the proposal could affect water quality and fish habitat in Grimes and Mores Creeks which are currently listed under the State of Idaho Section 303(d) of the Clear Water Act as being water quality impaired. The pollutant of concern is sediment. The draft EIS is expected to be available for public review in June 1999, with a final EIS estimated to be completed in August 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but not raised until after completion of the final EIS may be waived or dismissed by the courts. City of *Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (Ninth Circuit 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important for those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapter of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addressee of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted

anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: March 12, 1999.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 99–6795 Filed 3–25–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 22, 1999 at the Jefferson County Fire Hall located on the corner of Adam and "J" street off of Hwy 97 in Madras, Oregon. A business meeting will begin at 9 a.m. and finish at 4 p.m. Agenda items include Hosmer Lake Working Group Recommendations, PAC/IAC Summit, Revisit PAC Agreements on Ground Rules for Meetings and Subcommittee/ Working Group Processes/Assignments, The Lower Deschutes Working Group PAC Liaison Update, 1999 Program of Work, a Short Course on the Northwest Forest Plan, and a public forum from 1:30 p.m. till 2 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR 97701, mollie.chaudet/ r6pnw__deschutes@fs.fed.us, phone (541) 383–4769.

Dated: March 22, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–7486 Filed 3–25–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

Comments Must Be Received On Or Before: April 26, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Base Supply Center, Columbus Air Force Base, Mississippi.

NPA: Alabama Industries for the Blind, Talladega, Alabama

Central Facility Management, Southern Maryland District Courthouse, Greenbelt, Maryland.

NPA: The Chimes, Inc., Baltimore, Maryland

Janitorial/Custodial, Internal Revenue Service, Fresno Service Center (FSC), 5045 E. Butler Avenue, Fresno, California. NPA: Goodwill Industries of San Joaquin Valley, Inc., Stockton, California

Janitorial/Custodial, USARC #2, 1107 Payne Avenue, Erie, Pennsylvania. NPA: Dr. Gertrude A. Barber Center, Inc., Erie, Pennsylvania

Deletion:

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Pin, Tent, Metal, 8340–00–985–7461

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–7494 Filed 3–25–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: April 26, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 12, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (64 FR 7166) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Grounds Maintenance, The John F. Kennedy Center for the Performing Arts, 2700 F Street, NW, Washington, DC

Janitorial/Grounds Maintenance, U.S. Courthouse and IRS Federal Complex, 99 First Avenue, Beckley, West Virginia

Mailroom Operation, Federal Bureau of Investigation (FBI) Headquarters, J. Edgar Hoover (JEH), 935 Pennsylvania Avenue, NW, Washington, DC

Switchboard Operation, MacDill Air Force Base, Florida

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the service.

3. The action may result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Mailing Service, Headquarters, Air Force Military Personnel Center, Randolph AFB, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–7495 Filed 3–25–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Survey of Business Leaders Accompanying the Secretary on Trade Missions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Office of the Chief Information Officer, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230. Her Internet address is LEngel@Doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ilene Zeldin, Department of Commerce, Room 5517, 14th & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

On every trade mission the Secretary of Commerce leads, a brief survey will be conducted assessing the participants' opinions and opportunities they see for the markets where the trade mission will be taken. This information will help the Secretary to communicate the participant's concerns and views as they look to increase business opportunities.

II. Method of Collection

Orally or by completing a written survey.

III. Data

OMB Number: 0690–0017.
Form Number: N/A.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit organizations.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 3 minutes.
Estimated Total Annual Burden Hours: 5.
Estimated Total Annual Cost: $0 (no capital expenditures are required)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 22, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–7413 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Survey of Reference Materials for Forensic Science.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 567 hours.

Number of Respondents: 200.

Avg. Hours Per Response: 2.8 hours per laboratory.

Needs and Uses: The NIST Office of Law Enforcement Standards' (OLES) mission is to develop standards and perform scientific and engineering research in response to the needs of the criminal justice community. The NIST/OLES Survey of Reference Materials for Forensic Science will identify the current status of, and need for, standard reference materials and standard reference collections within all public crime laboratories in the United States. The information will be used to determine what standard reference materials and collections are needed to expand investigative capabilities of laboratories and to improve their efficiency.

Affected Public: State, local or tribal government and the federal government.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327 (internet address is LEngel@doc.gov), 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 22, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–7414 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–99]

Foreign-Trade Subzone 149A—Freeport, TX, Request for Extension of Board Order Condition, BASF Corporation (Caprolactam Extract, Cyclohexanone)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by BASF Corporation, operator of FTZ 149A, requesting an extension (to December 31, 2003) of Condition No. 2 of Board Order 732, which authorizes the election of nonprivileged foreign status (19 CFR § 146.42) for caprolactam extract and cyclohexanone admitted to Subzone 149A at the BASF chemical products manufacturing facilities in Freeport, Texas. It was formally filed on March 17, 1999.

Subzone 149A was approved by the Board in 1995 with authority to manufacture polycaprolactam (nylon-6; HTSUS 3908.10.0000) and its related chemical precursors, caprolactam extract and cyclohexanone under FTZ procedures up to a combined level of 45 million kilograms annually (Board Order 732, 60 FR 15903, 3–28–95), subject to the following conditions: (1) privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that nonprivileged foreign (NPF) status may be elected for foreign caprolactam extract (HTSUS 2933.71.0000; 2.3¢/kg+9%) and cyclohexanone (2914.22.1000; 1.4¢/kg+9.7%); and, (2) the authority with regard to the NPF option is initially granted until December 31, 1999, subject to extension.

FTZ procedures exempt BASF from Customs duty payments on the foreign components used in export production. On its domestic sales, the NPF option enables BASF to choose the finished polycaprolactam (nylon-6) duty rate (6.3%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 26, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to (June 9, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002.

Dated: March 17, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–7369 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1997–1998 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Romania. The review covers one exporter of the subject merchandise to the United States, Windmill International Romania Branch (Windmill), and the period August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on September 29, 1998 (63 FR 51893). Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity and difficulties presented with surrogate factor valuation in this case, the Department is extending the time limit for completion of the preliminary results until August 31, 1999. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: March 19, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–7367 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length (CTL) Carbon Steel Plate From Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determination in antidumping duty administrative review of certain CTL carbon steel plate from Mexico.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on certain CTL carbon steel plate from Mexico. This review covers the period August 1, 1997 through July 31, 1998.

EFFECTIVE DATES: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Heather Osborne or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: Beause it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until August 31, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. 1675(a)(3)(A)). *See* memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of the case deadline, dated March 17, 1999.

Dated: March 18, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–7370 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1775 or (202) 482–6071, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR Part 351 (April 1998).

Final Determination

We determine that extruded rubber thread ("ERT") from Indonesia is being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our preliminary determination in this investigation (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Extruded Rubber Thread from Indonesia;* 63 FR 59279, (October 27, 1998), ("Preliminary Determination")), the following events have occurred:

In December 1998, we verified the sales questionnaire response from Globe Manufacturing Company ("Globe"), an affiliated selling agent of P.T. Bakrie Rubber Industries ("Bakrie"), a foreign respondent. Between January 7 through January 31, 1999, we verified the sales and cost questionnaire responses of the foreign respondents, Bakrie and P.T. Swasthi Parama Mulya ("Swasthi").

Petitioner, North American Rubber Thread Co., Ltd., and respondents, Bakrie and Globe, submitted case briefs on February 26, 1999, and rebuttal briefs on March 2, 1999. Swasthi submitted a case brief on February 26, 1999, and a rebuttal brief on March 3, 1999. No party requested a public hearing for this investigation.

Scope of the Investigation

For purposes of this investigation, the product covered is ERT from Indonesia. ERT is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter.

ERT is currently classified under subheading 4007.00.00 of the *Harmonized Tariff Schedule* ("HTS"). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is January 1, 1997, through December 31, 1997.

Fair Value Comparisons

To determine whether sales of ERT from Indonesia to the United States were made at less than fair value, we compared the export price ("EP") or the constructed export price ("CEP") to the normal value ("NV"), as described below in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of Investigation" section of this notice, produced in Indonesia by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): gauge and color. In our preliminary determination we also made product comparisons using ends in our model match. At verification we learned that ends are not relevant to the product price of ERT. We also verified that there are no costs associated with the ends. Therefore, for purposes of the final determination, we have eliminated ends as a model match characteristic.

Level of Trade

In the preliminary determination, we determined that all comparisons are at the same level of trade for both respondents and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted. We find no basis to change this determination for the final determination.

Export Price

As in the preliminary determination, for Swasthi we used EP methodology, in accordance with section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

We based EP on the packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, from the starting price for foreign inland freight, international freight, marine insurance, U.S. customs duty, and brokerage and handling. We also made a deduction, where appropriate, for rebates.

In the course of preparing for verification, Swasthi discovered minor errors in its questionnaire responses. Swasthi reported these corrections to its questionnaire responses on the first day of verification. Upon examination of these minor corrections, we made the following revisions to Swasthi's U.S. sales database: (1) accepted a revised sales database which amended various fields (*see* Comment 4 in the "Analysis of Comments Received" section for further discussion); (2) revised the brokerage expenses (*see* Swasthi's Sales Verification Report); (3) revised the rebate calculation, where appropriate (*see* Swasthi's Sales Verification Report); and (4) recalculated imputed credit costs in the home and U.S. market in order to account for changes in the interest rates (*see* Swasthi's Sales Verification Report).

Constructed Export Price

For all sales by Bakrie, we used the CEP methodology, in accordance with section 772(b) of the Act, because the first sale of subject merchandise to an unaffiliated purchaser took place after importation into the United States. We based CEP on the packed, delivered prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, containerization expenses (expenses for loading the merchandise into the container), foreign brokerage and handling, international freight (including marine insurance, U.S. inland insurance, U.S. freight to the affiliated reseller), U.S. customs duties, and freight to U.S. customer. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit cost) (*see* Comment 7), inventory carrying costs (*see* Comment 7), other indirect selling expenses.

Finally, during our verification of Globe, we learned that Globe incorrectly based its inventory carrying costs and indirect selling expenses on a nine-month period rather than on the entire POI. Thus, based on our verification findings, we revised the inventory carrying costs and indirect selling expenses in Bakrie's U.S. sales database in order to account for the entire POI. In addition, we revised the international freight expenses incurred in the United States and the inland freight expenses from the warehouse and created a new field in order to account for marine insurance expenses that were omitted from Bakrie's original section C response. For further discussion on the above-mentioned revisions, *see* Globe's Verification Report. In addition, we recalculated Bakrie's imputed credit expenses in the home and U.S. market in order to account for changes in the interest rates that we discovered at verification (*see* Bakrie and Globe's Sales Verification Report).

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POI.

Consequently, we based NV on home market sales.

As discussed in the preliminary determination, the Department found reasonable grounds to believe or suspect that both Bakrie's and Swasthi's sales in the home market were made at prices below the cost of producing the subject merchandise. As a result, the Department initiated an investigation to determine whether Bakrie and Swasthi had made home market sales during the POI at prices below their respective cost of production within the meaning of section 773(b) of the Act. Section 782(c)(2) of the Act provides that the Department must attempt to provide guidance to small responding companies. Because both respondents are small companies in Indonesia, acting on their own behalf, the Department has attempted to provide guidance in the course of responding to antidumping questionnaires. This, in turn, necessitated granting time to respond to the questionnaires. Due to these extensions, the Department was unable to include a cost of production ("COP") analysis of either respondent's home market sales in the preliminary determination. However, we are including a COP analysis of Bakrie's and Swasthi's home market sales in this final determination.

Before making any fair value comparisons, we conducted the COP analysis described below for each company:

1. Bakrie

A. *Calculation of COP.* We calculated the COP based on the sum of Bakrie's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A") and packing costs in accordance with section 773(b)(3) of the Act.

B. *Test of Home Market Prices.* We used the respondent's weighted-average COP for the POI. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at below-cost prices within an extended period of time in substantial quantities, and whether the below-cost prices would permit recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. We did not deduct indirect selling expenses from the home market price because these expenses were included in COP.

C. *Results of COP Test.* Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

Based on our COP test, we found that Bakrie had no above-cost home market sales for matching purposes. (For further discussion, see the Calculation Memorandum to the File, dated March 18, 1999). Therefore, NV was based upon constructed value, pursuant to section 773(b)(1).

D. *Calculation of CV.* In accordance with section 773(e) of the Act, we calculated CV based on the sum of Bakrie's cost of materials, fabrication costs, SG&A, profit, and U.S. packing costs. We used Bakrie's actual selling expenses incurred in Indonesia on home market sales. Because Bakrie had no above-cost home market sales and, hence, no actual company-specific profit data available for its home market sales, we calculated profit in accordance with section 773(e)(2)(B) of the Act. Specifically, section 773(e)(2)(B)(iii) of the Act permits the Department to use any other reasonable method to determine profit. Therefore, we used Swasthi's profit rate as facts available under section 773(e)(2)(B)(iii) of the Act (*see* Comment 2).

E. *Price to CV Comparisons.* For price to CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses, in accordance with section 773(a)(6)(C)(iii) of the Act.

2. Swasthi

A. *Calculation of COP.* We calculated the COP based on the sum of Swasthi's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A and packing costs in accordance with section 773(b)(3) of the Act.

B. *Test of Home Market Prices.* On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and direct selling expenses. We did not deduct indirect selling expenses from the home market price because these expenses were included in the G&A portion of COP.

C. *Results of COP Test.* Based on our COP test and the methodology for disregarding below-cost sales described above for Bakrie, we found that Swasthi had sufficient above-cost home market sales for matching purposes. (For further discussion, *see* the Calculation Memorandum to the File, dated March 18, 1999). Therefore, for matching purposes, U.S. sales were compared to home market prices for all comparisons and CV was not required.

D. *Price to Price Comparisons.* We calculated NV based on packed, delivered prices to unaffiliated customers and prices to affiliated customers where the sales were made at arm's length. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight in accordance with section 773(a)(6)(B). In addition, where appropriate, we adjusted for differences in circumstances of sale ("COS") for credit expenses, in accordance with section 773(a)(6)(C). We made COS adjustments by deducting from the starting price credit expenses. In addition, in accordance with section 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, ignoring fluctuations, in accordance with section 773A of the Act.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate is a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we

substitute the benchmark for the daily rate.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents. Our verification results are outlined in detail in the public versions and are on file in Room B–099, the Central Records Unit, of the Department of Commerce.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner, and the two respondents, Bakrie and Swasthi. We also received rebuttal comments from the petitioner, Bakrie, Swasthi, and Globe.

Comment 1: Averaging Periods to Account for the Effect of Time on Price Comparability. Petitioner requests that the Department depart from its standard use of a single weighted-average price and use two six-month averaging periods to calculate the dumping margin in this investigation to ensure that the currency conversion methodology does not distort the Department's calculations of the dumping margins. Petitioner, in this case, cites the identical arguments for applying two six-month averaging periods discussed in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72272 (December 31, 1998) ("*Preserved Mushrooms*"). *See Preserved Mushrooms* at Comment 1.

According to Globe, the petitioner has misinterpreted the Department's decision regarding the application of two six-month averaging periods to calculate the dumping margin in this investigation. Globe argues that in the *Preserved Mushrooms* case, the Department chose not to use shorter averaging periods because they were of no consequence in that case. Accordingly, because the POI in this investigation is identical to the POI in *Preserved Mushrooms*, Globe contends that the Department should also not alter the averaging period and continue to average prices over the entire POI.

Swasthi also disagrees with the Petitioner's assertion that the Department should use two-averaging periods. Swasthi argues that dividing the POI into two parts would require the use of two sets of costs and sales data for each of the periods. Swasthi notes that the Department has only the costs and sales information regarding calendar year 1997, and does not have the information available to consider the Petitioner's proposed two-six month averaging period. On this basis, Swasthi contends that the Department should follow the practice as applied in *Preserved Mushrooms* by basing the price comparison on a single averaging period for all of calendar year 1997.

DOC Position. We agree with petitioners that separate averaging periods should be used. Under section 777A(d)(1)(A) of the Act , the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 C.F.R. 351.414(d)(3), the Department may use shorter averaging periods where normal value varies significantly over the POI. In this case, such a change is evidenced by the steady, significant decline in the rupiah's value that began about August 1997 and continued through the end of the POI. From August through December, the end of the POI, the rupiah's value decreased by more than 50 percent in relation to the dollar. Consequently, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. We disagree with Globe's claim that the use of averaging periods is not warranted because the POI is the same as the POI in *Preserved Mushrooms*. Whereas we declined to use two averaging periods in that case because doing so would have had no effect, thus rendering the issue moot, in this case the use of two averaging periods would affect our determination. As noted above, in our view, using a single averaging period would result in a distortion of the dumping calculation. We also disagree with Swasthi's assertion that we would need additional information in order to use two averaging periods. In accordance with our normal requirements, respondents reported individual sales transactions, and we simply segregated sales by period. Further, no additional or different cost information is required. The use of two averaging periods for margin calculation purposes does not affect whether the reported cost data are appropriate.

Comment 2: Calculated Profit. Petitioner argues that, should the Department find in its COP analysis that respondents made no sales above the cost of production, the Department should resort to the use of constructed value as NV, and apply, as the profit rate, a rate of 22.69 percent as used in the *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia*, 62 FR 1719, (January 13, 1997) ("*Melamine Dinnerware*").

Swasthi argues that its home market sales are profitable, and therefore the Department should use, if necessary, Swasthi's actual profit rate and not the rate of a plastic tableware manufacturer. Swasthi continues to state that a profit rate of another industry is irrelevant for an analysis involving the extruded rubber thread industry.

Bakrie did not comment on this issue.

DOC Position. We disagree with Petitioner. According to section 773(e)(2)(B) of the Act, the Department has various methodologies for calculating profit where profit does not exist. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2nd Sess. (1994) (SAA) at 841, states that if a company has no home market profit on sales of the foreign like product or has incurred losses in the home market, the Department is directed to find an alternative home market profit. The statute also infers that a positive profit amount must be included in the calculation of constructed value by mandating the use of profit from any sales above the costs of production (even one sale) and provides alternative methods for determining profit when no sales are found to be above the cost of production.

Because Bakrie had no above-cost home market sales and, hence, no actual company-specific profit data available for its home market sales of the foreign like product, we calculated profit in accordance with section 773(e)(2)(B) of the Act. Specifically, section 773(e)(2)(B)(iii) of the Act permits the Department to use any other reasonable method to determine profit. We note that Bakrie's audited 1997 financial statement indicated no profit during the POI. However, because Swasthi is another producer/exporter of the subject merchandise in Indonesia and did report a profit for the POI, we are applying, as facts available, its profit rate under section 773(e)(2)(B)(iii) of the Act. Therefore, we do not need to resort to other alternatives for a surrogate profit ratio.

Comment 3: Treatment of Bakrie's Audited Financial Statement as Public. Petitioner contends that the Department should treat Bakrie's 1997 audited financial statement as public information, as opposed to business proprietary information, based on the fact that Bakrie had to report such information to the Indonesian government.

Bakrie did not comment on this issue.

DOC Position. We disagree with Petitioner. Pursuant to section 351.105 of the Department's regulations, the Secretary normally will consider as business proprietary, at the request of the submitter, specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter. At the time of Bakrie's questionnaire submission, Bakrie requested that its financial statement be treated as proprietary. Bakrie's financial statement is not a public document. Petitioner's argument that the financial statement should be a public document because Bakrie has acknowledged that it must provide a copy of its financial statement to the government of Indonesia is not pertinent to Bakrie's request for proprietary treatment of the document. The fact that Bakrie's financial statement might be disclosed to a government entity does not in and of itself demonstrate that such information is public. For example, companies must file a tax return with the government, but this fact does not mean that company tax returns are public documents. Therefore, we continue to treat Bakrie's financial statement as a business proprietary document.

Comment 4: Use of Facts Available in Swasthi's Sales Responses. Petitioner argues that, at the beginning of the verification process, Swasthi provided updated information regarding returns, discounts, commissions, payment dates, packing expenses, product codes, sales dates and inland freight costs for both U.S. and Indonesian sales, which essentially constituted a new questionnaire response. Petitioner asserts that, because such data constitutes untimely new information which should have been provided in the questionnaire responses, the Department should disregard this new data and adjust Swasthi's sales data using facts available.

Swasthi states that the revisions should be included in the Department's final determination because the Department was able to reconcile the revisions during verification.

DOC Position. The revisions Swasthi provided to the Department at verification amount to corrections of certain errors Swasthi made in its questionnaire responses. The errors in question were neither significant nor pervasive. On the first day of verification, Swasthi presented a revised Section B and C database. The revisions were the direct result of errors discovered in the course of preparing for the Department's verification. Furthermore, the revised sales databases were reconciled and formed the basis of the Department's verification report. Because it is the Department's practice to accept minor corrections at verification, we have accepted these corrections for purposes of this final determination.

Comment 5: Conversion of Correct Units of Measure of Imputed Credit Cost in the United States. Swasthi alleges that its imputed credit cost for sales incurred in the United States at the preliminary determination was reported in U.S. dollars per kilogram instead of U.S. dollars per pound. Swasthi contends that this resulted in an overstatement of imputed credit cost to be deducted from the gross sales prices. Swasthi requests that the Department recalculate its imputed credit cost in the United States based on the fact that the Department verified that the imputed credit was reported in U.S. dollars per pound.

Petitioner did not comment on this issue.

DOC Position. In both the preliminary determination and in this final determination, we calculated imputed credit costs for Swasthi's U.S. sales based on a cost per-pound basis. This was done because the U.S. sales price is made on a per-pound basis. Therefore, the proper credit costs were used in both the preliminary and final determinations.

Comment 6: Loan from Shareholders. Petitioner argues that the Department should impute an interest expense on loans received from related parties and that this is consistent both with related party transaction provisions in the statute and with the Department's normal practice. Specifically, petitioner states that Swasthi received loans from shareholders bearing a non-arm's length interest rate. Petitioner notes that it is the Department's practice to calculate the interest cost for loans from affiliated parties, *e.g.,* shareholders, based on the interest rate the loan recipient is paying unaffiliated parties. *See Final Results of Antidumping Duty Administrative Review: Industrial Phosphoric Acid from Belgium*, 63 FR 55087, 55089, (October 18, 1998). According to petitioner, the COP the Department uses in its margin calculations should reflect the fair market cost of this type of loan.

Swasthi refutes petitioner's allegations by stating that its shareholders do indeed charge market interest rates on the loans; and that the cost of such loans were included as reported costs in its COP and CV databases. Swasthi notes that the Department stated in its verification report that there were no discrepancies in Swasthi's COP and/or CV databases. Thus, Swasthi contends, petitioner's comment on this issue should be disregarded.

DOC Position. We agree with Petitioner. It is the Department's practice to include imputed interest expenses in the computation of CV and COP on loans received from affiliated parties, if not included in the interest expense calculation. *See Final Results of Antidumping Duty Administrative Review: Shop Towels from Bangladesh*, 60 FR 48966, (September 21, 1995). The Department will normally impute an interest expense on transactions when the rate charged by a related party lender does not reflect a fair market rate. In this case, we do not consider the respondent's shareholder loans to be reflective of the fair market borrowing rate since such loans typically involve some cost to the borrower. The Department determined that Swasthi received loans from its shareholders, but the interest on those loans was not included in the calculation of Swasthi's COP and CV. Therefore, we calculated an annual imputed interest expense for the loan by multiplying the outstanding loan balance by the annual borrowing rate in rupiah as shown in the 1997 audited financial statement. The resulting per annum, annual imputed interest expense of the loan was added to Swasthi's reported interest expense, and the revised interest expense was then divided by the cost of goods sold to obtain a revised interest expense ratio which was used in the calculation of the COP (*see*, the Calculation Memorandum to the File dated March 18, 1999).

Comment 7: Imputed Credit and Inventory Carrying Costs. Bakrie argues that its U.S. and home market prices should not be adjusted for imputed credit costs and inventory carrying costs incurred in the home and United States because imputed credit costs are included in its interest expense for purposes of its COP calculation. Thus, Bakrie contends that the Department double-counted its interest expense because these expenses are included in COP and are also deducted from the home market sales price.

DOC Position. We did not double-count Bakrie's expenses. When conducting the COP test for Bakrie's home market sales, the COP includes the company's actual financial expenses. In conducting the COP test, we do not deduct imputed inventory carrying costs and home market credit costs from HM prices because the COP already includes the company's actual financial expenses. Thus, there is no double-counting of Bakrie's interest expenses. We do not perform the cost

test for U.S. sales. Therefore Bakrie's comment with respected to U.S. costs is moot.

Comment 8: Exclusion of Globe's Assistance in Bakrie's Reported COP. Petitioner contends that the Department should adjust Bakrie's reported COP to account for Globe's contribution to the joint venture which Petitioner asserts was not reflected in Bakrie's reported COP.

DOC Position. We disagree with Petitioner. Globe's contribution to the joint venture was already included in Bakrie's reported COP and CV databases. For further discussion, *see* the Calculation Memorandum to the File dated, March 18, 1999.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to begin suspension of liquidation for Swasthi of all entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination in the **Federal Register**. We are also directing the Customs Service to continue to suspend liquidation for Bakrie of all entries of subject merchandise from Indonesia, that are entered, or withdrawn from warehouse, for consumption on or after November 3, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The "All Others" rate applies to all exporters of extruded rubber thread not specifically listed below. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
P.T. Bakrie Rubber Industry	28.29
P.T. Swasthi Parama Mulya	44.86
All Others	31.54

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7371 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results in the 11th administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The period of review is March 1, 1997, through February 28, 1998. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3853 or 482–6309, respectively.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) initiated the administrative review of the antidumping duty order on certain fresh cut flowers from Colombia on April 21, 1998 (63 FR 19709). On December 7, 1998, we extended the deadline for these preliminary results until February 10, 1999 (63 FR 6754). On February 18, 1999, we published in the **Federal Register** the preliminary results of this administrative review (64 FR 8059).

Due to the complexity of the issues present in this case, the Department has determined that it is not practicable to complete this review within the original time limit set forth in section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act. Therefore, the Department is extending the time limit for completion of the final results until August 17, 1999.

As a result of the extension of the final results, the Department is also postponing the briefing schedule. Case briefs will be due on June 3, 1999, rebuttal briefs will be due on June 10, 1999.

This extension is in accordance with the section 751(a)(3)(A) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 99–7368 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–804]

Final Negative Countervailing Duty Determination: Extruded Rubber Thread From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

FINAL DETERMINATION: The Department of Commerce (the "Department") determines that countervailable subsidies are not being provided to producers or exporters of extruded rubber thread (ERT) in Indonesia.

Case History

Since the publication of the preliminary negative determination in the **Federal Register** on September 9, 1998, (63 FR 48191) (*Preliminary Determination*), the following events have occurred. Between September 23 and October 2, 1998, we conducted verification of the responses of the Government of Indonesia (GOI) and the respondent companies, P.T. Swasthi Parama Mulya (Swasthi) and Bakrie Rubber Industries (Bakrie). Swasthi submitted a case brief on December 1, 1998. No other parties to this investigation filed case briefs or rebuttal briefs. A public hearing was not requested by any interested party.

Scope of Investigation

For purposes of this investigation, the product covered is extruded rubber thread (ERT) from Indonesia. ERT is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. ERT is currently classified under subheadings 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Petitioner

The petition in this investigation was filed by North American Rubber Thread Co., Ltd. (the petitioner).

Period of Investigation

The period for which we are measuring subsidies (the "POI") is calendar year 1997.

De Minimis Countervailable Subsidy

Pursuant to its authority under section 771(36) of the Act, the United States Trade Representative ("USTR") has designated Indonesia as a "least developed country." *See* USTR Interim Final Rule: Developing and Least-Developed Country Designations Under the Countervailing Duty Law 15 CFR 2013 (63 FR 29945). Consequently, a net countervailable subsidy rate that does not exceed three percent *ad valorem* is considered *de minimis*, in accordance with section 703(b)(4)(B) of the Act, which implements Article 27 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). As discussed below, we determine that the net countervailable subsidy bestowed on extruded rubber thread from Indonesia is less than three percent *ad valorem*, and therefore, *de minimis*.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, the information reviewed at verification, and written briefs submitted by interested parties, we determine the following:

I. Programs Determined to Be Countervailable

A. Bank of Indonesia (BI) Rediscounted Loans

Under Decree No. 132/MPP/Kep/1996 of June 4, 1996, the Ministry of Industry and Trade, the Ministry of Finance, and the Bank of Indonesia (BI) provide support for certain exporters with the goal of achieving diversification of the Indonesian export base from oil and gas. Under the program, companies can sell their letters of credit and export drafts at a discount to the BI through participating foreign exchange banks, which are commercial banks that have obtained a license to conduct activities in foreign currencies. In the *Preliminary Determination*, we determined that this program was countervailable because the sale of the letters of credit and export drafts provided exporters with working capital at lower interest rates than they would otherwise obtain on the market. Our review of the information on the record, our findings at verification, and our analysis of the case brief submitted by Swasthi (*see* Comment 1) has not led us to change our preliminary determination that this program is countervailable.

During the POI, Swasthi obtained rediscounted loans under the BI rediscount loan program, as well as commercial rediscounted loans that were not associated with the BI rediscount loan program. Because Swasthi is a Designated Export Company (PET), it was eligible to obtain BI rediscounted loans at a rate that was lower than the rate available to non-PET companies, specifically, at the Singapore Interbank Offering Rate (SIBOR) rather than SIBOR plus one percentage point.

For purposes of the *Preliminary Determination*, we calculated the benefit to Swasthi under this program as the difference in the interest that Swasthi would have paid at the non-PET rate and interest it paid at the PET rate. However, for purposes of this final determination, we are using a different benchmark. According to section 771(5)(E)(ii) of the Act, the benefit conferred under a loan program is the difference between the amount the recipient of the loan pays on the loan under the government program and the amount the recipient would pay on a comparable commercial loan that it could actually obtain on the market. We verified that, during the POI, Swasthi obtained comparable commercial rediscounted loans outside of the BI rediscount loan program. Thus, we determine that those company-specific loans provide a more appropriate benchmark than the benchmark used in the *Preliminary Determination*. Therefore, instead of the using a rate established by the BI, we calculated the benchmark as the weighted-average interest rate of the non-BI rediscounted loans Swasthi obtained during the POI. In order to calculate the benefit under the program, we calculated the difference in the amount of interest Swasthi actually paid on the BI rediscounted loans during the POI and the amount it would have paid at the benchmark interest rate. We then divided the calculated benefit provided from the BI rediscount loan program by Swasthi's total exports of subject merchandise to the United States during the POI. We used export of subject merchandise to the United States because the loans could be segregated by product and destination. On this basis, we determine the benefit to Swasthi under this program to be 0.18 percent *ad valorem* for Swasthi. No other producers/exporters of the subject merchandise applied for or received loan under this program during the POI.

II. Programs Determined To Be Not Used

Based on the information provided in the responses and the results of verification, we determine that, during the POI, the producers/exporters of subject merchandise did not apply for or receive benefits under the following programs:

A. *Investment Credit for the Expansion of the Rubber Industry.*

B. *Corporate Income Tax Holiday.*

C. *Import Duty Exemption of Capital Equipment.*

Interest Party Comment

Comment 1: Benchmark Used in the Calculation of the Bank of Indonesia (BI) Rediscount Loan Program: Swasthi states that the Department should continue to use the benchmark interest rate employed in the *Preliminary Determination, (i.e.*, the interest rate differential between the BI's PET rate and the non-PET rate). Swasthi further argues that, when calculating the benefit provided by BI rediscounted loans, the Department should take into consideration the opportunity costs that Swasthi incurred as a result of collateral deposits. Swasthi states that collateral deposits are a typical banking practice in Indonesia.

Department's Position: We disagree with Swasthi's argument that the Department should continue to calculate the benefit to Swasthi using the BI rate for non-PET companies for comparison purposes. As explained above, section 771(5)(E)(ii) of the Act states that the benefit from a government loan program should be based upon comparable commercial loans that the company could actually obtain on the market. During the POI, Swasthi obtained comparable commercial rediscounted loans which are not associated with the BI rediscount loan program. Therefore, these loans are a more appropriate basis for benchmark purposes than the BI rediscount rate for non-PET companies.

Also we disagree that we should factor into our benefit calculations opportunity costs associated with collateral deposits. In determining whether particular loans are comparable for benchmark purposes, the Department normally focuses on the structure of the loans, the maturities of the loans, and the currencies in which the loans are denominated. As explained above, we have determined that Swasthi's commercial rediscounted loans are appropriate for benchmark purposes. They have comparable structures and maturities and are denominated in dollars.

As Swasthi acknowledges, collateral requirements are a typical bank practice in Indonesia. Both banks that participate in the BI rediscount loan program and banks that do not participate in the BI rediscount loan program require collateral. Moreover, collateral requirements vary across banks and loan types. Based on these facts, there is no basis for factoring in collateral requirements in determining the effective interest rates, nor is there a basis for finding that Swasthi's commercial rediscounted loans are not an appropriate benchmark.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed our standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total net countervailable subsidy rate for Bakrie is zero and that the total net countervailable subsidy rate for Swasthi is 0.18 percent *ad valorem*, which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of extruded rubber thread from Indonesia. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon the publication of the final negative determination in the **Federal Register**.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: March 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–7372 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of draft revision of the procedures for delivery of HEU natural uranium component in the United States, and request for comments.

SUMMARY: The Department of Commerce is announcing draft revised procedures for the delivery of HEU material pursuant to the USEC Privatization Act.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Karla Whalen, or Juanita H. Chen, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–3793.

Background

On April 25, 1996 Congress passed the United States Enrichment Corporation Privatization Act ("USEC Privatization Act"), 42 U.S.C. 2297h, *et seq.* The USEC Privatization Act requires the U.S. Department of Commerce ("Department") to administer and enforce the limitations set forth in 42 U.S.C. 2297h–10(b)(5) of the USEC Privatization Act. On January 7, 1998, in order to implement this statutory mandate, the Department issued the Procedures for Delivery of HEU Natural Uranium Component in the United States. The purpose of issuing Procedures for Delivery of HEU Natural Uranium Component in the United States ("HEU Procedures") is to enhance the predictability and transparency of the administration and enforcement of the above-referenced delivery limitations.

On July 6, 1998 the Department provided public notification of the HEU Procedures and Annex 1 to the HEU Procedures (see 63 FR 36391 (July 6, 1998)). On July 23, 1998 the Department issued a proposed Annex 2 to the HEU Procedures regarding re-importation requirements and requested public comment on Annex 2. Comments were received from eight parties.

In accordance with Section F of the HEU Procedures, on October 8, 1998, the Department requested comments on necessary or desirable changes to the HEU Procedures from parties (see 63 FR 54108 (October 8, 1998)). The Department received comments from eight parties regarding the HEU Procedures. After careful review of the comments, and after consultations with various parties, the Department has determined that revision and clarification of the HEU Procedures are warranted. Revised HEU Procedures are set forth below.

The Department hereby invites parties to provide comment on these draft

revised Procedures for delivery of HEU Natural Uranium Component in the United States, as set forth below. All such comments must be submitted to the Department no later than ten days after the date of publication of this notice. Comments should be addressed and submitted to: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, Attention: Roland L. MacDonald—Room 7866.

The Department intends to issue final revised Procedures for delivery of HEU Natural Uranium Component in the United States no later than 20 days after the date of publication of this notice.

Dated: March 18, 1999.

Robert S. LaRussa,

Assistant Secretary, Enforcement Group III.

Draft Revised Procedures for Delivery of HEU Natural Uranium Component in the United States

The United States Enrichment Corporation Privatization Legislation, 42 U.S.C. § 2297h, *et seq.* ("USEC Privatization Act"), directs the Secretary of Commerce to administer and enforce Russian origin uranium delivery limitations set forth in 42 U.S.C. § 2297h-10(b)(5). Accordingly, the U.S. Department of Commerce ("Department") is implementing § 2297h–10 of the USEC Privatization Act by issuing these revised HEU Procedures. The authority to implement the HEU Procedures does not derive from the Tariff Act of 1930, as amended. Therefore, these revised HEU Procedures are not subject to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Russian Suspension Agreement"), 57 FR 79235 (October 30, 1992), as amended.

A. Coverage

The uranium covered by these revised HEU Procedures consists of uranium hexafluoride derived from HEU taken from dismantled nuclear warheads, deemed under United States law for all purposes to be of Russian origin, and delivered to the Russian Executive Agent pursuant to the USEC Privatization Act ("HEU Natural Uranium Component").

B. Definitions

1. Account Administrator—means the party that administers the account into which the Russian Executive Agent or Designated Agent takes delivery of, and provides account balance information for, the HEU Natural Uranium Component prior to its sale pursuant to the USEC Privatization Act.

2. Annual Maximum Deliveries—means the delivery limitations as set forth at 42 U.S.C. § 2297h–10(b)(5):

ANNUAL MAXIMUM DELIVERIES TO END-USERS FOR CONSUMPTION

Year	(Millions lbs. U_3O_8 equivalent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009	20

3. Consumption—means for use as nuclear fuel.

4. Designated Agent—means any party that has been authorized by the Ministry of Atomic Energy of the Russian Federation ("MINATOM") to sell the HEU Natural Uranium Component.

5. Designated Agent's Account—means the account held in the name of the Designated Agent, into which only the HEU Natural Uranium Component is delivered prior to its transfer pursuant to the USEC Privatization Act.

6. End-User—means a utility that consumes the HEU Natural Uranium Component for energy production.

7. Executive Agent—means the United States or Russian Federation executive agent with the authority to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 19, 1993.

8. Secretary—means the Secretary of Commerce or a designee. The Secretary has responsibility for the administration and enforcement of the limitations set forth in 42 U.S.C. 2297h–10(b)(5).

9. U_3O_8 to UF_6 Conversion—based on a tails assay of 0.30 U^{235}, 1 KgU in UF_6 = 2.61283 lbs. U_3O_8.

10. Verification—The process by which the Department examines the records of the party that provided the information being examined, and interviews company personnel who prepared such information and who are familiar with the sources of the data in the information, in order to establish the adequacy and accuracy of submitted information.

C. Record Procedures and Commercial Confidentiality

1. Public Record and Access

a. HEU Record: A separate record for documents and information generated under the HEU Procedures shall be created under the identifying title "HEU File" and maintained in the Central Records Unit.

b. Central Records Unit: Import Administration's Central Records Unit is located at B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days.

c. The Central Records Unit is responsible for maintaining a public and an official record for the HEU File. The public record will consist of all material contained in the official record that the Secretary determines is subject to release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, *et seq.* (1998), and disclosed to the general public in the Central Records Unit. The Secretary will charge an appropriate fee for providing copies of documents. The official record will contain information for which the submitter has claimed an exemption to release under FOIA. Such record will be accessible only to authorized Commerce Department employees.

d. FOIA Release and Treatment of Commercial Information: Documents submitted to the Department are fully releasable under FOIA, unless a party claims protection from release under a listed exemption. A party making a submission may not claim its own identity as protected from release under FOIA. In order to claim protection from release, a party must specify the appropriate exemption applicable to the information which the party seeks to protect from release, and bracket such information. See § 4.7 of the Department's FOIA regulations, set forth in 15 C.F.R. Part 4 (1998). If the information in the submission is protected from release under an exemption to FOIA, the party submitting such documentation is to provide a releasable public version along with the non-releasable version. Further information on FOIA may be accessed at *http://www.usdoj.gov/foia* .

e. Internet Access to Quarterly Quota Usage: The Department will set up and update quarterly a web-page which will allow the public to access updates on the Annual Maximum Deliveries quota usage. This information will be accessible at *http://www.ita.doc.gov* .

f. Interim Record: The Department will create the public record of the HEU

File within 90 days from publication of the final revised HEU Procedures. During this time the Department will allow parties that have already submitted information to the Department, pursuant to the January 7, 1998 HEU Procedures, the opportunity to claim documents are exempt from release under FOIA and to create releasable versions of said documents. The Department will also transfer any documentation relating to the HEU Procedures from the record for the Russian Suspension Agreement (A–821–802) to the HEU File, or will return such documentation to the submitter, as appropriate.

2. Record Submission Instructions

a. Where to file: For the Department to consider a submission to the record, persons must address and submit all documents to: The Secretary of Commerce; Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Submissions may be made between 8:30 AM and 5:00 PM on business days. Courtesy copies addressed to the appropriate employee, and designating the employee's room number, may be delivered to Room 1874. Contract submitters are requested to notify the Department at 202–482–3793 when a contract has been submitted for approval.

b. Required Header Information: Any submission made to the HEU File must contain the following information in the upper right hand corner of the document in the order presented below:

HEU File
Number of Pages
Public Document, or,
Business Proprietary Document (Public or Proprietary Version)
Attn: Uranium Program, Room 7866

c. Number of Copies: Each submission to the Department must be accompanied by three copies of the submission. Where claim of exemption from release under FOIA is made, two public and three proprietary versions should be submitted to the Department. Upon receipt, the Central Records Unit will stamp the official date of filing on the submission.

D. Allocation of Annual Maximum Deliveries to End-Users

The Department recognizes that MINATOM may allocate the Annual Maximum Deliveries of HEU Natural Uranium Component among any Designated Agent(s) which it authorizes to sell the HEU Natural Uranium Component. For each Designated Agent receiving a delivery allocation, MINATOM will issue a certificate identifying such Designated Agent, the duration of time for which the allocation is valid, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the Designated Agent is to be sold in the United States for consumption. MINATOM will provide a copy of all such certificates to the Department within 10 days of issuance. The cumulative amount of the maximum deliveries authorized by such certificates each year may not exceed the Annual Maximum Deliveries.

E. Contract Monitoring and Approval

1. All Designated Agents must submit for approval all contracts related to the sale of the HEU Natural Uranium Component in the United States, regardless of the point of delivery. The following five items are required for contract approval:

a. A certificate as provided for in Section D confirming that the Designated Agent has been allowed sufficient amounts for deliveries by MINATOM to fulfill its obligations under the submitted contract;

b. A schedule of deliveries indicating the date(s) of deliveries, amount, and site of each delivery. The Department will compare this information to the sum of the previously approved contracts to ensure that the Designated Agent delivery allocation and/or the Annual Maximum Deliveries are not exceeded;

c. A statement in the contract that the material to be sold is of Russian origin;

d. A statement in the contract that the sale is for delivery to an End-User for consumption; and,

e. A certification from the Designated Agent that the deliveries pursuant to the contract submitted for approval, when combined with deliveries pursuant to other approved contracts entered into by that Designated Agent, do not (and will not) exceed that Designated Agent's delivery allocation for any given annual period. See Section E.2.a., below. In addition, each Designated Agent shall certify to the Department that such Designated Agent's sales of HEU Natural Uranium Component are for consumption and do not circumvent, directly or indirectly, the limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act and the revised Procedures set forth in this document. See Section E.2.b., below.

2. Required Language for Contract Approval Certifications.

a. (DESIGNATED AGENT) certifies that the total annual deliveries under the contract between (SELLER) and (PURCHASER), contract number (INSERT #), and executed on (INSERT DATE), when added to annual delivery quantities of other contracts approved in accordance with the HEU Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, will not exceed the maximum annual delivery quantity allocated to (DESIGNATED AGENT) by (MINATOM) for any given year, or the annual maximum delivery quantity(ies) established in 42 U.S.C. § 2297h–10(b)(5) of the USEC Privatization Act for the approved year(s) in which deliveries under this contract are to be made.

b. (DESIGNATED AGENT) further certifies that the sale of the HEU Natural Uranium Component is for consumption and does not circumvent, directly or indirectly, the limitations set forth in 42 U.S.C. § 2297h–10(b)(5) of the USEC Privatization Act or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

3. Approval Notification.

The Department will notify the submitter of the contract in writing whether the contract has been approved within 10 business days of complete contract submission to the Central Records Unit. In the unlikely event that the Department fails to notify the submitter of the contract of approval or denial within 10 business days, the contract will be deemed approved. If an approved contract is subsequently terminated as a result of force majeure, as defined in the relevant contract, the Department will allow the affected Designated Agent to replace current and future year deliveries pursuant to such contract with a newly executed contract, subject to the approval process outlined above, provided that the Designated Agent's delivery allocation and the Annual Maximum Deliveries are not exceeded.

F. Re-allocation

1. Annual deliveries allocated to a Designated Agent may be re-allocated to any other Designated Agent or to MINATOM within the same annual period subject to the Annual Maximum Deliveries under the following conditions:

a. The new contract is submitted to the Department no later than December 21 of the year in which the delivery is to be made;

b. MINATOM provides the Department with a copy of the amended and/or terminated certificate(s) from

which delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating such deliveries; and,

c. All new contracts entered into as a result of re-allocation must be approved under Section E of these HEU Procedures.

2. If, in any given annual period, a Designated Agent delivers less than the maximum amount deliverable under the approved contract(s), such Designated Agent may re-direct the difference between its actual deliveries during that year and the maximum deliverable amount approved for that same year by entering into a new contract(s), provided that the Designated Agent's total annual deliveries under all contracts do not exceed that Designated Agent's delivery allocation or the Annual Maximum Deliveries and provided that the following four conditions are met:

a. The Department is notified of the Designated Agent's intention to re-direct deliveries no later than December 21 of the applicable annual period;

b. All re-directed deliveries are to be delivered in that same year;

c. All new contracts entered into by Designated Agents resulting from re-direction of deliveries must be approved under Section E of these HEU Procedures; and,

d. The Designated Agent provides the Department with a copy of the End-User's binding delivery notice.

G. Delivery Forfeit and Flexibility

On December 31 of each year, any portion of the Annual Maximum Deliveries not delivered in that year will be forfeited. In the unlikely event that there are transfer or transportation difficulties beyond the control of the Designated Agent, the Department may provide for a 30 day grace period to complete the delivery. The Department must be notified in writing of a request for a 30 day grace period, detailing the reasons for the delivery delay.

H. Swaps, Exchanges, Loans, or Resales of Material

1. Swaps, Exchanges or Loans: Swaps, exchanges or loans of HEU Natural Uranium Component may be conducted solely for the purpose of facilitating further processing and end-use as nuclear fuel. Notification of such permitted swaps, exchanges or loans is required to be provided to the Department at the time of the transactions. The Department is attaching the notification format as Attachment 1. Examples of such permitted swaps are swaps designed to avoid transportation costs. The Department considers swaps, exchanges or loans that will result in sales for consumption in the United States, directly or indirectly, exceeding the Annual Maximum Deliveries to be circumvention. Swaps, exchanges or loans are subject to verification by the Department at any time and at its discretion.

2. Resale: The Department will permit End-Users to resell the HEU Natural Uranium Component. If the HEU Natural Uranium Component is resold to an entity outside the United States, the End-User making the resale must notify the Department of the date of the resale and the volume to be resold. If the HEU Natural Uranium Component is to be resold to an entity in the United States, the contract for the resale is presented to the Department for approval. The contract must indicate the date of delivery, amount, and site of delivery. The contract must also contain a statement that the material to be sold is of Russian origin. If the HEU Natural Uranium Component is resold to any party other than an End-User, the material must be held in a separate account and quarterly reports on the account balance similar to those attached at Attachments 2 and 3, are required from the purchaser of the resold material. The Department will notify the End-User making the resale whether the contract has been approved within 10 business days of complete contract submission to the Central Records Unit. Resales are also subject to verification by the Department at any time and at its discretion.

I. Quarterly Reports

1. Designated Agents

Designated Agents must submit quarterly reports to the HEU File that detail all activity relating to the movement of HEU Natural Uranium Component into and out of their respective accounts. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31. The Designated Agent must also provide a public summary of the report that details the movement of material in the aggregate. The Department is attaching a sample quarterly report form as Attachment 2. Designated Agents must also submit the following certification with the quarterly reports:

a. (DESIGNATED AGENT) certifies that it holds an HEU Natural Uranium Component account(s) at (STATE NAME OF ENTITY(IES)), and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for any of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. 2297h-10(b)(6) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. 2297h-10(b)(7); (3) for delivery to a United States End-User for consumption, within the Annual Maximum Deliveries set forth in 42 U.S.C. 2297h-10(b)(5) [1]; (4) for export out of the United States; or (5) for further processing on behalf of (NAME OF ENTITY).

b. (DESIGNATED AGENT) further certifies that none of the HEU Natural Uranium Component transferred from or into this (these) account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. 2297h-10(b)(5) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

2. Account Administrators

Account Administrators must submit quarterly reports regarding the account holding the HEU Natural Uranium Component. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31. The Department is attaching a sample Account Administrator form as Attachment 3.

J. Importer Certifications

The importer of record must certify the following to the United States Customs Service and provide a copy of such certification to the Department:

(IMPORTER NAME) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended, any antidumping duty order(s) on uranium, or the delivery limitations set forth in 42 U.S.C. 2297h-10(b)(5) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU

[1] Material which is exported to a non-United States entity may not re-enter the United States for consumption, either directly or indirectly, except when in compliance with these revised Procedures.

Natural Uranium Component in the United States, as revised.

K. Verification

The Department reserves the right to verify any information submitted to the Department related to deliveries authorized under the USEC Privatization Act and to restrict future deliveries from any account in which the reported activity is found to be in violation of these revised Procedures and/or the Annual Maximum Deliveries if such violations are not rectified to the satisfaction of the Department and MINATOM.

L. Consultations

Upon request, MINATOM and the Department will hold consultations subsequent to the filing of the quarterly reports due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU Natural Uranium Component under these revised Procedures during the previous year. Consultations may be held as necessary at other times.

M. Re-importation

The Department has simplified the procedure for allowing the re-importation of HEU Natural Uranium Component previously sold to an End-User that has been exported from the United States for further processing and subsequent re-importation into the United States. The End-User or its agent, i.e. the importer of record, must submit a notification letter and certifications, attached as Attachment 4.

N. Enforcement

If the Department finds that a Designated Agent has directly or indirectly exceeded its delivery allocation and/or the Annual Maximum Deliveries, the Department will require the Account Administrator or the appropriate entity to withhold any further release of HEU Natural Uranium Component from the Designated Agent's Account, until the issue has been satisfactorily resolved among the Department, MINATOM, and the relevant Designated Agent.

Pursuant to its authority under 42 U.S.C. 2297h-10(b)(9) of the USEC Privatization Act, the Department reserves the right to require any additional certifications, information, or take any other action necessary to enforce the Annual Maximum Deliveries provided for therein.

Attachment 1—Swaps, Exchanges and Loans Notification Format

1. List the volume and origin of the material being swapped.
2. Indicate the location of the swap, exchange, and/or loan.
3. List the parties involved in the swap, exchange, and/or loan.
4. Indicate the purpose of the swap, exchange and/or loan.

Indicate whether there was any financial or other consideration involved with the swap, exchange and/or loan.

Attachment 2—Designated Agent Quarterly Report Form

Quarterly Delivery Report for (INSERT DATES AND DESIGNATED AGENT) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): _____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent):_____

(DESIGNATED AGENT) certifies that it holds an HEU Natural Uranium Component account at (STATE NAME OF ENTITY(IES)) and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for any of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. 2297h–10(b)(7); (3) for delivery to a United States End-User for consumption, within the Annual Maximum Deliveries set forth in the USEC Privatization Act, at 42 U.S.C. 2297h–10(b)(5); (4) for export out of the United States; or (5) for further processing on behalf of (NAME OF ENTITY).

(DESIGNATED AGENT) further certifies that none of the HEU Natural Uranium Component transferred from or into the account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. 2297h–10(b)(5) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Attachment 3—Account Administrator Quarterly Report Form

Quarterly Report for (INSERT DATES AND ACCOUNT ADMINISTRATOR) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent):_____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent):

(ACCOUNT ADMINISTRATOR) certifies that it holds an HEU Natural Uranium Component account(s) in the name(s) of (DESIGNATED AGENT(S)), at (LOCATION), and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for any of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. 2297h–10(b)(6) and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. 2297h–10(b)(7); (3) for delivery to a United States End-User for consumption, within the delivery limits of the USEC Privatization Act, at 42 U.S.C. 2297h–10(b)(5) ; (4) for export out of the United States; or (5) for further processing on behalf of (NAME OF ENTITY).

(ACCOUNT ADMINISTRATOR) further certifies that none of the HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar

quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in the USEC Privatization Act, at 42 U.S.C. 2297h–10(b), the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Attachment 4 (Page One)—Re-importation Notification Form and Certifications

TOPIC: Re-importation of Uranium under 42 U.S.C. 2297h–10(b)(5) of the USEC Privatization Act.

Pursuant to Section M of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, ("HEU Procedures"), we hereby submit information describing the re-importation of Russian origin uranium subject to the delivery limitations set forth in the USEC Privatization Act, at 42 U.S.C. 2297h–10(b)(5), and in association with the contract between (NAME OF COMPANY A) and (NAME OF COMPANY B) approved by the U.S. Department of Commerce ("Department"), either by letter dated (DATE) or deemed approved at the end of the ten business day approval period referenced in Section E.3 of the HEU Procedures:

1. Quantity of Export (U_3O_8 equivalent) out of U.S.:
2. Date of Export out of U.S. (if available):
3. (NUMBER) lbs. of U_3O_8 equivalent contained in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt %:
4. Port of Re-Import:
5. Importer of Record:
6. Planned Date of Re-Import:
7. End User:
8. Vessel/Airline Name:
9. Amount of export listed in 1. and 2. that has been re-imported as of date (including current re-import):

Also, please find attached the importer of record declaration regarding country of origin, anti-circumvention and qualification of this material under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act. Further, we understand that, under 42 U.S.C. 2297h–10(b)(9) of the USEC Privatization Act, the Department has the authority to require additional information, if appropriate. We also agree to verification of this information if requested.

Attachment 4 (Page Two)—Re-importation Notification Form and Certifications

Certifications To U.S. Customs Service

1. (END-USER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being re-imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being re-imported was converted in (INSERT COUNTRY), enriched in (INSERT COUNTRY) and/or fabricated in (INSERT COUNTRY).

2. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being re-imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended, any antidumping duty order(s), or the delivery limitations set forth in 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

(END-USER or IMPORTER OF RECORD) hereby certifies that the uranium being re-imported into the United States is approved for United States end-use under 42 U.S.C. 2297h–10(b) of the USEC Privatization Act, 42 U.S.C. 2297h, et seq., under contract between (COMPANY) and (COMPANY) approved by the U.S. Department of Commerce, either by letter dated (DATE) with contract reference number (CONTRACT REFERENCE NUMBER) or deemed approved at the end of the ten business day approval period referenced in Section E.3 of the HEU Procedures. The material being re-imported represents (NUMBER) lbs. U_3O_8 equivalent of (NUMBER) lbs. U_3O_8 equivalent exported for further processing on (DATE). Including this shipment, (NUMBER) lbs. U_3O_8 equivalent of the material exported for further processing has been re-imported.

Signature
Name:
Title:

[FR Doc. 99–7373 Filed 3–25–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Survey for Financial Institutions for Website Inclusion

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–12 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dinah Flynn, Minority Business Development Agency, 14th and Constitution Avenue, NW, Washington, DC 20230 (202–482–5061).

SUPPLEMENTARY INFORMATION:

Abstract

The Minority Business Development Agency, in fulfillment of its mandate to foster the development of United States minority businesses, funds Business Development Centers nationwide to provide management and technical assistance to and seek sources of capital for those businesses. The Agency is in the process of creating an intranet website for the use of the consultants at its Centers who are seeking sources of equity and debt financing for their clients, with a goal of locating financial institutions which have an interest in working with minority entrepreneurs who are seeking capital to start, acquire or expand their businesses. The project will begin with a pilot program focused on financial institutions in New York and Philadelphia. Information on these participating institutions will be put on the new website. The Agency anticipates that as the pilot program is perfected, the website will contain comparable information on financial institutions across the country.

Method of Collection

Potential applicants will receive a survey form from the Agency along with a letter explaining the program. Those financial institutions who are interested in participating in the program will submit the completed form in order to be included on the new website.

Data

OMB Number: N/A.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: For-profit organizations.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 50 hours.
Estimated Total Annual Cost to Public: $0 (no material or equipment will need to be purchased to provide information. The form can be transmitted electronically).

Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 22, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–7415 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990217051–9051–01]

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: In accordance with the requirements of Public Law 102–567, the NWS is publishing proposed certifications for the consolidation, automation, and closure of the following:

(1) Fort Smith, Arkansas, Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Tulsa, Oklahoma, and Little Rock, Arkansas, Weather Forecast Offices (WFOs); and

(2) Kahului, Hawaii, WSO which will be automated at Federal Aviation Administration (FAA) Weather Observation Service Level C and have its services consolidated into the future Honolulu, Hawaii, WFO.

Certifications are also proposed for the automation and closure of the following WSOs at the indicated FAA Weather Observation Service Level:

(1) Beckley, West Virginia, WSO which will be automated at FAA Weather Observation Service Level D and with services being provided by the future Charleston, West Virginia, and Roanoke, Virginia, WFOs;

(2) Boston, Massachusetts, Residual Weather Service Office (RWSO) which will be automated at FAA Weather Observation Service Level A with services being provided by the future Boston, Massachusetts, WFO;

(3) Concord, New Hampshire, WSO which will be automated at FAA Weather Observation Service Level D with services being provided by the future Portland, Maine, and Boston, Massachusetts, WFOs;

(4) Hartford, Connecticut, WSO which will be automated at FAA Weather Observation Service Level A with services being provided by the future Boston, Massachusetts; New York City; and Albany, New York, WFOs;

(5) Portland, Maine, RWSO which will be automated at FAA Weather Observation Service Level C with services being provided by the future Portland, Maine, WFO;

(6) Providence, Rhode Island, WSO which will be automated at FAA Weather Observation Service Level A with services being provided by the future Boston, Massachusetts, WFO; and

(7) Worcester, Massachusetts, WSO which will be automated at FAA Weather Observation Service Level C with services being provided by the future Boston, Massachusetts, WFO. Additionally, certifications are proposed for the closure of the following offices:

(1) Olympia, Washington, Fire Weather Office with services being provided by the future Seattle/Tacoma, Washington, WFO;

(2) Salem, Oregon, Fire Weather Office with services being provided by the future Portland, Oregon, WFO; and

(3) Wenatchee, Washington, Fire Weather Office with services being provided by the future Spokane, Washington, WFO. In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed certifications.

DATES: Comments are requested by May 26, 1999.

ADDRESSES: Requests for copies of proposed certification packages should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, Maryland 20910–3283, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301–713–0300 extension 141.

SUPPLEMENTARY INFORMATION: Pursuant to section 706 of Public Law 102–567, the Secretary of Commerce must certify that consolidation, automation, and/or closure of an NWS field office will not result in a degradation of service to the affected area of responsibility and must publish the proposed certifications in the **Federal Register**. Documentation supporting these proposed certifications includes the following:

(1) For all certifications: a draft memorandum by the meteorologist in charge recommending the certification, the final of which will be concurred with by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) For all certifications: a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) For all certifications: a comparison of services provided within the service area to services to be provided after such action;

(4) For all certifications: a description of any recent or expected modernization of NWS operations which will enhance services in the service area;

(5) For all certifications: an identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the Doppler weather surveillance radar network (WSR–88D);

(6) For consolidation certifications: evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service would result from such action, including the WSR–88D Radar Commissioning Report, User Confirmation of Services Report, and the Decomissioning Readiness Report;

(7) For automation certifications: evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action, including the Automated Surface Observing System (ASOS) commissioning report; series of three letters between NWS and FAA confirming weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and back-up responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an inplace supplementary data program at the responsible WFO;

(8) For closure certifications, where appropriate: warning and forecast

verification statistics for pre-modernized and modernized services utilized in determining services have not been degraded;

(9) For closure certifications: an Air Safety Appraisal for offices which are located on an airport; and

(10) For all certifications: a letter appointing the liaison officer. These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995, the Committee decided to forego the optional consultation on proposed certifications. Instead, the Committee would only review certifications after the public comment period closed so its consultation would include the benefit of public comments which has been submitted. This notice does not include the complete certification package because it is too voluminous to publish. Copies of certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish final certifications in the **Federal Register** and transmit the certifications to the appropriate congressional committees prior to consolidating, automating, and closing the office.

Dated: March 19, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–7437 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–KE–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 22, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 339/639 is being increased for special shift, reducing the limit for Categories 338/638 to account for the special shift being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on March 26, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	896,412 dozen.
339/639	1,136,921 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–7482 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Egypt

March 22, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339 is being reduced for carryforward and special carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 54114, published on October 8, 1998; and 63 FR 63709, published on November 16, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 1, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on March 26, 1999, you are directed to decrease the limit for Categories 338/339 to 2,600,870 dozen[1], as provided for under the Uruguay Round Agreement on Textiles and Clothing and the Memorandum of Understanding dated October 22, 1998 between the Governments of the United States and the Arab Republic of Egypt (see directive dated November 10, 1998).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–7481 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Designated Consultation Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

March 22, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a Designated Consultation Level.

EFFECTIVE DATE: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The 1999 Designated Consultation Level (DCL) for Categories 338/339/638/639 is being increased to recredit part of the 1998 DCL increase which was not used.

The level does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 53880, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 30, 1998 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which begins on January 1, 1999 and extends through December 31, 1999. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on March 26, 1999, you are directed to increase the 1999 Designated Consultation Level for Categories 338/339/638/639 to 601,629 dozen[1] pursuant to exchange of letters dated December 5, 1997 and provisions of the NAFTA (North American Free Trade Agreement).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–7484 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a Merged Category Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

March 22, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a merged category limit.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding dated March 4, 1999, the Governments of the United States and Romania agreed to merge Categories 647 and 648 and to establish a new limit for merged Categories 647/648 of 185,931 dozen for the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999. In addition, unused carryforward that had been applied to the 1998 limit for Category 647 is being recredited. The individual 1999 levels for Categories 647 and 648 are superseded by the above limit.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a new limit for merged Categories 647/648 for the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67051, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on March 29, 1999, you are directed to combine the charges for Categories 647 and 648 and establish a new limit of 185,931 dozen [1] for merged Categories 647/648 for the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, pursuant to a Memorandum of Understanding dated March 4, 1999 between the Governments of the United States and Romania.

Textile products in Categories 647/648 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Products in Categories 647 and 648 exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 25, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limit set forth in this directive for merged Category 647/648.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–7483 Filed 3–25–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection 3038–0015: Copies of crop and market information reports.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0015, Copies of Crop and Market Information Reports, which is due to expire July 31, 1999. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

Title: Copies of Crop and Market Information Reports.

Control Number: 3038–0015.

Action: Extension.

Respondents: Futures commission merchants and Members of contract markets.

Estimated Annual Burden: 5 total hours.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. avg. hours, per response
Futures Commission Merchants and Members of Contract Markets	1.40	30	1	0.167

Issued in Washington, DC on March 22, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7497 Filed 3–25–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection 3038–0021: Regulations governing bankruptcies of commodity brokers.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0021, Regulations Governing Bankruptcies of Commodity Brokers, which is due to expire July 31, 1999. The information collected pursuant to this rule is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity broker.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

[1] The limit has not been adjusted to account for any import exported after December 31, 1998.

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Regulations Governing Bankruptcies of Commodity Brokers.

Control Number: 3038–0021.

Action: Extension.

Respondents: Futures Commission Merchants.

Estimated Annual Burden: 388 total hours.

Respondents	Regulation (17 CFR)	Estimated No. of respondents	Annual responses	Est. avg. hours. per response
Futures Commission Merchants	1.90	472	7757	0.35

Issued in Washington, D.C. on March 22, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7498 Filed 3–25–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, April 2, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7584 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, April 5, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7585 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, April 9, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7586 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, April 12, 1999.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7587 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, April 16, 1999.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7588 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, April 19, 1999.

PLACE: 1155 21st St., N.W., Washington D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7589 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 1:00 p.m., Tuesday, April 20, 1999.

PLACE: 1155 21st St., N.W., Washington D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Proposed new rules concerning automated access to electronic boards of trade; otherwise, primarily operating outside the United States, and related proposed rule 1.71.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7590 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, April 23, 1999.

PLACE: 1155 21st St., N.W., Washington D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7591 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Monday, April 26, 1999.

PLACE: 1155 21st St., N.W., Washington D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7592 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Friday, April 30, 1999.

PLACE: 1155 21st St., N.W., Washington D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–7593 Filed 2–24–99; 12:16 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Notification Requirements for Coal and Woodburning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval, through June 30, 2002, of information collection requirements in a coal and woodburning appliance rule.

The rule, codified at 16 CFR Part 1406, requires manufacturers and importers of certain coal and woodburning appliances to provide safety information to consumers on labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined. The requirements to provide copies of labels and instructions to the Commission have been in effect since May 16, 1984. For this reason, the information burden imposed by this rule is limited to manufacturers and importers introducing new products or models, or making changes to labels, instructions, or information previously provided to the Commission. The purposes of the reporting requirements in Part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the rule, and to assist the Commission in determining the extent to which manufacturers and importers comply with the requirements in Part 1406. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than May 26, 1999.

ADDRESSES: Written comments should be captioned "Notification Requirements for Coal and Wood Burning Stoves" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 504–0416, Ext. 2264.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there may be up to about 5 firms required to annually submit labeling and other information. The staff further estimates that the average number of hours per respondent is three per year, for a total of about 15 hours of annual burden (5 x 3 = 15).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 12, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–7360 Filed 3–25–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Announcement of Intent To Grant an Exclusive License for a U.S. Army-Owned Patent

AGENCY: U.S. Army, Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces that, unless there is objection, in sixty days it will grant an Exclusive license to Chancepts, Limited,

LLC of Charlotte, North Carolina, on U.S. Army Patent 5,099,764 issued on March 31, 1992 entitled "Propulsion Unit Fireable From An Enclosure" by Malcolm K. Dale, et al., based upon Serial No. 709,908 filed May 30, 1991, Army Docket No. DAR 34–90.

FOR FURTHER INFORMATION CONTACT: Mr. John Moran, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army, TACOM–ARDEC, Picatinny Arsenal, NJ 07806–5000. Phone: (973) 724–6590.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 60 days from publication date of this notice in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–7477 Filed 3–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents covers a wide variety of technical arts including: A Training Device for Digital Assessment of including: A Training Device for Digital Assessment of Intraocular Pressure and a Detector of Halogenated Compounds.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Training Device for Digital Assessment of Intraocular Pressure.

Inventors: Bruce E. Amrein and James W. Karesh.

Patent Number: 5,868,580.

Issued Date: February 9, 1999.

Title: Detector of Halogenated Compounds Based on Laser Photofragmentation/Fragment Stimulated Emission.

Inventors: Rosario C. Sausa and Josef B. Simeonsson.

Patent Number: 5,866,073.

Issued Date: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–7479 Filed 3–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent Concerning a Method of Lysing Thrombi

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.7 (a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent Number 5,399,158, issued March 21, 1995 and entitled "Method of Lysing Thrombi", to Transon LLC, a U.S. company incorporated in the State of Delaware and having a principal place of business in San Francisco, California. Notice of availability of this invention for licensing was previously published in the **Federal Register** on April 25, 1995, Vol. 60, No. 79, Pages 20259–20260.

ADDRESSES: Commanding General, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Harris, Patent Attorney, (301) 619–2065 or telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Command Judge Advocate, U.S. Army Medical Research and Materiel Command, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–7476 Filed 3–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A Waveguide for performing 2 or more wavelength (de) multiplexing based on the Talbot effect.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Self-Imaging Waveguide Devices for Wavelength Division Multiplexing Applications.

Inventors: Tristan Tayag and Theodore Batchman.

Patent Number: 5,862,288.

Issued Date: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, MD 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–7478 Filed 3–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed McIntosh Unit 4 Pressurized Circulating Fluidized Bed Demonstration Project

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental and human health impacts of a proposed project to expand the C. D. McIntosh, Jr. Power Plant in Lakeland, Florida. The proposed project, selected under DOE's Clean Coal Technology Program, would demonstrate both Pressurized Circulating Fluidized Bed (PCFB) and Topped PCFB technologies. The proposed project would involve the construction and operation of a nominal 238 MWe (megawatts of electric power) combined-cycle power plant designed to burn a range of low- to high-sulfur coals. The EIS will help DOE decide whether to provide 44% of the funding for the currently estimated $440,000,000 proposed project.

The purpose of this Notice is to inform the public about the proposed action; present the schedule for the action; announce the plans for a public scoping meeting; invite public participation in (and explain) the scoping process that DOE will follow to comply with the requirements of NEPA; and solicit public comments for consideration in establishing the proposed scope and content of the EIS. The EIS will evaluate the proposed project and reasonable alternatives.

DATES: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. All comments must be received by May 21, 1999, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held in the City of Lakeland's City Commission Chambers, 228 South Massachusetts Avenue, Lakeland, Florida at 7 p.m. on April 13, 1999. On the day of the meeting, from 1 p.m. until 7 p.m. preceding the meeting, DOE will host an informational session for interested parties in a conference room adjoining the City Commission Chambers. Displays and other forms of information about the proposed action and its location will be available, and DOE personnel will be available to answer questions. The public is invited to this informal session to learn more about the proposed action.

ADDRESSES: Written comments and requests to participate in the public scoping process should be addressed to:

Mr. Joseph Martin, Document Manager, Federal Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26507–0880

Individuals who would like to provide comments and/or otherwise participate in the public scoping process should contact Mr. Martin directly at telephone 304–285–4447; toll free number 1–800–432–8330 (ext. 4447); fax 304–285–4469; or e-mail jmarti@fetc.doe.gov.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Joseph Martin at the address provided above. For general information on the DOE NEPA process, please contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119, 202–586–4600 or leave a message at 1–800–472–2756

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Under Public Law 102–154, the U.S. Congress authorized and funded DOE to conduct cost-shared Clean Coal Technology Program projects for the design, construction, and operation of facilities that significantly advance the efficiency and environmental performance of coal-using technologies and apply to either new or existing facilities. DOE's purpose for this proposed action, which is known as the McIntosh Unit 4 PCFB Demonstration Project, is to establish through successful technology demonstration, the commercial viability of a Topped PCFB combustion combined-cycle plant. Funding for this action would be made available through the novation (substitution of a new obligation for an old one) of two previous Clean Coal Technology Program awards: (1) Cooperative Agreement DE–FC21–91MC27364, DMEC–1 Limited Partnership's PCFB Demonstration Project; and (2) Cooperative Agreement DE–FC21–94MC31261, Four Rivers Energy Modernization Project. The decision to combine the two projects into one at a new location was made because of diminished prospects for proceeding at their original sites due to uncertainties regarding regional power requirements. The City of Lakeland, however, is in an area experiencing substantial growth in demand for electricity. In addition, combining the two projects would save taxpayers more than $30,000,000 in Federal cost sharing (compared to building two projects separately) without sacrificing the original objectives.

Over the next several decades, increases in demand for electric power and replacement of a significant amount of electric power generating capacity that is approaching the end of its design service life are expected to require the construction of new generating stations. The most abundant domestic fuel, coal, continues to represent an attractive energy source for new generating capacity. The proposed McIntosh Unit 4 PCFB Demonstration Project would fulfill an established DOE programmatic need to demonstrate advanced technology that may improve the environmental performance and efficiency of coal-fired power generation facilities.

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include long-term, high-risk activities through the proof-of-concept stage in developing innovative concepts for a wide variety of coal technologies. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration generally is too high for the private sector to assume without strong incentives. Congress established the Clean Coal Technology Program to accelerate the development of innovative technologies to meet the nation's near-term energy and environmental goals, to reduce technological risk to the business community to an acceptable level, and to provide incentives for the private

sector to pursue innovative research and development directed at providing solutions to long-range energy supply problems.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with the City of Lakeland, Florida, cost-shared financial assistance for the design, construction, and operation of the proposed McIntosh Unit 4 PCFB Demonstration Project, described below. The proposed project would last 121 months after novation of prior agreements (see Background and Need for Agency Action) and would cost a total of approximately $440,000,000; DOE's share would be approximately $195,000,000 (44%).

The proposed project would be constructed at the existing C.D. McIntosh, Jr. Power Plant, which is located in the City of Lakeland, Florida along the northeastern shore of Lake Parker. The current McIntosh Plant is an industrial site encompassing about 530 acres. The Plant includes three fossil-fuel-fired steam electric units, two diesel-powered peaking units, and one simple-cycle gas turbine peaking unit; water treatment facilities; fuel handling facilities (oil storage and coal handling and storage); air pollution control facilities; wastewater treatment facilities; by-product treatment and storage facilities; and an ash disposal area. Further, the City of Lakeland is adding to the McIntosh Plant a simple-cycle power generation unit that will use a Siemans Westinghouse 501G turbine to generate a nominal 250 MWe. In addition to the McIntosh Plant, the City of Lakeland owns and operates the Larsen Power Plant, which also is located on Lake Parker approximately 2 miles south of the McIntosh facility. The Larsen Plant provides 243 megawatts of electric power capacity and is fueled by oil and natural gas.

The Lake Parker area has been extensively mined for phosphate; several ponds and wetlands have formed in depressions left from these past mining activities. Mud Lake, a small wetland, is located to the north and adjacent to the fence line of the McIntosh Plant, but outside the proposed footprint of the PCFB Demonstration. A significant natural resource, the Class I Chassahowitzka National Wildlife Refuge, is located approximately 55–60 miles northwest of Lakeland. The McIntosh Plant site lies above the 100-year statistical flood frequency elevation.

PCFB technology is a combined-cycle power generation system that is based on the pressurized combustion of solid fuel to generate steam, combined with the expansion of hot pressurized flue gas through a gas turbine. The technology can be subdivided into the basic PCFB cycle (first generation or "Non-Topped") and Topped PCFB cycle (second generation or "Advanced").

In the basic PCFB cycle, hot pressurized flue gas is expanded through a gas turbine at a temperature of less than 1400°F. Tubes contained in the PCFB generate, superheat, and reheat steam for use with the most advanced steam turbines. Hot, pressurized combustion gas leaving the PCFB can drive a gas turbine for additional power generation. Combustion and fluidizing air is supplied from the compressor section of the gas turbine to the PCFB combustor located inside a pressure vessel. Dried coal and sorbent (usually limestone) are fed to the combustor using a conventional pneumatic transport system employing lock hoppers. The limestone sorbent captures sulfur *in situ* as sulfur dioxide, and nitrogen oxides are controlled by temperature and pressure. Particulate matter is removed from the flue gas exiting the combustor using cyclones and barrier filters located between the PCFB and the gas turbine. The hot gas cleaned by the filter system expands through the gas turbine, exhausts to a heat recovery unit, and vents to a stack. The heat recovered from both the combustor and the heat recovery unit is used to raise, superheat and reheat steam for use in the steam turbine. Approximately 25% of the total power produced is generated in the gas turbine, and the balance is generated in the steam turbine.

The topped PCFB technology integrates a carbonizer island and gas turbine topping combustor into the PCFB cycle. The carbonizer is an air-blown jetting, fluidized bed operating at 1600°F to 1800°F. Dried coal and sorbent are fed to the carbonizer using a conventional pneumatic transport system employing lock hoppers. The coal is devolatilized and partially gasified to produce a low-BTU synthesis gas and a solid residue (called char) that is removed from the carbonizer and transferred to the PCFB for combustion. The limestone sorbent captures sulfur as calcium sulfide and also acts as a stabilizer to prevent bed agglomeration and to aid in partial gasification. The particulate matter (char plus reacted and unreacted sorbent) in the synthesis gas is removed using a cyclone and hot gas particulate filter system similar to that used for the PCFB. This collected material, together with the main char flow from the carbonizer, is transferred to the PCFB to complete combustion and sulfur removal. The hot clean synthesis gas is burned in the topping combustor to raise the turbine inlet temperature to the firing temperature of the gas turbine.

The planned project would involve two sequential demonstrations as follows:

(1) The first demonstration would be a PCFB cycle that would come on-line in July 2002 and would provide approximately 145 MWe of coal-fired generating capacity. The system would have a gas turbine inlet temperature under 1400°F.

(2) The second demonstration, which would be constructed and brought on-line approximately two years later, would convert the PCFB system to a Topped PCFB system by adding a carbonizer island that includes a topping combustor. The addition of the carbonizer system would generate a coal-derived, low-BTU synthesis gas that would be burned in the topping combustor to raise the turbine inlet temperature to more than 1900°F. In order to provide the total power that the City of Lakeland needs from the project, an auxiliary coal-fired heat recovery steam generator would provide the necessary steam superheating and feedwater heating. The net effect would be an additional 93 MWe of power output.

Under the proposed action, the McIntosh Unit 4 would be designed to burn a wide range of coals including high ash-high sulfur coals that are expected to become available in the future at substantially lower prices than mid-to-low-sulfur bituminous coals. Further, limestone for the circulating fluidized bed would be obtained from a number of nearby Florida limestone quarries; ash produced during the processing would be disposed of in an existing landfill or marketed to others after such markets are identified.

The majority of the project's water makeup requirements would be met by using secondary treated sewage effluent in the cooling tower. Service water, which is potable water from the public water utility, would be used only for boiler water makeup feed to the demineralizer system. Wastewater from the PCFB Demonstration unit would be treated on site, by neutralization and removal of heavy metals, before being returned to the Glendale wastewater treatment facility, which is owned by the City of Lakeland, for discharge.

To ensure that the PCFB technology meets applicable emissions limits, gaseous emissions from the plant would be controlled, as required, using state-of-the-art technology. For example, the amount of high sulfur coal would be

reduced or sulfur dioxide would be removed using limestone scrubbers; the oxides of nitrogen would be controlled by managing combustion temperature and pressure, or by using selective non-catalytic reduction technology; and particulate matter would be removed by barrier filters or electrostatic precipitators.

Alternatives

Section 102(2)(C) of NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. Congress established the Clean Coal Technology Program with a specific purpose: to demonstrate the commercial viability of technologies that use coal in more environmentally benign ways than conventional coal technologies. Congress also directed DOE to pursue the goals of the legislation by means of partial funding (cost sharing) of projects owned and controlled by non-Federal government sponsors. This statutory requirement places DOE in a much more limited role than if the Federal Government were the owner and operator of the project. In the latter situation, for example, DOE would be responsible for a comprehensive review of reasonable alternatives. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

An overall strategy for compliance with NEPA was developed for the Clean Coal Technology Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. As part of the NEPA strategy, the EIS for the proposed McIntosh Unit 4 demonstration project will tier off the final Programmatic Environmental Impact Statement (PEIS) that was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) the no-action alternative, which assumed that the Clean Coal Technology Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls, to meet New Source Performance Standards, would continue to be used; and (2) the proposed action, which assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The range of reasonable alternatives to be considered in the EIS for the proposed McIntosh Unit 4 demonstration project is narrowed in accordance with the overall NEPA strategy. The EIS will include an analysis of the no-action alternative as a reasonable alternative to the proposed action of providing cost-shared funding support for the proposed project. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the project. In the absence of DOE funding, the McIntosh Unit 4 facility probably would not be constructed, although the City of Lakeland could construct the proposed project without DOE cost-shared funding. If the proposed McIntosh Unit 4 is not built, other alternative sources for electric power would be necessary for the City of Lakeland to meet future demands of its customers. Such alternatives could include purchasing power from other sources, adding generation capacity that does not rely on PCFB technology (e.g., natural gas), or using some other current technology. Lakeland could also consider repowering old existing units at the McIntosh site. In the EIS, DOE will consider these variations of the no-action alternative.

Because of DOE's limited role of providing cost-shared funding for the proposed McIntosh Unit 4 PCFB project, and because of advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. An existing plant site is preferred because the costs associated with a "greenfield site" in an undisturbed area would be much higher and the environmental impacts likely would be greater than at an existing facility.

Project activities would include engineering and design, permitting, fabrication and construction, testing, and demonstration of PCFB technology and Topped PCFB technology. The EIS will assume that the proposed facility would continue its commercial operation after the demonstration of Topped PCFB technology is completed. DOE plans to complete the EIS and issue a Record of Decision within 15 months of this Notice, assuming timely delivery of information from the City of Lakeland necessary for development of the EIS.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list, which is based on analyses of similar projects, is not intended to be all-inclusive nor a predetermined set of potential impacts, but is presented to facilitate public comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the scoping process. The issues include:

(1) Atmospheric resources: potential air quality impacts resulting from air emissions during current and future operations of the McIntosh Plant (e.g., effects of ground-level concentrations of criteria pollutants and trace metals on surrounding residential areas and sensitive areas (such as the Chassahowitzka National Wildlife Refuge, (a Class I refuge located approximately 55–60 miles northwest of Lakeland));

(2) Water resources: potential effects on surface water and groundwater resources consumed and discharged, including any impacts on wetlands;

(3) Infrastructure and land use: potential effects resulting from the transport of additional coal and limestone required for the proposed project;

(4) Solid waste: pollution prevention and waste management practices, including impacts caused by generation, treatment, transport, storage, and disposal of ash;

(5) Construction: impacts associated with noise, traffic patterns, and construction-related emissions;

(6) Changes in the sources of coal for the overall plant;

(7) Environmental Justice issues with respect to the surrounding community;

(8) Cumulative effects that result from the incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until May 21, 1999. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed. Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues.

Written, e-mailed, faxed, or telephoned comments should be communicated by May 21, 1999 (see **ADDRESSES**). A public scoping meeting to be conducted by DOE will be held in the City of Lakeland City Commission

Chambers on April 13, 1999, at 7 p.m. The address of the City Commission Chambers is: 228 South Massachusetts Avenue, Lakeland, Florida. In addition, DOE will hold an informational session at the same location from 1 p.m. to 7 p.m. on April 13. Displays and other materials and DOE personnel will be available to provide information about the proposed action.

DOE requests that anyone who wishes to speak at this public scoping meeting contact Mr. Joseph Martin, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). Individuals who do not make advance arrangements to speak may register at the meeting and will be given the opportunity to speak after all previously scheduled speakers have made their presentations. Speakers who wish to make presentations longer than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, it may be necessary to limit speakers to five minute presentations initially, with the opportunity for additional presentations as time permits. Speakers can also provide additional written information to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed McIntosh Unit 4 demonstration project. A presiding officer will be designated by DOE to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined.

However, speakers may be asked to clarify their statements to ensure that DOE fully understands the comments or suggestions. The presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 22nd day of March, 1999.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99–7487 Filed 3–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to successful applicants. Awards will be made to a limited number of applicants based on a scientific and engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

FOR FURTHER INFORMATION CONTACT: Nancy Toppetta, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236–0940, Telephone: (412)892–5715, FAX: (412)892–6216, E-mail: toppetta@fetc.doe.gov. The solicitation (available in Portable Document Format (PDF)) will be released on DOE's FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about March 23, 1999.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: "Improved Natural Gas Storage Well Remediation"

Objectives: Through Program Solicitation No. DE-PS26–99FT40060, the DOE seeks applications from qualified sources for research and development efforts that address storage well damage issues associated with underground geologic reservoirs, such as depleted oil/gas fields, aquifers, etc.; however, such research and development efforts must *not* include underground storage tanks or mined salt caverns. The general objectives of this research and development effort are to (1) characterize the geochemical conditions of underground geologic natural gas storage reservoirs and injection/withdrawal wells for a selected set of damage mechanisms that lead to decreased performance characteristics and (2) design and successfully demonstrate practical and cost effective remedial techniques for those damage mechanisms. The damage mechanisms to be considered are (1) inorganic precipitates, (2) hydrocarbons, organic residues, and production chemicals, (3) bacterial fouling and plugging, and (4) particulate fouling and plugging.

Eligibility: Applications are welcome from all qualified sources. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: DOE is interested in development of the above described mechanisms for improved remediation design, especially for effective shallow damage remedial treatments.

Awards: DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year.

Solicitation Release Date: The Program Solicitation is expected to be ready for release on or about March 23, 1999. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–7493 Filed 3–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) for the program entitled "Development of Feed System for Alternative Feedstocks for Gasification." Through this solicitation, FETC seeks to support applications in the following areas of interest: (1) Wet Gasification Feed Systems, and (2) Dry Gasification Feed Systems. Applications will be subjected to a review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific and engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

FOR FURTHER INFORMATION CONTACT: William Mundorf, U.S. Department of Energy, Federal Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236–0940, Telephone: (412) 892–4483, FAX: (412) 892–6216, E-mail: mundorf@fetc.doe.gov. The solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's

FETC World Wide Web Server Internet System (http://www.fetc.doe.gov/business/solicit) on or about April 2, 1999.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: "Development of Feed System for Alternative Feedstocks for Gasification"

Objectives: Through Program Solicitation No. DE–PS26–99FT40432, the Department of Energy seeks applications for innovative technical approaches to co-feed alternative feedstocks with coal to a gasifier to broaden the base of fuels utilized in a gasifier. This solicitation is specifically aimed at identifying opportunities and constraints to the use of co-feeding alternative feedstocks and the development and testing of technologies for co-feeding coal with alternatives feedstocks such as biomass, municipal solid waste, animal wastes, other difficult-to-feed industrial streams, and lower quality coals or coal wastes. This solicitation is limited to those technologies, processes, and concepts that are applicable for co-feeding to a gasifier under pressure and with coal being the primary component of the feedstock.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: The Department is interested in obtaining applications to improve gasification systems for co-feeding alternative feedstocks into gasifiers under pressure in the following areas of interest: (1) Wet Gasification Systems: Liquid feed systems primarily designed to handle feed materials that are hydrocarbon liquids or are solids slurried in water. Technical topics include: (a) property alteration or conversion to be suitable as a liquid or slurry feed; and (b) new or improved feed system equipment and design; and (2) Dry Gasification Systems: Co-mixtures of dry materials with coal that incorporate significantly different material properties to be fed with uniform and consistent performance. Technical topics include: (a) equipment and processes to modify the alternative feed materials and blend into acceptable co-mixtures; and (b) equipment modifications and improvements to the feed system.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available. Approximately $9.5 million of DOE funding is planned for this solicitation ($1.5 million Project Period I, $4 million Project Period II, and $4 million for Project Period III). The estimated funding by the DOE is planned to be $0.5 million per award for Project Period I and $1.5 million to $2.0 million for Project Period II, with remaining funds for Project Period III. The DOE intends to solicit Renewal Applications for subsequent Project Periods only from those organizations selected for Project Period I. Cost sharing by the applicant is required, and details of the cost sharing requirement are contained in the solicitation.

Solicitation Release Date: The Program Solicitation is expected to be ready for release on or about April 2, 1999. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–7492 Filed 3–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 22, 1999, 1:00 p.m.–5:15 p.m., and Friday, April 23, 1999, 8:30 a.m.–12:15 p.m.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue S.W. (Room 1E–245), Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management, Environmental Management Advisory Board (EM–1), 1000 Independence Avenue S.W. (Room 5B–171), Washington, D.C. 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Advisory Program from the perspective of affected groups, as well as state, local, and tribal governments. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on these issues.

Tentative Agenda*

Thursday, April 22, 1999

1:00 p.m.—Public Meeting Opens.
Opening Remarks.
Privatization Committee Report.
Technology Development & Transfer Committee Report.
Break.
Worker Health & Safety Committee Report.
Accelerating Closure Committee Report.
Public Comment Period.
6:00 p.m.—Wrap up—Adjourn.

Friday, April 23, 1999

8:30 a.m.—Public Meeting Opens.
Science Committee Report.
Long Term Stewardship Committee Report.
Break.
Public Comment Period.
Board Business.
Public Comment Period.
12:15 p.m.—Meeting Adjourns

* Times are approximate. A final agenda will be available at the start of the meeting.

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. You may also register to speak at the Meeting Site on April 22–23, or ask to speak during the public comment period. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

Minutes: We will make the minutes of this meeting available for public review and copying by May 23, 1999. Please come to the Freedom of Information Public Reading Room (Room 1E–190) in the Forrestal Building to view these documents. The Room is open Monday through Friday from 9:00 a.m.—4:00 p.m. except on Federal holidays.

Issued in Washington, D.C. on March 22, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–7488 Filed 3–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 15, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.	Call to Order
5:45 p.m.	Approve Meeting Minutes
6:00 p.m.	Public Comment/Questions
6:30 p.m.	Presentations
7:30 p.m.	Break
7:45 p.m.	Presentations
9:00 p.m.	Public Comment
9:30 p.m.	Administrative Issues
10:00 p.m.	Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the times indicated on the agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC on March 22, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–7489 Filed 3–25–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6316–3]

California State Motor Vehicle Pollution Control Standards; Within the Scope Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has approved amendments to the zero-emission vehicle (ZEV) requirements of the low-emission vehicle (LEV) program, including the repeal of the ZEV requirements for model years 1998 through 2002. By letter dated February 26, 1997, California requested that EPA confirm CARB's finding that its amendments are within-the-scope of section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), of a waiver of federal preemption for the California LEV program regulations, which EPA approved on January 13, 1993.

EPA has tentatively scheduled a public hearing for April 23, 1999, to hear comments concerning CARB's request. Before this notice, EPA received submissions to the docket on this matter from the state of Massachusetts, CARB, and aftermarket associations. EPA requests comments from interested parties as to the relevance and merit of these previous submissions to the within-the-scope waiver request. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket.

DATES: EPA has tentatively scheduled a public hearing for April 23, 1999, beginning at 10:00 a.m. EPA will hold a hearing only if a party notifies EPA by April 5, 1999, expressing its interest in presenting oral testimony regarding CARB's requests or other issues noted in this notice. By April 7, 1999, any person who plans to attend the hearing should call David Dickinson of EPA's Vehicle Programs and Compliance Division at (202) 564–9256 to learn if we will hold a hearing. Any party may submit written comments by May 10, 1999.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The Air Docket is open during working hours from 8:00 a.m. to 4:00 p.m. at EPA, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The reference number for this docket is A–97–20. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. In addition, parties should send their written comments (in duplicate) regarding the within-the-scope waiver request to David Dickinson at the same address. If EPA receives a request for a public hearing, EPA will hold the public hearing in the first floor conference room at 501 3rd Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Group Manager, Vehicle Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Telephone:

(202) 564–9256, Fax:(202) 565–2057, E-Mail: Dickinson.David@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

EPA makes available an electronic copy of this Notice on the Office of Mobile Sources' (OMS) homepage (http://www.epa.gov/OMSWWW/). Users can find this document by accessing the OMS homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary website: (http://www.epa.gov/docs/fedrgstr/EPA-AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

II. Background

A. Procedural History

On January 13, 1993, EPA published a Notice Regarding Waiver of Federal Preemption granting California a waiver of federal preemption for the California LEV program. (58 FR 4166). The California LEV waiver included California's original ZEV requirements.

In March 1996, CARB amended the LEV program by eliminating the ZEV sales requirement for model years 1998 through 2002.

On February 26, 1997, CARB submitted to the Administrator a request that EPA confirm CARB Board's determination that the amendments to its regulations noted below (primarily repealing the ZEV requirements for model years 1998 through 2002) are within-the-scope of the existing California LEV waiver. CARB also entered into, on March 29, 1996, what it terms memorandum of agreements (MOAs) with the seven largest vehicle manufacturers. These MOAs provide for the introduction of a certain number of ZEVs into the California market for calendar years 1998–2000 and require CARB to perform certain tasks.

B. Background and Discussion

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emission from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. The Administrator must grant a waiver unless she finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB submitted a letter to the Administrator notifying EPA that it had adopted amendments to its LEV program. These amendments provide for (1) the elimination of the requirement upon manufacturers to certify, produce, and offer for sale in California ZEVs in amounts equal to two percent of their total California sales of passenger cars and light-duty trucks weighing less than 3,750 pounds beginning with the 1998 model year, increasing to five percent in the 2001 model year and ten percent in the 2003 model year (the ten percent ZEV requirement for the 2003 model year has been retained by California); (2) the creation of multiple ZEV credits for vehicles produced prior to the 2003 model year; and (3) the creation of test procedures for determining All-Electric Vehicle Range.

CARB asserts, and requests that the Administrator determine, that each of these three amendments to its LEV regulations fall within-the-scope of EPA's previously granted waiver, thereby obviating the independent need to meet the requirements of section 209(b) of the Act set forth above. EPA has decided in the past where California's amendments do not undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; do not affect the consistency of California's requirements with section 202(a) of the Act; and raise no new issues affecting EPA's previous waiver determinations that a within-the-scope waiver determination is acceptable.

When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA traditionally publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Because EPA has already received written comment on this within-the-scope request, EPA invites comment on the following issues before determining CARB's within-the-scope request: (1) Should EPA consider CARB's request as a within-the-scope of a previous waiver request or should it be considered and examined as a new waiver request?; (2) If EPA should consider CARB's request as a within-the-scope request then do California's amendments (a) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations?; (3) Should EPA consider CARB's request as a new waiver request then provide comment on (a) Whether California's determination that its standards are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) Whether California needs separate standards to meet compelling and extraordinary conditions, and (c) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act?; and (4) the significance of the MOAs and issues that may arise out of the MOAs and their relevance to the within-the-scope waiver request CARB has submitted to EPA, addressing how the MOAs and related issues affect EPA's consideration either under the within-the-scope or waiver criteria.

III. Procedures for Public Participation

Any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with David Dickinson at the address listed above no later than April 21, 1999. In addition, the party should submit 25 copies, if feasible, of the planned statement to the

presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants with special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until May 24, 1999. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at EPA Air Docket. (Docket No. A–97–20).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7429 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6316–2]

Request From Massachusetts Concerning Zero Emission Vehicle Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Attorney General of the Commonwealth of Massachusetts has requested that EPA respond to certain questions related to whether Massachusetts's regulations requiring the sale of a certain number of zero emission vehicles in the calendar years 1998–2000 are preempted by the Clean Air Act. The questions have arisen in the context of a decision by the United States Court of Appeals for the First Circuit in a litigation between Massachusetts and automobile manufacturers. This notice announces the opening of a thirty day period for the submission of written comments regarding the issues raised by the Court decision and the request from Massachusetts.

DATES: Written comments must be received on or before April 26, 1999

ADDRESSES: Written comments regarding the request should be submitted, in duplicate, to Public Docket No. A–99–08 at the following address: U.S. Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. The Agency also requests that a separate written copy be sent to the contact person at the address noted below. The information received from Massachusetts, as well as any written comments received from interested parties, is available for public inspection in the Air Docket at the above address during from 8:00 a.m. to 5:30 p.m Monday to Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260–7548. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: For more information about this document, please contact Michael Horowitz, Office of General Counsel (2344), 401 M St., SW, Washington, DC 20460; telephone (202) 260–8883; fax (202) 260–0586; and e-mail: horowitz.michael@epamail.epa.gov

SUPPLEMENTARY INFORMATION: On December 29, 1998, the U.S. Court of Appeals for the First Circuit issued a decision in *American Automobile Manufacturers Ass'n* v. *Massachusetts Department of Environmental Protection,* 163 F.3d 74 (1st Cir. 1998). In that decision, the court determined that it would allow EPA an opportunity to rule on certain issues relevant to whether Massachusetts's requirement that automobile manufacturers deliver for sale a certain number of zero emission vehicles ("ZEVs") in the years 1998–2000 violated the Clean Air Act. The court therefore provided Massachusetts with "a reasonable opportunity to obtain a ruling from the EPA. * * * However, if no agency ruling is forthcoming within 180 days from the date this opinion issues, the parties shall so notify this court. We will then decide the issues before us without the EPA's guidance."

Pursuant to the court's decision, on January 28, 1999, the Attorney General of the Commonwealth of Massachusetts sent a letter to the Administrator requesting EPA's opinion regarding the questions arising from the case.

I. Background

This case arises from Massachusetts's regulations requiring that certain automobile manufacturers produce and deliver for sale in Massachusetts a combined total of 750 ZEVs during calendar years 1998 and 1500 ZEVs during each calendar years 1999 and 2000. There are also certain reporting requirements related to these regulations. This case is the latest in a series of law suits that automobile manufacturers have brought against Massachusetts and New York related to those states' incorporation of California's Low Emission Vehicle program into their state laws. The following is a brief summary of the critical federal statutory provisions and the events leading up to the Court's decision. For further information, please review the December 28, 1998 decision and the briefs filed in that case, as well as the earlier decisions resulting from the suits brought by manufacturers against New York and Massachusetts. [1]

[1] The briefs have been placed in the docket. The significant prior decisions in the Massachusetts litigation are as follows: *AAMA* v. *Massachusetts DEP,* 998 F. Supp. 10 (D. Mass. 1997); *AAMA* v. *Massachusetts DEP,* 31 F.3d 18 (1st Cir. 1994); *AAMA* v. *Greenbaum,* No.93–10799–MA, 1993 WL 443946 (D. Mass. Oct. 27, 1993). The significant decisions in the New York litigations are: *AAMA* v. *Cahill,* 152 F.3d 196 (2d Cir. 1998); *AAMA* v. *Cahill,* 973 F. Supp. 288 (N.D.N.Y. 1997); *Motor Vehicle Mfrs. Ass'n. ("MVMA")* v. *New York Dep't of Envtl. Cons. ("New York DEC"),* 79 F.3d 1298 (2d Cir. 1996); *MVMA* v. *New York DEC,* 869 F. Supp. 1012 (N.D.N.Y. 1994); *MVMA* v. *New York DEC,* 17 F.3d 521 (2nd Cir. 1994).

A. Relevant Clean Air Act Provisions

Under section 209(a) of the Clean Air Act ("CAA"), states and localities are prohibited from adopting or attempting to enforce "any standard relating to the control of emissions from new motor vehicles." Section 209(a) also prohibits state approvals "relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial sale, titling * * * or registration of such motor vehicle." However, section 209(b) of the Act permits the state of California to request an EPA waiver from this prohibition if California determines that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. EPA must grant this request unless it finds one of the following: (1) California's "in the aggregate" determination was arbitrary and capricious; (2) California does not need standards to meet compelling and extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are not consistent with Clean Air Act section 202(a).

There is no similar provision for other states to obtain a waiver from the prohibitions in section 209(a). However, under CAA section 177, once California has promulgated its motor vehicle program, other states may adopt and enforce their own standards as long as such standards are "identical to the California standards for which a waiver has been granted for such model year" and such standards have been adopted at least two years before commencement of such model year. Section 177 further states:

> Nothing in this section * * * shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle * * * that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle * * * different than a motor vehicle * * * certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle'.

B. Factual Background

In 1990, the California Air Resources Board ("CARB") adopted its Low Emission Vehicle ("LEV") program. One of the elements of that program was a requirement, beginning in model year 1998, that two percent of the cars offered for sale in California by a manufacturer must be ZEVs. That percentage would increase to five percent in model year 2001 and ten percent in model year 2003. California received a waiver for its LEV program, including the ZEV sales requirement, in 1993. 58 FR 4166 (Jan. 13, 1993).

New York and Massachusetts both promulgated regulations adopting California's LEV program, including the ZEV mandate, into their state regulations. Auto manufacturers challenged both state programs in federal court, claiming that the state programs were prohibited under section 209 and were not authorized under the provisions of section 177. In both instances, manufacturers were not successful in their challenges. Courts in both the 1st and 2nd Circuit ruled that the state regulations were permitted under section 177.

However, in 1996, California amended its regulations to eliminate its ZEV sales mandate until the 2003 model year. Later in 1996, California entered into Memoranda of Agreement ("MOAs") with the seven largest automobile makers. As part of these MOAs, the automobile manufacturers agreed to supply a certain number of ZEVs in the state of California during calendar years 1998–2000. Massachusetts then revised its LEV regulations by replacing the preexisting ZEV sales mandate for the 1998–2002 model years with the ZEV sales portions of the MOAs, using the ZEV sales numbers in the MOAs.

AAMA sued Massachusetts, claiming the revised ZEV regulations violated section 209(a) of the Clean Air Act.[2] The District Court in Massachusetts ruled in favor of the auto manufacturers.[3] However, on appeal, the 1st Circuit refrained from deciding the case, preferring instead to allow EPA to provide its views on the issue, if it chooses to do so. "This matter is plainly within the EPA's primary jurisdiction, and its resolution could clearly benefit from a deep familiarity with the CAA and the public policy considerations that underlie these statutory provisions. We therefore refer this issue to the EPA for its consideration."[4] The court then stayed further judicial action to allow Massachusetts the opportunity to obtain a ruling from EPA on the issues relevant to deciding the case. However, if EPA does not rule within 180 days of the court's decision, the court has indicated that it will then decide the issues without EPA's guidance. Pursuant to the court's decision, the Massachusetts Attorney General sent a letter to the Administrator requesting EPA's opinion regarding the issues arising from the court's opinion.

EPA believes it is appropriate to seek comments from the public on this request from Massachusetts. EPA therefore requests that any interested parties provide comments on the issues raised by the Court's opinion and the letter from Massachusetts.

II. Procedures for Public Participation

EPA will keep the record open until April 26, 1999. Upon expiration of the comment period, EPA will determine the appropriate response, if any, to the request from the Massachusetts Attorney General. Persons seeking information relevant to this proceeding may review the information provided at the EPA Air Docket. (Docket No. A–99–08).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7428 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

[2] AAMA also sued New York, which had not amended its ZEV mandate at all. The Second Circuit found for the auto makers in that case. *AAMA* v. *Cahill*, 152 F. 3d 196 (2d Cir. 1998).

[3] *AAMA* v. *Massachusetts DEP*, 998 F. Supp. 10 (D. Mass. 1997).

[4] *AAMA* v. *Massachusetts DEP*, 163 F. 3d 74, 83 (1st Cir. 1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–7]

Public Water Supply Supervision Program Revision for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (USEPA) has determined to approve an application by the State of New York to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the USEPA's National Primary Drinking Water Regulations (NPDWR) for Synthetic Organic Chemicals and Inorganic Chemicals (Phase 5 Chemical Regulations) promulgated by EPA on July 17, 1992 (57 FR 31776).

Effective May 27, 1998, the New York State Department of Health adopted revisions to 10 NYCRR Part 5, Subpart 5.1—Public Water Systems. These revised regulations have been submitted by the State in an application to revise its approved Public Water Supply Supervision Primacy Program (approved primacy program). The application demonstrates that New York has adopted drinking water regulations which satisfy the National Primary Drinking Water Regulations (NPDWR) for Synthetic Organic Chemicals and Inorganic Chemicals promulgated by EPA on July 17, 1992 (57 FR 31776). The USEPA has determined that New York State's chemical regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

In addition, the revised regulations contained in the revision application make several minor changes, consisting of corrections and clarifications, to New York State's drinking water regulations which parallel a number of other NPDWRs, including the Lead and Copper Rule (56 FR 26548) and Surface Water Treatment Rule (54 FR 27527) and certain variance and exemption procedures. Here, too, the USEPA has determined that New York State's drinking water regulations remain no less stringent than the corresponding Federal regulations. (The USEPA's June 3, 1997 determination to retain primacy, until May 15, 2007, for the enforcement of the Surface Water Treatment Rule within the City of New York's Catskill and Delaware water supply systems remains unaffected by today's action.) This determination to approve the State's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective April 26, 1999, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown by April 26, 1999. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective April 26, 1999.

Any request for a public hearing shall include the following information:

(1) the name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, 290 Broadway New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9:00 am and 4:30 pm, Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection—Room 406, 2 University Plaza/Western Avenue, Albany, New York 12203–3399

U.S. Environmental Protection Agency—Region II, Drinking Water Section, 290 Broadway, New York, New York 10007–1866

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region II, (212) 637–3880.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13)

Dated: February 25, 1999.

William J. Muszynski,

Acting Regional Administrator, EPA Region II.

[FR Doc. 99–7181 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6241–2)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 01, 1999 Through March 05, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65297–MT

Rating EC2, Bull Lake Estates Road Access Project, Implementation, Easement Grant Permit, Kootenai National Forest, Three Rivers Rangers District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about potential adverse social, water quality, fisheries, and wildlife impacts of the development of the Bull Lake Estates subdivision. The Final EIS should discuss the environmental impacts of the management actions and mitigation measures.

ERP No. D–AFS–L65312–WA

Rating EO2, Olympic Cross Cascade Pipeline Project, Construct and Operate a Common Carrier Petroleum Pipeline, Mt. Baker-Snoqualmie and Wenatchee National Forests, City of Pasco, Snohomish, King, Kittitas, Adams, Grant and Franklin Counties, WA.

Summary: EPA expressed environmental objections because the draft EIS does not adequately discuss the need for the project in terms of a public interest, a range of alternatives needed to meet the purpose and need for the project, and environmental risks posed by the proposed alternative.

ERP No. D–AFS–L65316–ID

Rating EC2, Coeur d'Alene River Ranger District Noxious Weed Control

Project, Treating 76 Specific Sites across District, Kootenai and Shoshone Counties, ID.

Summary: EPA expressed environmental concerns with the proposed methodologies for the controlling noxious weeds. The Final EIS should address operational objectives or performance standards, additional strategies to prevent the spread of noxious weeds, funding for the control of weed expansion and adaptive management that addresses treatment other than chemical ones.

ERP No. D–BLM–K65217–AZ

Rating EO2, Ray Land Exchange/Plan Amendment, Implementation, Exchange of Federal Lands for Public Lands, Pinal, Gila and Mohave Counties, AZ.

Summary: EPA expressed strong objections to the proposed project because of its potential for significant environmental degradation. EPA recommended that BLM consider preparing a revised DEIS with substantially more information regarding other alternatives, the affected environment, and environmental consequences, including indirect and cumulative impacts, with respect to site geology and geochemistry, hydrology and hydrogeology, existing and potential future water and air quality, riparian and aquatic resources, facilities design, minerals and land management, environmental justice, and mitigation measures.

ERP No. D–DOA–G36150–AR

Rating EC2, Departee Creek Watershed Plan Flood Prevention, Implementation, COE Section 404 Permit, Independence and Jackson Counties, AR.

Summary: EPA expressed environmental concerns regarding wetland impacts, alternative, mitigation, and environmental justice. Additional information concerning these issues was requested.

ERP No. DS–AFS–L67036–OR

Rating EC2, Nicore Mining Project, Implementation, New Information on Six New Alternatives, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District.

Summary: EPA expressed environmental concerns with mining in the Rough and Ready watershed because of potential impacts to water quality and the unique ecological values of the area. The Final EIS should disclose complete monitoring plan and mitigation plans.

Final EISs

ERP No. F–BLM–L65272–ID

Challis Land and Resource Management Plan, Implementation, Upper Columbus—Salmon Clearwater Districts, Salmon River, Lemhi and Custer Counties, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–GSA–C60004–NY

Governors Island Disposition of Surplus Federal Real Property, Implementation, Upper New York Bay, NY.

Summary: EPA's review of the Final EIS have been adequately addressed. In light of the covenants that will be set forth in the transfer deed, EPA have concluded that the proposed project would not result in significant adverse environmental impacts; therefore, EPA has no objections to the implementation of the proposed project.

ERP No. F–IBR–K28018–CA

Central Valley Project, Municipal and Industrial Water Supply Contracts under Public Law 101–514 (Section 206), Sacramento County Water Agency and San Juan Water District, City of Folsom, Sacramento County, CA.

Summary: EPA continues to be concerned with the probability of additional diversions from the American river. EPA urge selection of diversion point on the American River below the courthouse of the American River.

ERP No. F–STA–G50007–00

Programmatic EIS—International Bridge Crossing Project, Construction and Operation, Along the United States—Mexico Border from EL Paso to Brownsville, TX, Presidential Permit, NM and TX.

Summary: EPA finds that the Final Programmatic EIS to be adequate and has no objections to preferred alternative.

ERP No. FS–UMC–K24018–CA

Sewage Effluent Compliance Project, Updated and Additional Information, Implementation, Lower Santa Margarita Basin, Marine Corps Base Camp Pendleton, San Diego County, CA.

Summary: EPA indicated that the FSEIS adequately addressed EPA environmental objections. EPA request that a Record of Decision (ROD) not be made until the Navy fully evaluates a final percolation pond study. EPA also asked the Navy to provide a detailed monitoring and reporting program and contingency measures, for their selected alternative, to ensure that no adverse impacts would occur to the nearby salt marsh. EPA also commented on concerns regarding long term health of riparian habitat and asked the Navy to acknowledge its intent, in the ROD, to seek funding for tertiary treatment facilities.

Other

ERP No. LD–UAF–K11096–NV

Rating EO2, Nellis Air Force Range (NAFR), Renewal of the Land Withdrawal to Provide a Safe and Secure Location to Test Equipment and Train Military Personnel, Clark, Lincoln and Nye Counties, NV.

Summary: EPA expressed objections due to the excessively long proposed periods between public reviews of the land withdrawal (i.e., indefinitely or 25 years) of the roughly 3 million acre area. EPA requested additional information regarding impacts to ground and surface water, hazardous materials and waste, safety, and biological resources.

Dated: March 23, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–7490 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed March 15, 1999 Through March 19, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990083, Final Supplemental, EIS, NOA, Atlantic, Gulf and Caribbean Exclusive Economic Zone (EEZ) Billfish Fishery Management Plan, White and Blue Marlin, Sailfish, and the Longbill Spearfish, Implementation, Due: April 19, 1999, Contact: Rebecca J. Lent (301) 713–2347. This Notice of Availability (NOA) should have appeared In the 3/19/1999 FR. The Wait Period is Calculated from 3/19/1999. Publication of the NOA was Delayed Pending Resolution of an Administrative Problem with the Draft Supplemental EIS.

EIS No. 990084, Final EIS, BOP, WV, Ohio and Tyler Counties Federal Correctional Facility, Construction and Operations, Three Possible Sites:

Wheeling-Ohio County Airport Industrial Park, Fort Henry and Iver Flats, Ohio and Tyler Counties, WV, Due: April 26, 1999, Contact: David J. Dorwoth (202) 514–6470.

EIS No. 990085, Final EIS, BOP, WV, Preston County Federal Correctional Facility, Construction, Preston County, WV, Due: April 26, 1999, Contact: David J. Dorworth (202) 514–6440.

EIS No. 990086, Draft Supplemental EIS, AFS, CO, Upper Elk River Access Analysis, Implementation, Proposal to Remove and/or Treat Blowdown Trees, Routt Divide Blowdown, Medicine Bow-Routt National Forests, Hahn Peak/Bears, Ear Ranger District, Routt County, CO, Due: May 10, 1999, Contact: Andy Cadenhead (970) 870–2220.

EIS No. 990087, Final EIS, AFS, ID, Musselshell Analysis Area, Implementation, Pierce Ranger District, Clearwater National Forest, Clearwater County, ID, Due: April 26, 1999, Contact: Lois Hill (208) 935–2513.

EIS No. 990088, Revised Final EIS, NPS, MI, Isle Royale National Park General Management Plan, Implementation, Keweenaw County, MI, Due: April 26, 1999, Contact: Pete Armington (906) 487–7148.

EIS No. 990089, Final Supplement, NOA, CA, Coastal Pelagic Species Fishery Management Plan Amendment 8, (Formerly Known as Northern Anchovy Fishery Management Plan), Approval and Implementation, WA, CA and OR, Due: April 26, 1999, Contact: Jim Morgan (562) 980–4036.

EIS No. 990090, Final EIS, BIA, OR, Adoption—Coquille Forest Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR, Due: April 26, 1999, Contact: Gary Varner (541) 444–2679. The U.S. Department of Interior's (DOI) Bureau of Indian Affairs (BIA) has Adopted the U.S. Department of Interior's Bureau of Land Management (BLM), FEIS #940460, filed with EPA on 11–14–94. BIA was not a Cooperating Agency on the BLM EIS, therefore recirculation on the FEIS is necessary under 1506.3(b) of the Council on Environmental Quality (CEQ) Regulations.

EIS No. 990091, Final EIS, FTA, UT, University-Downtown-Airport Transportation Corridor, Major Investment Study, Construction and Operation of the East-West Corridor Light Rail Transit (LRT), Transportation System Management (TSM) and Central Business District (CBD), Funding, Salt Lake County, UT, Due: April 26, 1999, Contact: Don Cover (303) 844–3242.

EIS No. 990092, Final EIS, FHW, CA, I–880 Interchange at Dixon Landing Road, Reconstruction Improvements, Funding and COE Section 404 Permit, Fremont, Milpitas, Alameda and Santa Clara Counties, CA, Due: April 26, 1999, Contact: Robert F. Tally (916) 498–5020.

Dated: March 23, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–7491 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6316–6]

National Advisory Council for Environmental Policy and Technology; Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting is being held to formally present reports and recommendations to EPA and to discuss future activities and projects of NACEPT.

Tentatively, reports and recommendations will be presented by the Environmental Information and Public Access Committee, the Title VI Implementation Committee, the Toxic Data Reporting Committee, the Environmental Capital Markets Committee, and the NACEPT Self-Study Team. Future activities for NACEPT will also be discussed, including charges for new NACEPT committees and NACEPT's Strategic Planning Process.

DATES: The two-day public meeting will be held on Wednesday, April 28, 1999, from 1:00 p.m. to 5:30 p.m., and Thursday, April 29, 1999, from 8:30 a.m. to 3:00 p.m. On both days, the meeting will be held at the Ramada Plaza Hotel, 901 Fairfax Street, Alexandria, Virginia.

ADDRESSES: Material may be transmitted to the Committee through Joseph A. Sierra, NACEPT DFO, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460; telephone (202) 260–9741.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sierra, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, (1601–F), Washington, D.C. 20460; telephone (202) 260–9741.

Dated: March 17, 1999.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 99–7426 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6315–7]

National Drinking Water Advisory Council, Health Care Provider Outreach and Education Working Group; Notice of Conference Call

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a conference call of the Health Care Provider Outreach and Education Working Group of the National Drinking Water Advisory Council (NDWAC) established under the Safe Drinking Water Act, as amended (U.S.C. S300f *et.seq.*), will be held on April 16, 1999, from 1:00–3:00 p.m., EST. The call will be held at the U.S. Environmental Protection Agency, 401 M Street, S.W., Room 1209 East Tower, Washington, D.C., 20460. The call is open to the public, but seating will be limited.

The purpose of the call is to (1) review the work that has been done on draft strategic recommendations since the January conference call, and (2) prepare for the second formal working group meeting in Washington, DC, for late May to early June. Statements from the public will be taken on this call as time allows.

For more information, please contact Ron Hoffer, Designated Federal Officer, Health Care Provider Outreach and Education Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4607, 401 M Street SW, Washington, D.C. 20460. The telephone number is 202/260–7096 and the e-mail address is hoffer.ron@epa.gov.

Dated: March 19, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–7430 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–4]

[Docket No. CERCLA–7–99–008]

Notice of Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended, 42 U.S.C. 9622(h), Peerless Industrial Paint Coatings Site, St. Louis, MO

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Peerless Industrial Paint Coatings Site in St. Louis, Missouri with the following parties: Boise Cascade Corporation, Cook Composite and Polymers Company, Morton International, Inc., and U.S. Polymers, Inc.

DATES: On or before April 26, 1999, the Agency will receive written comments relating to the settlement terms regarding the payment of past and future costs as required by Section 9622(h) and (i) of CERCLA, 42 U.S.C. 9622(h) and (i). The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at Region VII's offices located at 726 Minnesota Avenue, Kansas City, Kansas 66101.

ADDRESSES: The proposed settlement and a fact sheet providing additional background information relating to the settlement is available at Region VII's offices located at 726 Minnesota Avenue, Kansas 66101. A copy of the proposed settlement may be obtained form Venessa Cobbs, Regional Hearing Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–7630. Comments should reference the "Peerless Industrial Paint Coatings Site" and EPA Docket No. CERCLA–7–99–0008 and should be addressed to Ms. Cobbs at the above address. For further information, contact Denise Roberts, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551–1349.

SUPPLEMENTARY INFORMATION: The settlement requires the settling parties to pay $525,000, including interest, to the Hazardous Substance Superfund. The settling parties also agree to finance and perform the future removal action, including payment of future oversight costs, estimated to cost $305,000. The value of the PRPs' settlement is $830,000. The government's past costs, after deduction of payments made by the *de minimis* parties, are calculated to be $1,321,202.50. EPA is forgiving $796,202.50 of unreimbursed past costs, representing the orphan share for this Site. This was one of 11 Superfund sites designated by the U.S. Environmental Protection Agency (EPA) to be one of the Allocation Pilots wherein EPA agreed to reimburse costs attributed to the orphan share, the share attributed to insolvent and defunct parties. In this case, the PRPs are paying 50% of past and future costs and EPA is contributing its 50% share through forgiveness of a portion of the past costs.

The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). There is also reservation of rights to allow the United States to recover costs in certain circumstances.

Dated: March 10, 1999.

William Rice,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 99–7182 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6316–1]

Administrative Order on Consent Between the United States Environmental Protection Agency and Wise Garage, Inc., a CERCLA § 122(g) Deminimis Party at the Powell Road Landfill Site; In the Matter of Powell Road Landfill Site; Huber Heights, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative Order on Consent authorizing an installment payment arrangement with a deminimis party at the Powell Road Landfill Site.

SUMMARY: Wise Garage, Inc. ("Wise") is a deminimis party at the Powell Road Landfill Site ("Site"), but was unable to execute the January 21, 1998, deminimis settlement Administrative Order on Consent ("AOC") because of an inability to pay. Under the terms of the January 21, 1998, deminimis settlement, Wise has a payment amount of $83,583. An analysis by U.S. EPA determined that an installment payment arrangement was justified by Wise's financial condition. On April 23, 1998, a signature copy of the Wise installment payment Administrative Order on Consent ("Wise AOC") was sent to Wise by the U.S. EPA. On July 1, 1998, Wise sent the U.S. EPA a signed version of the Wise AOC. The Wise AOC requires a lump sum payment of $10,000 within 60 days of the effective date of the order. Wise is then required to pay five equal installments of $14, 717 each over the next five years.

In approximately October, 1996, U.S. EPA sent "first point of contact letters" to several hundred deminimis generators and transporters informing them of the impending deminimis settlement offer. On May 13, 1997, U.S. EPA issued deminimis settlement offers to 182 eligible deminimis PRPs, including Wise Garage, Inc. By the deadline for submission of signature pages on July 14, 1997, 71 of 182 eligible deminimis PRPs submitted signature pages to U.S. EPA certifying their commitment to participate in the settlement. The deminimis settlement AOC was executed on October 17, 1997. As required by section 12(g)(4) of CERCLA, the deminimis settlement AOC was approved by the Attorney General's designee on November 7, 1997. Pursuant to section 122(i) of CERCLA, U.S. EPA published notice of the proposed deminimis settlement in the **Federal Register** on November 28, 1997. The 30-day public notice and comment period ended on December 28, 1997. On January 21, 1998, the deminimis settlement AOC was approved as a final matter and became effective.

DATES: Comments on this Administrative Order on Consent must be received on or before April 26, 1999.

ADDRESSES: Written comments relating to this Administrative Order on Consent, Docket No. VW–98–C–499, should be sent to William H. Clune, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 5, Mail Code C–14J, 77 West Jackson Blvd., Chicago, IL, 60604.

SUPPLEMENTARY INFORMATION: Copies of the Administrative Order on Consent and the Administrative record for this Site are available at the following address for review. It is strongly recommended that you telephone Mike

Bellot at (312) 353–6425 before visiting the Region 5 office.

U.S. Environmental Protection Agency, Region 5, Superfund Division, 77 West Jackson Blvd., Chicago, IL 60604

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 99–7431 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:41 a.m. on Tuesday, March 23, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than March 19, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: March 24, 1999.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 99–7676 Filed 3–24–99; 3:57 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Request for Additional Information

This is a notice that additional information was requested from the Transpacific Stabilization Agreement.

Agreement No.: 203–011223–020

Title: Transpacific Stabilization Agreement.

Parties:

American President Lines, Ltd.
APL Co. PTE Ltd.
COSCO Container Lines Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie GmbH
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The Federal Maritime Commission hereby gives notice, pursuant to section 6(d) of the Shipping Act of 1984, 46 U.S.C. app. Sections 1701 *et seq.*, that it has requested the agreement parties to submit additional information regarding their agreement. Further information is necessary to evaluate the impact of the proposed agreement modification. This action prevents the agreement from becoming effective as originally scheduled.

Dated: March 22, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–7303 Filed 3–24–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[File No. 9923039]

Abercrombie & Fitch, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Purusant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Abercrombie & Fitch, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of

the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of a print catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, by failing to disclose in its catalogs whether products offered for sale were made in the U.S.A., imported, or both.

Part I of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and Commission rules and regulations, found at 16 CFR Parts 303 and 300, respectively, implementing the requirements of those statutes.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc 99–7402 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923009]

Bugle Boy Industries, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Bugle Boy Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile products by means of an on-line Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, by failing to disclose in its on-line catalog whether products offered for sale were made in the U.S.A., imported, or both.

Part I of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act and Commission rules and regulations, found at 16 CFR part 303, implementing the requirements of the statute.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) Copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials

and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7401 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923002]

Burlington Coat Factory Warehouse Corp.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Burlington Coat Factory Warehouse Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of an on-line Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose in its catalogs whether products offered for sale were made in the U.S.A., imported, or both.

Part I of the proposed consent order prohibits respondent from advertising any textile or wool product in any mail order catalog or mail order promotional material, including those disseminated on the Internet, without disclosing clearly and conspicuously that the product was made in the U.S.A., imported, or both.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7395 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9910046]

CMS Energy Corp.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the

consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Frank Lipson or Mark Menna FTC/H–2105, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2617 or (202) 326–2722.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from CMS Energy Corporation ("CMS" or "Proposed Respondent") an Agreement Containing Consent Order ("Proposed Consent Order"). The Proposed Consent Order remedies the likely anticompetitive effects in the market for pipeline transportation of natural gas into parts of Michigan arising from certain aspects of the proposed acquisition by CMS of all voting securities of Panhandle Eastern Pipeline Company ("Panhandle"), Panhandle Storage Company, and Trunkline LNG Company ("Trunkline"), now held by Duke Energy Company ("Duke"), its subsidiaries or affiliates.

II. Description of the Parties and the Transaction

CMS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 330 Town Center Drive, Dearborn, Michigan. CMS is a holding company for its principal subsidiary, Consumers Energy Company ("Consumers Energy"). Consumers Energy is a combination electric and gas utility company that serves customers in broad sections of Michigan.

Duke is an integrated energy and energy services provider. Duke delivers and manages electricity and natural gas throughout the United States and abroad. Duke's Natural Gas Transmission segment is involved in interstate transportation and storage of natural gas for customers primarily in the Mid-Atlantic, New England and Midwest states. Duke's earnings before interest and taxes for the three months ending September 30, 1998, were $870.9 million.

Duke owns 100 percent of Panhandle Eastern Pipeline and Trunkline Pipeline, both of which are natural gas pipelines regulated by the Federal Energy Regulatory Commission ("FERC") Panhandle originates in the producing fields of Oklahoma and moves natural gas in a northeasterly direction from Oklahoma into Michigan. Trunkline originates in the Gulf Coast and transports gas produced from offshore Gulf Coast wells north to the Midwest. Trunkline terminates at the Michigan border. Both Panhandle and Trunkline interconnect with Consumers Energy.

Respondent CMS entered into a Stock Purchase Agreement dated as of October 31, 1998, with PanEnergy Corp. and Texas Eastern Corp., subsidiaries of Duke, to acquire all voting securities of Panhandle Eastern Pipe Line Company, Panhandle Storage Company, and Trunkline LNG Company for $1.9 billion plus the assumption of $300 million in debt.

III. The Proposed Complaint and Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with CMS in settlement of a proposed complaint alleging that the proposed acquisition violates section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and that consummation of the acquisition would violate section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission act. The proposed complaint alleges that the acquisition will lessen competition in the pipeline transportation of natural gas into Consumer Energy's gas service area (the "Service Area"). The Service Area includes all or portions of 54 counties in the lower peninsula of Michigan. Principal cities served include Bay City, Flint, Jackson, Kalamazoo, Lansing, Pontiac, and Saginaw.

Consumers Energy receives natural gas through interconnections with Panhandle and Trunkline as well as other pipelines in which Consumers Energy will have no financial interest after the proposed acquisition. The proposed compliant alleges that Consumers Energy can unilaterally decide to reduce the interconnection capacity or close the interconnection altogether. The proposed complaint alleges that after the acquisition, CMS will have an incentive to close or reduce the interconnection capacity with the non-CMS pipelines. This action is likely to increase demand for transportation service on Panhandle and Trunkline and enable these pipelines to increase their rates. The proposed compliant also alleges that such a rate increase may also affect customers' natural gas prices and electricity prices in the Service Area.

To remedy the alleged anticompetitive effects of the proposed acquisition, the Proposed Consent Order allows a shipper to use another interconnection on the Consumers Energy system if the shipper does not incur increased costs. Alternatively, the Proposed Consent Order requires CMS to supply gas from its own system to any shipper to which CMS refuses transportation because of reduced interconnect capacity. The shipper would have to return the borrowed gas, but not earlier than the end of the calendar month following the month in which CMS reduced interconnect capacity.

IV. Resolution of Antitrust Concerns

Consumers Energy, a CMS subsidiary, is the franchised monopoly provider of local gas distribution services to residential, commercial and industrial customers in large parts of Michigan. Gas enters the Consumers Energy's intra-state transmission system at interconnections with Trunkline, Panhandle and other pipelines (mainly, those owned by ANR, Great Lakes and Michigan Consolidated Gas). While Consumers Energy is the local distribution monopolist, it must offer transportation to other firms on its transmission system. In this manner, it competes with other companies in the

sale of natural gas to customers on the Consumers Energy system.

Consumers Energy controls the operation of its system, including its capacity to receive gas at pipeline interconnections. Currently, Consumers Energy, as a purchaser of interstate transportation services, has the incentive to maintain competitive access to its intra-state system to maintain maximum flexibility and minimum prices for the gas delivery. In fact, prices on both Panhandle and Trunkline are substantially below the maximum permitted by FERC. After the acquisition, however, CMS would have the incentive to restrict access to the Consumers Energy system by non-CMS pipelines to support higher post-acquisition transportation prices on Trunkline and Panhandle. CMS could restrict the access non-CMS pipelines have to the Consumers Energy system by reducing the capacity of the interconnections that service those pipelines. It is unlikely that either State or Federal regulatory agencies have the authority to interdict this behavior.

The resulting increase in the price of natural gas transportation into the Consumers Energy system would likely increase the price of gas sold to customers in the Service Area. In addition, the proposed acquisition is likely to adversely affect industrial plants locate in the Service Area that rely on natural gas as a feedstock to generate their electricity. Increased gas transportation rates are likely to increase the cost of self-generation and may force these plants, instead, to purchase electric power from Consumer Energy.

The Proposed Consent Order is designed to prevent CMS from restricting or eliminating the interconnection capacity available to competing pipelines. The Proposed Consent Order identifies a designated capacity for each interconnection based on historical usage to maintain non-CMS capacity at current levels. CMS may adjust the designated capacity for reasons related to force majeure or routine maintenance, resulting in an adjusted designated capacity for each interconnection.[1]

The Proposed Consent Order requires CMS to give shippers two options if they cannot deliver gas into Consumers Energy's service area because the available interconnection capacity is less than actual capacity for any reasons other than force majeure or routine maintenance. First, if the shipper is able to nominate its shipments to another pipeline interconnection point into the Consumers Energy system at no additional cost to the shipper, CMS will accept the gas at such other pipeline interconnection point. Second, if the shipper would incur additional cost in delivering at another interconnection point, or if no other interconnection point is available to the shipper, CMS will provide gas from its own supply of gas and without interruption on the Consumer Energy system for the shipper's account equal to the volume of gas nominated by the shipper that could not be transferred through any of the interconnection points. The shipper must return the gas to Consumers Energy without penalty by the end of the month following the month in which CMS provided gas in offset to the shipper's blocked gas.[2]

The Proposed Consent Order requires CMS to post to an electronic bulletin board information which will let shippers know whether actual capacity is less than current capacity at non-CMS interconnects. Specifically, the Proposed Consent Order requires Consumers Energy to provide (for each interconnection point) the current capacity, current capacity as adjusted for maintenance and force majeure conditions (including the cause of the adjustment and the date it is expected to end), actual capacity, shipments nominated and confirmed (no later than the second business day of each month), and throughput for the previous month.[3] This information will permit industry participants to monitor access to CMS's intra-state distribution system.

The Proposed Consent Order, which will be effective for a period of ten years, requires Consumers Energy to incorporate these obligations into the tariffs it has filed with the Michigan Public Service Commission and into its contracts with shippers.

[1] The Proposed Consent Order refers to these measures as "Designated Capacity" and "Adjusted Designated Capacity." The Proposed Consent Order refers to actual capacity as "Available Interconnection Capacity," meaning the amount of natural gas that Consumers Energy is ready, willing and able to receive at a non-CMS interconnection. Exhibit A to the Proposed Consent Order lists the eight non-CMS interconnection points at issue, along with the Designated Capacity of each interconnection.

[2] The procedure is iterative in that the process repeats itself if Consumers Energy declines a shipper's return of gas because actual non-CMS interconnection capacity is less than current capacity, thereby giving the shipper additional time to settle the offset with Consumers Energy.

[3] The Proposed Consent Order requires the listing of "Recorded Throughput," meaning the data obtained electronically by Consumers Energy from its Supervisory Control And Data Acquisition system units located at each of the interconnection points at issue.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make the order final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order to aid the Commission in its determination of whether to make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7403 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923008]

Delia's Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Delia's Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of a print catalog and an on-line Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose in its catalogs whether products offered for sale were made in the U.S.A., imported, or both.

Part 1 of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act, the Wool products Labeling Act, and Commission rules and regulations, found at 16 CFR parts 303 and 300, respectively, implementing the requirements of those statutes.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7399 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823257]

Design Zone, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to section 69(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order

from Design Zone, Inc. The agreement would settle a proposed complaint by the Federal Trade Commission that Design Zone violated the Textile Fiber Products Indentification Act and engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns country-of-origin labeling practices relating to the sale of cotton t-shirts and other textile wearing apparel. The proposed complaint charges that Design Zone removed labels saying "Made in China" from t-shirts manufactured in China and substituted labels containing the statement "Made in the USA" or, in some instances, added the "Made in USA" labels without removing the "Made in China" labels.

The proposed consent order contains provisions designed to prevent Design Zone from engaging in similar acts and practices in the future. Part I of the proposed order prohibits Design Zone from misrepresenting, in any manner, the extent to which t-shirts or other items of textile wearing apparel are made in the United States or any other country. It further prohibits it from violating any provision of the Textile Fiber Products Identification Act.

The proposed order also contains standard provisions regarding record-keeping, notification of changes in corporate status, distribution of the order, termination of the order, and filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7397 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923004]

Gottschalks, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Gottschalks, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of an on-line Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose in its on-line catalog whether products offered for sale were made in the U.S.A., imported, or both.

Part I of the proposed consent order prohibits respondent from advertising any textile or wool product in any mail order catalog or mail order promotional material, including those disseminated on the Internet, without disclosing clearly and conspicuously that the product was made in the U.S.A., imported, or both.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby

the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–7396 Filed 3–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810261]

North Lake Tahoe Medical Group, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/H–3115, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2770 or Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5276.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm.". A paper copy can be obtained form the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

North Lake Tahoe Medical Group, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from North Lake Tahoe Medical Group, Inc. ("Tahoe IPA"). The agreement settles charges by the Federal Trade Commission Tahoe IPA has violated Section 5 of the Federal Trade Commission Act by: (1) Acting concertedly to delay the entry into the market of managed care; (2) engaging in collective negotiations over prices with payers; and (3) refusing to deal with Blue Shield of California ("Blue Shield") when it did not comply with the Tahoe IPA's demands. The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement and proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Tahoe IPA that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a proposed complaint will be issued by the Commission along with the proposed consent order. The allegations in the Commission complaint are summarized below.

Tahoe IPA is a physician organization based in Truckee, California. All of the members of Tahoe IPA are physicians practicing in and around the Tahoe Basin, which includes the North Lake Tahoe and South Lake Tahoe areas. During the time period addressed by the allegations of the complaint, Tahoe members constituted at least 70% of all physicians practicing in the North and South Lake Tahoe areas.

Tahoe IPA was formed in 1994 as a vehicle for its members to deal concertedly with the impending entry into North and South Lake Tahoe of managed care. Beginning in 1994, and continuing until at least 1998, when Tahoe IPA first learned that it was under investigation by the staff of the Commission, Tahoe IPA conspired to fix the prices and other terms under which its members dealt with third-party payers. Tahoe IPA also conspired to prevent or delay the entry into the North Lake and South Lake Tahoe areas of managed care. Tahoe IPA refused to participate, either individually or collectively, in HMO plans offered by Blue Shield, Hometown Health Plan, Foundation Health Plan, St. Mary's Health Plan, and other third-party payers attempting to do business in the Tahoe Basin. Tahoe IPA engaged in collective negotiations to fix price terms and other competitively significant terms with all payers seeking to enter the North and South Lake Tahoe areas. Tahoe IPA maintained an exclusivity clause in its "Provider Participation Agreement," and encouraged its members to deal with third-party payers only through Tahoe IPA. Tahoe IPA sought to coerce payers into accepting the IPA fee schedules and minimum reimbursement rates. Tahoe IPA leaders stated that payers must accept the IPA's price terms if they want to contract with IPA members.

In furtherance of its unlawful agreements, since 1996 Tahoe IPA attempted to coerce Blue Shield to raise its level of fee-for-service reimbursement to IPA physicians. Since November 1997, when it became clear the Blue Shield would not negotiate on the Tahoe IPA's terms, the IPA encouraged its physician members to departicipate from Blue Shield's preferred provider organization ("PPO"). In private and public statements, the Tahoe IPA reminded its members that it was acting as their agent with Blue Shield, and that the IPA would ultimately be successful in its negotiations with Blue Shield if the members continued to contract on a united front. Beginning as early as

January 1998, many of the physician members of Tahoe IPA submitted letters of termination to Blue Shield. Some of these members no longer contract with Blue Shield, and others have notified Blue Shield of their intent to terminate their contracts as of January 1, 1999.

Tahoe IPA's members have not integrated their medical practices in any economically significant way, nor have they created any efficiencies that might justify this conduct. Tahoe IPA's actions have harmed consumers in the North and South Lake Tahoe areas by restraining competition among physicians, by fixing or increasing the prices that are paid for physician services, and by depriving third-party payers, their subscribers, and patients of the benefits of competition among physicians.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing Tahoe to engage in legitimate joint conduct. Section II of the proposed order contains the core operative provisions. Section II.A prohibits Tahoe IPA from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) fixing prices, or any other terms, on which its members deal, and (4) restricting the ability of any physicians to deal with any payer or provider individually or through any arrangement outside of Tahoe IPA.

Section II.B prohibits Tahoe IPA from exchanging or facilitating the exchange of information among physicians of information concerning the terms or conditions of reimbursement. Section II.C prohibits this Tahoe IPA from encouraging, advising or pressuring any person to engage in any action that would be prohibited if the person were subject to the order.

Section II includes a proviso allowing Tahoe IPA to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any "qualified risk-sharing joint arrangement," or (b) any "qualified clinically integrated joint arrangement," provided Tahoe IPA complies with the order's prior notification requirements. For the purpose of the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physicians participating in the arrangement must share substantial financial risk from their participation in the arrangement. The order lists ways in which physicians might share financial risk, tracking the types of financial risk sharing set forth in the Statements of Antitrust Enforcement Policy in Health Care, issued jointly by the FTC and the Department of Justice. Statements of Antitrust Enforcement Policy in Health Care, issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153. Second, any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive, i.e., it must not restrict the ability, or facilitate the refusal, or physicians participating in the arrangement to deal with payers individually or through any other arrangement.

A "qualified clinically integrated joint arrangement" includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate to evaluate and modify their clinical practice patterns, to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangements reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. In addition, as with risk-sharing arrangements, the arrangement must be non-exclusive in light of Tahoe IPA's large share of the market.

For a qualified clinically integrated joint arrangement to fall within the proviso, the Tahoe IPA must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact. This requirement will help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Section II also contains a proviso that permits the Tahoe IPA to refuse to transmit information from payers or providers to less than all of its participating physicians. This proviso, however, does not permit the Tahoe IPA to require that payers or providers make offers to all participating physicians or to any particular physician.

Section III of the proposed order requires the Tahoe IPA to terminate the participation in the Tahoe IPA of physicians who have terminated their participation, or have given notice of their intent to terminate their participation, in Blue Shield's PPO. this provision requires the Tahoe IPA to provide to Blue Shield the names and addresses of all of its participating physicians, and to request from Blue Shield the names of all participating physicians who either have terminated participation in Blue Shield, or have given notice of intent to terminate future participation in any Blue Shield health plan between January 1, 1998, and the date the agreement was signed. Within twenty days after Tahoe IPA has received from Blue Shield the names and addresses of the boycotting physicians, the Tahoe IPA must terminate their participation unless the physician either: (1) Attempts in good faith to reestablish participation in a Blue Shield health plan for a period of at least six months thereafter; or (2) rescinds in writing his or her notice of intent to terminate future participation in a Blue Shield health plan and continues to participate in a Blue Shield health plan for a period of at least six months thereafter.

Section IV.A requires that Tahoe IPA notify its members and certain third parties, including certain third-party payers, about the order. Section IV.A also requires the IPA to revise its "Provider Agreement," which contains a clause requiring members to contract exclusively through the Tahoe IPA, so that it complies with the order. Section IV.B requires the IPA to terminate any contracts with any payers that do not comply with Section II of the order, at the earlier of (1) the termination or renewal date of the contract; or (2) receipt of a written request from the payer to terminate the contract. Section IV.C requires that the IPA, for the next five years (1) distribute copies of the complaint and order to new members, and (2) publish annually to members a copy of the complaint and order.

Sections V, VI, and VII consist of standard Commission reporting and compliance procedures, with the exception that Section V specifies some of the information Tahoe IPA must include in its annual compliance reports, including: (1) Information identifying each health plan that has contacted Tahoe IPA for the purpose of contracting for physician services, the terms of any contract the health plan was seeking with Tahoe IPA, and Tahoe IPA's response to the health plan; (2) information sufficient to describe the manner in which Tahoe IPA's members share financial risk in each "qualified non-exclusive risk-sharing arrangement" in which the Tahoe IPA participates; and (3) copies of the

minutes of Tahoe IPA's annual meetings.

Finally, Section VIII of the proposed order contains a twenty year "sunset" provision under which the terms of the order terminate twenty years after the date of issuance.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

[North Lake Tahoe Medical Group, Inc., File No. 981–0261]

The Commission has published a proposed complaint alleging that North Lake Tahoe Medical Group ("Tahoe IPA") violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating an illegal group boycott among its member physicians who refused to deal with Blue Shield of California ("Blue Shield"). Because the actions of Tahoe IPA went beyond a mere refusal to contract and were, instead, part of a larger agreement to impede the growth of managed care health plans, we believe that the proposed order, including the remedial provisions contained in Section III, prescribes appropriate relief to restore competition and remedy the harm caused by Tahoe IPA's illegal activities.

Having reached an impasse in its efforts to raise the reimbursement rate paid by Blue Shield to its members, Tahoe IPA requested that its members withdraw from Blue Shield's health plan. Twenty-four doctors either withdrew, or announced their intention to withdraw, following Tahoe IPA's request. By engaging in an illegal group boycott directed at Blue Shield, Tahoe IPA and its members attempted to impair the growth and effectiveness of health insurance plans in the relevant market.

The proposed order is designed to restore competition lost as a result of the boycott. Section II.A of the order would prohibit Tahoe IPA from negotiating on behalf of its members with any payer or provider for physician services. Section II.A also would prohibit Tahoe IPA from orchestrating refusals to deal among its members with payers, fixing prices or any other terms on which its members deal with physicians, and preventing physicians from dealing with any payer or provider individually or through arrangements outside of Tahoe IPA. Section III of the proposed order further requires that Tahoe IPA terminate member physicians for a period of six months who refused to deal with Blue Shield as part of the illegal boycott led by Tahoe IPA. Section III permits Tahoe IPA to retain these members if they either (1) attempt in good faith to re-join Blue Shield's network for six months, or (2) rescind their refusals to deal and participate in the Blue Shield plan for at least six months.

The Commission is unanimous in its belief that the relief set forth in Section II is necessary to restore competition in the relevant market. However, Commissioner Swindle dissents from Section III of the order and contends that Tahoe IPA's members will have sufficient independent incentives to negotiate or contract with Blue Shield without Section III of the proposed order. The facts tell a different story.

Since the proposed order was reached with Tahoe IPA, 20 of its member physicians have agreed to re-join the Blue Shield provider network or to enter negotiations over terms under which they might re-join. Only four members of Tahoe IPA have refused to enter negotiations with Blue Shield. There is every reason to believe that the doctors have re-joined the Blue Shield network in part because of the pending order, and may have been more reluctant to do so in the absence of Section III.

Accordingly, given the conduct alleged in the complaint and its anticompetitive effects, we respectfully disagree with Commissioner Swindle. Section III of the proposed order is a modest, but appropriate, step to reverse the harm caused by Tahoe's illegal conduct. With a large percentage of area doctors withdrawing from its plan through an illegal boycott, Blue Shield no longer offered adequate services to its members. Provisions of the cease and desist order other than Section III prohibit further action to effectuate an agreement to boycott. But where the action has already succeeded, as it did here, something more is needed to restore competition that was eliminated through the anticompetitive conduct alleged in the complaint. Insufficient relief in this case could increase the likelihood of similar conduct arising in other markets. Moreover, the relief in Section III is limited to a six-month time period, and is narrowly tailored to meet the direct purpose of the proposed order by covering only the period when negotiations were occurring for the 1999 coverage year. Tahoe IPA is primarily responsible for the boycott, and it is therefore appropriate that Tahoe IPA take steps to make clear to its own membership that they must make a unilateral decision whether to continue to deal with Blue Shield.

In cases where illegal conduct has caused serious harm, the remedy should aim to undo the damage when reasonably possible. The objective of the proposed order in this case is to restore competition that has been lost through the illegal activities of Tahoe IPA and its members. Section III of the proposed order is an appropriate limited measure designed to accomplish this traditional antitrust remedial objective. It ensures that Tahoe IAP will allow its members to act in a manner consistent with their independent incentives, not in a fashion that allows the effects of an antitrust violation to persist.

Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part

[Tahoe Health System, Inc., File No. 981–0261]

The Commission has accepted a consent agreement in this matter that includes a novel remedy I do not support. North Lake Tahoe Medical Group, Inc. ("Tahoe IPA"), the respondent, engaged in negotiations on behalf of its member physicians to obtain from third-party payers prices that were discounted no more than 10 percent below their usual fees. Blue Shield, a third-party payer, refused to accede to Tahoe IPA's demands, leading Tahoe IPA to successfully encourage many of its members no longer to participate as physicians for Blue Shield. Other third-party payers that were considering offering HMO products in the Lake Tahoe area responded to Tahoe IPA's demands by deciding not to enter.

I agree that there is reason to believe that Tahoe IPA's conduct violated Section 5 of the FTC Act. To remedy these violations, Paragraph II of the proposed consent order contains typical provisions that would prohibit Tahoe IPA from entering into any agreement to (1) negotiate on behalf of physicians with any payer or provider for physician services, or (2) refuse to deal with any payer or provider. I support the relief in Paragraph II because it is necessary to prevent Tahoe IPA from engaging in unlawful conduct that is identical or similar to that alleged in the proposed complaint. Both the Commission's complaint and the relief prescribed by Paragraph II make it clear to Tahoe IPA's members that they must make unilateral decisions as to whether to deal with Blue Shield.

The proposed consent order, however, also contains a novel—and questionable—remedy, Paragraph III requires that Tahoe IPA terminate the membership of all physicians who refused to deal (or who gave notice of their intent to refuse to deal) with Blue Shield as a result of Tahoe IPA's encouragement. Tahoe IPA, however,

would not have to terminate: (1) physicians who refused to deal but attempt in good faith to reparticipate in Blue Shield for six months, and (2) physicians who rescind their notices of refusal to deal and continue to participate in Blue Shield for at least six months.

I do not believe that Paragraph III is needed. Prior to the refusal to deal with Blue Shield alleged in the complaint, the Tahoe IPA physicians who participated in Blue Shield had their own sufficient market incentives to participate. With the cessation of the refusal to deal and the prohibition in Paragraph II on future refusals to deal, these market incentives should revive. With the return of these incentives, the Tahoe IPA physicians who refused to deal presumably would choose once again to participate in Blue Shield even without the burdens imposed by Paragraph III.[1]

The majority believes that government action beyond these market incentives is needed to make this market work better in the future. I disagree. Because Tahoe IPA physicians on their own have sufficient to return to Blue Shield, there is no reason to add a layer of government intervention intended to achieve the same result.

I dissent as to Paragraph III of the proposed consent order.

[FR Doc. 99–7404 Filed 3–25–99; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923007]

Wal-Mart Stores, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Wal-Mart Stores. Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate actions or make final the agreement's proposed order.

This matter concerns practices related to the sale of textile and wool products by means of an on-line Internet catalog. The Commission's compliant charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose on its on-line catalog whether products offered for sale were made in the U.S.A. imported, or both.

Part I of the proposed consent order prohibits respondent from advertising any textile or wool product in any mail order catalog or mail order promotional material, including those disseminated on the Internet, without disclosing clearly and conspicuously that the product was made in the U.S.A., imported, or both.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any changes in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an officials interpretation of the agreement and proposed order or to modify in any way there terms.

By direction of the Commission.

[1] Twenty physicians have agreed to reparticipate in Blue Shield, while four have not. All this demonstrates is that physicians have reparticipated in Blue Shield while Paragraph III is in effect. It does not establish that Paragraph III was a cause of this reparticipation, or that market incentives would not have caused the physicians to reparticipate in the absence of Paragraph III.

Dated:
Donald S. Clark,
Secretary.
[FR Doc. 99–7398 Filed 3–25–99; 8:45 am]
BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923003]

Woolrich, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 26, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carol Jennings, FTC/S–4302, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from respondent Woolrich, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed under.

This matter concerns practices related to the sale of textile and wool products by means of an on-line Internet catalog. The Commission's complaint charges that respondent violated the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, the Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.*, and the Wool Products Labeling Act, 15 U.S.C. 68 *et seq.*, by failing to disclose in its on-line catalog whether products offered for sale were made in the U.S.A., imported, or both.

Part I of the proposed consent order prohibits future violations of the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and Commission rules and regulations, found at 16 CFR parts 303 and 300, respectively, implementing the requirements of those statutes.

Part II of the proposed order requires the respondent, for five years after the date of issuance of the Order, to maintain records demonstrating compliance with the Order, including: (a) copies of mail order catalogs and mail order promotional materials, as defined in 16 CFR 303.1(u) and 300.1(h), that offer textile and/or wool products for direct sale to consumers; and (b) complaints and other communications with consumers, government agencies, or consumer protection organizations, pertaining to country-of-origin disclosures for textile and/or wool products.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 99–7400 Filed 3–25–99; 8:45 am]
BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.
ACTION: Notice of two-day meeting on April 12 and 13.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Monday, April 12 and Tuesday, April 13 from 9:00 to 4:30 PM in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to:

- Discuss issues regarding Stewardship Reporting and Management's Discussion and Analysis (MD&A), and
- Review FY 1998 Financial Reports, FASAB Projects Plans, and other miscellaneous items.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., N.W., Room 3B18, Washington, D.C. 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86

Stat. 770, 774 (1974) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 23, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–7480 Filed 3–25–99; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 20 and 21, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave, Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857; 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application (NDA) 21–042 Vioxx™ (rofecoxib, Merck) for the treatment of acute or chronic signs and symptoms of osteoarthritis and the management of pain.

Procedure: On April 20, 1999, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 14, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 14, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On April 21, 1999, from 8 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app.2).

Dated: March 16, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–7362 Filed 3–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Changing Times; Clinical Trial Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Southeast Region, is announcing the following meeting: "Changing Times: Clinical Trial Regulations, Clinical Investigators and IRB's Learning to Cope." The topic to be discussed is FDA regulatory requirements for the conduct of clinical studies and practical issues such as how clinical investigators and Institutional Review Boards can cope with the regulatory process, how to prepare for a data audit, what to expect during an inspection, and how to get current information from FDA.

Date and Time: The meeting will be held on Friday, April 30, 1999, from 8 a.m. to 6 p.m.

Location: The meeting will be held at the Veterans Administration Medical Center Auditorium (2d floor), 1201 NW. 25th St., Miami, FL 33125.

Contact: Luz I. Collado, Food and Drug Administration, HFR–SE2575, P.O. Box 59–2256, Miami, FL 33159, 305–526–2800, ext. 926, or Brunilda Torres, Food and Drug Administration, Florida District, HFR–SE250, 407–475–4718, FAX 407–475–4768.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to Gloria Allington, Director, University of Miami School of Medicine, Division of Continuing Medical Education, 1500 NW. 12th Ave., Miami, FL 33136, 305–243–6716, FAX 305–243–5613. Attendance will be limited to the first 200 applicants, therefore, interested parties are encouraged to register early. A $100 registration fee is being charged by the University of Miami School of Medicine to help cover costs of materials, breakfast, box lunches, and beverages for breaks. A discounted registration fee of $90 is being offered to those who register by Thursday, April 1, 1999.

If you need special accommodations due to a disability, please contact Gustavo Godoy, Executive Director and Administrative Officer for R&D, VA Medical Center, 1201 NW. 16th St., Miami, FL 33125, 305–324–3179, FAX 305–324–3126, at least 7 days in advance.

Dated: March 19, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7361 Filed 3–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0484]

Draft Guidance for Industry on Accelerated Approval Products: Submission of Promotional Materials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Accelerated Approval Products: Submission of Promotional Materials." The accelerated approval regulations require that applicants, unless otherwise informed by the agency, submit to FDA for consideration during the preapproval review period copies of all promotional materials, including promotional labeling and advertisements, intended for dissemination or publication within 120 days following marketing approval. This draft guidance is intended to assist sponsors of drug and biological products who are submitting such materials as part of the accelerated approval process.

DATES: Written comments on the draft guidance may be submitted by May 26, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm", or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or FAX 301–594–3215.

FOR FURTHER INFORMATION CONTACT:

Regarding prescription human drugs: Tracy L. Acker, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2831, or via Internet at ackert@cder.fda.gov.

Regarding biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028, or via Internet at stifano@cber.fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Accelerated Approval Products: Submission of Promotional Materials." This draft guidance is intended to assist sponsors of drug and biological products who are submitting promotional materials as part of the accelerated approval process.

In the **Federal Register** of December 11, 1992 (57 FR 58942), FDA published final regulations under which the agency would accelerate the approval of certain new drugs and biological products for serious or life-threatening illnesses. In November 1997, the President signed the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Pub. L. 105–115). Section 112 of the Modernization Act, in part, essentially codified in statute the accelerated approval regulations in an amendment to the Federal Food, Drug, and Cosmetic Act (section 506 of the act (21 U.S.C. 356) entitled "Fast Track Products"). On November 12, 1998, FDA published a draft guidance for industry on its policies and procedures regarding fast track drug development programs. The draft guidance that is the subject of this notice would apply to all products approved under § 314.500 (21 CFR 314.500), including those designated as fast track development programs.

Among other things, the accelerated approval regulations (§§ 314.550 and 601.45 (21 U.S.C. 314.550 and 601.45)) require that applicants, unless otherwise informed by the agency, submit to FDA for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication during the 120 days following marketing approval. The accelerated approval regulations also require that promotional materials intended for use following the 120-day postapproval period must be submitted to FDA for review at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement, unless otherwise informed by the agency.

During the past several years, representatives of the pharmaceutical industry have requested guidance from FDA on the procedures for submitting promotional materials under §§ 314.550 and 601.45. The draft guidance is intended to assist applicants submitting promotional materials under these regulations.

This draft guidance document represents the agency's current thinking on the process for submitting promotional materials for accelerated approval products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, on or before May 26, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments or requests for copies are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7516 Filed 3–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Number 99D–0392]

Seafood HACCP Transition Guidance; Request for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing for comment draft guidance setting forth circumstances under which the agency may consider refraining from regulatory action under the seafood Hazard Analysis Critical Control Point (HACCP) regulation and the Federal Food, Drug, and Cosmetic Act (the act) pending completion of studies to resolve scientific issues relating to whether the agency should revise or amend its policies concerning particular hazard analyses or controls.

DATES: Submit written comments by May 26, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should contain the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS–400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

SUPPLEMENTARY INFORMATION: On December 18, 1995 (60 FR 65096), FDA published final regulations (21 CFR part 123) that require processors of fish and fishery products to develop and implement HACCP systems for their operations. Those regulations became effective on December 18, 1997. As a companion to the regulation, FDA also issued a guidance document entitled the Fish and Fishery Products Hazards and Controls Guide (the Guide). The Guide contains FDA's compilation of what the agency believes to be the latest, science-based knowledge about when food safety hazards are reasonably likely to occur and what controls are appropriate for those hazards. In the period since the publication of the final regulations, FDA has produced two editions of the Guide. The agency intends to publish

new editions of the Guide as knowledge and technology advance about fish and fishery products hazards and controls.

Under the act and its implementing regulations, processors are responsible for ensuring that their HACCP systems are adequate. If processors need help in developing a HACCP system, the Guide provides them with information that can help them put in place a HACCP system that should generally satisfy a processor's obligations under the seafood HACCP regulation. However, as the Guide itself makes clear, the materials contained in the Guide consist of recommendations, and not binding requirements. Processors may control hazards in other ways so long as they can demonstrate that their approaches are scientifically defensible. Processors may also rely on hazard analyses that differ from those in the Guide so long as they can demonstrate that their own analyses are valid for their particular circumstances.

As a general matter, processors should establish the adequacy of a hazard analysis or control before implementing it. FDA can envision circumstances, however, where the industry could make a strong threshold case for the validity of a particular hazard analysis or system of controls even though complete confirmation of its validity was not yet available from scientific studies.

FDA believes that a mandatory HACCP program should serve as a catalyst for research and science-based resolution of food safety questions. Thus, where the consuming public would not be placed at risk, FDA believes it is appropriate to use a mechanism that encourages the resolution of legitimate scientific questions before they become legal controversies.

The purpose of this notice is to propose and obtain comment on guidance on the submission of citizen's petitions under § 10.30 (21 CFR 10.30), whereby any member of the public may request that FDA consider exercising enforcement discretion on certain matters under the seafood HACCP regulations pending their scientific resolution. This proposed guidance applies to issues involving matters of scientific fact related to whether a hazard is reasonably likely to occur or whether a control is sufficient, the resolution of which is likely only after the completion of a scientific study or a search of existing scientific literature. Other issues that relate to broader policy, such as circumstances where regulations specify hazards that are reasonably likely to occur in certain situations or enumerate performance standards or the actual critical limits that must be met, may also be addressed by filing a citizen's petition, or by discussing the issue directly with the agency in a less formal manner, but are not within the scope of this proposed guidance.

FDA anticipates that matters for which limited enforcement discretion will be considered will be narrow. In determining whether to exercise enforcement discretion, the agency may consider, among other things, whether the position presented by the petitioner has sufficient scientific merit and whether the petitioner's proposal is appropriate and adequate to answer the necessary scientific questions (e.g., whether the study and/or literature search that will be undertaken will, in the agency's judgment, provide the information needed to support the requested change; whether the identification of the time necessary to complete the study and any data analysis is reasonable; whether the petitioner commits to keeping FDA apprised of the progress being made on the study plan over the course of the study; and whether the petitioner agrees to provide FDA with all data from the study in order to advance the public state of knowledge, regardless of the outcome of the study).

FDA recommends that such petitions be submitted as requests to revise or amend the Guide. If a party believes that the Guide should be revised based on scientific data to be provided at a later date, the party should submit a petition under § 10.30 to the Dockets Management Branch (address above). Petitions must comply with the requirements of § 10.30. In addition, interested persons are encouraged to discuss the contents of an intended petition in advance of submission with representatives of FDA's Office of Seafood either in person or by telephone (202–418–3133). Such communication may minimize misunderstandings and time-consuming written communication during the consideration process.

If FDA determines, after reviewing a request, that it is appropriate for the agency to exercise enforcement discretion, the agency will advise the requester in writing that the agency does not anticipate enforcement action for the practice at issue and will post the letter on its Internet website at "http://www.fda.gov". FDA will also advise the requester of the time period that the agency believes is reasonable for the study and data analysis. If, at the end of this timeframe, the agency concludes that the data from the study are inadequate, or if no data are submitted, FDA will proceed with its regulatory options. The agency may also reconsider the use of enforcement discretion before the end of the timeframe if circumstances change or otherwise warrant reconsideration. If such reconsideration takes place, FDA will notify the original requester and make its reconsideration public.

In considering the information submitted, FDA will evaluate, as appropriate: (1) The methodology of the scientific study; (2) the scientific merit of the conclusions; and (3) the consistency of the recommended action with agency policy. Any changes in agency position will be posted on FDA's Internet website at "http://www.fda.gov" and then reflected in the next edition of the Guide.

The public is reminded that it is welcome to discuss with the agency at any time, including before finalization of this guidance, issues relating to seafood hazards and controls and how these issues may be resolved through research.

The guidance provided in this notice represents the agency's current thinking on the subject and does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

FDA tentatively concludes that this guidance would not impose any paperwork burden that has not already been approved by OMB under OMB No. 0910–0183 "Citizen Petition—21 CFR 10.30." These guidelines simply provide information to the public to assist them in submitting citizen petitions to obtain changes in the Guide under certain circumstances.

Dated: March 17, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–7363 Filed 3–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should

notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 27–28, 1999.

Open: For the Director's Status Report, presentation on the NNA Program Review, Center for Inherited Disease Research, and Report on the Minority Aging Task Force.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: May 28, 1999, 8:00 am to 9:30 am.

Agenda: Report on Working Group on Program.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: May 28, 1999, 9:30 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, Director, Office of Extramural Affairs, National Institute of Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7504 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, K–12 RFA.

Date: April 15, 1999.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.865, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7505 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secretes of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel HYPOXIA IN DEVELOPMENT: INJURY AND ADAPTATION MECHANISMS.

Date: April 6–7, 1999.

Time: 7:30 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn at Yale, 30 Whalley Avenue, New Haven, CT 06511.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 900 Rockville Pike, 6100 Bldg., Room 5E01, BETHESDA, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7506 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel NIEHS SEP: Growth Factors in Asbestos Induced Pulmonary Fibrosis.

Date: April 7–9, 1999.

Time: April 7, 1999, 7:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Downtown-Superdome, 330 Loyola Avenue, New Orleans, LA 70112.

Time: April 8, 1999, 4:00 PM to 8:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Downtown-Superdome, 330 Loyola Avenue, New Orleans, LA 70112.

Time: April 9, 1999, 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Downtown-Superdome, 330 Loyola Avenue, New Orleans, LA 70112.

Contact Person: Ethel B. Jackson, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: March 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7507 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel R13 Review Meeting.

Date: April 9, 1999.

Time: 10:00 A.M. to 11:00 A.M.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Patrick J Mastin, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel REF 98–26 (II) Contract Review.

Date: April 13, 1999.

Time: 8:30 A.M. to 5:00 P.M.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 T W Alexander Drive, Bldg. 4401, Rm 3162, Research Triangle Park, NC 27709.

Contact Person: Patrick J Mastin, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113 Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894; Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health; HHS)

Dated: March 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7508 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 25, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level, review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Solar Building, Room 2A17, 6003 Executive Boulevard, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7509 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel Novell Human Oral & Craniofacial Genes (RFP–NIH–NHLBI–DR–99–18).

Date: April 21, 1999.

Time: 1:00 pm TO 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Two Rockledge Centre, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie L. Prenger, Scientific Review Administrator, NIH, NHLBI, DEA Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7510 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Instiute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Special Emphasis Panel.

Date: March 25, 1999.

Time: 10:00 AM TO 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientifics and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs, 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7511 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, March 24, 1999, 7:45 a.m. to March 25, 1999, 5 p.m., Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on March 8, 1999, 64 FR 11015.

The meeting is being amended to reflect location change. The new meeting location is Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007. The meeting is closed to the public.

Dated: March 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–7512 Filed 3–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. Veterans Administration, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other

purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:

Air Force: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184.

Army: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318.

Energy: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426.

DOT: Mr. Rugene Spruill, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246.

GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052.

Interior: Ms. Lola Kane, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080.

Navy: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200 (these are not toll-free numbers).

Dated: March 18, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 3/26/99

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 645
Fort Richardson
Anchorage C0: AK 99505–6500
Landholidng Agency: Army
Property Number: 21199910081
Status: Excess
Comment: 2304 sq. ft., concrete block, most recent use—admin., off-site use only.

Bldg. 763
Fort Richardson
Anchorage Co: AK 99505–6500
Landholidng Agency: Army
Property Number: 21199910082
Status: Excess
Comment: 1500 sq. ft., wood frame, most recent use—vehicle dispatch, off-site use only.

Bldg. 770
Fort Richardson
Anchorage Co: AK 99505–6500
Landholidng Agency: Army
Property Number: 21199910083
Status: Excess
Comment: 24,896 sq. ft., concrete block, most recent use—vehicle maint., off-site use only.

Bldg. 789
Fort Richardson
Anchorage Co: AK 99505–6500
Landholidng Agency: Army
Property Number: 21199910084
Status: Excess
Comment: 19,001 sq. ft., concrete block, most recent use—vehicle maint., off-site use only.

Arizona

Bldg. 87821, 90420
Fort Huachuca
Sierra Vista Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 21199910087
Status: Excess
Comment: 377 and 5662 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only.

California

Bldg. 104
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910088
Status: Unutilized
Comment: 8039 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 106
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910089
Status: Unutilized
Comment: 1950 sq. ft., presence of asbestos/lead paint, most recent use—office/storage, off-site use only.

Bldg. 125
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910090
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 339
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910092
Status: Unutilized
Comment: 5654 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 340
Presidio of Monterey
Monterey, Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910093
Status: Unutilized
Comment: 6500 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 341
Presidio of Monterey
Monterey, Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910094
Status: Unutilized
Comment: 371 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 4214
Presidio of Monterey
Monterey, Co: CA 93944–
Landholding Agency: Army
Property Number: 21199910095
Status: Unutilized
Comment: 3168 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–640
Fort Shafter
Honolulu, Co: HI 96819–
Landholding Agency: Army
Property Number: 21199910096
Status: Unutilized
Comment: 19,743 sq. ft., most recent use—dining facility, off-site use only.

Bldg. P–224
Tripler Army Medical Center
Honolulu, Co: HI 96819–
Landholding Agency: Army
Property Number: 21199910097
Status: Unutilized
Comment: 24,045 sq. ft., most recent use—dining facility, off-site use only.

Maryland

Bldg. 32
Fort George G. Meade
Anne Arundel, Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910098
Status: Unutilized
Comment: 100 sq. ft., concrete block, office, off-site use only.

Bldg. 2232

Fort George G. Meade
Anne Arundel, Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21199910099
Status: Unutilized
Comment: 1144 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only.

Bldg. 2233
Fort George G. Meade
Anne Arundel, MD 20755–5115
Landholding Agency: Army
Property Number: 21199910100
Status: Unutilized
Comment: 1297 sq. ft., presence of asbestos/lead paint, most recent use—supply-storage, off-site use only.

Missouri

Bldg. 6036
Fort Leonard Wood
Pulaski, MO 65473–8994
Landholding Agency: Army
Property Number: 21199910101
Status: Underutilized
Comment: 240 sq. ft., off-site use only.

Bldgs. 9017, 9019
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910102
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9021, 9023, 9025
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910103
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9027, 9031
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910104
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9033, 9049
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910105
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9051, 9100
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910106
Status: Underutilized
Comment: 8664 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9053, 9103
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910107
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldg. 9110
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910108
Status: Underutilized
Comment: 6498 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

Bldgs. 9113, 9115, 9117
Fort Leonard Wood
Pulaski, Co: MO 65473–8994
Landholding Agency: Army
Property Number: 21199910109
Status: Underutilized
Comment: 4332 sq. ft., presence of asbestos/lead paint, most recent use—family quarters, off-site use only.

New Jersey

Bldg. 117
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris, NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910110
Status: Excess
Comment: 17,458 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 119
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910111
Status: Excess
Comment: 8596 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1109
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910112
Status: Excess
Comment: 1140 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1111
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910113
Status: Excess
Comment: 1581 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1123
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910114
Status: Excess
Comment: 2465 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1125
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910115
Status: Excess
Comment: 2513 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1127
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910116
Status: Excess
Comment: 2098 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1130
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910117
Status: Excess
Comment: 1977 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1132
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910118
Status: Excess
Comment: 2307 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1138
Armament Research,
Development & Eng. Center
Picatinny Arsenal, Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910119
Status: Excess
Comment: 1893 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1140
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910120
Status: Excess
Comment: 1323 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1142
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910121
Status: Excess
Comment: 2018 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1144
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910122
Status: Excess
Comment: 1394 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1146
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910123

Status: Excess
Comment: 1365 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1147
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910124
Status: Excess
Comment: 1177 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1149
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910125
Status: Excess
Comment: 1421 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1393
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910126
Status: Excess
Comment: 1413 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 1398
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910127
Status: Excess
Comment: 1929 sq. ft., possible lead paint, most recent use—housing, off-site use only.

Bldg. 3327
Armament Research,
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910128
Status: Excess
Comment: 1512 sq. ft., possible lead paint, most recent use—housing, off-site use only.

17 Bldgs.
Armament Research
Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: 1112, 1114, 1116, 1120, 1124, 1126, 1139, 1141, 1145, 1148, 1104A, 1109A, 1140A, 1392A, 1393A, 1398A, 3326
Landholding Agency: Army
Property Number: 21199910129
Status: Excess
Comment: 210–1000 sq. ft., possible lead paint, most recent use—garages, off-site use only.

New Mexico

16 Bldgs., Type A
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2160–2162, 2157, 2155, 2148, 2139, 2137, 2130, 2129, 2117, 2113, 2109, 2107, 2102, 2100
Landholding Agency: Air Force
Property Number: 18199910013
Status: Unutilized
Comment: 2733 sq. ft., presence of lead, most recent use—residential, off-site use only.

12 Bldgs., Type B
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2158, 2149, 2147, 2136, 2132, 2125–2128, 2121, 2115, 2103
Landholding Agency: Air Force
Property Number: 18199910014
Status: Unutilized
Comment: 2735 sq. ft., presence of lead, most recent use—residential, off-site use only.

15 Bldgs., Type C
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2164, 2159, 2156, 2150, 2142, 2143, 2140, 2135, 2122–2124, 2120, 2110, 2108, 2104
Landholding Agency: Air Force
Property Number: 18199910015
Status: Unutilized
Comment: 2790 sq. ft., presence of lead, most recent use—residential, off-site use only.

6 Bldgs., Type D
Kirtland AFB
Duplex Houses
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2165, 2163, 2144, 2131, 2106, 2105
Landholding Agency: Air Force
Property Number: 18199910016
Status: Unutilized
Comment: 2936 sq. ft., presence of lead, most recent use—residential, off-site use only.

9 Bldgs., Type E
Kirtland AFB
Single Units
Kirtland AFB Co: Bernalillo NM 87117–5000
Location: 2153, 2151, 2134, 2141, 2133, 2119, 2112, 2111, 2101
Landholding Agency: Air Force
Property Number: 18199910017
Status: Unutilized
Comment: 1482 sq. ft., presence of lead, most recent use—residential, off-site use only.

Roberts, Thomas A
#70, County Rd. 2900
Aztec, Co: San Juan, NM 87410–
Landholding Agency: Interior
Property Number: 61199910017
Status: Excess
Comment: 2895 sq. ft., most recent use—residential, off-site use only.

Oklahoma

Bldg. T–207
Fort Sill
Lawton, Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910130
Status: Unutilized
Comment: 19,531 sq. ft., possible asbestos/lead paint, most recent use—office, off-site only.

Bldgs. P–364, P–584, P–588
Fort Sill
Lawton, Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910131
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.

Bldg. P–599
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910132
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.

Bldgs. P–703, P–1816, T–1930
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910134
Status: Unutilized
Comment: 661 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–746
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. P–1908, P–2078
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910136
Status: Unutilized
Comment: 106 & 131 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only.

Bldgs. T–1938, S–2101
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910137
Status: Unutilized
Comment: 964 & 1640 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. T–1941
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910138
Status: Unutilized
Comment: 1242 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. T–2183
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army
Property Number: 21199910139
Status: Unutilized
Comment: 14,530 sq. ft., possible asbestos/lead paint, most recent use—repair shop, off-site use only.

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche, OK 73503–5100
Landholding Agency: Army

Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldgs. S–2790, P–2906
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910142
Status: Unutilized
Comment: 1602 and 1390 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–2909
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910143
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. S–3169
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910145
Status: Unutilized
Comment: 6437 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. P–3469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910147
Status: Unutilized
Comment: 3930 sq. ft., possible asbestos/lead paint, most recent use—car wash, off-site use only.

Bldg. S–3559
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910148
Status: Unutilized
Comment: 9462 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–4064
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910149
Status: Unutilized
Comment: 1389 sq. ft., possible asbestos/lead paint, off-site use only.

Bldg. S–4610
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910150
Status: Unutilized
Comment: 3095 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only.

Bldg. T–4748
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910151
Status: Unutilized
Comment: 1896 sq. ft., possible asbestos/lead paint, most recent use—classroom, off-site use only.

Bldg. S–5086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910152
Status: Unutilized
Comment: 6453 sq. ft., possible asbestos/lead paint, most recent use—maintenance shop, off-site use only.

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only.

Bldg. S–5401
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910154
Status: Unutilized
Comment: 3200 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only.

Bldg. P–5638
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910155
Status: Unutilized
Comment: 300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only.

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only.

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only.

Bldg. TT120A
Fort A.P. Hill
Bowling Green Co: Caroline OK
Landholding Agency: Army
Property Number: 21199910160
Status: Unutilized
Comment: 2180 sq. ft., most recent use—storage, off-site use only.

Tennessee

01–200
Stones River Natl
Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61199910018
Status: Excess
Comment: 1596 sq. ft., most recent use—residential, off-site use only.

01–201
Stones River Natl
Battlefield
2042 Mansion Pike
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61199910019
Status: Excess
Comment: 3196 sq. ft., most recent use—residential, off-site use only.

Virginia

Bldg. MCE223
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Landholding Agency: Navy
Property Number: 77199910053
Status: Excess
Comment: 256 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Bldg. MCE221
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Landholding Agency: Navy
Property Number: 77199910054
Status: Excess
Comment: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Unsuitable Properties

Buildings (by State)

California

Old SF Mint
88 5th Street
San Francisco Co: CA 94103–
Landholding Agency: GSA
Property Number: 54199910017
Status: Excess
Reason: Extensive deterioration.
GSA Number: 9–G–CA–1531

Colorado

Bldg. 308A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 788
Rocky Flats Env. Tech. site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area.

Hawaii

Bldg. 1740
U.S. Coast Guard Air Station
Barbers Point
Honolulu Co: HI 96862–5800
Landholding Agency: DOT
Property Number: 87199910002
Status: Unutilized
Reason: Secured area.

Idaho

Admin. Site #2, Lot #3
Bean Lane
Salmon Co: Lemhi ID 83467–
Landholding Agency: GSA
Property Number: 54199910019
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material.
GSA Number: 9–I–ID–543

Maine

Harold Slager Army Reserve Ctr
931 Union Street
Bangor Co: ME 04401–
Landholding Agency: GSA
Property Number: 54199910020
Status: Excess
Reason: Within airport runway clear zone.
GSA Number: 1–D–ME–627

Ohio

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; secured area.

Texas

Weather Radar Tower
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910050
Status: Unutilized
Reasons: Within airport runway clear zone; extensive deterioration.

Virginia

Bldg. SP76AQ
Naval Air Station
Norfolk Co: VA 23511–2797
Landholding Agency: Navy
Property Number: 77199910051
Status: Excess
Reason: Extensive deterioration.

Bldg. CA502
Naval Station Norfolk
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 77199910052
Status: Excess
Reason: Secured area.

Land (by State)

Arkansas

0.426 acres
Former Lower Level Windshear
Alert Sys #4
Little Rock, Co: Pulaski, AR 57501–
Landholding Agency: GSA
Property Number: 54199910016
Status: Surplus
Reasons: Within airport runway clear zone; floodway.
GSA Number: 7–U–AR–555

California

Reclamation Unit T–2
Red Bluff, CA 96080–
Landholding Agency: GSA
Property Number: 54199910018
Status: Excess
Reason: Inaccessible.
GSA Number: 9–I–CA–1528

New York

Braddock Point Light Land
0.8 acres
Parma, NY 10950–
Landholding Agency: GSA
Property Number: 54199910021
Status: Excess
Reason: Inaccessible.
GSA Number: 1–U–NY–870

[FR Doc. 99–7143 Filed 3–25–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Thirteen Plant Taxa From the Northern Channel Islands for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a Draft Recovery Plan for Thirteen Plants from the Northern Channel Islands. These plants occur on the Northern Channel Islands and Santa Catalina Island off the coast of California in Santa Barbara and Los Angeles Counties, California.

DATES: Comments received on the draft recovery plan by May 26, 1999 will be considered by the Service.

ADDRESSES: Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, at the Ventura Fish and Wildlife Office: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766).

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, at the Ventura address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimated time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 13 plants from the Northern Channel Islands addressed in this draft recovery plan were included on the list of endangered and threatened species

on July 31, 1997 (61FR40954). Hoffmann's rock-cress (*Arabis hoffmannii*) (Munz) Rollins, Santa Rosa Island manzanita (*Arctostaphylos confertiflora*) (Eastw.), island barberry (*Berberis pinnata* Lag. ssp. *insularis*) (Munz), soft-leaved paintbrush (*Castilleja mollis*) (Pennell), island bedstraw (*Galium buxifolium*) (Greene), Hoffmann's slender-flowered gilia (*Gilia tenuiflora* Benth. ssp. *hoffmannii*) (Eastw.) A.D. Grant & V.E. Grant, Santa Cruz Island bushmallow (*Malacothamnus fasciculatus*) (Torr. & A.Gray) (Greene ssp. *nesioticus*) (B.L. Rob. in A. Gray) Kearney, island malacothrix (*Malacothrix indecora* Greene), Santa Cruz Island malacothrix (*Malacothrix squalida* Greene), island phacelia (*Phacelia insularis* Munz ssp. *insularis*), and Santa Cruz Island fringepod (*Thysanocarpus conchuliferus* Greene) were listed as endangered and Santa Cruz Island dudleya (*Dudleya nesiotica* Moran) and island rush-rose (*Helianthemum greenei* Robinson) were listed as threatened. All 13 taxa are endemic to the Northern Channel Islands (Anacapa, Santa Cruz, Santa Rosa, and San Miguel), with the exception of two populations of *Helianthemum greenei* that occur on the more southerly island of Santa Catalina. The plants occur in a variety of habitats: coastal terrace, coastal bluff scrub, coastal sage scrub, and chaparral. All 13 plant species and their habitats have been variously affected or are currently threatened by one or more of the following—soil loss, historic and continuing habitat alteration by mammals alien to the Channel Islands (pigs, goats, sheep, donkeys, cattle, deer, elk, horses, bison); direct predation by these same alien mammals; habitat alteration by native seabirds; competition with alien plant taxa; and increased vulnerability to extinction due to reduced genetic viability, depressed reproductive vigor, and the chance of stochastic extinction resulting from small numbers of individuals and isolated populations.

The goal of this plan is to stabilize and protect existing populations to allow for the downlisting of *Arabis hoffmannii, Arctostaphylos confertiflora, Berberis pinnata* ssp. *insularis, Castilleja mollis, Galium buxifolium, Gilia tenuiflora* ssp. *hoffmannii, Malacothamnus fasciculatus* var. *nesioticus, Malacothrix indecora, Malacothrix squalida, Phacelia insularis* var. *insularis,* and *Thysanocarpus conchuliferus,* and the delisting of *Dudleya nesiotica* and *Helianthemum greenei.*

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 22, 1999.

Michael J. Spear,

California/Nevada Operations Manager, Sacramento, California

[FR Doc. 99–7390 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of the Coquille Forest Resource Management Plan (CFRMP) Final Environmental Impact Statement (FEIS) for the 5,410 Acre Coquille Forest Near the Community of Bridge, in Coos County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a Final Environmental Impact Statement (FEIS) for the Coquille Forest Resource Management Plan (CFRMP) with the Environmental Protection Agency. Both the FEIS and the Plan, which will provide guidance for resource management activities on the 5,410 acre Coquille Forest, are now available for review.

DATES: Written comments will be accepted through April 26, 1999.

ADDRESSES: Address written comments to Mr. Ronald D. Kortlever, Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 569, Siletz, Oregon.

To obtain a copy of the FEIS or CFRMP, please write Mr. Gary Varner, Forester, at the above address, or telephone 541–444–2679. Copies of the FEIS and CFRMP have been sent to all agencies and individuals who participated in the scoping process or who have already requested copies of these documents.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Varner, 541–444–2679.

SUPPLEMENTARY INFORMATION: The BIA, through consultation with the Coquille Indian Tribe (Tribe), has developed the CFRMP in conformance with the requirements of the Coquille Restoration Act (Public Law 101–42), as amended by Pub. L. 104–208 of September 30, 1996 (25 U.S.C. 715c, 110 Stat. 3009–537). The Coquille Forest was created from a fraction of more than 300,000 acres that are under the jurisdiction of the Coos Bay District of the Bureau of Land Management (CBD/BLM). In September 1994, the CBD/BLM approved a Resource Management Plan, and its associated Environmental Impact Statement (EIS), that would provide guidance for the management of those 300,000+ acres for 10 to 15 years into the future. The BIA and the Tribe, through the Coquille Forest Resource Management Plan, have adopted the land allocations, management practices, standards and guidelines in the BLM's plan that are applicable to the 5,410 acre Coquille Forest. The CFRMP is materially the same as the CBD/BLM Resource Management Plan.

The Council on Environmental Quality (CEQ) regulations at 40 CFR Part 1506.3 allow federal agencies to adopt an EIS prepared by other federal agencies, if the proposed action is substantially the same as that of the issuing agency. An adopting agency that was not a cooperator in the original EIS must recirculate that EIS as an FEIS, with a 30 day review and comment period, before issuing a record of decision on the proposed action. The BIA is following this procedure by recirculating the BLM's EIS, which was approved two years before the statute authorizing the establishment of the Coquille Forest was enacted, along with the CFRMP.

This notice is furnished in accordance with Section 1503.1 of the CEQ regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 23, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–7513 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendments to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Lac du Flambeau Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1992, which was executed on December 18, 1998.

DATES: This action is effective March 26, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: February 11, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–7514 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–931–6320–05; GP9–0099]

Seed Orchard Pest Management Programs at the Walter H. Horning, Charles A. Sprague, Travis Tyrrell, and Provolt Seed Orchards, on Lands Administered by the Bureau of Land Management, Clackamas, Josephine, Lane, and Jackson Counties, OR

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Department of Interior, Bureau of Land Management, (BLM) will prepare a draft and final environmental impact statement (EIS) on a proposed action to develop a pest management program at all four of its Oregon Seed Orchards: the Horning Seed Orchard near Colton, the Sprague Seed Orchard near Merlin, the Tyrrell Seed Orchard near Lorane, and the Provolt Seed Orchard near Grants Pass.

The BLM invites written comments on the scope of the analysis. In addition, the BLM gives notice of the environmental analysis and decision making process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by May 10, 1999, to ensure timely consideration.

ADDRESSES: Send written comments to: Dennis Weber, Project Leader, Horning Seed Orchard, 27004 S. Sheckly Road, Colton, OR 97017.

FOR FURTHER INFORMATION CONTACT: Harvey Koester, Orchard Manager, Sprague and Provolt Seed Orchards (541) 770–2401; Glenn Miller, Orchard Manager, Tyrrell Seed Orchard, (541) 683–6445; or Jim Hallberg, Orchard Manager, Horning Seed Orchard, (503) 824–2151.

SUPPLEMENTARY INFORMATION: The BLM Seed Orchards are managed primarily for the production of Douglas-fir, and sugar pine seed. Minor species managed for seed production include western hemlock, noble fir, western red cedar, western white pine, ponderosa pine, incense cedar, and Port-Orford cedar. The seed is used to produce seedlings for reforestation on BLM lands in Oregon and for use in cooperative orchard efforts. Some of the seed is used in the tree improvement program to produce genetically superior trees. The primary objective of the orchards is to produce seed of high quality and sufficient quantity to meet the needs of the BLM and of their cooperative partnerships. Use of pest management technology and products is necessary to achieve this goal.

The BLM will conduct an environmental analysis to determine what type of pest management program will be used at the Horning, Sprague, Tyrrell, and Provolt Seed Orchards in western Oregon to produce seed and seedlings for the BLM in Oregon. The pest management practices that will be analyzed include, but are not limited to, control of unwanted vegetation by mechanical and chemical methods; control of diseases using sanitation, biological control organisms, and fungicides; control of insect pests with biological and chemical insecticides and use of sanitation; and control of animal pests through mechanical and preventative measures. Fertilization practices will also be considered in this analysis.

In preparing the environmental impact statement, the BLM will identify and consider a range of alternative pest management programs. One alternative will be a no action (continuation of the present pest management program) alternative. Another alternative will be a pest management program without the use of chemical pesticides. Other alternatives will be pest management programs comprised of various combinations of control methods.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make up of the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

The BLM will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed action.

Public participation will be solicited by person-to-person contact and/or by mail to known interested and affected publics and key contacts regarding scope of the analysis. In addition, news releases will be used to give the public general notice. Input from interested people and organizations will be used in preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1999. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 60 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3).

Following the comment period on the draft environmental impact statement, substantive comments will be analyzed, considered, and responded to by the BLM in preparing the final

environmental impact statement. The final environmental impact statement is scheduled to be completed by September 2000.

The responsible official will consider the comments and responses; environmental consequences discussed in the environmental impact statement; and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and rationale for the decision will be documented in the Record of Decision. A separate Record of Decision will be prepared for each orchard considered in the analysis. The responsible officials for each of these projects are as follows:

Van Manning, Salem District Manager, (Horning Seed Orchard),
Denis Williamson, Eugene District Manager, (Tyrrell Seed Orchard), and
Ronald Wenker, Medford District Manager, (Sprague and Provolt Seed Orchards).

Dated: March 15, 1999.

Mark Lawrence,

Acting District Manager, Salem District.

[FR Doc. 99–6836 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–5101–00–K038; WYW147148]

Notice of Intent, and Notice of Scoping Meetings and Comment Period; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct an environmental analysis and prepare either an environmental assessment or environmental impact statement, and notice of scoping meetings and public comment period.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management is directing the preparation of an environmental document for the construction, operation, and maintenance of a 24-inch diameter natural gas pipeline gathering system that would be approximately 127 miles in length. The proposed project is known as the Lost Creek Gathering System Project. The environmental document is being prepared as an environmental assessment, but may be advanced to the environmental impact statement level based on public scoping or if the environmental assessment concludes that significant issues or impacts are present. Public scoping meetings will be held for the proposed project and will include a public comment period.

DATES: Public scoping meetings will be at the Jeffrey Center, 315 W. Pine, Rawlins, Wyoming from 3:00 p.m. to 9:00 p.m. on April 13, 1999 and at the Riverton School District #25 Public Meeting Room, 121 N. 5th Street West, Riverton, Wyoming on April 14, 1999. The agenda for both meetings will be to conduct an open-house to receive interested parties between 3:00 p.m. to 5:30 p.m., followed by a formal presentation starting at 7:00 p.m., and concluding with a public comment period. The meeting will conclude at 9:00 p.m. Written comments on the proposed project will be accepted until April 30, 1999.

ADDRESSES: Any comments should be sent to Bureau of Land Management, Lander Field Office, Attention: Bill Bartlett, P.O. Box 589, Lander, Wyoming 82520. E-mail comments may be sent to Bill_Bartlett@blm.gov.

FOR FURTHER INFORMATION CONTACT: Bill Bartlett, (307) 332–8402.

SUPPLEMENTARY INFORMATION: Pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C.) as amended by the Act of November 16, 1973 (37 Stat. 587), the Lost Creek Gathering Company has applied for a right-of-way, serial number WYW147148, for the construction, operation, and maintenance of a natural gas gathering system. The proposed project crosses Federal, State, and private land. The proposed Lost Creek Gathering System Project is comprised of (1) A 127 mile, 24-inch diameter natural gas pipeline that would start at the Burlington Resources' Lost Cabin gas treating plant near Lost Cabin in Fremont County, would go south passing near Jeffrey City and would end at the Interstate 80 corridor near Western Gas Resources' Red Desert plant in Sweetwater County; (2) a 36 mile 12-inch diameter lateral that connects Snyder's Beaver Creek gas plant to the proposed 24-inch header within Fremont County; (3) dew-point control facilities at the southern terminus of the 24-inch header; and (4) a compressor station located at the southern terminus of the gathering system. Current compressor design calls for approximately 5,000 horsepower of compression. The pipeline would be able to deliver approximately 120 million cubic feet per day into the Colorado Interstate Gas (CIG) and Wyoming Interstate Gas Company (WIC) interstate pipelines without compression, and approximately 275 million cubic feet per day with compression. Additional smaller-diameter laterals could be added to this system after the right-of-way application for the Lost Creek project is filed with the BLM. Inclusion of additional laterals into the Lost Creek project will depend upon the progress of negotiations between Lost Creek and producers in these fields. Maps of the Lost Creek Gathering System Project, proposed and alternate routes, are available for viewing at the Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming, and Rawlins Field Office, 1300 North Third Street, Rawlins, Wyoming.

Dated: March 19, 1999.

Ed Womack,

Acting Field Manager.

[FR Doc. 99–7380 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Tuesday May 4, 1999, at the U.S. Forest Service Office in Steamboat Springs, Colorado.

DATES: Tuesday, May 4, 1999.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on May 4, 1999, at the U.S. Forest Service Office, 925 Weiss Drive, Steamboat Springs, Colorado. The meeting will start at 9 a.m. and include discussions of the proposed statewide recreation guidelines, grazing permit renewals, fire planning, and the draft oil and gas regulations.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during

regular business hours within thirty (30) days following the meeting.

Dated: March 22, 1999.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 99–7379 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00; GP9–0093]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Burns District Office of the BLM, HC 74–12533 Hwy 20 West, Hines, Oregon, from 8 am to 4:30 pm, Pacific Standard Time, on Wednesday, April 28, 1999, and from 8:00 am to 12:00 pm on Thursday, April 29, 1999. Topics to be discussed by the Council include the Southeast Oregon Resource Management Plan, Oregon Department of Environmental Quality watershed basin issues, the Interior Columbia Basin Ecosystem Management Project, and such other matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11:30 am to 12:00 noon (PST) on April 28, 1999.

DATES: March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Sonya Hickman, Bureau of Land Management, Lakeview District Office, HC 10 Box 337, Lakeview, OR 97630 (Telephone: 541/947–2177).

Scott Florence,

Acting Designated Federal Official.

[FR Doc. 99–7386 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV–030–1430–01; NVN 26693)

Notice of Realty Action; Recreation and Public Purposes Act Classification; Carson City, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land, comprising 40.08 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*):

Mt. Diablo Meridian, Nevada

T. 15 N., R. 20 E.

Sec. 33, Lots 33–36, 49–52, W½SW¼NW¼.

Containing 40.08 acres.

SUPPLEMENTARY INFORMATION: The public land is located within the city of Carson City. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The Carson City Parks and Recreation Department has expressed an interest in constructing a park on the site.

The lease/patent, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

4. Those rights for highway purposes granted to the United States Department of Transportation, Federal Highway Administration by Permit No. N44595.

5. Those rights for road purposes granted to Carson City by Permit No. N 36229.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of the conveyance document or publication in the **Federal Register** of an order specifying the date and time of opening.

DATES: Interested parties may submit comments until May 10, 1999.

ADDRESSES: Written comments should be sent to: Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Realty Specialist, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701; (702) 885–6000.

Dated: March 16, 1999.

Meg Jensen,

Assistant Manager, Non-renewable Resources, Carson City Field Office.

[FR Doc. 99–7503 Filed 3–25–99; 8:45 am]

BILLING CODE 4810–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Closure and Restriction Orders

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Firearm use restrictions for certain public lands within Shasta County, California.

SUMMARY: The BLM is restricting the use of firearms on certain public lands located within the Lower Clear Creek Greenbelt in Shasta County, California. All current and future BLM land located within the Lower Clear Creek Greenbelt within portions of M.D.M. Township 31 North, Range 6 West, sections 10, 11, 14, 15, 22, 23, 25, 26, 27, 34, 35, and 36; portions of M.D.M. Township 30 North, Range 6 West, section 1; portions of M.D.M. Township 31 North, Range 5 West, sections 31, 32, 33, 34, and 35, and portions of the San Buenaventura Land Grant within the Bottomlands area; portions of M.D.M. Township 30 North, Range 5 West, sections 5 and 6; are closed to firearm shooting. Firearm shooting is defined as the discharge of any pistol, firearm, airgun, musket or instrument of any kind, character or description, which throws a bullet or missile for any distance by means of the elastic force of air, except that use being conducted under the auspices of hunting.

All current and future BLM land located within the Horsetown-Clear Creek Preserve and the Clear Creek Bottomlands within portions of M.D.M. Township 31 North, Range 6 West, section 36 (east of Clear Creek and north of Clear Creek Road, and all BLM land south of Clear Creek Road); portions of M.D.M. Township 30 North, Range 6 West, section 1; portions of M.D.M. Township 30 North, Range 5 West, sections 5 and 6; portions of M.D.M. Township 31 North, Range 5 West, sections 31, 32, 33, 34, and 35, and

portions of land within the San Buenaventura Land Grant within the Bottomlands area are closed to hunting. Hunting is defined as the lawful pursuit or take of birds and mammals under regulations adopted by the California Fish and Game Commission under the authority of the California Fish and Game Code.

All current and future BLM land located within the Cloverdale Canyon area that are located south of Placer Road and east of Clear Creek within portions of M.D.M. Township 31 North, Range 6 West, sections 25 and 26 are closed to hunting. Hunting is defined as the lawful pursuit or take of birds and mammals under regulations adopted by the California Fish and Game Commission under the authority of the California Fish and Game Code.

All current and future BLM land located west of Clear Creek within the Cloverdale Canyon area within portions of M.D.M. Township 31 North, Range 6 West, sections 26, 27, 34, 35 and 36 (west of Clear Creek and north of Clear Creek Road) are closed to firearm hunting except for shotgun hunting. Maps showing the exact boundaries of the restriction areas are available at the BLM office in Redding, California.

BACKGROUND: The BLM prepared an environmental assessment (EA) and finding of no significant impact (FONSI) which analyzed the impacts of firearm use on BLM lands within the Lower Clear Creek Greenbelt. The EA and FONSI were prepared in response to a request for action from a Firearm-Use Subcommittee of the Lower Clear Creek Coordinated Resource Management Plan. The Subcommittee was composed of a diverse group of citizens including landowners, sportsmen, and other recreational users.

Restrictions analyzed within the EA are necessary to improve consistency with adjoining Federal lands and City of Redding restrictions under Redding City Code 7.04.090 and 10.58.010 which prohibit firearm shooting and hunting within the Redding City limits. The authority for these closures and rule makings is 43 CFR 8364.1. Any person who fails to comply with a closure order or rule making is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months.

DATES: These restrictions will take effect March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 99–7392 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–09–1060–00]

Bonanza Herd Area, UT; Wild Horse Maintenance; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to establish a Herd Management Area (HMA) for wild horses including establishing the appropriate management level (AML) of wild horses within the Bonanza Herd Area (HA) and notice of intent to amend the Book Cliffs Resource Management Plan (RMP).

SUMMARY: This notice is intended to inform the public of an intent to establish an HMA within the Bonanza HA for the maintenance of wild horses. The number or AML of wild horses to be managed will also be determined and any adjustments in forage allocation. Forage allocation adjustments shall take into consideration the needs of wildlife and livestock. These proposed actions would require an amendment to the Book Cliffs Resource Management Plan (RMP).

SUPPLEMENTARY INFORMATION: The May, 1985, Record of Decision for the Book Cliffs Resource Management Plan called for gathering and removing all wild horses within the Bonanza HA. In 1986, the Bureau of Land Management (BLM) conducted a roundup to completely remove all of the horses. Ownership of the gathered wild horses was challenged by members of the Ute Tribe. Wild Horse Organized Assistance (WHOA) also challenged BLM's action to remove all wild horses from the Bonanza HA and pending a resolution, wild horses were returned to the range. Since 1986, the HA has been evaluated to determine its potential for long-term management of wild horses in terms of existing land ownership pattern, present, and planned uses. This data indicates that the HA is capable of supporting a viable wild horse population. The RMP amendment will be prepared under 43 CFR part 1610 to meet the requirement of section 202 of the Federal Land Policy and Management Act, and section 102 of the National Environmental Policy Act. This revision is necessary to update the decisions in the existing land use plan. Decisions generated during this planning process will supersede affected land use planning decisions presented in the 1985 Book Cliffs RMP that affects public lands within the Bonanza HA.

Public participation is being actively sought at this time to ensure the analysis address all issues, problems, and concerns from those interested and affected in the management of these public lands. The RMP amendment is a public process and the public is invited and encouraged to assist in the identification of issues and the scope of the planning amendment. A public open house will be held on April 9, 1999, from 3:00 p.m. to 8:00 p.m. at the Vernal Field Office, 170 S. 500 E., Vernal, Utah to discuss planning issues. Written comments may also be submitted to: Bureau of Land Management, Vernal Field Office, 170 S. 500 E., Vernal, Utah 84078–2799, web site http://ww.blm.gov/utah/vernal, or Fax: (435) 781–4410.

Written comments will be received through April 30, 1999. The open house also will be announced in local newspapers and through other local media.

Planning amendment documents will be prepared by an interdisciplinary team which includes specialists in rangeland, wild horses, minerals, vegetation, riparian values, cultural resources, recreation, wildlife habitats and special status animal and plant species. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Dean L. Evans, Resource Advisor, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (435) 781–4430, fax (435) 781–4410.

Douglas M. Koza,

Acting State Director, Utah.

[FR Doc. 99–7391 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61315]

Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers has cancelled its

application (N–61315) to withdraw public lands in Clark County, Nevada, for flood control facilities. The application was filed on October 4, 1996. This application has been replaced by an application (N–63039) that was filed on November 19, 1998.

EFFECTIVE DATES: March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published as FR Doc. 96–30580 in the **Federal Register**, 61 FR 63858–63860, on December 2, 1996, for the Department of the Army, Corps of Engineers to withdraw approximately 2,370 acres of public lands for flood control facilities in Clark County, Nevada. This application has been cancelled and replaced by the application published as FR Doc. 98–31758 in the **Federal Register**, 63 FR 65811, on November 30, 1998.

The lands described in FR Doc. 96–30580, 61 FR 63858–63860, December 2, 1996, will remain closed to surface entry and mining in accordance with the provisions of the Southern Nevada Public Land Management Act of 1998, Public Law 105–263, 111 Stat. 2343 *et seq.* and the lands are hereby made available for disposal pursuant to said Act.

Dated: March 22, 1999.

Dennis J. Samuelson,

Acting Lands Team Lead.

[FR Doc. 99–7393 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1999, through October 31, 1999. The List of Restricted Joint Bidders published October 2, 1998, in the **Federal Register** at 63 FR 53097 covered the period of November 1, 1998, through April 30. 1999.

Group I. Exxon Corporation; Exxon San Joaquin Production Co.

Group II. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc,; Shell Offshore Properties and Capital II Inc.

Group III. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc; Mobil Exploration and Producing North America Inc.

Group IV. BP America Inc.; The Standard Oil Co.; BP Exploration and Oil Inc.; and BP Exploration (Alaska) Inc.

Dated: March 19, 1999.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 99–7359 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Royalty Computation of Phosphate Production on Western Public Lands

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of adoption of method for determining value used to compute royalty payments on Federal phosphate ore mined on western public lands.

SUMMARY: This final notice provides a new method of determining the value of production used to compute royalties on phosphate ore produced from Federal leases on western public lands. The new method uses a weighted composite of two published indices and a price survey that are more closely related to the phosphate industry. This new method replaces the current method of valuation, which utilizes the Gross Domestic Product—Implicit Price Deflator (GDP–IPD) to annually adjust phosphate value.

DATES: Effective April 26, 1999.

ADDRESSES: Inquiries about this notice should be sent to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; or e-Mail RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Herbert B. Wincentsen, Chief, Solid Minerals Valuation and Reporting Branch, Minerals Management Service, P.O. Box 25165, MS 3153, Denver, Colorado 80225–0165, telephone (303) 275–7210.

SUPPLEMENTARY INFORMATION: On October 16, 1997, the Secretary of the Interior approved an April 16, 1997, recommendation from the Royalty Policy Committee (RPC) to revise the current method of adjusting the value used to compute royalty payments on Federal phosphate production. RPC is a committee of the Minerals Management Service Advisory Board (Board). The Board was created under the authority of the Federal Advisory Committee Act. The Board's purpose includes, in relevant part, providing advice to the Secretary, the Director, MMS, and other Department of the Interior officials on royalty management of Federal and Indian leases. RPC includes representatives of States which share in mineral revenues from Federal lands, Indian tribes and allottees whose mineral revenues MMS collects in trust, oil and gas and solid minerals producing industries who pay royalties, and the public.

The approved valuation changes based on the RPC recommendations were the following:

1. Discontinue the current indexing procedure that utilizes the GDP-IPD to annually adjust the phosphate value for royalty calculation purposes.

2. Determine phosphate value using a weighted composite index methodology with the following indices, published by the Bureau of Labor Statistics (BLS), and weights:

- The Chemical and Fertilizer Minerals Mining Index, Standard Industry Code (SIC) 147, weighted at 50 percent;
- The Phosphatic Fertilizers Index (SIC 2874), weighted at 25 percent; and
- The Phosphate Rock Index (SIC 1475), weighted at 25 percent.

Lessees would recalculate the phosphate unit value annually, as under the existing indexing procedure.

3. Continue using the weighted composite index methodology for 5 years, at which time MMS will examine the methodology and the values determined to assure there is a continued relationship to the marketplace.

4. Apply the composite index valuation methodology only to Federal phosphate production; there is no Indian phosphate production. State or fee phosphate leases are also unaffected unless the parties to a State or fee lease elect to use the Federal valuation methodology.

5. The recommended composite index methodology will not be retroactive. The methodology will become effective April 26, 1999.

Comments on Proposed Methodology

On March 24, 1998, MMS published a notice (63 FR 14131) proposing to revise the current method used to compute royalty on phosphate produced from western Federal lands. This notice requested comments on the revision with the comment period open to April 23, 1998. During the comment period, MMS received one comment from a phosphate producer who supported the proposed change in phosphate royalty valuation procedures. The commentor stated that although there was no perfect valuation method, the new western phosphate ore royalty valuation method proposed in the March 24, 1998, **Federal Register** notice will more reasonably correlate to general phosphate market changes. The commentor stated that the value received for their end product (phosphate based fertilizers) is no higher now than what they were receiving in 1979, yet the phosphate unit value generated by MMS's existing index-based method had almost doubled over that same period.

Discontinuance of Producer Price Index for Phosphate Rock

During the proposed notice comment period, we became aware that the BLS had discontinued the Phosphate Rock Index, SIC 1475. The BLS set the Phosphate Rock Index based on sales information that included data of crude phosphate ore, processed phosphate rock, washed or concentrated phosphate rock, dried phosphate rock, and primary products. Because there were very limited sales data voluntarily reported, BLS decided to discontinue publishing the index. The last Phosphate Rock Index, published in June 1997, was generated from one sale of phosphate primary products. The BLS stated they will probably not resume the survey over the next 5 years. Accordingly, we decided to replace the BLS Phosphate Rock Index for royalty valuation purposes.

We examined several alternatives to the discontinued BLS Phosphate Rock Index before concluding that the Phosphate Rock Price Index, as published by the United States Geological Survey (USGS) is a viable replacement. On August 21, 1998, we sent a letter to the RPC Phosphate Subcommittee members explaining our analysis. We requested review and comment on the proposed index replacement. We received one response from an Idaho phosphate company in favor of our proposal. No other comments were received.

Adoption of USGS Phosphate Rock Price Data

The USGS annually publishes phosphate rock prices in its "Minerals Yearbook." This publication was formerly released by the Bureau of Mines (BOM). However, USGS assumed responsibility for continued publication when BOM was abolished in 1996. We will use USGS when referring to published data (both pre- and post-1996) for the remainder of this notice.

To determine whether USGS's price survey of phosphate rock prices is comparable to BLS' data collections for phosphate rock, we researched price data beginning with 1982, the year BLS reset the Phosphate Rock Index to 100. To test whether USGS price surveys reasonably track with BLS price data, we used the following methodology:

- We set USGS's published 1982 price for phosphate rock of $25.50 per ton to 100. Therefore, for 1982, both BLS and USGS began with a unitless index figure of 100.
- We converted the new USGS published price to an index change using a direct proportion for each year after 1982. For example, in 1983, USGS published a price of $23.97 per ton. This equates to a proportioned index of 94 (23.97/25.50).
- We statistically compared the year-to-year percent change of these two indices. The overall index price trends, expressed as a percentage change of the indices of the BLS Phosphate Rock Index and the USGS Phosphate Rock Price Index, are similar with a correlation factor of 0.7928. This suggests that BLS and USGS were receiving and collecting similar data from the phosphate industry.

To determine how the old unit value (based on BLS' Phosphate Rock Index) correlates with the new unit value (based on USGS's Phosphate Rock Price Index), we performed a comparison of the two series of unit values using a percent difference plot. The unit values, as calculated by both the new indexed methodology and the existing GDP–IPD methodology, were equal at $0.5038/unit in 1987, thus 1987 was used as the base year for comparison.

The percent unit value difference for each series follows the formula:

$$\text{Current Year Difference} = \frac{(\text{Current Year Unit Value}) - (\text{Previous Year Unit Value}) \times 100 \text{ percent}}{\text{Previous Year Unit Value}}$$

A plot of the percent unit value differences for the period 1987 through 1997 indicates the two series of unit values are closely related and comparable, with a statistical correlation coefficient of 0.9837.

Table 1 shows the comparison of the old indexed unit value and the new indexed unit value as a percent difference based on the formula described above.

TABLE 1. COMPARISONS OF OLD AND NEW UNIT VALUE

Year	New unit value	Percent difference	Old unit value	Percent difference
1987	$0.5038	.....	$0.5038	.....
1988	0.5350	6.20	0.5310	5.40
1989	0.5583	4.35	0.5516	3.88
1990	0.5574	−0.16	0.5507	−0.16
1991	0.5644	1.25	0.5621	2.07
1992	0.5474	−3.00	0.5572	−0.87
1993	0.5174	−5.48	0.5254	−5.71
1994	0.5384	4.04	0.5435	3.44
1995	0.5743	6.68	0.5793	6.59
1996	0.6096	6.14	0.6112	5.51

TABLE 1. COMPARISONS OF OLD AND NEW UNIT VALUE—Continued

Year	New unit value	Percent difference	Old unit value	Percent difference
1997	0.5965	−214	0.5949	−2.67

Application of USGS Data

Based on the analysis above, Federal phosphate producers must use the same "composite index" methodology as originally proposed in the March 24, 1998 **Federal Register** Notice with the exception that the USGS Phosphate Rock Price Index replaces the now discontinued BLS Phosphate Rock Index (SIC 1475). As recommended by the RPC, we are adopting for valuation purposes the composite index from which each year's adjustment to the phosphate value would be derived and weighted as follows: 50-percent BLS Chemical and Fertilizer Minerals Mining Index; 25-percent BLS Phosphate Fertilizer Index; and 25-percent USGS Phosphate Rock Price Index.

Implementation and Annual Revision of New Unit Value

The unit value of phosphate ore using the composite index methodology is determined with reference to the prior year's composite index value compared to the base year's composite index value. Table 2 shows the new weighted composite index methodology and the computation of the index unit value:

For example:

$$\text{1998 Phosphate Unit Value} = \text{1987 Base Year Unit Value} \times \frac{\text{1997 Composite Index}}{\text{1987 Composite Index}}$$

$$\text{1998 Phosphate Unit Value} = \$0.5038/\text{Unit} \times \frac{112.39}{94.92} = \$0.5965/\text{Unit}$$

The new methodology will not be applied retroactively owing to the revised computation method provided in this notice for phosphate valuation. Phosphate producers will continue using the existing methodology until the first day of the first full month following the effective date of this final notice.

For clarification, we are providing an implementation strategy as follows:

For 1999 Phosphate Production

1. You must use the 1998 Phosphate Unit Value of $0.6858/Unit, as computed by MMS and distributed to the phosphate industry in May 1998, as an estimated value for 1999 production. The phosphate producers must continue using this value until the updated GDP–IPD index data becomes available and the 1999 Unit Value, using the existing methodology is calculated, (March–April 1999).

2. You must retroactively correct the estimated value for 1999 production when MMS notifies you. We will calculate the Unit Value for 1999, when the GDP–IPD index data becomes available, using the existing methodology and provide that value to phosphate producers. Producers must continue to use the 1999 Unit Value until the implementation date of the new methodology Unit Value. This implementation date will be the first full month following the effective date of this final notice.

Phosphate Unit Value From April 26, 1999

Use the new methodology Unit Value ($0.5965/Unit) for production occurring on or after April 26, 1999 until August 1, 1999. No production month will have more than one Unit Value under this implementation strategy.

Phosphate Value After August 1, 1999

You must use the revised Unit Value from August 1, 1999, through July 31, 2000. We will revise the phosphate Unit Value and distribute it by letter to the industry during July of each year with an effective date of August 1, of that same year. We will use this date because the annual BLS indices and the annual USGS phosphate rock prices that make up the composite index are published by June of each year. For example, MMS will calculate and distribute the 1999 Unit Value to the phosphate industry by July 1999. It becomes effective for production beginning August 1, 1999. You must calculate and pay royalties due for August production, using this 1999 Unit Value, no later than September 30, 1999. The 1999 Unit Value will remain in effect until July 31, 2000, when MMS will calculate the next unit value revision.

We will examine phosphate value computed under the new methodology through a market analysis every 5 years to ensure that the new valuation methodology is, in fact, reflecting changes in the western phosphate industry. Since the analysis that was part of the Phosphate Subcommittee's work occurred in 1996, MMS will examine and compare the values computed for phosphate ore to market data in 2001.

Dated: March 19, 1999.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 99–7394 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the twenty-ninth meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The public meeting will be held on April 14, 1999, from 7:00 p.m. to 9:00 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-committee Reports, General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District,

Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION, CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: March 18, 1999.

David H. Dreier,

Acting Superintendent.

[FR Doc. 99–7388 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Pawnee Tribe of Oklahoma.

In 1959, human remains representing five individuals were recovered from site 25BD1 overlooking Ponca Creek, Boyd County, NE during excavations conducted under the direction of T. Witty. No known individuals were identified. No associated funerary objects were present.

Based on ceramic and stone tool assemblages, site 25BD1 has been identified as an Initial Coalescent occupation dated to circa 1400 A.D.

In 1931, human remains representing one individual were recovered from Cache 3 of site 25BF1 near Sweetwater, NE during excavations conducted by W.R. Wedel under the direction of W.D. Strong. No known individuals were identified. No associated funerary objects were present.

Based on ceramic and stone tool assemblages, site 25BF1 has been identified as a Loup River Phase (Itskari Phase) occupation dating to between 1250-1450 A.D.

In 1940, human remains representing 20 individuals from site 25BO7, Boone County, NE were recovered by John Champe during University of Nebraska salvage archeology. No known individuals were identified. No associated funerary objects are present.

Based on burial location and skeletal morphology, these individuals have been determined to be Native American. The location of this site is close to a Central Plains Tradition village site, these individuals are believed to be associated with the Central Plains Tradition.

In 1935, human remains representing one individual were recovered from the Linwood site (25BU1), Butler County, NE by W.R. Wedel. No known individual was identified. No associated funerary objects are present.

Based on recorded associated funerary objects and manner of interment, this individual has been determined to be Native American. W.R. Wedel described an excavation by the Nebraska Archeological Survey in which a "flexed child burial" was found, along with trade material including iron hoes, axes, fragments of copper kettles, and bits of brass and glass. The University of Nebraska has determined that these human remains are most likely from the described child's burial. Wedel's report concludes that the Linwood site (25BU1) is a Pawnee village "very probably inhabited about the year 1800, and may date, in part, from a much earlier period."

At an unknown date, human remains representing one individual were recovered from the Ashland site (25CC1), Cass County, NE under unknown circumstances. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, museum records, and site information, this individual has been determined to be Native American, most likely from the Central Plains Tradition period. Based on material culture and site organization, the Ashland site (25CC1) has been identified as a multi-component site, including a Central Plains Tradition component.

At an unknown date, human remains representing two individuals were recovered from the Rock Bluff site (25CC31[25CC0]) overlooking the Missouri River in southern Cass County, NE. No information is available as to how or when these remains came into University of Nebraska State Museum collections. No known individuals were identified. No associated funerary objects are present.

Between 1914 and 1968, the University conducted excavations at the nearby Walker Glimore site, during which these human remains were most likely collected. Archeological evidence from these excavations indicates the site is attributable to the Nebraska Culture of the Central Plains Tradition.

In 1913, human remains representing 53 individuals from an ossuary (25CC9001) in Plattsmouth, NE were excavated by R.F. Gilder and others in an uncontrolled excavation following the discovery of the ossuary during a work project. No known individuals were identified. The associated funerary objects are 11 shell pendants or pendant fragments.

Based on burial location and manner of interment, this ossuary has been attributed to the Nebraska Culture within the Central Plains Tradition.

In 1934, human remains representing three individuals were excavated from Wiseman Village (25CD3) on the south bank of the Missouri River, Cedar County, NE under the direction of E.H. Bell of the University of Nebraska. No known individuals were identified. No associated funerary objects are present.

Based on ceramics and stone tool assemblages, the Wiseman Village site has been identified as probable St. Helena Phase occupation. The St. Helena Phase is a component of the Central Plains Tradition.

In 1934, human remains representing 137 individuals were recovered from Wiseman Mounds site (25CD4) under the direction of E.H. Bell of the University of Nebraska. No known individuals were identified. The two associated funerary objects are stone beads.

Based on probable association with the Wiseman village site, the Wiseman Mounds have been identified as having a Central Plains Tradition component. Based on the apparent age of the remains, these individuals have been determined to be Native American dating to the Central Plains Tradition period.

In 1941, human remains representing 200 individuals were recovered from Wynot Ossuary (25CD7), Cedar County, NE during excavations conducted by R.B. Cuming for the Nebraska State Archeological Survey. No known individuals were identified. The four associated funerary objects are shell beads.

Based on ceramics and stone tool assemblages present in the fill, the Wynot Ossuary has been identified as in use during the St. Helena Phase [1425-1500 A.D.] of the Central Plains Tradition. Based on archeological context, these individuals have been identified as Native American.

In 1978, human remains representing one individual were recovered from site 25CD13, Cedar County, NE by J.

Ludwickson of the University of Nebraska Department of Anthropology. No known individual was identified. No associated funerary objects were present.

Based on artifacts collected from the site, site 25CD13 has been identified as a Central Plains Tradition occupation. Based on archeological context and condition of the remains, this individual has been identified as Native American.

In 1931, human remains representing one individual were recovered from the Wolfe site (25CX2) near the mouth of Shell Creek, Colfax County, NE during excavations conducted by W.D. Strong and Waldo Wedel. No known individual was identified. No associated funerary objects are present.

Based on ceramic and stone tool assemblages, the Wolfe site has been identified as a Lower Loup period (1450-1550 A.D.) occupation of the Central Plains Tradition. Based on the dates for this site, this individual has been determined to be Native American.

In 1939, human remains representing two individuals were recovered from the Bobier site (25DK1A), Dakota County, NE during University of Nebraska/W.P.A. excavations conducted by S. Bartos, Jr. under the supervision of H. Angelino. No known individuals were identified. No associated funerary objects were present.

In 1939, human remains representing one individual were recovered from another part of the Bobier site (25DK1B), Dakota County, NE during excavations conducted by S. Bartos, Jr. No known individual was identified. No associated funerary objects were present.

Based on material culture of the sites, the Bobier sites have been identified as a Nebraska Phase (1050-1425 A.D.) of the Central Plains Tradition. Based on the dates for these sites, these individuals have been determined to be Native American.

In 1940, human remains representing 130 individuals were recovered from the Murphy Ossuary (25DK9), Dakota County, NE during excavations conducted by J. Champe. No known individuals were identified. No associated funerary objects are present.

Based on ceramics, stone tools, and burial pattern, the Murphy Ossuary has been identified as a St. Helena Phase (1425-1500 A.D.) occupation of the Central Plains Tradition. Based on the dates for this site, these individuals have been determined to be Native American.

In 1941, human remains representing 292 individuals were recovered from the Maxwell site (25DK13) near Homer, NE during University of Nebraska/W.P.A. excavations conducted by L. Bartos, Jr. under the direction of John L. Champe and Paul Cooper. No known individuals were identified. No associated funerary objects were present.

Based on bone preservation and ceramic sherds in fill, the Maxwell site has been identified as a Central Plains Tradition occupation (1050-1500 A.D.). Based on archeological context and dates for this site, these individuals have been determined to be Native American.

In 1941, human remains representing 16 individuals were recovered from an ossuary at the Hancock site (25DK14), Dakota County, NE during excavations conducted by S. Bartos, Jr. No known individuals were identified. No associated funerary objects were present.

Based on ceramic and stone tool assemblage, the Hancock site has been identified as a St. Helena Phase (1425-1500 A.D.) occupation of the Central Plains Tradition. Based on the dates for this site, these individuals have been determined to be Native American.

Before 1909, human remains representing 11 individuals were recovered from the "Watson House" site (25DOO), Omaha, NE during excavations conducted by R.F. Gilder. No known individuals were identified. No associated funerary objects are present.

Based on ceramic and stone tool assemblages, the "Watson House" site has been identified as a Nebraska Phase (1050-1425 A.D.) occupation of the Central Plains Tradition. Based on the dates for this site, these individuals have been determined to be Native American.

In 1913, human remains representing two individuals were recovered from site 25D0O (11-25-5-13) in Omaha, NE during house construction and donated to the University of Nebraska State Museum by R.H. Gilder. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the remains and known archeological sites in this area, site 25DO0 (11-25-5-13) has been identified as a Nebraska Culture (1050-1425 A.D.) occupation of the Central Plains Tradition. Based on the probable dates for this site, these individuals have been determined to be Native American.

In 1913, human remains representing one individual was excavated at 13th and Missouri Streets (25DO?2), Omaha, NE by R.F. Gilder. These human remains became part of the Wallace collection and were donated to the University of Nebraska State Museum in 1913. No known individual was identified. No associated funerary objects are present.

Based on the condition of the remains and the cultural material from this site, this burial has been determined to be Native American from the Nebraska Phase (1050-1425 A.D.) of the Central Plains Tradition.

In 1906, human remains representing 42 individuals were collected from site 25DO26, Gilder's Mound, Long's Hill, NE by R.F. Gilder. No known individuals were identified. No associated funerary objects are present.

This site is also known and the "Loess Man" site, due to the human remains being found in loess soil. Material culture collected from this site resemble Central Plains Tradition/Woodland materials on the basis of the poor to fair preservation. Based on the condition of the human remains and material culture from this site, these individuals have been determined to be Native American from the Nebraska Phase (1050-1425 A.D.) of the Central Plains Tradition.

At an unknown date, human remains representing one individual were collected at site 25FR0, four miles north of the Riverton highlands, Franklin County, NE by an unknown individual. No known individual was identified. The four associated funerary objects are coils of brass wire.

Based on the coils of brass wire and location of site 25FR0, this burial has been attributed to the historic Pawnee c.1750-1850 A.D.

In 1983, human remains representing one individual were recovered in the Upper Republican midden layer of site 25FT145, Frontier County, NE during excavations in a habitation area directed by T. Myers. No known individual was identified. No associated funerary objects are present.

Based on the ceramics recovered in the midden, site 25FT145 has been identified as an Upper Republican Culture occupation (950-1250 A.D.) of the Central Plains Tradition.

At an unknown date, human remains representing one individual were recovered from the Goodrich site (25GY21), Greeley County, NE by W.J. Hunt of the Department of Anthropology at the University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on material culture, the Goodrich site has been identified as a Central Plains Tradition (950-1450 A.D.) occupation. Based on the material culture of this site, this individual has been determined to be Native American.

In 1930, human remains representing four individuals were recovered from the Graham Ossuary site (25HN5),

Harlan County, NE during excavations conducted by W. Wedel under the direction of W.D. Strong. No known individuals were identified. The minimum of 100 associated funerary objects include ceramic fragments, shell beads, bone beads, bracelets, copper ornaments, ceramics, and stone tools.

Based on the material culture, the Graham site has been identified as a Upper Republican Phase occupation of the Central Plains Tradition. Based on the associated funerary objects, these individuals have been determined to be Native American.

In 1978, human remains representing one individual were recovered from the Schmidt site (25HW301), Howard County, NE by S. Holen and C. Roberts. No known individual was identified. No associated funerary objects are present.

Based on ceramic and stone tool assemblages, the Schmidt site has been identified as a Central Plains Tradition occupation. Based on the archeological context, this individual has been determined to be Native American.

During 1936-1938, human remains representing 15 individuals were recovered from the Ponca Fort site (25KX1), Knox County, NE during excavations conducted by the Nebraska State Archeological Survey under the direction of Perry Newell and S. Wimberly as part of WPA Official Project ι165-81-8095, Work Project ι3140. No known individuals were identified. No associated funerary objects are present.

Based on ceramics and stone tool assemblages, this portion of the Ponca Fort site has been identified as a Central Plains Tradition (950-1250 A.D.) occupation. Based on archeological context, poor preservation of the remains, poor dental health, and evidence of severe arthritis in one individual, these individuals have been determined to be Native American from the pre-contact period.

In 1961, human remains representing five individuals were recovered from site 25KX20, a small area of land extending into Lewis and Clark Lake near Crofton, NE during a survey conducted by P. Holder and R. Krause for the University of Nebraska Department of Anthropology. No known individuals were identified. No associated funerary objects were present.

Based on ceramics and stone tools, site 25KX20 has been identified as a Central Plains Tradition occupation dating to between (1050-1500 A.D.).

In 1913, human remains representing three individuals were recovered from a small house ruin (25SY0/7-12-13) on a ridge near Mill Hollow in Sarpy County, NE by R.F. Gilder. No known individuals were identified. No associated funerary objects are present.

Based on material culture, site 25SY0 has been identified as a Nebraska Culture (1050–1425 A.D.) occupation of the Central Plains Tradition. Based on the dates for this site, these individuals have been identified as Native American.

In 1914, human remains representing eight individuals were recovered from the Childs Point site (25SY0) overlooking the Missouri River in Sarpy County, NE under the direction of R.F. Gilder and were accessioned into the University of Nebraska State Museum. No known individuals were identified. No associated funerary objects were present.

Based on material culture, the Childs Point site has been identified as a Nebraska Phase (1050-1425 A.D.) occupation of the Central Plains Tradition. Based on the dates of this site, these individuals have been determined to be Native American.

During 1908-1917, human remains representing 46 individuals from the Wallace Mound site (25SY67) were excavated under the direction of R.F. Gilder and accessioned into the University of Nebraska State Museum. No known individuals were identified. No associated funerary objects were present.

In 1913, human remains representing six individuals were removed from the Swoboda site (25SY67/31-8-14), part of the Wallace Mounds site, Sarpy County, NE and were secured by Miss Edith Dennett who donated these remains to the University of Nebraska State Museum in 1914. No known individuals were identified. No associated funerary objects are present.

Based on the association with the Child's Point site, the Wallace Mound site has been identified as a Nebraska Culture (1050-1425 A.D.) occupation of the Central Plains Tradition. Based on the condition of the skeletal material, these individuals have been determined to be Native American.

In 1938 and 1939, human remains representing one individual were recovered from Cache Pit B of the Redbird site (25HT3), Holt County, NE during legally authorized excavations conducted by E. Bell for the W.P.A. Work Project ι4841. No known individual was identified. No associated funerary objects were present.

Based on material culture and geographical location, the Redbird site has been identified as an Extended Coalescent Tradition site. Based on the archeological context, material culture, and manner of interment this individual has been identified as Native American. Based on ceramic evidence and development, the Extended Coalescent Tradition has been identified as ancestral to the present-day Pawnee.

Based on continuities of ceramic decoration, stone tool form and function, architecture, chronology, mortuary custom, subsistence pattern, settlement pattern, and geographic location, the Central Plains Tradition is recognized by many anthropologists as ancestral to the present-day Pawnee and Arikara. Pawnee and Arikara oral traditions also indicate cultural affiliation between the earlier Central Plains Tradition and these present-day tribes.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 1,014 individuals of Native American ancestry. Officials of the University of Nebraska have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 121 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pawnee Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Tribe of Oklahoma, the Three Affiliated Tribes of the Fort Berthold Reservation, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before April 26, 1999. Repatriation of the human remains and associated funerary objects to the Pawnee Tribe of Oklahoma may begin after that date if no additional claimants come forward.

The Ponca Tribe of Oklahoma notified the University of Nebraska-Lincoln by letter dated December 14, 1998 that the Tribe claims the human remains and associated funerary objects listed in this notice from the following sites: 25BD1; 25CD3; 25CD4; 25CD7; 25CD13; 25DK1A; 25DK1B; 25DK9; 25DK14; 25HT3; 25KX1; 25KX20; 25SY0(7-12-

13); 25SY0; 25SY67; and 25SY67(31-8-14).

The National Park Service is not responsible for the determinations within this notice.

Dated: March 17, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–7500 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Webster County, NE, in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from Webster County, NE, in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The eleven cultural items include fragments of a cradle board, glass beads, metal rings, and a wooden bowl.

In 1930, these eleven cultural items were excavated from three burials at site 25WT1, Webster County, NE by the Nebraska Archeological Survey under the direction of A.T. Hill. The human remains are not in the collections of the University of Nebraska-Lincoln.

Based on material culture and geographic location, site 25WT1 has been identified as a late-18th century Republican Band occupation. The Republican Band is one of the component bands of the present-day Pawnee Tribe of Oklahoma. Consultation with representatives of the Pawnee Tribe of Oklahoma has affirmed this affiliation.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these eleven cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the University of Nebraska have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Pawnee Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Tribe of Oklahoma, the Three Affiliated Tribes of the Fort Berthold Reservation, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before April 26, 1999. Repatriation of the human remains and associated funerary objects to the Pawnee Tribe of Oklahoma may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: March 17, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–7501 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from LaCrosse, Wisconsin, in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Wisconsin (Museum Division), Madison, WI.

A detailed assessment of the human remains was made by State Historical Society of Wisconsin professional staff in consultation with representatives of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe-Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska.

During 1989-1991, human remains representing 46 individuals were recovered from the Gunderson Clinic site (47-Lc-0394) by field crews of the Mississippi Valley Archeological Center during parking lot expansion of the Gunderson Clinic, LaCrosse, WI. No known individuals were identified. The 38 associated funerary objects include ceramics, sherds, projectile point, scrapers, and flakes, shell, copper fragments, mammal bone, and wood fragments.

Based on ceramic typology, the Gunderson Clinic site has been identified as an Oneota occupation dating between 1300-1650 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthropologists as ancestral to the present-day Iowa Tribes of Oklahoma and Kansas, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

Based on the above mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 46 individuals of Native American ancestry. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 38 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Oklahoma and the Ho-Chunk Nation of Wisconsin.

This notice has been sent to officials of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe-Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Wooley, Curator of Anthropology, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706-1488; telephone: (608) 264-6574, before April 26, 1999. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma and the Ho-Chunk Nation of Wisconsin may begin after

that date if no additional claimants come forward.

Dated: March 18, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–7502 Filed 3–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Signature Flight Support Corp. et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Signature Flight Support Corporation, et al.*, Civil Action No. 99–0537. On March 1, 1999, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of AMR Combs, Inc. ("Combs") would violate section 7 of the Clayton Act, 15 U.S.C. 18. Signature and Combs own and operate competing fixed base operators ("FBOs") that provide flight support services at various airports in the United States. The proposal Final Judgment orders Signature to sell actual or planned FBO businesses at Palm Springs Regional Airport, Bradley International Airport, and Denver Centennial Airport, along with certain tangible and intangible assets. Copies of the Complaint, Hold Separate Stipulation and Order, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within 60-days of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307–6351).

Constance K. Robinson,

Director of Operations, Antitrust Division.

Hold Separate Stipulation and Order

It is hereby STIPULATED by and between the undersigned parties, subject to approval and entry by the Court, That:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Signature" means Signature Flight Support Corporation, a Delaware corporation with a principal place of business in Orlando, Florida, and its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "Combs" means AMR Combs, Inc., a Delaware corporation headquartered in Dallas, Texas, its successors, and assigns, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them. Combs is a wholly owned subsidiary of AMR Corporation, A Delaware corporation that has its principal place of business in Fort Worth, Texas, and is a party to the agreement to sell Combs to Signature.

C. The "Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the PSP Assets, the BDI, Assets and the APA Assets;

1. The "PSP Assets" means all tangible and intangible assets controlled by the existing Signature FBO at Palm Springs Regional Airport, as described in Appendix A to the Final Judgment.

2. The "BDL Assets" means all tangible and intangible assets controlled by the existing Combs FBO at Bradley International Airport, as described in Appendix B to the Final Judgment, but does not include the assets related to Combs' commercial jet fueling business, such as the bulk storage facility and fuel farm.

3. The "APA Assets" means all tangible and intangible assets controlled by the exiting Combs FBO at Centennial Airport, as described in Appendix C to the Final Judgment.

D. "APA Airport" means Centennial Airport, located near Denver, Colorado.

E. "BDL Airport" means Bradley International Airport, located near Hartford, Connecticut.

F. "PSP Airport" means Palm Springs Regional Airport, located two miles east of Palm Springs, California.

G. "FBO" means any or all services related to providing fixed based operator services to general aviation customers, including, but not limited to, selling fuel, leasing hangar, ramp, and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels.

H. "FBO Facility" means any and all tangible and intangible assets required to provide FBO services, including but not limited to office terminal space, hangars, ramps, a general aviation fuel farm for Jet A Fuel and aviation gas, and related fueling and maintenance equipment.

I. "SunBorne" means SunBorne Development Corporation, a real estate development company that conducts business in the Denver, Colorado area.

J. "SunBorne FBO Facility" means the FBO facility that is to be constructed at APA Airport by SunBorne Development Corporation. The SunBorne FBO facility is to consist of (1) an office/terminal facility to occupy the first floor (approximately 15,000 square feet) of a three-story building to be constructed by SunBorne; (2) one 25,000 square foot hanger to be constructed by SunBorne; (3) a general aviation fuel farm with storage for 40,000 gallons of Jet A fuel and 20,000 gallons of aviation gas to be constructed by Signature; and (4) a 10.8 acre ramp.

K. "SunBorne operator for the SunBorne FBO Facility" means a person who, with the approval of SunBorne and of the Arapahoe County Public Airport Authority, will operate the SunBorne FBO Facility in Signature's stead.

II. Objectives

The Final Judgment filed in this case is meant to ensure Signature's prompt divestiture and sale of the BDL Assets, the PSP Assets, and if necessary, the APA Assets, for the purpose of maintaining viable competitors in the provision of FBO services at BDL Airport, PSP Airport, and APA Airport. These actions will remedy the effects that the United States alleges would otherwise result from Signature's proposed acquisition of Combs.

This Hold Separate Stipulation and Order has two primary objectives. With respect to the BDL Assets and the PSP Assets, it ensures that, prior to such divestitures, each of the assets being divested be maintained as independent economically viable, ongoing business concerns, and that competition among FBO facilities at BDL Airport and at PSP Airport is maintained during the pendency of the divestitures. With

respect to the APA Assets, this Order permits Signature to conduct business at APA Airport using the APA Assets, pending competition of a new FBO facility at APA Airport (the SunBorne FBO Facility) that will either be operated by Signature or by a substitute operator. If Signature does not produce a substitute operator by a date set by the Final Judgment, Signature must divest the APA Assets by a later date set by the Final Judgment. This Order ensures that, prior to such divestiture, the APA Assets be maintained and operated in a fashion that preserves or improves their existing physical condition should Signature be required to divest.

III. Hold Separate Provisions for the BDL Assets and the PSP Assets

Unit the divestiture required by the Final Judgment has been accomplished;

A. Signature shall preserve, maintain, and operate the BDL Assets and the PSP Assets as independent competitors with management, sales, services, and operations held entirely separate, distinct and apart from those of Signature. Signature shall not coordinate the marketing or sale of services from the BDL Assets' and the PSP Assets' businesses with the FBO businesses at BDL Airport and PSP Airport that Signature will own as a result of the acquisition of Combs. Within twenty (20) calendar days of the filing of the Complaint in this matter. Signature will inform plaintiff of the steps taken to comply with this provision.

B. Signature shall take all steps necessary to ensure that the PSP Assets and the BDL Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the sale of FBO services at PSP Airport and at BDL Airport: that the management governing the PSP Assets and the BDL Assets will not be influenced by Signature; and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the PSP Assets and the BDL Assets will be kept separate and apart from the operations of Signature. Signature's influence over the PSP Assets and the BDL Assets shall be limited to that necessary to carry out Signature's obligations under this Order and the Final Judgment. Signature may receive historical aggregate financial information (excluding pricing information) relating to the PSP Assets and the BDL Assets to the extent necessary to allow Signature to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports, and Signature shall use such information only for such purposes.

C. Signature shall use all reasonable efforts to maintain service levels at the FBO operations that represent the PSP Assets and the BDL Assets, and shall maintain, promotional advertising sales, technical assistance, marketing and merchandising support for the PSP Assets and the BDL Assets at current or previously approved levels, whichever are higher.

D. Signature shall provide and maintain sufficient working capital to maintain the PSP Assets and the BDL Assets as economically viable, ongoing businesses.

E. Signature shall provide and maintain sufficient lines and sources of credit to maintain the PSP Assets and the BDL Assets as economically viable, ongoing businesses.

F. Signature shall take all steps necessary to ensure that the PSP Assets and the BDL Assets are fully maintained and are in operable condition at no lower than current service capabilities, and shall maintain and adhere to normal repair and maintenance schedules for the PSP Assets and the BDL Assets.

G. Signature shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any PSP Assets or any BDL Assets.

H. Signature shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the PSP Assets and the BDL Assets.

I. Until such time as the PSP Assets and the BDL Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Order. Signature shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees who on the date of the signing of this Agreement work on the sites where the PSP Assets or the BDL Assets are located.

V. Provisions for the APA Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Signature shall use all reasonable efforts to maintain service levels at the FBO operations that constitute the APA Assets, and shall maintain, promotional, advertising sales, technical assistance, marketing and merchandising support for the APA Assets at current or previously approved levels, whichever are higher.

B. Signature shall provide and maintain sufficient working capital to maintain the APA Assets as an economically viable, ongoing business.

C. Signature shall provide and maintain sufficient lines and sources of credit to maintain the APA Assets as an economically viable, ongoing business.

D. Signature shall take all steps necessary to ensure that the APA Assets are fully maintained and in operable condition at no lower than its current service capabilities, and shall maintain and adhere to normal repair and maintenance schedules for the APA Assets.

E. Signature shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any APA Assets.

F. Until such time as the APA Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Order, Signature shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employees, who on the date of the signing of this Agreement work on the site where the APA Assets are located.

G. Signature shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of the APA Assets.

VI. Other Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Signature shall take no action that would interfere with the ability of any trustee(s) appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to suitable purchasers.

B. This Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of the Court.

Respectfully submitted,

For Plaintiff United States of America.

Nina B. Hale,

Salvatore Massa,

Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, (202) 307–6351.

For Defendant Signature Flight Support Corporation.

Bruce Van Allen,

President and Chief Operating Officer.

For Defendants AMR Combs, Inc. and AMR Corporation.

Eugene A. Burrus,

Esquire, AMR Corporation, P.O. Box 619616, MD 5675, Dallas Forth Worth Airport, TX 75261, (817) 967–1252.

Dated: March 2, 1999.

So Ordered:

Thomas F. Hogan for Judge Royce C. Lamberth,

United States District Judge.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court of the District of Columbia;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. Defendant Signature (as defined in paragraph II.A of the proposed Final Judgment attached hereto) shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court; provided, however, that Signature shall not be obligated to comply with Sections V through VIII of the proposed Final Judgment unless and until the closing of any transaction in which Signature directly or indirectly acquires all or any part of the assets or capital stock of Combs (as defined in paragraph II.B of the proposed Final Judgment attached hereto);

4. Defendants shall not consummate the transaction before the Court has signed this Stipulation and Order as well as the Hold Separate Stipulation and Order;

5. In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

6. The defendant Signature represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that the defendant Signature will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: March 1, 1999.

For Plaintiff United States of America:

Nina B. Hale,

Salvatore Massa,

Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6351.

For Defendant Signature Flight Support Corporation.

William Norfolk, Esq.,

Sullivan & Cromwell, 125 Broad Street, New Yor, New York 10004, 212–558–3512.

For Defendants AMR Combs, Inc. and AMR Corporation

Eugene A. Burrus, Esq.,

AMR Corporation, P.O. Box 619616, MD 5675, Dallas Fort Worth Airport, TX 75261, (817) 967–1252.

Final Judgment (Proposed)

Whereas, plaintiff, the United States of America ("United States"), filed its complaint in this action on March 1, 1999, and plaintiff and defendants, Signature Flight Support Corporation ("Signature"), AMR Combs, Inc. ("Combs") and AMR Corporation, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of certain fixed based operator facilities to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendant Signature to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures or provisions contained below;

Now, Therefore, before taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties in this action. The Complaint states a claim upon which relief may be granted against the defendants, as defined below, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. "Signature" means Signature Flight Support Corporation, a Delaware corporation with a principal place of business in Orlando, Florida, and its successors and assigns, its parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "Combs" means AMR Combs Inc., a Delaware corporation headquartered in Dallas, Texas, as well as its successors, assigns, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of any of them. Combs is a wholly owned subsidiary of AMR Corporation, a Delaware corporation with its principal place of business in Fort Worth, Texas, and is a party to the agreement to sell Combs to Signature.

C. "APA Airport" means Centennial Airport, located near Denver, Colorado.

D. "BDL Airport" means Bradley International Airport, located near Hartford, Connecticut.

E. "PSP Airport" means Palm Springs Regional Airport, located two miles east of Palm Springs, California.

F. The "Assets to be Divested" means all rights, titles and interests, including all fee, leasehold and real property rights, in the PSP Assets, the BDL Assets, and the APA Assets, as defined below:

1. The "PSP Assets" means all tangible and intangible assets controlled by the existing Signature FBO at Palm Springs Airport, as described in Appendix A.

2. The "BDL Assets" means all tangible and intangible assets controlled by the existing Combs FBO at Bradley International Airport, as described in Appendix B, but does not include the assets related to Combs' commercial jet fueling business, such as the bulk fuel storage facility and the fuel farm.

3. The "APA Assets" means all tangible and intangible assets controlled by the existing Combs FBO at Denver Centennial Airport, as described in Appendix C.

G. "FBO" means any or all services related to providing fixed based operator services to general aviation customers, including, but not limited to, selling fuel, leasing hangar, ramp, and office space, providing flight support services, performing maintenance, providing access to terminal facilities, or arranging for ancillary services such as rental cars or hotels.

H. "FBO Facility" means any and all tangible and intangible assets required to provide FBO services, including but not limited to office/terminal space, hangars, ramps, a general aviation fuel farm for Jet A Fuel and aviation gas, and related fueling and maintenance equipment.

I. "SunBorne" means SunBorne Development Corporation, a real estate development company doing business in the Denver, Colorado area.

J. "SunBorne FBO Facility" means the FBO facility that is to be constructed at APA Airport by SunBorne. The SunBorne FBO facility is to consist of (1) an office/terminal facility to occupy the first floor (approximately 15,000 square feet) of a three-floor building to be constructed by SunBorne; (2) one 25,000 square foot hangar to be constructed by SunBorne; (3) a general aviation fuel farm with storage for 40,000 gallons of Jet A fuel and 20,000 gallons of aviation gas to be constructed by Signature; and (4) a 10.8 acre ramp.

K. "Substitute operator for the SunBorne FBO Facility" means a person who, with the approval of SunBorne and of the Arapahoe County Public Airport Authority, will operate the SunBorne FBO Facility in Signature's stead.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Signature shall require, as a condition of the sales or other disposition(s) of all or substantially all of the Assets to be Divested, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. The SunBorne FBO Facility

A. Signature shall have until September 1, 1999, to find a substitute operator for the SunBorne FBO Facility that is acceptable to the United States in its sole discretion. The United States, in its sole discretion, may extend the time period for finding a substitute operator by an additional period of time not to exceed thirty (30) calendar days.

V. Divestiture of the Assets

A. Signature is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred eighty (180) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the PSP Assets and the BDL Assets as ongoing businesses to purchasers acceptable to the United States in its sole discretion. With respect to any of the PSP Assets and the BDL Assets to be divested in which Signature holds a leasehold interest, Signature must transfer the entire leasehold including all renewal or option rights.

B. In addition to divesting the PSP Assets and the BDL Assets, Signature shall provide to the purchaser of the BDL Assets (which includes all successors, assigns, parents, subsidiaries, affiliates, and directors, officers, managers, agents, and employees acting for or on behalf of the purchaser) the option of access to the existing Combs jet fuel bulk storage facility and fuel farm for two years. In the event that the purchaser exercises this option, such access shall be limited to the storage and delivery of the purchaser's owned Jet A fuel for use at the BDL Assets. To the extent Signature charges the purchaser of the BDL Assets for access, the service charge shall be commercially reasonable and shall be no greater than the fee Signature charges any other customer for the same types of services associated with such access.

C. In the event that Signature does not find a substitute operator for the SunBorne FBO Facility by the date set forth in Paragraph A of Section IV. Signature is hereby ordered and directed in accordance with the terms of this Final Judgment, by June 1, 2000, or within 10 (ten) calendar days after receipt of a certificate of occupancy by SunBorne Development Corporation for the SunBorne FBO facility, whichever is sooner, to divest the APA Assets as an ongoing business to a purchaser acceptable to the United States in its sole discretion. With respect to any of the APA Assets in which Signature holds a leasehold interest, Signature must transfer the entire leasehold including all renewal or option rights.

D. Signature shall use its best efforts to facilitate the completion of the SunBorne FBO Facility.

E. Signature shall not take any action, direct or indirect, that will impede in any way the completion of the SunBorne FBO Facility.

F. The plaintiff may, in its sole discretion, relieve Signature of the obligation to divest the APA Assets based on the plaintiff's assessment of changed circumstances relating to the completion of the SunBorne FBO Facility.

G. Signature shall use its best efforts to accomplish each of the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any of the divestitures in order to accommodate mandatory municipal, county, state or federal review.

H. In accomplishing each of the divestitures order by this Final Judgment. Signature promptly shall make known, by usual and customary means, the availability of each of Assets to be Divested described in the Final Judgment. Signature shall inform any person making any inquiry regarding a possible purchase that the sales are being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Signature shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be Divested customarily provided in a due diligence process, except such information subject to attorney-client

privilege or attorney work-product privilege. Signature shall make available such information to the plaintiff at the same time that such information is made available to any other person.

I. Signature shall not interfere with any negotiations by any purchaser to employ any employee who works at any of the Assets to be Divested, or whose principal responsibility is operating or managing any of the Assets to be Divested.

J. Signature shall permit prospective purchasers of each of the Assets to be Divested to have reasonable access to personnel and to make such inspection of each of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

K. Signature shall not take any action, direct or indirect, that will impede in any way the operation or value of the Assets to be Divested.

L. Unless the United States otherwise consents in writing, the divestitures pursuant to Section V, or by a trustee appointed pursuant to Section VI of this Final Judgment, shall include all of the Assets to be Divested, operated in place pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying all of the Assets to be Divested to purchasers in such a way as to satisfy the United States, in its sole discretion, that each of the Assets to be Divested can and will be used by the purchasers as part of viable, ongoing businesses engaged in providing FBO services at PSP Airport, at BDL Airport, and at APA Airport. Each of the divestitures, whether pursuant to Section V or Section VI of this Final Judgment, shall be made to purchasers for whom it is demonstrated to the United States' sole satisfaction that: (1) The purchasers have the capability and intent of competing effectively in the provision of FBO services at PSP Airport, at BDL Airport, and at APA Airport; (2) the purchasers have or soon will have the managerial, operational, and financial capability to compete effectively in the provision of FBO services at PSP Airport, BDL Airport, and APA Airport; and (3) none of the terms of any agreement between the purchasers and Signature gives Signature the ability unreasonable to raise the purchasers' costs, to lower the purchasers' efficiency, or otherwise to interfere in the ability of the purchasers to complete effectively.

VI. Appointment of Trustee

A. In the event that Signature has not divested all of the Assets to be Divested within the times specified in Section V of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestitures of those Assets to be Divested that have not been timely divested.

B. After the appointment of a trustee becomes effective, only that trustee shall have the right to sell the particular Assets to be Divested (i.e., APA Assets, PSP Assets, and/or BDL Assets). The trustee shall have the power and authority to accomplish the divestiture(s) at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Signature any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the particular divestiture(s), and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the particular divestiture(s) at the earliest possible time to purchaser(s) acceptable to the United States in its sole discretion and shall have such other powers at this Court shall deem appropriate. Signature shall not object to a sale by trustee on any grounds other than the trustee's malfeasance. Any such objections by Signature must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. A trustee shall serve at the cost and expense of Signature, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Signature and the trust shall then be terminated. The compensation of the trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of each of the divested businesses and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the particular divestiture(s) and the speed with which it is accomplished.

D. Signature shall use its best efforts to assist the trustee in accomplishing the required divestiture(s), including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and Signature shall develop financial or other information relevant to the Assets to be Divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Signature shall permit prospective acquirers of each of the Assets to be Divested to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth that trustee's efforts to accomplish the particular divestiture(s) ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the Assets to be Divested, and shall describe in detail each contact with any such person during this period. The trustee shall maintain full records of all efforts made to divest the particular Assets to be Divested.

F. If the trustee has not accomplished such divestiture(s) within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture(s), (2) the reasons, in the trustee's judgment, why the required divestiture(s) have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and

to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment for a period requested by the United States.

VII. Notification

Within two (2) business days following execution of a definitive agreement contingent upon compliance with the terms of this Final Judgment to effect, in whole or in part, the proposed divestitures pursuant to Sections V or VI of this Final Judgment, Signature or a trustee, whichever is then responsible for effecting the particular divestiture(s), shall notify plaintiff of the proposed divestiture(s). If a trustee is responsible, the trustee shall similarly notify Signature. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the particular Assets to be Divested that is the subject of the definitive agreement, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Signature, the proposed purchaser(s), or any other third party additional information concerning the proposed divestiture(s) and the proposed purchaser(s). Signature and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Signature, the proposed purchaser(s), or any third party, whichever is later, the United States shall provide written notice to Signature and the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If the United States provides written notice to Signature and the trustee that it does not object, then the divestiture(s) may be consummated, subject only to Signature's limited right to object to the sales under Section VI(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, none of the divestitures proposed under Section V or Section VI shall be consummated. Upon objection by Signature under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section V or Section VI of this Final Judgment, Signature shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section V or Section VI of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in each of the Assets to Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Signature has taken to solicit buyer(s) for each of the Assets to be Divested and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Signature shall deliver to plaintiff an affidavit which describes in detail all actions Signature has taken and all steps Signature has implemented on an on-going basis to preserve each of the Assets to be Divested pursuant to Section IX of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. Relating to the PSP Assets and the BDL Assets, the affidavit also shall describe, but not be limited to, Signature's efforts to maintain and operate each of those Assets to be Divested as active competitors, maintain the management, staffing, research and development activities, sales, marketing, and pricing of each of those Assets to be Divested, and maintain the PSP and BDL FBO facilities in operation condition at current capacity configurations. Relating to the APA Assets, the affidavit shall describe, but not be limited to, Signature's efforts to maintain the management, staffing, research and development activities, sales, marketing, and pricing of the APA Assets, and maintain the APA FBO facility in an operable condition at current capacity configurations. Signature shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Signature's earlier affidavit(s) filed pursuant to Section VIII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after each divestiture has been completed, Signature shall preserve all records of all efforts made to preserve the Assets to be Divested and effect the divestitures.

IX. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished. Signature shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Signature shall take no action that would jeopardize the divestiture of any of the Assets to Be Divested.

X. Financing

Signature is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections V or VI of this Final Judgment.

XI. Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Signature made to its principal offices, shall be permitted:

1. Access during office hours of Signature to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Signature, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of Signature and without restraint or interference from them, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Signature at its principal offices, Signature shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any of the defendants to plaintiff, any of the defendants represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to the defendant(s) prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Appendix A—PSP Assets

"PSP Assets" means all rights, titles, and interests, including all fee, leasehold and real property rights, in the following assets owned or controlled by Signature that are used by Signature to provide fuel or other services to general aviation customers at PSP Airport.

1. The existing 8,000 square foot Signature terminal and office buildings.

2. Approximately 21,000 square feet of hangar space, consisting of the existing Signature hangar buildings and approximately 30,000 square feet of space prepared for hangar use.

3. The existing Signature above-ground fuel farm consisting of two 20,000 gallon Jet A fuel tanks and one 12,000 gallon avgas tank with fuel separator sump system that is adjacent to the t-hangars.

4. Approximately 40,000 square feet of ramp space adjacent to the foregoing buildings.

5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, and ground power units.

6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.

7. Approximately 2.5 acres of parking space.

Appendix B—BDL Assets

"BDL Assets" means all rights, titles, and interests, including all fee, leasehold and real property rights, in the following assets owned or controlled by Combs that are used by Combs to provide fuel or other services to general aviation customers at BDL Airport.

1. The existing Combs terminal and office buildings.

2. Approximately 50,000 square feet of hangar space, consisting of the existing Combs hangar buildings: One 30,000 square foot hangar (Hangar 214); one 20,000 square foot hangar (Storage Hangar).

3. The existing Combs avgas tank, located adjacent to the commercial airline services building.

4. Approximately 366,000 square feet of ramp space adjacent to the foregoing buildings.

5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, ground power units.

6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.

7. Approximately .9 acres of parking space.

Appendix C—APA Assets

"APA Assets" means all rights, titles, and interests, including all fee, leasehold and real property rights, in the following assets owned or controlled by Combs that are used by Combs to provide fuel or other services to general aviation customers at APA Airport.

1. The existing Combs terminal and office buildings.

2. Approximately 40,000 square feet of hangar space, consisting of the existing Combs hangar buildings: one hangar of 20,000 square feet (Hangar 9); one hangar of 20,000 square feet (Hangar 10).

3. The existing Combs fuel farm consisting of two 12,000 gallon Jet A tanks and one 10,000 gallon avgas tank located ¼ mile from the executive terminal between Peoria Street and Dove Valley Parkway.

4. Approximately 1,000,000 square feet of ramp space adjacent to the foregoing buildings.

5. All equipment and supplies necessary and appropriate to support a viable FBO business at the foregoing facilities, including but not limited to, existing office furniture, lobby furniture, phone system, radios, televisions, towing equipment, golf carts, pickup trucks, refuellers, and ground power units.

6. Contracts (including, but not limited to, customer contracts) and customer lists related to this location.

7. Approximately 5 acres of parking space.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 1, 1999, the United States filed a Complaint alleging that the proposed acquisition by Signature Flight Support Corporation ("Signature") of the flight support operations of AMR Combs, Inc. ("Combs"), a wholly owned indirect subsidiary of AMR Corporation, would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that Signature and Combs own and operate fixed base operator ("FBO") businesses at various airports around the country. Combs owns and operates eleven FBOs in the United States, including FBOs at Palm Springs Regional Airport ("PSP Airport"), Bradley International Airport ("BDL Airport"), and Denver Centennial Airport ("APA Airport"). The Complaint alleges that Signature and Combs are the only two providers of FBO services for general aviation customers at PSP Airport, located two miles east of Palm Springs, California, and BDL Airport, located near Hartford, Connecticut. the Complaint further alleges that the proposed acquisition will create a monopoly for Signature at those two airports, giving it significant power to raise prices and lower the quality of service. Thus, the proposed acquisition would have likely lessened competition substantially in the market for FBO services at PSP Airport and BDL Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

The Complaint also alleges that the proposed acquisition would deny general aviation customers at APA Airport, where there are currently two

competing FBOs, the benefits of additional competition at the airport. In 2000, when a new FBO facility is built, Signature was to enter the market as the third FBO. The likely benefits to general aviation customers at APA Airport from competition among three FBOs would have been increased choice and lower prices for fuel and hangar rentals. Signature's proposed acquisition of the Combs FBO at APA Airport would have eliminated the likelihood of anticipated additional competition because entry by a different FBO is not likely. Signature is one of only a few firms positioned to make the necessary commitment for a start-up operation on the scale desired by the airport board. Accordingly, Signature's proposed acquisition would have lessened potential competition in the market for FBO services at APA Airport in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a preliminary and permanent injunction preventing Signature and Combs from consummating the proposed acquisition.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Signature to complete its acquisition of Combs, but requires divestitures that would preserve competition for general aviation customers at PSP Airport and at BDL Airport. With regard to APA Airport, the proposed settlement would require a divestiture unless another firm replaces Signature as the operator of the new FBO facility, thereby preserving the potential for competition among three FBOs for general aviation customers at APA Airport.

This settlement consists of a Hold Separate Stipulation and Order ("Hold Separate Order"), and a proposed Final Judgment. The proposed Final Judgment orders Signature to sell the FBO assets at two of the airport—PSP Airport and BDL Airport—to purchasers who have the capability to compete effectively in the provision of FBO services to general aviation customers at those airport. Signature will divest the existing Signature assets located at PSP ("the PSP Assets"). At BDL Airport, Signature will divest the existing Combs assets except for Combs' interests in a bulk jet fuel storage facility and a fuel farm, which is located in different parts of the airport from the Combs FBO facility ("the BDL Assets"). Signature must complete the divestitures of the PSP Assets and the BDL Assets before the later of one hundred and eighty (180) calendar days after filing of the Complaint, or five (5) days after entry of the Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. If Signature should fail to accomplish the divestitures, a trustee appointed by the Court would be empowered to divest these assets.

With regard to APA Airport, the proposed Final Judgment takes into account two facts: the third FBO facility has not yet been built and Signature would occupy it as a tenant of the builder, a real estate developer called SunBorne Development Company ("SunBorne"). Accordingly, the proposed settlement permits Signature to occupy and operate the existing Combs FBO Facility at APA Airport ("the APA Assets") pending SunBorne's construction of the new FBO. Within ten days of presentation of a certificate of occupancy for the new FBO or June 1, 2000, whichever is sooner, Signature must divest the APA Assets and move into the new FBO facility, unless Signature has found a suitable firm to operate the new FBO facility in its stead.

The Hold Separate Order and the proposed Final Judgment also impose a hold separate agreement that requires defendant Signature to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the PSP Assets and the BDL Assets will be held separate and apart from, and operated independently of, Signature's other FBO assets and businesses. Similarly, the Hold Separate Order and the proposed Final Judgment require Signature to ensure that, if divestiture of the APA Assets is required, no steps will be taken that would denigrate their value.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. The Parties and the Proposed Transaction

On December 14, 1998, Signature, AMR Services Holding Corp., and AMR Corporation (the parent of AMR Combs, Inc., and AMR Services Holding Corp.) entered into an agreement under which Signature would seek to acquire all of the capital stock of Combs for approximately $170 million.

Signature is a wholly owned subsidiary of BBA Group PLC, a British holding company. Signature is a Delaware corporation with its principal place of business in Orlando, Florida. Signature operates a nationwide network of forty-two FBOs throughout the United States, including facilities at PSP Airport and BDL Airport.

Combs is a wholly owned, indirect subsidiary of AMR Corporation, which is a Delaware corporation with its principal place of business in Forth Worth, Texas. Combs is a Delaware corporation, headquartered in Dallas, Texas. It owns and operates eleven FBOs throughout the United States, including ones at PSP Airport, BDL Airport, and APA Airport. Combs also manages two FBOs in Mexico and is an equity partner in an executive aviation center in Hong Kong.

B. The FBO Services Market

FBOs are facilities located at airports that provide flight support services, including aircraft fueling, ramp and hangar rentals, office space rentals, and other services to general aviation customers. General aviation customers include charter, private and corporate aircraft operators, as distinguished from scheduled commercial airlines.

FBOs sell aircraft fuel, as well as related support services such as ramp, hangar and office space rental. The largest source of revenues for an FBO is its fuel sales. FBOs sell Jet A fuel for jet aircraft, turboprops and helicopters, and avgas for smaller, piston driven planes. FBOs do not charge separately for many services offered to general aviation customers, such as use of customer and pilot lounges, baggage handling, and flight planning support, rather, they recover the costs for these services in the price that they charge for fuel. FBOs do charge separately for certain services, such as hangar rental, office space rental, ramp parking fees, catering, cleaning the aircraft, arranging ground transportation and maintenance on the aircraft. General aviation customers generally buy fuel from the same FBO from which they obtain those other services.

The Complaint alleges that the provision of FBO services to general aviation customers at each of the airports—PSP Airport, BDL Airport, and APA Airport—is a relevant market (*i.e.*, a line of commerce and a section of the country) under Section 7 of the Clayton Act. General aviation customers cannot obtain fuel, hangar, ramp and other services offered at PSP Airport, BDL Airport, or APA Airport, except through an FBO authorized to sell such products and services by the local airport

authority. Thus, general aviation customers have no alternatives to FBOs for these products and services when they land at PSP Airport, BDL Airport, or APA Airport.

The Complaint also alleges that FBOs at other airports would not provide economically practical alternatives for general aviation customers who currently use PSP Airport, BDL Airport, and APA Airport. Although there are other airports in the same regions as PSP Airport, BDL Airport, and APA Airport, those other airports are not economically viable substitutes for passengers flying into PSP Airport, BDL Airport, or APA Airport. General aviation customers use PSP Airport, BDL Airport, or APA Airport because of the airport's location, convenience and facilities. General aviation customers have selected these airports in part because of their proximity to their ultimate destination (whether their residence, business or other place); using a different airport would significantly increase their driving time, reducing the convenience of maintaining a corporate jet. There are not enough general aviation customers who have selected PSP Airport, BDL Airport, or APA Airport as their airport who would switch to other airports to prevent anticompetitive price increases for fuel and other services at PSP Airport, BDL Airport, or APA Airport.

C. Competition Between Signature and Combs

1. *PSP Airport and BDL Airport.* Signature and Combs are direct competitors in the provision of FBO services to general aviation customers at PSP Airport and BDL Airport. As the only two FBOs at PSP Airport and BDL Airport, Signature and Combs compete over price and service packages. General aviation customers have benefited from competition between Signature and Combs at PSP Airport and BDL Airport, receiving lower prices and improved FBO services. The acquisition would eliminate this competition, creating a monopoly in the market for FBO services to general aviation customers at PSP Airport and at BDL Airport.

The prospect of new entry is not likely to check Signature's resulting ability to raise prices or reduce service. The financial opportunity that would be created by the anticompetitive effect of this merger would not be great enough to induce a new entrant to make the investments needed to enter the FBO business at PSP Airport and BDL Airport. There are significant sunk costs involved in building an FBO, including the cost of building hangar and ramp facilities. The revenue a new FBO operation would have to generate to achieve an acceptable rate of return on such an investment exceeds the revenues a new entrant would likely earn. In particular, a new entrant would have to achieve a large enough share of market revenues to be able to cover the fixed (including sunk) costs of entry and be profitable at pre-merger prices. And, the airport authorities' minimum operating standards, which require an FBO to provide other services beyond hangar rental, fueling and maintenance, effectively raise the minimum viable scale of entry, making entry even more difficult. Therefore, new FBO entry on a scale sufficient to prevent a post-merger price increase is not likely to occur at PSP Airport and BDL Airport.

2. *APA Airport.* The market for FBO services at APA Airport is presently highly concentrated, with only two FBOs competing. Prior to its proposed acquisition of Combs, Signature was poised to enter as a third independent competitor early in 2000 when a new FBO facility is to be competed. In September of 1998, Signature signed a detailed letter of intent with SunBorne, the real estate developer, to enter as the tenant operator of an FBO facility at APA Airport in 2000.

For general aviation consumers, the addition of a third, independent FBO at APA Airport would increase consumer choice and would have likely resulted in increased price and quality competition to the benefit of general aviation customers at APA Airport.

Signature's acquisition of Combs significantly lessens the potential for competition among three FBOs at APA Airport. Entry by a different firm that would be the third independent FBO is not likely because Signature was one of only a few firms positioned to make the necessary commitment for a start-up operation.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Signature's acquisition of Combs would result in FBO monopolies at PSP Airport and at BDL Airport. The Complaint further alleges that Signature's acquisition of the Combs FBO at APA Airport would deprive general aviation customers of the benefits of additional competition from having three independent FBOs, rather than just two.

The Complaint alleges that the acquisition of Combs by Signature would substantially lessen competition and restrain trade unreasonably. The transaction would have eliminated actual competition between Signature and Combs in the market for FBO services at PSP Airport and BDL Airport, resulting in an increase in prices for fuel and other FBO services. In addition, potential competition at APA Airport would be substantially lessened, and prices for fuel and other FBO services sold to general aviation customers at APA Airport would not decrease.

III. Explanation of the Proposed Final Judgment

The United States brought this action because the effect of the acquisition of Combs by Signature may be substantially to lessen competition, in violation of Section 7 of the Clayton Act, in the markets for FBO services provided to general aviation customers at PSP Airport, BDL Airport, and APA Airport.

A. PSP Airport and BDL Airport Provisions

The risk to competition posed by this acquisition at PSP Airport and BDL Airport, however, would be eliminated if certain assets, leases, and agreements currently held by Signature or Combs to operate their PSP Airport and BDL Airport FBO businesses were sold and assigned to a purchaser that could operate them as an active, independent and financially viable competitor. To this end, the provisions of the proposed Final Judgment are designed to accomplish the sale and assignment of certain assets and leaseholds to such a purchaser and thereby prevent the anticompetitive effects of the proposed acquisition.

Section V of the proposed Final Judgment requires defendant Signature, within one hundred and eighty (180) calendar days after filing of the Complaint in this matter, or within five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, to divest an FBO business at PSP Airport and an FBO business at BDL Airport, as set out in Section II.C (i.e., the PSP Assets and the BDL Assets) of the proposed Final Judgment. Unless the United States otherwise consents in writing, Signature is required to divest its present FBO business at PSP Airport, including all hangars, ramp and office space, fuel farms, and any related terminal and maintenance facilities located on the property it presently leases as well as any other leases or options on leases it possesses at PSP Airport.

At BDL Airport, Signature is required to divest Combs's present FBO operation, including all hangars, ramp and office space, and any related terminal and maintenance facilities located on the property Combs presently

leases, as well as any other leases or options on leases Combs possesses at BDL Airport. Combs does not have a jet fuel farm at its FBO location. It obtains fuel for its general aviation customers from its fuel farm located at BDL Airport's commercial terminal. Combs's fuel farm serves predominantly commercial aviation customers, and Combs's commercial fueling business is separate from its FBO business. The proposed Final Judgment requires Signature, which will own the fuel farm after the acquisition, to provide the purchaser of the Combs FBO business with non-discriminatory and unlimited access to the fuel farm at the commercial terminal for a minimum of two years. Access will be limited to the storage and delivery of the purchaser's owned Jet A fuel for FBO use at BDL Airport. Signature may charge the purchaser a commercially reasonable access charge that is not greater than what it charges others for the costs associated with the purchaser's use of the facilities. Of course, the purchaser of the Combs FBO business is free to build its own fuel farm (which it could do in relatively short amount of time for a moderate cost), or it may negotiate a longer term access agreement with Signature.

B. APA Airport Provisions

The risk to competition posed by this acquisition at APA Airport would be eliminated if the likelihood of entry by a third, independent FBO remains the same after the transaction as it was before. This could be accomplished in one of two ways: (1) Signature could go ahead with its plan to be the operator of the new FBO upon its completion, and sell the existing Combs FBO business ("the APA Assets") to a purchaser that could operate it as an independent and financially viable competitor; or (2) Signature could find a firm willing to operate the new FBO instead of Signature, in which case, Signature could operate the existing Combs business.

Accordingly, Section IV of the proposed Final Judgment gives Signature until September 1, 1999, to find a substitute operator for the new FBO facility. If Signature is unsuccessful, Section V of the proposed Final Judgment requires Signature to move into the new FBO facility and divest the APA Assets no later than June 1, 2000, or within ten days of receiving a certificate of occupancy from SunBorne. Section V further provides that if circumstances relating to the completion of the new FBO change, the United States may, in its discretion, relieve Signature of the obligation to sell the APA Assets. As a result of the obligations imposed on Signature, and the divestiture required by the proposed Final Judgment, general aviation customers at APA Airport will be able to reap the benefits of three competing FBOs in 2000.

C. General Divestiture Provisions

For each of the required divestitures, Signature shall divest such equipment and supplies as is necessary and appropriate to operate a viable FBO at PSP Airport, BDL Airport, and APA Airport. Signature shall transfer its contracts, including customer contracts, and customer lists, for providing FBO services at each airport. Together with the equipment, supplies and customer contracts and lists, and the commitment to access to the fuel farm at BDL Airport at a reasonable price, these assets will give qualified purchasers the means to establish themselves as competitive alternatives to Signature. Thus, as a result of the divestitures required by the proposed Final Judgment, general aviation consumers at PSP Airport and BDL Airport will continue to have a choice between two competitive FBOs, and at APA Airport, the likelihood of their having three competing FBOs has been maintained.

Under the proposed Final Judgment, Signature must take all reasonable steps necessary to accomplish quickly the divestitures of the PSP Assets, the BDL Assets, and the APA Assets, and shall cooperate with prospective purchasers by supplying all information relevant to the proposed sales. Should Signature fail to complete any of its divestitures within the required time periods, the Court will appoint, pursuant to Section VI, a trustee to accomplish the divestitures. The United States will have the discretion to delay the appointment of the trustee in order to permit other governmental review (such as the county or municipal airport authority).

Following the trustee's appointment, only the trustee will have the right to sell the divestiture assets, and defendant Signature will be required to pay for all of the trustee's sale-related expenses. The trustee's compensation will be structured to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestitures as quickly as possible.

Section VII of the proposed Final Judgment would assure the United States an opportunity to review any proposed sale, whether by Signature or by the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation. Upon objection by the United States to a sale of any of the divestiture assets by the defendant Signature, any proposed divestiture may not be completed. Should the United States object to a sale of any of the divested assets by the trustee, that sale shall not be consummated unless approved by the Court.

Pursuant to Section VI.F, should the trustee not accomplish the divestitures within six months of appointment, the trustee and the parties will make a recommendation to the Court, which shall enter such orders as it deems appropriate to carry out the purpose of the trust, which may include extending the term of the trustee's appointment.

Under Section IX of the proposed Final Judgment, defendant Signature must take certain steps to ensure that, until the required divestitures have been completed, the PSP Assets and the BDL Assets will be maintained as separate, ongoing, viable FBO businesses and kept distinct from Signature's other FBO operations. Until such divestitures, Signature must also continue to maintain and operate the divestiture assets as viable, independent competitors as PSP Airport and BDL Airport, using all reasonable efforts to maintain sales of FBO services to general aviation customers at PSP Airport and BDL Airport. Until the divestiture, Signature must maintain and operate the APA Assets as a viable entity, using all reasonable efforts to maintain its sales of FBO services to general aviation customers at APA Airport. Signature must maintain all three FBO businesses at PSP Airport, BDL Airport, and APA Airport, so that they continue to be stable, including maintaining all records, loans, and personnel for their operation.

Section XI requires the Signature to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect Signature's facilities and ensure that Signature is complying with the requirements of the proposed Final Judgment. Section XIII of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable

attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedure for Commenting on the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trail on the merits of its Compliant against Signature and Combs. The Unites States is satisfied, however, the divestitures of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the provisions of FBO services to general aviation customers at PSP Airport, BDL Airport, and APA Airport that otherwise would be affected adversely by the acquisition. Thus, the compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trail.

15 U.S.C. 16(e). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir 1995).

In conducting this inquiry, "the court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practicular practice or whether in mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omited.)." [3]

VIII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly,

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 *reprinted in* (1974) U.S. Code Cong. & Ad News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716; *see also Microsoft*, 56 F.3d at 1461 (whether "the, remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'") (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.*, 552 F.Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom, Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co.*, *Supra*, 406 F.Supp. at 716; *United States* v. *Alcan Alumninum, Ltd.*, 605 F.Supp. 619, 622 (W.D. Ky. 1985)

none are being filed with this Competitive Impact Statement.

Dated: March 15, 1999.

Respectfully submitted,

Nina B. Hale,

Salvatore Massa,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy and Agriculture Section, Suite 500, 325 Seventh Street, NW., Washington, DC 20530, (202) 307–6351.

[FR Doc. 99–7288 Filed 3–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–36]

Francois J. Saculla, M.D., Revocation of Registration

On April 13, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francois J. Saculla, M.D. (Respondent) of Racine, Wisconsin notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BS1404552, and deny any pending applications for renewal of his registration pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Wisconsin.

By letter dated May 21, 1998, but not filed with the Office of Administrative Law Judges until July 20, 1998, Respondent requested a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 20, 1998, the Government filed a Motion for Summary Disposition alleging that Respondent is not currently authorized to handle controlled substances in the state in which he is registered with DEA and therefore DEA cannot maintain his registration. Judge Bittner provided Respondent with an opportunity to respond to the Government's motion, but no such response was filed.

On October 14, 1998, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacked authorization to handle controlled substances in Wisconsin; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on November 24, 1998, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirely, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that in a Final Decision and Order dated November 25, 1994, the State of Wisconsin, Medical Examining Board (Board) limited Respondent's license to practice medicine. The Board Order prohibited Respondent from treating any female patient; ordered that his entire practice be under the direct supervision of another physician; required that Respondent undergo psychological evaluation within 90 days; and advised that any additional limitations recommended by the psychologist would be adopted by the Board. In addition, costs were assessed against Respondent ion the amount of $22,000. The Order placed no limitations on Respondent's ability to handle controlled substances in Wisconsin. Therefore, Respondent presently possesses a limited license to practice medicine in Wisconsin.

However, in order to practice medicine in Wisconsin an individual must not only be licensed but must also possess a registration. Respondent's Wisconsin registration expired on November 1, 1995. Therefore, Respondent is unable to practice medicine in the State of Wisconsin. The Deputy Administrator finds that it is reasonable to infer that if Respondent is unable to practice medicine in Wisconsin, he is also not authorized to handle controlled substances in that state. In his request for a hearing, Respondent did not deny that he was not currently authorized to handle controlled substances in Washington.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D. 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in Wisconsin, where he is registered with DEA. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. It is well settled that where there is no material question of fact involved, or when the material facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1993), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

Accordingly, the Deputy 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) and 0.104, hereby orders that DEA Certificate of Registration BS1404552, previously issued to Francois J. Saculla, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective April 26, 1999.

Dated: March 22, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–7441 Filed 3–25–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 23, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Pauline Perrow ((202) 219–5096 ext. 165) or by E-Mail to Perrow-Pauline@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM,

ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration (ESA).

Title: Report of Ventilatory Study (CM–907), Roentgenographic Interpretation (CM–933 and CM933b), Medical History and Examination for Coal Mine Workers' Compensation (CM–988) and Report of Arterial Blood Gas Study (CM–1159).

OMB Number: 1215–0090 (Extension).

Frequency: On-occasion.

Affected Public: Business or other for-profit; not-for-profit institutions;

Number of Respondents: 37,800.

Estimated Time Per Respondent:

CM–907 20 minutes
CM–933 05 minutes
CM–933b 05 minutes
CM–988 30 minutes
CM–1159 15 minutes

Total Burden Hours: 9,338.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: CM–907, Report of Ventilatory Study. When a miner applies for benefits, the Division of Coal Mine Workers' Compensation (DCMWC) schedules a series of diagnostic tests, one of which is a ventilatory study. The results of the study can be used to establish total disability, a criterion for entitlement. CM–933 & CM–933b, Roentgenographic Interpretation Form, This is the form used to record the results of diagnostic x-rays to determine the presence of pneumoconiosis, a criterion for entitlement.

CM–988, Report of Physical Examination, provides information concerning the physical examination required by DOL to establish the presence of pneumoconiosis, total disability, and the causal relationship between the miner's coal mine employment and pneumoconiosis, all of which are criteria for entitlement.

CM–1159, Report of Arterial Blood Gas Study. This form was designed to set forth the results of the arterial blood gas studies as required by the regulations.

Agency: Employment Standards Administration (ESA).

Title: Comparability of Current Work to Coal Mine Employment; (2) Coal Mine Employment Affidavit; (3) Affidavit of Deceased Miner's Condition.

OMB Number: 1215–0056 (Extension).

Frequency: On-occasion.

Affected Public: Individuals and households.

Number of Respondents: 3,336.

Estimated Time Per Respondent:

CM–913—30 minutes
CM–918—10 minutes
CM–1093—20 minutes

Total Burden Hours: 1,618.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $1,200.

Description: CM–913, Comparability of Current Work to Coal Mine Employment, This form is used to compare coal mine with non-coal mine work. This equipment information, together with medical information, is used to establish whether the miner is totally disabled due to black lung disease caused by coal mine employment, a criteria for entitlement.

CM–918, Coal Mine Employment Affidavit, used to gather coal mine employment evidence only when primary evidence, such as pay stubs, W–2 forms, employer and union records, and Social Security records are unavailable or incomplete.

CM–1093, Affidavit of Deceased Miners' Condition, an affidavit used to record lay medical evidence. It is used in survivor's claims in which evidence of the miners' medical condition is insufficient.

Pauline Perrow,

Acting Departmental Clearance Officer.

[FR Doc. 99–7472 Filed 3–25–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable of Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA990005 (Mar. 12, 1999)
PA990030 (Mar. 12, 1999)
PA990031 (Mar. 12, 1999)
Virginia
VA990042 (Mar 12, 1999)

Volume III:

Florida
FL990001 (Mar. 12, 1999)
Georgia
GA990022 (Mar. 12, 1999)
GA990032 (Mar. 12, 1999)
GA990034 (Mar. 12, 1999)
GA990050 (Mar. 12, 1999)
GA990073 (Mar. 12, 1999)
GA990085 (Mar. 12, 1999)
GA990087 (Mar. 12, 1999)

Volume IV:

None

Volume V:

Iowa
IA990031 (Mar. 12, 1999)
Nebraska
NE990009 (Mar. 12, 1999)

Volume VI:

None

Volume VII:

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 18th day of March 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–7146 Filed 3–25–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [99–049]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Propulsion Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Tuesday, April 13, 1999, 8:00 a.m. to 4:30 p.m., Wednesday, April 14, 1999, 8:00 a.m. to 4:30 p.m., and Thursday, April 15, 8:00 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview
—Propulsion Systems Base R&T Program Review
—Focus Program Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 18, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–7356 Filed 3–25–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [99–050]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA-NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA-NIH Advisory Subcommittee.

DATES: Monday, April 12, 1999, 9:00 a.m. to 5:00 p.m.; and Tuesday, April 13, 1999, 9:00 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–5A, Room 5H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Life Sciences Division Update
—FASEB and ASCB Reports
—NIH–NASA Program Announcement
—NIH–NASA Knockout Workshop
—NASA Pillars of Biology
—International Space Station Status
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 18, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–7357 Filed 3–25–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [99–051]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: Wednesday, April 14, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Kennedy Space Center, Conference Room of Kennedy Space Center, Visitors Complex, Room 2001, Guest Operations Center, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SA, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 281–483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Space Medicine Issues
—Review of Occupational Health Program Safety Plan of Excellence
—NASA Office of Health Affairs Update
—Occupational Health Continuing Education Series
—Preparation of Committee Findings and Recommendations
—Review of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 18, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–7358 Filed 3–25–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission, Report Subcommittee.

ACTION: Notice of public meeting.

SUMMARY: At the April 7–8 meeting of the Report Subcommittee of the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, the Subcommittee will discuss draft chapters of the Final Report, concerning advertising/promotion, Internet gambling, sports wagering, pari-mutuel, lotteries, casinos, gambling regulation, and future research, among others. The Report Subcommittee will also discuss the integration of Commission-contracted studies into draft chapters, as well as discuss presentation of draft chapters to the full Commission for review.

DATES: Wednesday, April 7, 8:30 a.m. to 5:30 p.m., and Thursday, April 8, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site will be: Phoenix Park Hotel Powerscourt Room, 520 North Capitol Street, NW, Washington, DC 20001.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: Seating may be limited to approximately 50 persons and will be available on a first-come first-served basis. Members of the media who plan to attend are kindly asked to contact Mr. Craig Stevens, Communications and Logistics Coordinator, at 202–523–8217 to make arrangements. For more information, please contact Mr. Craig Stevens at the Commission.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 99–7517 Filed 3–25–99; 8:45 am]

BILLING CODE 6802–ET–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on Tuesday, January 5, 1999 (64 FR 536). Individual authorities established or revoked under Schedules A and B and established under Schedule C between December 1, 1998, and January 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during December 1998 and January 1999.

Schedule B

No Schedule B authorities were established or revoked during December 1998 and January 1999.

Schedule C

The following Schedule C authorities were established during December 1998 and January 1999.

Department of the Air Force (DOD)

Special Advisor for International Affairs to the Assistant to the Vice President for National Security Affairs. Effective December 4, 1998.

Department of Agriculture

Deputy Press Secretary to the Director, Office of Communications. Effective January 8, 1999.

Confidential Assistant to the Deputy Administrator for Farm Programs. Effective January 14, 1999.

Staff Assistant to the Executive Director. Effective January 19, 1999.

Director, Office of Communications to the Deputy Under Secretary for Rural Development. Effective January 22, 1999.

Confidential Assistant to the Director, Office of Civil Rights. Effective January 26, 1999.

Confidential Assistant to the Administrator, Farm Service Agency. Effective January 27, 1999.

Department of the Army (DOD)

Personal and Confidential Assistant to the Under Secretary of the Army. Effective December 24, 1998.

Department of Commerce

Confidential Assistant to the Deputy Chief of Staff for External Affairs. Effective December 3, 1998.

Special Assistant to the General Counsel. Effective December 29, 1998.

Special Assistant to the General Counsel, Office of the General Counsel. Effective January 13, 1999.

Special Assistant to the Director, Office of Public Affairs. Effective January 13, 1999.

Assistant Director for Communications to the Director, Bureau of the Census. Effective January 13, 1999.

Senior Advisor to the Director, Minority Business Development Agency. Effective January 27, 1999.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective January 29, 1999.

Department of Defense

Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. Effective December 16, 1998.

Special Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. Effective January 28, 1999.

Staff Specialist to the Director, Legislative Affairs. Effective January 29, 1999.

Department of Education

Confidential Assistant to the Director, Executive Secretariat. Effective December 2, 1998.

Special Assistant to the Deputy Assistant Secretary for Regional and Community Services. Effective January 5, 1999.

Special Assistant to the Assistant Secretary for Postsecondary Education. Effective January 13, 1999.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective January 13, 1999.

Department of Energy

Special Assistant to the Secretary of Energy. Effective December 16, 1998.

Executive Assistant to the Secretary of Energy. Effective December 16, 1998.

Special Assistant to the Director, Office of Worker and Community Transition. Effective December 22, 1998.

Special Executive Advisor to the Assistant Secretary for Fossil Energy. Effective January 5, 1999.

Special Assistant to the Director, Management and Administration. Effective January 14, 1999.

Special Assistant to the Secretary of Energy. Effective January 26, 1999.

Special Assistant to the Secretary of Energy. Effective January 26, 1999.

Executive Assistant to the Secretary of Energy. Effective January 27, 1999.

Senior Policy Advisor to the Secretary of Energy. Effective January 29, 1999.

Special Assistant to the Director, Office of Field Management. Effective January 29, 1999.

Special Assistant to the Director, Management and Administration. Effective January 29, 1999.

Department of Transportation

Director, Office of Congressional and Public Affairs to the Administrator, Maritime Administration. Effective January 13, 1999.

Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs. Effective January 20, 1999.

Department of Health and Human Services

Special Assistant to the Administrator, Substance Abuse and Mental Health Service Administration. Effective December 7, 1998.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective December 9, 1998.

Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families, Administration for Children and Families. Effective December 22, 1998.

Special Assistant to the Assistant Secretary for Planning and Evaluation. Effective January 27, 1999.

Confidential Assistant to the Executive Secretary. Effective January 27, 1999.

Special Assistant to the Assistant Secretary for Children and Families. Effective January 27, 1999.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective December 3, 1998.

Assistant Deputy Secretary for Field Policy and Management to the Deputy Secretary. Effective December 8, 1998.

Special Assistant to the Secretary's Representative, California State Office. Effective December 9, 1998.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective December 9, 1998.

General Deputy Assistant Secretary for Public Affairs to the Deputy

Assistant Secretary for Public Affairs. Effective December 18, 1998.

Deputy Assistant Secretary for Strategic Planning to the Assistant Secretary for Public Affairs. Effective January 4, 1999.

Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective January 5, 1999.

Secretary's Representative, Rocky Mountain Region, to the Deputy Secretary. Effective January 8, 1999.

Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research. Effective January 11, 1999.

Department of the Interior

Special Assistant to the Chief Biologist. Effective December 7, 1998.

Special Assistant to the Deputy Chief of Staff. Effective January 27, 1999.

Attorney Advisor (General) to the Solicitor. Effective January 29, 1999.

Department of Justice

Special Assistant to the Assistant Attorney General, Criminal Division. Effective December 1, 1998.

Staff Assistant to the Assistant to the Attorney General. Effective December 9, 1998.

Public Affairs Assistant to the Director, Office of Public Affairs. Effective December 18, 1998.

Staff Assistant to the Attorney General. Effective December 29, 1998.

Special Assistant to the Solicitor General. Effective December 29, 1998.

Special Assistant to the Assistant Attorney General for Civil Rights. Effective January 5, 1999.

Special Assistant to the Director, Community Relations Service. Effective January 22, 1999.

Department of Labor

Director of Policy to the Assistant Secretary for Occupational Safety and Health. Effective December 7, 1998.

Special Assistant to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective December 29, 1998.

Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 15, 1999.

Staff Assistant to the Director of Public Liaison. Effective January 20, 1999.

Special Assistant to the Assistant Secretary for Policy. Effective January 20, 1999.

Special Assistant to the Deputy Under Secretary for International Labor Affairs. Effective January 21, 1999.

Special Assistant to the Assistant Secretary for Labor. Effective January 21, 1999.

Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupational Safety And Health Administration. Effective January 26, 1999.

Special Assistant to the White House Liaison. Effective January 26, 1999.

Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective January 27, 1999.

Department of the Navy (DOD)

Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs). Effective January 28, 1999.

Department of State

Special Advisor to the Deputy Assistant Secretary. Effective December 2, 1998.

Special Assistant to the Chief of Protocol. Effective December 18, 1998.

Foreign Affairs Officer to the Deputy Secretary of State. Effective December 29, 1998.

Special Assistant to the Senior Advisor. Effective January 15, 1999.

Special Assistant to the Assistant Secretary for International Organization Affairs. Effective January 27, 1999.

Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective January 27, 1999.

Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective January 27, 1999.

Department of the Treasury

Special Assistant to the Assistant Secretary for Economic Policy. Effective December 31, 1998.

Special Assistant to the Assistant Secretary for Financial Institutions. Effective January 11, 1999.

Equal Employment Opportunity Commission

Special Assistant to the Chairman. Effective January 5, 1999.

Attorney-Advisor (Civil Rights) to the Chairwoman. Effective January 15, 1999.

Environmental Protection Agency

Senior Policy Advisor to the Regional Administrator. Effective December 24, 1998.

Assistant to the Deputy Administrator. Effective December 29, 1998.

Senior Policy Advisor to the Regional Administrator. Effective December 29, 1998.

Federal Emergency Management Agency

Policy Advisor to the Director, Office of Congressional and Legislative Affairs. Effective January 25, 1999.

Government Printing Office

Staff Assistant to the Public Printer. Effective December 10, 1998.

Occupational Safety and Health Review Commission

Counsel to the Member (Commissioner). Effective December 7, 1998.

Office of Personnel Management

Speech Writer to the Director of Communications. Effective December 4, 1998.

Special Assistant to the Deputy Director. Effective December 11, 1998.

Special Assistant to the Director of Congressional Relations. Effective January 5, 1999.

Office of the United States Trade Representative

Special Assistant to the Chief of Staff. Effective January 26, 1999.

United States Information Agency

Public Affairs Officer to the Voice of America Director. Effective January 15, 1999.

Senior Advisor to the Director, United States Information Agency. Effective January 27, 1999.

United States Tax Court

Secretary and Confidential Assistant to a Judge. Effective January 13, 1999.

United States Trade and Development Agency

Congressional Liaison Officer to the Director, Trade and Development Agency. Effective December 3, 1998.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–7417 Filed 3–25–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26992]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 19, 1999.

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 under the Act. All interested persons are referred to the applications(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 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 April 13, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(s) 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 should 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 April 13, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of Oklahoma (70–8887)

Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74119–1212, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a post-effective amendment under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 under the Act.

By order dated December 30, 1996 (HCAR No. 26638) ("1996 Order"), PSO was authorized to make a capital contribution to, and consequently acquire a 4.9% voting and 70% economic interest in, Nuvest L.L.C. ("Nuvest"), which provides services to public utility companies through its subsidiaries, Numanco, Inc. and Numanco L.L.C. (All companies are collectively the "Numanco Companies".) The 1996 Order also authorized PSO to guarantee the obligations of the Numanco Companies up to an aggregate of $12 million.

PSO now proposes to increase: (1) its aggregate capital contribution in Nuvest by $4.3 million to $5 million; and (2) the aggregate amount of guarantees by $6 million to $18 million. PSO states that its 4.9% voting and 70% economic interests in Nuvest will remain unchanged by the increases in capital contributions and guarantees. PSO also states that the other owners of Nuvest will maintain a 30% economic interest as compensation for their day to day management and operation of the Numanco Companies.

Eastern Enterprises (70–9443)

Eastern Enterprises ("Eastern"), 9 Riverside Road, Weston, Massachusetts 02493, a Massachusetts public utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, has filed an application under section 9(a)(2) and 10 of the Act. Eastern requests Commission authorization to acquire all of the issued and outstanding common stock of Colonial Gas Company ("Colonial"), a Massachusetts gas utility ("Transaction"). Eastern also requests an order under section 3(a)(1) of the Act exempting it from all provisions of the Act except section 9(a)(2), after the Transaction.

Eastern has two public utility subsidiaries, the Boston Gas Company ("Boston Gas"), and the Essex Gas Company ("Essex Gas"). Together, Boston Gas and Essex Gas serve approximately 580,000 customers, all in central and eastern Massachusetts. Eastern has several direct and indirect nonutility subsidiaries engaged in providing energy services and other nonutility subsidiaries which engage in investment and real estate activities, installing and servicing HVAC equipment, automated meter reading services, and ownership of liquid natural gas storage facilities. Eastern had revenues of $973 million for the twelve months ended September 30, 1998. Eastern's nonutility subsidiaries contributed $262 million or approximately 26.9% of total revenues during this period.

Colonial serves approximately 151,000 customers in eastern Massachusetts. Colonial's revenues were approximately $178 million for the twelve months ended September 30, 1998. Colonial's nonutility subsidiaries contributed $2.7 million, approximately 1.5% of total revenues during this period. A portion of Colonial's service territory is contiguous to Boston Gas' and Essex Gas' service territories. Colonial has one active nonutility subsidiary, Transgas Inc., which provides over-the-road transportation of liquefied natural gas, propane, and similar commodities, and two inactive nonutility subsidiaries, CGI Transport Ltd and Colonial Energy. Colonial is subject to the retail ratemaking jurisdiction of the Massachusetts Department of Telecommunications and Energy.

The Trustees of Eastern approved the Transaction at a meeting held on October 28, 1998. No approval of the Transaction by Eastern's shareholders is required. However, on February 10, 1999, the shareholders of Eastern voted to approve the issuance of additional shares ("Eastern Common Stock") to complete the Transaction. Colonial's board of director approved the proposed merger at a meeting held on October 17, 1998, and Colonial's stockholders approved the Transaction on February 10, 1999.

Following the Transaction, Eastern will own all the outstanding capital stock of Colonial, and the former stockholders of Colonial will receive shares of Eastern Common Stock and/or cash. Eastern and Colonial have entered into an Agreement and Plan of Reorganization dated as of October 17, 1998 ("Agreement"). The Agreement provides, among other things, that Colonial will merge with and into a Massachusetts special purpose subsidiary of Eastern ("Newco") for purposes of the Transaction. Each outstanding share of Colonial will be converted into cash, shares of Eastern Common Stock, or a combination of both, having a value of $37.50 ("Exchange Value").[1] Outstanding debt securities of Colonial will not be affected and will remain outstanding under current terms and conditions.

Eastern is the sole stockholder of all issued and outstanding common stock of Boston Gas and Essex Gas, Massachusetts corporations engaged in the gas utility business. Together Boston Gas and Essex Gas serve approximately 580,000 customers, all in Massachusetts. Boston Gas has outstanding 1.2 million shares of nonvoting preferred stocks. Boston Gas had combined assets of $902 million at September 30, 1998 and combined revenues of $712 million for the twelve-month period ended September 30, 1998. Colonial has 8,845,315 shares of common stock issued and outstanding. Colonial has assets of $381 million as of September 30, 1998 and revenues of $178 million for the twelve-month period ended September 30, 1998. Colonial, Boston Gas and Essex Gas together will have *pro forma* combined assets of $1.5 billion and *pro forma* combined revenues of $890 million.

[1] The Exchange Value is subject to adjustment under certain circumstances and based on the quoted market price for Eastern Common Stock during a ten-day period preceding the effective date. The Agreement provides that, if the holder of Colonial stock electing to receive cash exceeds $150 million then that total will be prorated among the electing stockholders and the balance will be made up by Eastern Common Stock.

Eastern Common Stock is traded on the New York Stock Exchange, the Boston Stock Exchange and the Pacific Exchange. Based on reported closing price for Eastern Common Stock on the New York Stock Exchange and the number of shares of Colonial common stock outstanding on December 22, 1998, the Eastern Common Stock to be issued would have a market value of approximately $184 million and would constitute approximately 16.4% of Eastern's outstanding Common Stock.

Eastern requests an order granting it and all of its subsidiaries as such an exemption under section 3(a)(1) of the Act following the Transaction. Eastern states that it will continue to satisfy the requirements for exemption because it and each of its public utility subsidiaries currently are and will continue to be predominately intrastate in character and will continue to carry on their businesses substantially in Massachusetts, the state in which each is organized.

Consolidated Natural Gas Company, et al. (70–9321)

Consolidated Natural Gas Company ("CNG"), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its nonutility subsidiary, CNG International Corporation ("CNG International"), Two Fountain Square, Suite 600, 11921 Freedom Drive, Reston, Virginia 20190–5608, have filed an application-declaration under sections 6(a)(2), 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

CNG and CNG International or any of CNG International's direct subsidiaries request authority, through December 31, 2003, to invest up to $750 million to acquire in areas outside the United States interests in entities other than foreign utility companies ("FUCOs") or exempt wholesale generators ("EWGs") engaged in activities permitted under section 2(a) of the Gas Related Activities Act of 1990 ("GRAA") and activities under section 2(b) of the GRAA and approved by order of the Commission under sections 9(a) and 10 of the Act ("Gas Related Activities"). In addition, CNG and CNG International request authority, through December 31, 2003, for CNG International and its subsidiaries to make investments in entities organized to participate in activities involving the transportation or storage of natural gas within the meaning of section 2(a) of the GRAA without any additional prior case-by-case approval of the Commission.

CNG and CNG International also propose, through December 31, 2003, to enter into guarantees and provide other credit support for obligations of CNG International or its subsidiaries. Credit support may be in the form of a guarantee of payment of a subsidiary capital contribution obligation or of a debt obligation issued by a subsidiary. Fixed income securities being guaranteed would not have a maturity in excess of 50 years, nor an effective cost of money in excess of 500 basis points over 30 year term U.S. Treasury securities. Any fees, commissions, penalties and expenses would not exceed fair, reasonable and customary fees, commissions, penalties and expenses comparable to those incurred at arms-length in similar transactions by similar companies in the relevant securities markets. The maximum aggregate limit on the credit support with respect to EWGs and FUCOs will be an amount equal to 50% of CNG's consolidated retained earnings, less the amount of guarantees and credit support previously given and outstanding on behalf of investments in EWGs and FUCOs. The maximum aggregate limit on all credit support for foreign Gas Related Activities will be $750 million at any one time outstanding.

As one source of financing for the proposed investments, CNG International proposes to issue and sell shares of its common stock, $10,000 par value per share. CNG International presently has authorized capital of 30,000 shares of its common stock, of which 21,555 shares are issued and outstanding. In order to accommodate future financings, CNG International proposes to amend its certificate of incorporation to increase its common stock equity authorization to 200,000 shares.

In order to fund the proposed investments, CNG and CNG International and its subsidiaries propose to issue and sell securities. It is anticipated that most of these financings will be intra-system financings exempt under rule 52 under the Act. To the extent an issuance and sale of securities is not exempt under rule 52, CNG and CNG International and its subsidiaries propose to issue and sell securities to finance acquisitions of entities engaged in foreign Gas Related Activities. It is stated that the pricing of these securities, and the fees and expenses for their issuance and sale, will not exceed the price, fees, and expenses of securities issued by companies of comparable credit quality. It is also stated that the terms, conditions, and features of these securities will be similar to those securities issued by companies of comparable credit quality. CNG and CNG International request that jurisdiction over the issuance and sale of these securities be reserved, pending completion of the record.

Enova Corporation (70–9471)

Enova Corporation ("Enova"), 101 Ash Street, San Diego, California 92101, a public utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, has filed an application under section 3(a)(1) of the Act for an order exempting it from all provisions of the Act, except section 9(a)(2).

Enova is organized under the laws of the State of California. Its only public utility company subsidiary is San Diego Gas & Electric Company ("SDG&E"), a California public utility. SDG&E provides electric and natural gas service in San Diego County and surrounding areas. Enova and SDG&E are predominantly intrastate. The application states that 99% of SDG&E's utility revenues, including 100% of its retail natural gas revenues, are from utility operations within the State of California.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7365 Filed 3–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23746; 812–11524]

Todd Investment Advisors, Inc.; Notice of Application

March 22, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of a new investment sub-advisory agreement ("New Agreement") for a period of not more than 150 days beginning on the later of the date on which the acquisition by Fort Washington Investment Advisors, Inc. ("Fort Washington") of Todd Investment Advisors, Inc. ("Todd") is consummated or the date on which the requested order is issued and continuing through the date the New Agreement is approved or disapproved by the shareholders (but in no event later than September 9, 1999)

("Interim Period"). The order would also permit payment of all fees earned under the New Agreement during the Interim Period following shareholder approval.

FILING DATES: The application was filed on February 26, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

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 April 12, 1999, 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 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 3160 National City Tower, Louisville, Kentucky 40202.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. no. (202) 942–8090).

Applicant's Representations

1. Todd is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act") and is a wholly-owned subsidiary of Stifel Financial Corp. ("Stifel"). Todd serves as investment sub-adviser to American Fidelity Dual Strategy Fund, Inc. ("Fund") and other institutional and individual clients. The Fund is an open-end management investment company registered under the Act. American Fidelity Assurance Company, an investment adviser registered under the Advisers Act, serves as the Fund's investment adviser ("Adviser"). Todd manages the assets of the Fund pursuant to an investment sub-advisory contract between Todd and the Adviser ("Existing Agreement").

2. Fort Washington is an investment adviser registered under the Advisers Act, and is a wholly-owned subsidiary of The Western and Southern Life Insurance Company ("Western Southern"). On January 27, 1999, Fort Washington and Stifel entered into an agreement pursuant to which Stifel will sell all of Todd's outstanding voting securities to Fort Washington (the "Transaction"). As a result of the consummation of the Transaction, Todd will become a wholly-owned subsidiary of Fort Washington. The Transaction is expected to be consummated on or about April 12, 1999 (the "Closing Date"). Todd states that the Transaction will result in an assignment, and thus automatic termination, of the Existing Agreement.

3. Todd requests an exemption to permit (i) the implementation during the Interim Period, prior to obtaining shareholder approval, of the New Agreement between the Adviser and Todd, and (ii) Todd to receive from the Fund, upon approval of the Fund's shareholders, any and all fees payable under the New Agreement during the Interim Period. The requested exemption would cover the Interim Period of not more than 150 days beginning on the later of the Closing Date or the date the requested order is issued [1] and continuing through the date the New Agreement is approved or disapproved by the shareholders of the Fund (but in no event later than September 9, 1999). The New Agreement will contain terms and conditions identical to those of the Existing Agreement, except for the effective and termination dates.

4. On February 24, 1999 the Fund's Board of Directors ("Board") met to consider and evaluate the New Agreement and to determine whether the terms of the New Agreement are in the best interests of the Fund and its shareholder. The Board, including a majority of the directors who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Independent Directors"), voted to approve the New Agreement and to recommend that the Fund's shareholders approve the New Agreement. Proxy materials for the shareholder meetings are expected to be mailed on or about April 5, 1999, and the shareholder meeting is scheduled to be held on or about June 14, 1999.

5. Todd proposes to enter into an escrow arrangement with an unaffiliated financial institution. The fees earned by Todd during the Interim Period under the New Agreement would be paid into an interest-bearing escrow account. The amounts in the escrow account (including any interest earned) will be paid (i) to Todd only if shareholders of the Fund approve the New Agreement, or (ii) to the Fund if the Interim Period has ended and shareholders have not approved the New Agreement. Before any such payment is made, the Fund's Board will be notified.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control. Todd states that the Transaction will result in an assignment of the Existing Agreement and its automatic termination.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, the adviser may continue to serve for up to 120 days under a written contract that has not been approved by the investment company's shareholders, provided that: (i) the new contract is approved by the company's board of directors (including a majority of the non-interested directors); (ii) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly

[1] Todd states that if the Closing Date precedes the issuance of the requested order, it will continue to serve as investment sub-adviser after the Closing Date (and prior to the issuance of the order) in a manner consistent with its fiduciary duty to continue to provide investment sub-advisory services to the Fund even though shareholder approval of the New Agreement has not yet been secured. Todd also states that the Fund may be required to pay, with respect to the period until the receipt of the order, no more than the actual out-of-pocket costs to Todd for providing sub-advisory services.

receives money or other benefit" in connection with the assignment. Todd states that it may not rely on rule 15a–4 because of the benefits arising to Stifel, Todd's parent, in connection with the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is 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 Act.

4. Todd states that the requested relief satisfies this standard. Todd asserts that the structure and timing of the Transaction were determined by Fort Washington and Stifel in response to a number of factors beyond the scope of the Act and substantially unrelated to the Fund and that the parties wish to consummate the Transaction as expeditiously as possible to permit Fort Washington and Todd to take advantage of new business opportunities and to implement other business plans unrelated to the Fund.

5. Todd represents that under the New Agreement, during the Interim Period, the scope and quality of services provided to the Fund will be at least equivalent to the scope and quality of the services it previously provided. Todd states that if any material change in its personnel occurs during the Interim Period, Todd will apprise and consult with the Board to ensure that the Board, including a majority of the Independent Directors, are satisfied that the scope and quality of the sub-advisory services provided to the Fund will not be diminished. Todd also states that the compensation payable to it under the New Agreement will be no greater than the compensation that would have been paid to Todd under the Existing Agreement.

Applicant's Conditions

Todd agrees as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement that is in effect during the Interim Period will have the same terms and conditions as the Existing Agreement with the exception of its effective and termination dates.

2. Fees payable to Todd by the Fund during the Interim Period will be maintained in an interest bearing escrow account with an unaffiliated financial institution. The amount in the escrow account, including any interest earned, will be paid to (i) Todd only if the shareholders of the Fund approve the New Agreement by the end of the Interim Period; or (ii) the Fund if the shareholders of the Fund do not approve the New Agreement by the end of the Interim Period. Before any such payment is made, the Fund's Board will be notified.

3. The Fund will convene a meeting of the shareholders to vote on approval of the New Agreement on or before the 150th day following the termination of the Existing Agreement (but in no event later than September 9, 1999).

4. Todd, Stifel, Fort Washington and Western Southern will bear the costs of preparing and filing this application and the costs relating to the solicitation of shareholder approval of the Fund's shareholders necessitated by the Transaction.

5. Todd will take all appropriate actions to ensure that the scope and quality of the sub-advisory services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of service previously provided. If any material change in Todd's personnel occurs during the Interim Period, Todd will apprise and consult with the Board to ensure that the Board, including a majority of the Independent Directors, are satisfied that the scope and quality of the sub-advisory services provided to the Fund will not be diminished.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7439 Filed 3–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41195; File No. SR–NASD–98–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 6 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

March 19, 1999.

I. Introduction

On March 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (a) implement, on a pilot basis, new Primary Nasdaq Market Maker ("PMM") standards for all Nasdaq National Market ("NMM") securities; (b) extend the NASD's Short Sale Rule pilot until November 1, 1998; and (c) extend the suspension of existing PMM standards until May 1, 1998. On March 30, 1998, the Commission issued notice of the filing and approved, on an accelerated basis, the portions of the filing extending the NASD's Short Sale Rule pilot and the suspension of existing PMM standards.[3] The Short Sale Rule pilot and the suspension of existing PMM standards was subsequently extended until March 31, 1999.[4]

On March 19, 1999, Nasdaq proposed to (1) continue to suspend the current PMM standards until June 30, 1999, and (2) extend the NASD's Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) until June 30, 1999.[5]

Background

Presently, NASD Rule 4612 provides that a member registered as a NASD market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards. The implementation of the SEC Order Handling Rules and what some perceive as a concurrent move toward a more order-driven, rather than a quote-driven, market raised questions about the continue relevance of those PMM standards. As a result, such standards were suspended beginning in early 1997.[6] Currently, all market makers are designated as PMMs.

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[1] 14 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998).

[4] *See* Exchange Act Release No. 40485 (September 25, 1998) 63 FR 52780 (October 1, 1998).

[5] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated March 19, 1999.

[6] *See* Exchange Act Release No. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997) (approving temporary suspension of PMM standards); Exchange Act Release No. 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997) (extending suspension through April 1, 1998); Exchange Act Release No. 39819 (March 30, 1998) 63 FR 16841 (April 6, 1998) (extending suspension through May 1, 1998); Exchange Act Release No. 39936 (April 30, 1998) 63 FR 25253 (May 7, 1998) (extending suspension through July 1, 1998); Exchange Act Release No. 40140 (June 26, 1998) 63 FR 36464 (July 6, 1998) (extending suspension through October 1, 1998); Exchange Act Release No. 40485 (September 23, 1998) 63 FR 52780 (October 1, 1998) (extending suspension through March 31, 1999).

Since February 1997, Nasdaq has worked to develop PMM standards that are more meaningful in what may be an increasingly order-driven environment and that better identify firms engaged in responsible market making activities deserving of the benefits associated with being a PMM, such as being exempt from NASD Rule 3350, the Commission's Short Sale Rule. The NASD now proposes to extend the current suspension of the existing PMM standards.

In light of a substantial number of comments on the proposed new PMM standards, Nasdaq staff in August 1998 convened a subcommittee to develop new standards. Nasdaq expects that it will file an amendment to SR–NASD–98–26 to incorporate the new PMM standards that currently are being developed by the subcommittee, or in the alternative, that it will withdraw SR–NASD–98–26 and will submit the new PMM standards as a new filing.

For the reasons discussed below, the Commission has determined to grant accelerated approval of Nasdaq's request, in Amendment No. 6, to continue to suspend the current PMM standards and to extend the NASD's Short Sale Rule Pilot until June 30, 1999.

II. Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards to allow more time to refine the PMM standards.

The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

NASD Rule 3350

(a)–(k) No Changes

(l) This Rule shall be in effect until [March 31, 1999] *June 30, 1999.*

III. Discussion

After careful consideration, the Commission has concluded, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until June 30, 1999, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6)[7] of the Exchange Act. Section 15A(b)(6) requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade. The Commission believes that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission and the NASD review the operation of revised PMM standards. because the Commission's ultimate stance on the Short Sale Rule may be affected, in part, by the operation of revised PMM standards, it is reasonable to keep the Short Sale Rule pilot in place while work continues on the PMM standards. Furthermore, it is judicious, in the short term, to avoid reintroducing the previous PMM standards prior to the implementation of a new PMM pilot.

In finding that the suspension of the existing PMM standards is consistent with the Exchange Act, the Commission reserves judgment on the merits of the NASD's Short Sale Rule, any market maker exemptions to that rule, and the proposed new PMM standards. The Commission recognizes that the Short Sale Rule already has generated significant public comment. Such commentary, along with any further comment on the interaction of the Short Sale Rule with the proposed new PMM standards, will help guide the Commission's evaluation of the Short Sale Rule and new PMM standards. During the PMM pilot period, the Commission anticipates that the NASD will continue to address the Commission's questions and concerns and provide the Commission staff with any relevant information about the practical effects and the operation of the revised PMM standards and possible interaction between those standards and the NASD's Short Sale Rule.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot (including extending the amendment to the definition of "legal" short sale) and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register.** It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards for a brief period prior to implementing a new PMM pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 6, including whether the proposed Amendment is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted April 16, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[8] that Amendment No. 6 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to June 30, 1999, be and hereby is approved on an accelerated basis.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7364 Filed 3–25–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(2)

[9] In approving Amendment No. 6, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Assistance Application".

Form No: 2055.

Description of Respondents: Small Business Owners in the Washington Metropolitan Area.

Annual Responses: 500.

Annual Burden: 500.

Comments: Send all comments regarding this information collection to, Houston E. Gray, Assistant District Director, Office of Economic Development, Small Business Administration, 1110 Vermont Avenue N.W., Suite 900, Washington, D.C. 20416.

Phone No: 202–606–4000 ext. 259.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: March 22, 1999.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 99–7375 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0586]

BOCNY, LLC.; Notice of Issuance of a Small Business Investment Company License

On June 3, 1998, an application was filed by BOCNY, LLC, at 10 East 53rd Street, 32nd Floor, New York, NY 10022, with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0586 on February 5, 1999, to BOCNY, LLC. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 18, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–7418 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

[License No. 05/75–0238]

InvestCare Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 26, 1998, an application was filed by InvestCare Partners, L.P., at 31500 Northwestern Highway, Suite 120, Farmington Hills, MI 48334, with the Small Business Administration (SBA) pursuant to § 107.300 of the regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/75–0238 on February 5, 1999, to InvestCare Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 18, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–7419 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000298]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that KCEP Ventures II, L.P. ("KCEP II"), 233 West 47th Street, Kansas City, Missouri 64112, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the completed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. KCEP II has provided equity financing to Organized Living, Inc., 9851 Lackman Road, Lenexa, Kansas 66215. The financing was completed for working capital purposes.

The financing is brought within the purview of section § 107.730(a)(1) of the Regulations because KCEP I, L.P., a Federal Licensee under the Act and an Associate of KCEP II, owns greater than 10 percent of Organized Living, Inc. and therefore Organized Living, Inc. is considered an Associate of KCEP II as defined in § 107.50 of the regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

A copy of this notice shall be published, in accordance with § 107.730(g), in the **Federal Register** by SBA.

Dated: March 18, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–7421 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

(Declaration of Disaster #3163)

State of Washington

Thurston and Kitsap Counties and the contiguous counties of Grays Harbor, Jefferson, King, Lewis, Mason, and Pierce in the State of Washington constitute a disaster area as a result of damages from floods, landslides, and high winds caused by winter storms beginning on January 29, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 17, 1999 and for economic injury until the close of business on December 17, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795. Sacramento, CA 95853–4795.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	6.375%
Homeowners without credit available elsewhere	3.188%
Businesses with credit available elsewhere	8.000%

Businesses and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	7.000%
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000%

The number assigned to this disaster for physical damage is 316311 and for economic injury the number is 9B4400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 17, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–7376 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0550]

KOCO Capital Company, L.P.; Notice of Surrender of License

Notice is hereby given that KOCO Capital Company, 111 Radio Circle, Mt. Kisco, New York 10549 has surrendered its license to operate as a small business investment company under the Business Investment Act of 1958, as amended (the Act). KOCO Capital Company, L.P. was licensed by the Small Business Administration on March 25, 1994.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was effective as of March 12, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–7420 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

Small Business Administration

5TLC Funding Corporation (License No. 02/02–0380); Notice of Surrender of License

Notice is hereby given that TLC Funding Corporation, 660 White Plains Road, Tarrytown, New York 10591 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TLC Funding Corporation was licensed by the Small Business Administration on February 29, 1980.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on March 8, 1999. Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 19, 1999.

Don A. Christensen,

Associate Administrator, for Investment.

[FR Doc. 99–7377 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Washington, D.C. District Advisory Council Public Meeting

The U.S. Small Business Administration Washington, D.C. District Advisory Council, located in the metropolitan area of Washington, D.C., will hold a public meeting from 9:00 a.m.—11:00 a.m., Wednesday, April 7, 1999, at Creative Associates, Inc., 5301 Wisconsin Avenue, N.W., Suite 700, Washington, D.C., 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 Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, N.W., Suite 900, (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

Shirl Thomas,

Director of External Affairs.

[FR Doc. 99–7374 Filed 3–25–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notices. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Request for Review of Hearing Decision/Order—0960–0277. The information collected on form HA–520 is needed to afford claimants their statutory right under the Social Security Act to request review of a hearing decision. The data will be used to determine the course of action appropriate to resolve each issue. The respondents are claimants denied or dissatisfied with a decision made regarding their claim.

Number of Respondents: 103,932.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 17,322 hours.

2. Statement Regarding Date of Birth and Citizenship—0960–0016. The information collected on form SSA–702 is used by the Social Security Administration in conjunction with other evidence to establish a claimant's age or citizenship when better proofs are not available. The respondents are individuals who have knowledge of the birth and citizenship of the applicant.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 200 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Government Pension Questionnaire—0960–0160. The Social

Security Act and the Code of Federal Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefits amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse's benefits and also receive their own Government pension.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 12.5 minutes.

Estimated Average Burden: 6,250 hours.

2. Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0556. Schedule SSA is a form filed annually with the Internal Revenue Service (IRS) by pension plan administrators as part of a series of pension plan documents required by Section 6057 of the IRS Code. IRS forwards Schedule SSA to the Social Security Administration, which maintains it until a claim for social security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for private pension plan benefits.

Number of Respondents: 107,174.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 30,366 hours.

(SSA Address) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB Address) Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

Dated: March 18, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–7161 Filed 3–25–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST 97–2684]

Proposed Revocation of the Certificate Authority of Kiwi International Holdings, Inc. d/b/a Kiwi International Air Lines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–3–18).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding that Kiwi International Holdings, Inc. d/b/a Kiwi International Air Lines, Inc., has failed to demonstrate that it continues to be fit, willing, and able to conduct certificated air transportation operations and (2) proposing to revoke its section 41102 certificate.

DATES: Persons wishing to file objections should do so no later than April 6, 1999.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–2684 and addressed to the Department of Transportation Dockets SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia L. Thomas, Chief, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: March 23, 1999.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–7471 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held April 13–15, 1999, starting at 8:30 a.m., on April 13. The meeting will be held at Daimler Chrysler Aerospace Airbus, Huenefeldstrasse 1–5, Bremen D–28199, Germany. For prior notification to gain entry into the Daimler-Chrysler facility, contact Connie Beane, (425) 227–2796 (phone), (425) 227–1149 (fax), connie.beane@faa.gov (e-mail); or Cleland Newton, 011 44 16 84 89 50 71 (phone), 011 44 16 84 89 43 03 (fax), c.newton@eris.dera.gov.uk (e-mail) as soon as possible.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Plenary Disposition of Document Comments; (9) New Items of Consensus; (10) Special Committee 190 Committee Activity Report; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 22, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–7446 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–02–C–00–MSO To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Missoula International Airport, Submitted by Missoula County Airport Authority, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Missoula International Airport under the provisions of 49

U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, (HLN–ADO); Federal Aviation Administration; 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter J. Van Pelt, Director of Airports, at the following address: Missoula International Airport, 5225 Highway 10 West, Missoula, Montana 59802.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Missoula Internaitonal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, Manager at (406) 449–5271, Federal Aviation Administration, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, Montana 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 99–02–C–00–MSO to impose and use PFC revenue at Missoula International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 19, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Missoula County Airport Authority, Missoula International Airport, Missoula, Montana was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 2, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: October 1, 2004.

Total requested for use approval: $2,705,000.

Brief description of proposed projects: 1. Terminal access road. 2. Land. 3. Security access system. 4. Terminal building work. 5. Apron rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi's and charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Missoula International Airport.

Issued in Renton, Washington on March 19, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–7457 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, April 22, 1999. The meeting begins at 1 p.m. The letter designations that follow each item mean the following: (I) Is an "information item;" (A) is an action item; (D) is a discussion item. This meeting includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements; (2) Federal ITS Initiatives Report (I/D); (3) Review and Acceptance of Election Results (A); Then an Executive Session will be held for about 30 minutes. US DOT participants and observers are excused. Voting Board members and ITS America staff only. (4) Report of the Nomination Committee (I); (5) Election of New Officers of the Board of Directors (A); General Session reconvenes: Transfer of gavel from outgoing chairman to incoming chairman. (6) Appointment of At-Large Coordinating Council Members (A); (7) Appointment of State Chapters Council Officers (A); (8) Review and Approval of January 14, 1999 Board Meeting #29 Minutes (A); (9) Coordinating Council Report (I); (10) State Chapters Council Report/ Reorganization Proposal (I/D/A); (11) International Affairs Council Report (I); (12) National ITS Deployment Strategy Update (I); (13) Electronic Commerce Blue Ribbon Panel Report (I); (14) President's Report (External Issues); (15) Other Business; Business Session (US DOT participants excused; Board Members, ITS America Members and staff only.) (16) Report of the Finance Committee (A); (17) Report of the Audit Committee; (18) President's Report (I); (19) Appointment of New Board of Directors Committees (I); (20) Other Business; (21) Adjournment until August 8–10, 1999, Board of Directors Meeting #31 in Boston, MA.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, April 22, 1999, from 1 p.m.–5 p.m.

ADDRESSES: Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC, Phone: (202) 328–2000. Fax: (202) 234–0015.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW, Suite 800, Washington, DC 20024. Persons needing further information or to request to speak at this meeting should contact Marlene Vence-Crampton at ITS AMERICA by telephone at (202) 484–4847, or by Fax at (202) 484–3483. The DOT contact is Mary Pigott, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–9230. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 17, 1999.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 99–7405 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement Program to Support Innovative Programs To Reduce Impaired Motorcycle Riding

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of a discretionary cooperative agreement program to support innovative programs to reduce impaired motorcycle riding.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate innovative programs designed to reduce the incidence of impaired motorcycle riding.

This notice solicits applications from public and private, non-profit and not-for-profit organizations, and governments and their agencies or a consortium of the above.

NHTSA anticipates funding up to three (3) projects for a period not to exceed three (3) years.

DATES: Applications must be received in the office designated below on or before 2:00 p.m. (EST), May 24, 1999.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attention: Lamont O. Norwood, 400 Seventh Street SW, Room 5301, Washington, DC, 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–99–H–05087.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lamont O. Norwood, Office of Contracts and Procurement at (202) 366–8573, or by email at *lnorwood@nhtsa.dot.gov*. Programmatic questions relating to this cooperative agreement program should be directed to Joey W. Syner, Safety Countermeasures Division, NHTSA, 400 Seventh Street, SW (NTS–15), Washington, DC, 20590, by email at *jsyner@nhtsa.dot.gov*, or by phone at (202) 366–1770. Interested applicants are advised that no separate application package exists beyond the content of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Motorcycling is a complex task requiring excellent coordination and motor skills. Alcohol diminishes the coordination and motor skills needed to maneuver a motorcycle safely. Even motorcyclists with blood alcohol concentrations (BAC) below the legal limit can be impaired, which affects riding and decision-making skills necessary to handle traffic situations on the highway. Research has shown that performance errors and reaction time may increase while operators are sobering up.

Motorcycle operators involved in fatal crashes have higher intoxication rates than any other motor vehicle operators. In 1997 almost 30 percent of all fatally injured motorcycle operators were intoxicated with a BAC of .10 g/dl or higher. An additional 11 percent had a lower alcohol level ≤.10 g/dl. Of the 876 motorcycle operators who died in single vehicle crashes almost half were intoxicated. Unfortunately these data have changed very little over the past 10 years. While the proportion of automobile drivers with a BAC ≥.10 who die in alcohol-related crashes has declined to the lowest level ever, the proportion of impaired motorcyclists dying in alcohol-related crashes has not shown similar reductions.

Programs designed to address impaired driving have little effect on motorcyclists. Motorcyclists do not consider themselves "drivers." They do not "drive" a motorcycle; they "ride" a motorcycle. As a result, messages that target drivers are not effective in addressing impaired riding issues.

Interventions designed for automobile drivers may not necessarily apply to motorcyclists; a prime example is the designated driver program. In this program, one person chooses not to drink alcohol in order to be responsible for safely transporting a group of friends or family members. This concept is not applicable in motorcycling, because motorcyclists generally ride alone on their motorcycle.

Another example of a program designed for automobile operators that may not be effective for motorcyclists is one where the driver allows a friend or companion to drive the vehicle home or voluntarily leaves the automobile parked for the night, and returns the next day to retrieve it. Such interventions are unlikely to occur for motorcyclists because a motorcycle operator is often unwilling to leave a vehicle parked overnight in an unsecured location and is less likely to allow another individual to operate his/her vehicle. Moreover, the individual accompanying the motorcyclist who has been drinking may not have the necessary skills or license needed to operate the motorcycle safely.

In 1995, a national goal was established to reduce alcohol-related fatalities to no more than 11,000 by the year 2005, a 37 percent decline from the 1994 level. Following the establishment of the goal, a conference was held to establish strategies for achieving this goal. Partners in Progress: An Impaired Driving Guide for Action provides a framework for future program initiatives to reduce impaired driving. That document provides strategies and action steps in seven areas: public education, individual responsibility, health care community; business and employers, legislation, enforcement and adjudication, and technology, as it is only through the broadest collective action that progress can be made in reducing impaired driving. (A copy of Partners in Progress: An Impaired Driving Guide for Action can be obtained from NHTSA's Office of Communication and Outreach by sending a fax to (202) 366–2062.)

Programs Addressing Impaired Riding

In 1996, the National Highway Traffic Safety Administration (NHTSA) awarded three grants to address impaired motorcycle riding issues. A preliminary review of the findings from this project found that the most effective programs were implemented at the local level; included a visible media (print and video) component; educated members of the local prosecution and judicial communities; and included partnerships with local law enforcement agencies, riding groups, and hospitality establishments.

Other programs have been developed by national and local organizations across the country. For example, the Motorcycle Safety Foundation includes a module on impairment in the basic rider education course taught in most rider education classes in the United States. This module addresses the effects of alcohol on the rider, the rider's ability to handle a motorcycle while impaired, and the deadly consequences of operating a motorcycle while impaired. The Wisconsin motorcycle rider education program has expanded this module into a stand alone unit that depicts the process a motorcyclist undergoes when arrested for riding under the influence of alcohol or other drugs, thus emphasizing the real-life consequences of riding under the influence.

Some motorcyclists believe that peer to peer programs are more effective than those delivered by non-motorcyclist groups. For example, one motorcycle group has adapted the Contract For Life, a program developed by Students Against Destructive Decisions, to

address the need of motorcyclists by promoting awareness and responsible use of alcohol. Another motorcycle group has developed a demonstration involving a motorcycle and .08 goggles. These goggles are designed to replicate the effects of walking, driving, or riding a motorcycle with blood alcohol level of .08 g/dl. Even though this project is in its early stages, and needs further refinement, it shows promise as an effective educational tool.

In some cases impaired driving programs have been adapted for use by motorcyclists. In Minnesota, a non-profit organization promotes an "800" number and organizes volunteers who will go to a bar or other location to pick up a motorcyclist who may have had too much to drink and get the rider and the motorcycle home safely. New Jersey's motorcycle safety program partnered with AAA to train tow truck operators to tow motorcycles, safely and with minimal damage. The New Jersey motorcycle safety program made the list of trained towing companies available to motorcycle clubs and hospitality establishments as a service to the motorcyclist. There are no data on these programs' effectiveness or how often they are utilized.

These are a few examples of approaches to reduce impaired motorcycle riding. Many other approaches may exist. To make an impact on the impaired riding problem it is necessary to identify both innovative and effective strategies and make this information available to the motorcycling community.

Purpose and Objectives

The purpose of this cooperative agreement program is to support the development, implementation, and evaluation of up to three (3) programs designed to reduce the incidence of impaired motorcycle riding and injuries and fatalities resulting from alcohol-related motorcycle crashes.

Specific objectives for this cooperative agreement program are as follows:

1. Identify a community that demonstrates the potential for successful implementation and evaluation of innovative approaches to reduce impaired motorcycle riding and the resulting injuries and fatalities associated with alcohol-related motorcycle crashes.

2. Use community data to define the problem, as appropriate. These data are to extend beyond police crash reports to the extent possible.

3. Actively engage the community to define the problem and potential solutions to the problem. The community may include but not be limited to, motorcyclists, law enforcement officials, traffic safety officials, prosecutors and judges, and health care and injury prevention professionals. The grantee shall develop strategies for ensuring community involvement in the process.

4. Implement a program to reduce the incidence of impaired motorcycle riding and the injuries and fatalities associated with alcohol-related motorcycle crashes. The intervention should be creative, based on data and citizen input and comprehensive in nature. The intervention should be designed to allow for easy implementation and replication.

5. Evaluate the effectiveness of the intervention. The evaluation should include process and outcome measures. The evaluation may include but not be limited to the following: what works, what does not work, how to engage partners, methods of overcoming barriers or challenges, and ways to turn challenges into opportunities.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this cooperative agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and others (Federal, state and local) interested in reducing impaired riding and the activities of the grantee.

4. Review and provide comments on program content, materials, and evaluation activities.

5. Stimulate the transfer of information among grant recipients and others engaged in motorcycle and impaired driving activities.

Availability of Funds

Approximately $250,000 to $300,000 is available to fund up to 3 demonstration and evaluation projects for a period of three (3) years. This stated range does not establish minimum or maximum funding levels. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the Federal funds. Preference will be given to applicants with cost sharing proposals. At the discretion of the government, funds may be obligated fully at the time of award of the cooperative agreement or incrementally over the period of the cooperative agreement. Nothing in this solicitation should be constructed as committing NHTSA to make any award.

Period of Performance

The period of performance for this cooperative agreement will be three (3) years from the effective date of award.

Eligibility Requirements

Applications may be submitted by public and private, non-profit and not-for-profit organizations, and governments and their agencies or a consortium of the above. Thus, universities, colleges, research institutions, hospitals, other public and private (non-or not-for-profit) organizations, and State and local governments are eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program. Preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

To be eligible to participate in this cooperative agreement, applicants must meet the following special competencies:

1. Demonstrate knowledge and familiarity with the impaired riding problem and other motorcycle safety issues within the community. Data sources must include local data sets and should (to the degree possible) extend beyond police crash reports to include injury data (e.g. motorcycle/alcohol-related injuries).

2. Demonstrate capability of technical and management skills to successfully design, conduct, and evaluate programs implemented in local communities. Demonstrate that such programs have resulted in timely, adequate and complete projects. Include a narrative description of the documented experience, clearly indicating the relationship to this project and providing details such as project description and sponsoring agency. References to completed final project reports should include author's name.

3. Demonstrate capacity to:

a. Design and implement innovative approaches for addressing difficult community problems;

b. Work successfully with motorcycling and other community groups;

c. Design comprehensive program evaluations; including collecting and

analyzing both quantitative and qualitative data; and

d. Synthesize, summarize, and report results which are useable and decision-oriented.

4. Demonstrate expertise in traffic safety, program development and implementation, and knowledge and experience in motorcycle safety issues, especially impaired riding.

5. Demonstrate ability and experience in working with local citizens in implementing solutions to traffic safety problem, especially impaired riding or driving.

6. Demonstrate experience in fostering outreach efforts to the media.

Application Procedure

Each applicant must submit one (1) original and two (2) copies of the application package to: Lamont O. Norwood, NHTSA, Office of Contracts and Procurement (NAD–30), 400 Seventh Street SW Room 5301, Washington DC 20590. Applications must include a completed Application for Federal Assistance (Standard Form 424—Revised 4/88). An additional two copies will facilitate the review process, but are not required.

Only complete packages received on or before 2:00 p.m. May 24, 1999 will be considered. No facsimile transmissions will be accepted. Due to the large number of actions being processed, applications must be typed on one side of the page only and a reference to NHTSA Cooperative Agreement Number DTNH22–99-H–05087. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Please direct cooperative agreement application questions to Lamont O. Norwood, at (202) 366–8573 or by email address lnorwood@nhtsa.dot.gov. Programmatic questions should be directed to Joey W. Syner, by email at jsyner@nhtsa.dot.gov, or by phone at (202) 366–1770.

Application Contents

A. The application package must be submitted with OMB Standard Form 424, (Rev 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakout of the proposed costs (detail labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the projects in the innovative project plan. The estimated costs should be separated and proposed on the basis of individual Federal fiscal years i.e. beginning October 1, 1999 through September 30, 2000; October 1, 2000 through September 30, 2001; etc.

B. Funding sources other than the funds being provided through this cooperative agreement are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the project will be met.

C. Program Narrative Statement: Proposal must fully describe the scope of the project, detailing the activities and costs for which funding is being requested. Also, applications for this program must include the following information in the program narrative statement:

1. A table of contents including page number references.

2. A description of the community in which the grantee proposes to implement an impaired riding program. For the purpose of this program a community includes a city, town or county, small metropolitan area or a group of cities, towns or counties in a particular region. It should be large enough so that the program can have a demonstrable effect on impaired riding. The description of the community should include, at a minimum, community demographics including motorcycle population, the community's impaired riding problem, data sources available, existing traffic safety programs, impaired driving programs and community resources.

3. A description of the program's goal and how the grantee plans to establish an impaired riding program in the proposed site. How will the grantee solicit the assistance and partner with local organizations, such as law enforcement agencies, and motorcycle rider groups? How will local motorcyclists become part of the process of problem identification and proposed solutions?

4. A description of the interventions or specific activities proposed to achieve the objectives of the program. What actions will be undertaken to reduce impaired riding? How will motorcyclists be involved with these activities? What groups are needed to ensure program success? To what degree has the buy-in of these groups been secured? How will the interventions be delivered? How will delivery be monitored? What are the expected results of the intervention?

5. A description of the process and outcome evaluation plan including the types of data that will be collected and all data collection procedures. A description of the data analysis procedures which will be conducted should be included.

6. A description of how the project will be managed, both at the grantee-level and at the community level. The application shall identify the proposed project manager and other personnel considered critical to the successful accomplishment of this project, including a brief description of their qualifications and respective organizational responsibilities. The role and responsibilities of the grantee, the community and any others included in the application package shall be specified. The proposed level of effort in performing the various activities shall also be identified.

7. A detailed explanation of time schedules, milestones, and product deliverables, including quarterly reports and draft and final reports. (See Terms and Conditions of Award.)

8. A separately-labeled section with information demonstrating that the applicant meets all of the special requirements outlined in the Eligibility Requirements section of this announcement.

D. Commitment and Support: A complete set of letters (form letters are not acceptable) from major partners, organizations, and groups proposed for involvement with this project shall detail what each partner is willing to do over the course of the project period. Included in this set of letters shall be a letter from the State Highway Safety Office and the State Motorcycle Safety Program Coordinator, supporting this program's effort.

Evaluation Criteria and Review Process

Each application package will be reviewed initially to confirm that the applicant is an eligible recipient, meets applicant competency factors listed in the Eligibility Requirements section, and has included all of the items specified in the Application Procedures section of this announcement. Each

complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria:

A. Program Innovation (25 Percent)

The extent to which the applicant is knowledgeable about impaired riding/driving programs. The extent to which the applicant clearly identifies and explains creative approaches to address impaired riding. If building on an existing approach or program, what are the innovative, new, or creative features that makes this project different from what has been tried in the past? Has the applicant identified potential barriers associated with developing and implementing the new, creative approach? Has the applicant offered solutions for addressing the barriers? Has the applicant involved the motorcycling community, traditional traffic safety partners, and new non-traditional highway safety or motorcycle partners in the project? Has the applicant demonstrated how the project is adaptable to other jurisdictions at a reasonable cost?

B. Goals, Objectives, and Work Plan (20 Percent)

The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, action-oriented, measurable, and achievable. The extent to which the work plan will achieve an outcome-oriented result that will reduce impaired riding crashes, injuries, and fatalities resulting from alcohol-related traffic crashes. The work plan must address what the applicant proposes to develop and implement; how this will be accomplished; and must include the major tasks/milestones necessary to complete the project. This involves identification of, and solutions to, potential technical problems and critical issues related to successful completion of the project. The work plan will be evaluated with respect to its feasibility, realism, and ability to achieve desired outcomes.

C. Understanding the Community (15 Percent)

The extent to which the applicant has demonstrated an understanding of the proposed community, including the community's demographics, traffic safety problem, and resources (including data). The extent to which the applicant has identified partners and groups to work on the proposed project. Has the applicant specified who will be involved and what each will contribute to the project? What new or non-traditional partners has the applicant involved in the project?

D. Special Competencies (15 Percent)

The extent to which the applicant has met the special competencies (see Eligibility Requirements) including knowledge and familiarity with impaired riding and other motorcycle safety issues within the community; technical and management skills needed to successfully design, conduct, and evaluate programs implemented at the local level; ability to work with local citizens and the motorcycling community to implement programs; ability to design and implement approaches for addressing difficult community problems; and experience in fostering outreach to the media.

E. Project Management and Staffing (15 Percent)

The extent to which the proposed staff are clearly described, appropriately assigned, and have adequate skills and experiences. The extent to which the applicant has the capacity and facilities to design, implement, and evaluate the proposed project. The extent to which the applicant has provided details regarding the level of effort and allocation of time for each staff position. The applicant must furnish an organizational chart and résumés of each proposed staff member. Is the applicant's staffing plan reasonable for accomplishing the objectives of the project within the time frame set forth in the announcement?

Has the applicant's financial budget provided sufficient detail to allow NHTSA to determine that the estimated costs are reasonable and necessary to perform the proposed effort? Has financial or in-kind commitment of resources by the applicant's organization or other supporting organizations to support the project been clearly identified?

F. Evaluation Plan (10 Percent)

The extent to which the evaluation plan clearly articulates the project's potential to make a significant impact on reducing impaired motorcycle riding, crashes, and associated injuries and fatalities. The extent to which the evaluation plan will measure the effectiveness of the innovative, creative project. Has the applicant described the proposed evaluation design and the methods for measuring the outcomes of the proposed interventions (countermeasures)?

Are there sufficient data sources and is access ensured from appropriate owners or collectors of data to collect and appropriately analyze quantitative and qualitative data to measure the effectiveness of the innovative project?

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other Federal, state, local, and private sources to augment those available under this announcement. For those application that are evaluated as meritorious for consideration of award, preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for Drug Free Work Place (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports must include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. Any problems and issues that may arise and need the Contracting Officer's Technical Representative (COTR) or Contracting Officer (CO) attention should be clearly identified in the quarterly report in a specific, identified section. The grantee shall supply the progress report to the COTR every ninety (90) days, following date of award.

b. Initial and Subsequent Meetings with COTR: The grantee will meet with the COTR and appropriate NHTSA staff in Washington DC at NHTSA's offices to discuss and refine the development, implementation, and evaluation of the project. The grantee will prepare a 20 to 30 minute presentation describing the project and will be prepared to answer questions from the COTR and others present at the briefing. After this initial meeting with the COTR, the grantee should meet at least once a year with the COTR in Washington DC at NHTSA's offices to discuss the project's progress and results. These meetings will be a minimum of 4 hours in length.

c. Revised Implementation and Evaluation Plan: The grantee will submit a revised program implementation and evaluation plan incorporating verbal and written

comments from the COTR. This revised plan is due no more than one (1) month from date of the initial meeting with COTR.

d. Draft Final Report: The grantee will prepare a Draft Final Report that includes a description of the innovative project, intervention strategies, program implementation, evaluation methodology, and findings from the program evaluation. With regard to technology transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to enhance replication in similar communities and what can be done to avoid potential problems for future replication of the project. The grantee will submit Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

e. Final Report: The grantee will revise the Draft Final Report to reflect the COTR's comments. The revised final report will be delivered to the COTR along with the following:

The print materials shall be provided to NHTSA in both camera ready and appropriate media formats (disk, CD-rom) with graphics and printing specifications to guide NHTSA's printing office and any outside organization implementing the program. Printing Specifications follow.

• Digital artwork for printing shall be provided to NHTSA on diskette (100MG Zip disk or 1GB Jaz disk). Files should be in current desktop design and publication programs, for example, Adobe Illustrator, Adobe Photoshop, Adobe Pagemaker, Macromedia Freehand, QuarkXPress. The grantee shall provide all supporting files and fonts (both screen and printers) needed for successful output, black and white laser separations of all pages, disk directory(s) with printing specifications provided to the Government Printing Office (GPO) on GPO Form 952 to guide NHTSA's printing office, GPO, and any outside organizations assisting with program production. The grantee shall confer with the COTR to verify all media format and language.

• Additionally, the program materials shall be submitted in the following format for placement on NHTSA's website on the world wide web.

—Original application format, for example, *pm5; *.doc; *.ppt; etc
—HTML level 3.2 or later
—A PDF file for viewing with Adobe Acrobat

All HTML deliverables must be delivered on either a standard 3.5'' floppy disk or on a Windows 95 compatible formatted Iomega zip disk and labeled with the following information:

—Grantee's name and phone number
—Names of relevant files
—Application program and version used to create the file(s).

If the files exceed the capacity of a high density floppy, a Windows 95 compatible formatted Iomega zip disk is acceptable.

Graphics must be saved in Graphic Interchange Format (GIF) or Joint Photographic Expert Group (JPEG). Graphics should be prepared in the smallest size possible, without reducing the usefulness or the readability of the figure on the screen. Use GIF for solid color or black and white images, such as bar charts, maps, or diagrams. Use JPEG (highest resolution and lowest compression) for photographic images having a wider range of color or grey-scale tones. When in doubt, try both formats and use the one that gives the best image quality for the smallest file size. Graphic files can be embedded in the body of the text or linked form the body text in their own files: the latter is preferable when a figure needs to be viewed full screen (640 X 480 pixels) to be readable.

Tabular data must be displayed in HTML table format.

List data must be displayed in HTML list format.

Pre-formatted text is not acceptable.

Currently, frames are not acceptable.

JAVA, if used, must not affect the readability or usefulness of the document, only enhance it.

Table background colors may be used, but must not be relied upon (for example, a white document background with a table with colored background may look nice with white text, but the colored background doesn't show up on the user's browser the text shall be white against white and unreadable.)

All HTML documents must be saved in PC format and tested on a PC before delivery.

f. Final project briefing to NHTSA and a presentation to a national meeting: The grantee will deliver a briefing in Washington, DC at NHTSA's offices to the COTR and appropriate NHTSA staff to review the project implementation, evaluation, and results. This presentation shall last no less than 30 minutes and the grantee shall be prepared to answer questions from the briefing's attendees.

In consultation with the COTR, the grantee will select a national meeting to deliver a presentation of the project and it effectiveness.

g. An electronic Microsoft PowerPoint (97) presentation that NHTSA staff shall be able to use to brief senior staff or motorcycle partners at various meetings and conference.

3. During the effective performance period of the cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreement, dated July 1995.

Issued on: March 23, 1999.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–7407 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143 [Notice No. 99–2]

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of filing requirements.

SUMMARY: The Hazardous Materials Registration Program will enter registration year 1999–2000 on July 1, 1999. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation. Persons who registered for the 1998–99 registration year will be mailed a registration statement form and informational brochure in May.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis, DHM–60 (202–366–4109), Hazardous Materials Safety, 400 Seventh Street SW, Washington, DC 20590–0001, or by E-mail to REGISTER@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: This notice is intended to notify persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. Each person, as defined by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), who engages in any of the specified activities relating to the transportation of hazardous

materials is required to register annually with the Department of Transportation and pay a fee. The regulations implementing this program are in Title 49, Code of Federal Regulations, §§ 107.601–107.620.

Proceeds from the fee are used to fund grants to State, local, and Native American tribal governments for emergency response training and planning, and to provide related assistance, including the revision, publication, and distribution of the *North American Emergency Response Guidebook*. Grants were awarded to 50 states, the District of Columbia, four territories, and 15 Native American tribes during FY 1998. By law, 75 percent of the Federal grant monies awarded to the States is further distributed to local emergency response and planning agencies. Preliminary reports indicate that the FY 1997 funds helped to provide. (1) Training for approximately 117,000 emergency response personnel; (2) approximately 400 commodity flow studies and hazard analyses; (3) 7,350 emergency response plans updated or written for the first time; (4) assistance to 1,450 local emergency planning committees; and (5) 750 emergency exercises.

The persons affected by these regulations are those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (that is, a "material poisonous by inhalation" that meets the criteria for "hazard zone A");

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The following persons are excepted from the registration requirement:

A. Agencies of the Federal Government;

B. Agencies of States;

C. Agencies of political subdivisions of States;

D. Employees of those agencies listed in A, B, or C with respect to their official duties;

E. Hazmat employees, including the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR part 376 or an equivalent contractual relationship; and

F. Persons domiciled outside the United States whose only activity involving the transportation of hazardous materials within the United States is to offer hazardous materials for transportation in commerce from locations outside the United States, if the country in which they are domiciled does not impose registration or a fee upon U.S. companies for offering hazardous materials into that country. However, persons domiciled outside the United States who carry the types and quantities of hazardous materials that require registration within the United States are subject to the registration requirement.

The 1998–99 registration year ends on June 30, 1999. The 1999–2000 registration year will begin on July 1, 1999, and end on June 30, 2000. Any person who engages in any of the specified activities during the 1999–2000 registration year must file a registration statement and pay the associated fee of $300.00 before July 1, 1999, or before engaging in any of the activities, whichever is later. All persons who registered for the 1998–99 registration year will be mailed a registration statement form and an informational brochure in May 1999. Other persons wishing to obtain the form and any other information relating to this program should contact RSPA at the address given above. The brochure and form can also be downloaded from the RSPA registration Internet home page at http://hazmat.dot.gov/register.htm.

The registration requirements have not been amended for the 1999–2000 registration year, nor has the registration statement been revised materially. Registrants should file a registration statement and pay the associated fee at least four weeks before July 1, 1999, in order to ensure that a 1999–2000 certificate of registration has been obtained by that date to comply with the recordkeeping requirements. These include the requirement that the registration number be made available on board each truck and truck tractor (not including trailers and semi-trailers) and each vessel used to transport hazardous materials subject to the registration requirements. A certificate of registration is generally mailed within ten days of RSPA's receipt of a properly completed registration statement.

Persons who engage in any of the specified activities during a registration year are required to register for that year. Persons who engaged in these activities during registration year 1992–93 (September 16, 1992, through June 30, 1993), 1993–94 (July 1, 1993, through June 30, 1994), 1994–95 (July 1, 1994, through June 30, 1995), 1995–96 (July 1, 1995, through June 30, 1996), 1996–97 (July 1, 1996, through June 30, 1997), 1997–98 (July 1, 1997, through June 30, 1998), or 1998–99 (July 1, 1998, through June 30, 1999) and have not filed a registration statement and paid the associated fee of $300.00 for each year for which registration is required should contact RSPA to obtain the required form (DOT F 5800.2). A copy of the form that will be distributed for the 1999–2000 registration year may be used to register for previous years. Persons who fail to register for any registration year in which they engaged in such activities are subject to civil penalties for each day a covered activity is performed. The legal obligation to register for a year in which any specified activity was conducted does not end with the registration year.

Issued in Washington, DC, on March 22, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–7406 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–406 (Sub-No. 8X)]

Central Kansas Railway Limited Liability Co.—Abandonment Exemption—in Harper County, KS

Central Kansas Railway Limited Liability Company (CKR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 8-mile line of its railroad on the Spring Branch between milepost 69.0 at Anthony and milepost 77.0 at Spring, in Harper County, KS. The line traverses United States Postal Service Zip Code 67003.

CKR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past two years; (3) no formal complaint

filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] any additional formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 5, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 15, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CKR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 31, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CKR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CKR's filing of a notice of consummation by March 26, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–7330 Filed 3–25–99; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–29]

Guidelines for the Cancellation of Claims for Liquidated Damages and Mitigation of Penalties for Failure To Provide General Order Notifications or Failure To Take Possession of General Order Merchandise; Guidelines for Mitigation of Penalties for Delivery of Cargo Without Customs Authorization; Guidelines for Cancellation of Claims for Liquidated Damages for Failing To Deliver In-Bond Merchandise; Guidelines for Cancellation of Claims for Removal of Merchandise From Centralized Examination Stations, Container Freight Stations or Places of Examination

AGENCY: 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 the cancellation of bond charges. In Treasury Decision 98–74 (T.D. 98–74), the Secretary published amendments to the Customs Regulations regarding the obligation of carriers and certain related parties to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unlading beyond the time period provided by regulation without entry having been completed. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The new regulations provide for the assessment of penalties or liquidated damages for failure to provide the required notice to Customs or to a bonded warehouse proprietor of the presence of unentered merchandise or baggage and for liquidated damages against the warehouse operator who fails to take required possession of the merchandise or baggage for which notification has been received.

This document publishes guidelines for the mitigation of penalties incurred by carriers for failing to provide appropriate notifications. It also publishes bond cancellation standards to be applied to claims for liquidated damages incurred by bonded carriers, custodians or warehouse operators who fail to comply with obligations to provide notification of the presence of unentered merchandise or to collect that merchandise about which notification has been received.

In addition, this document publishes new mitigation guidelines for penalties assessed against carriers and other parties for the delivery of cargo from the place of unlading without Customs authorization or delivery of cargo without examination. Inasmuch as these penalties are very similar to claims for liquidated damages assessed against in-bond carriers for nondelivery, shortage or delivery directly to the consignee, the bond cancellation standards for 19 CFR 18.8 in-bond violations which were published in T.D. 94–38 are revised by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization. Additionally, this document amends T.D. 94–38 to revise bond cancellation standards for claims for liquidated damages arising from breach of the Basic Custodial Bond when cargo is removed from a Centralized Examination Station (CES) without authorization and standards for claims arising from breach of the Basic Importation Bond when merchandise is

not delivered to or is not held at the place of examination. Finally, the document provides for bond cancellation standards for claims for liquidated damages arising from the removal of merchandise from a Container Freight Station (CFS) without authorization.

EFFECTIVE DATE: These guidelines will take effect upon March 26, 1999 and shall be applicable to all cases which are currently open at the petition or supplemental petition stage. No second supplemental petitions will be accepted solely to gain the benefit of a less harsh guideline.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344.

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. 94–38, dated April 11, 1994, the text of current guidelines for cancellation of claims for liquidated damages was published.

In a document published as Treasury Decision 98–74 (T.D. 98–74) in the **Federal Register** (63 FR 51283) on September 25, 1998, Customs promulgated amendments to its regulations which implemented section 656 of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, providing for penalties against the owner or master of any vessel or vehicle or the agent thereof for failure to notify Customs of any merchandise or baggage unladen for which entry is not made within the time period prescribed by law or regulation. The new regulations extend such liability to owners or pilots of aircraft or the agent thereof.

The new regulations require the owner, master, operator or pilot, or the agent thereof, of the arriving carrier, or any subsequent in-bond carrier or party who accepts custody under a Customs-authorized permit to transfer, to provide notice of the unentered merchandise or baggage to a bonded warehouse. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The new regulations provide for penalties under 19 U.S.C. 1448 or liquidated damages under the International Carrier Bond (19 CFR 113.64) against the owner, master, operator or pilot of any conveyance, or agent thereof, for failure to provide the required notice to Customs or to a bonded warehouse proprietor. The new regulations provide for the assessment of liquidated damages under the Basic Custodial Bond (19 CFR 113.63) against any subsequent in-bond carrier or other party who accepts custody of the merchandise or baggage under a Customs-authorized permit to transfer who fails to notify Customs and a bonded warehouse of the presence of such unentered merchandise or baggage. Finally, the new regulations provide for liquidated damages under the Basic Custodial Bond (19 CFR 113.63) against the warehouse operator who fails to take required possession of the merchandise or baggage after receipt of notification.

This document publishes guidelines for the mitigation of those penalties incurred by carriers for failing to provide appropriate notifications. It also publishes bond cancellation standards to be applied to claims for liquidated damages incurred by arriving carriers, bonded carriers, custodians or warehouse operators who fail to comply with obligations to provide notification of the presence of unentered merchandise or to collect that merchandise about which notification has been received.

In addition to new guidelines required for these G.O. notification and merchandise collection violations, this document publishes new mitigation guidelines for penalties established against carriers and other parties for violation of 19 U.S.C. 1595a(b) for facilitating an importation contrary to law, specifically 19 U.S.C. 1448 for delivery of merchandise from the place of unlading without Customs authorization, and 19 U.S.C. 1499 for delivery of cargo without a requested Customs examination. Customs has found that the current guidelines for mitigation of these penalties do not provide a sufficient deterrent for parties who violate these provisions of law.

Additionally, these penalties are very similar to claims for liquidated damages assessed against in-bond carriers for failing to deliver, short delivery or delivery directly to the consignee of in-bond merchandise. In Customs view, both types of violations should be mitigated or canceled under the same standards. Accordingly, the bond cancellation standards for 19 CFR 18.8 in-bond violations which were published in T.D. 94–38, Section III., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

This document also updates bond cancellation standards for claims for liquidated damages arising from breach of the Basic Custodial Bond when cargo is removed from a Centralized Examination Station (CES) without authorization. The bond cancellation standards for violations arising for removal of merchandise from a CES without authorization which were published in T.D. 94–38, Section XI., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

The bond cancellation standards articulated in T.D. 94–38 did not include standards for removal of merchandise from a Container Freight Station (CFS). This document publishes standards for the removal of merchandise from a CFS.

Finally, this document updates bond cancellation standards for claims for liquidated damages arising from breach of the Basic Importation Bond when merchandise is not delivered to or is not held at the place of examination (19 CFR 113.62(f)). The cancellation standards which were published in T.D. 94–38, Section X., are revised and replaced by this document to be consistent with guidelines for the mitigation of the penalties assessed for delivery of cargo without Customs authorization.

The text of the guidelines is set forth below.

Dated: March 23, 1999.

Raymond W. Kelly,

Commissioner of Customs.

Guidelines for Cancellation of Claims for Liquidated Damages and Mitigation of Penalties for Failure To Provide General Order Notifications or Failure to Take Possession of General Order Merchandise; Guidelines for Mitigation of Penalties for Delivery of Cargo Without Customs Authorization; Guidelines for Cancellation of Claims for Liquidated Damages for Failing To Deliver In-Bond Merchandise; Guidelines for Cancellation of Claims for Removal of Merchandise from Centralized Examination Stations, Contained Freight Stations or Places of Examination

I. Penalties Against Carrier for Failure To Notify Customs of Presence of Unentered Merchandise

A. Assessment

Any merchandise or baggage regularly landed but not covered by a permit for its release will be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master, pilot, operator or owner of the conveyance or the agent thereof must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master, pilot, operator or owner of the conveyance or the agent thereof for violation of the provisions of title 19, United States Code, section 1448 (19 U.S.C. 1448). If the value of the merchandise on the bill is less than $1,000, the penalty will be equal to the value of such merchandise.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the penalty may be mitigated to an amount between 10 and 50 percent of the assessment, but not less than $100 or the value of the merchandise (whichever is lower), depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

II. Claims for Liquidated Damages Assessed Against a Bonded Party for Failure To Notify Customs of the Presence of Unentered Merchandise

A. Assessment

Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party must notify Customs of any such merchandise or baggage for which entry has not been made. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages equal to $1,000 per bill of lading for which notification is not given for violation of the provisions of 19 CFR 113.63(c)(4) and: 19 CFR 4.37(b), if original arrival is by vessel; 19 CFR 122.50(b), if original arrival is by air; or 19 CFR 123.10(b), if original arrival is by land carrier.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

III. Claims for Liquidated Damages Incurred by the Carrier or Other Party for Failure To Notify the Bonded Warehouse of the Presence of Unentered Merchandise

A. Assessment

In addition to the notification to Customs, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) must provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification must be provided in writing or by any appropriate Customs-authorized electronic data interchange system and must be provided within the 20-calendar day period. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading for which notification is not given. Liability of the arriving carrier would be under the provisions of 19 CFR 113.64(b) and: 19 CFR 4.37(c) if the original arrival was by vessel; 19 CFR 122.50(c) if the original arrival was by air; or 19 CFR 123.10(c) if the original arrival was by land carrier. Liability of the party to whom custody has been transferred by a Customs-authorized permit to transfer or in-bond entry would be under the provisions of 19 CFR 113.63(b), 19 CFR 113.63(c) and: 19 CFR 4.37(c) if the original arrival was by vessel; 19 CFR 122.50(c) if the original arrival was by air; or 19 CFR 123.10(c) if the original arrival was by land carrier.

B. Mitigation

1. If notification of the presence of unentered merchandise is provided to the bonded warehouse outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If notification is not received, or if Customs discovers the presence of unentered merchandise after the time period for notification has expired, no mitigation will be afforded.

IV. Claims for Liquidated Damages Against a Bonded Warehouse for Failure To Collect Unentered Merchandise for Which Notification Has Been Received

A. Assessment

If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages of $1,000 per bill of lading remaining uncollected. Liability would be under

19 CFR 113.63(a)(1) and: 19 CFR 4.37(d) if the original arrival was by vessel; 19 CFR 122.50(d) if the original arrival was by air; or 19 CFR 123.10(d) if the original arrival was by land carrier.

B. Mitigation

1. If the bonded warehouse operator takes possession of unentered merchandise outside the time period allowed by law or regulation, the claim for liquidated damages may be canceled upon payment of an amount between 10 and 50 percent of the assessment, depending on the presence of aggravating or mitigating circumstances.

2. If the bonded warehouse operator never takes possession of merchandise for which he has received appropriate notification, no mitigation will be afforded.

V. Delivery of Cargo Without Customs Authorization

A. Assessment

Penalties for removal of merchandise from the place of unlading without authorization will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of the provisions of 19 U.S.C. 1448 or penalties for delivery of merchandise without Customs examination will be assessed under the provisions of 19 U.S.C. 1595a(b) for violation of 19 U.S.C. 1499.

1. These penalties may be assessed against any party who is deemed to be responsible for the unauthorized removal or delivery.

2. Penalties are assessed in an amount equal to the domestic value of the merchandise removed or delivered without authorization.

3. Penalties of these types assessed against holders of international carrier bonds are secured by the terms and conditions of the bond up to the limit of the bond. Penalties may be collected in full from the violator. Collection from a surety is limited to the amount of the bond.

4. Double penalties should not be assessed, i.e., while the same misdelivery may be without Customs authorization and may involve avoidance of examination, only one assessment equal to the value of the merchandise should be made. If multiple assessments from the same transaction occur, mitigation should reflect the policy that only a single penalty should have been assessed.

B. Penalty Mitigation

1. If the violator can show that the violation occurred solely as a result of Customs error, the penalty should be canceled.

2. If the violator can show that the merchandise was never received or landed, the penalty should be mitigated without payment.

3. If the merchandise which was removed without authorization or delivered without examination could have been the subject of an informal entry, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the violator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus $50.

5. If the merchandise which was removed without authorization was not designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed without authorization was not designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such examination. Conversely, the mitigated amount can never exceed the value of the shipment.

8. If the merchandise which was removed without authorization or delivered without examination was designated for Customs examination and the violator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the penalty may be mitigated upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case shall the mitigated amount be lower than any costs chargeable to the importer which are incident to such Customs examination. Conversely, the mitigated amount can never exceed the value of the shipment.

9. If the violator has a history of removal of merchandise from the place of unlading without Customs authorization or delivery without Customs examination or particularly aggravating circumstances exist with regard to a violation, the Fines, Penalties and Forfeitures Officer may mitigate the penalty upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch will be sought to determine appropriate mitigation.

10. Theft of merchandise from Customs custody. Merchandise which is stolen from the carrier prior to having been released by Customs shall be treated as having been delivered without Customs authorization. The carrier will be liable for penalties and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from Customs custody. In those instances, no mitigation will be afforded to the person or persons primarily responsible for the illegal act. Aiders and abettors may receive mitigation to 25–50 percent of the penalty, depending upon the degree of complicity.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. Violator inexperienced in the handling of cargo.

b. Violator has a general good performance and low error rate in the handling of cargo.

c. Violator demonstrates remedial action has been taken to prevent future violations.

2. Aggravating Factors

a. Violator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. Violator has a rising error rate which is indicative of deteriorating performance in the handling of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was removed from the place of unlading without authorization or which was delivered without examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

VI. 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. Assessment

All claims for liquidated damages assessed for breach of the provisions of 19 CFR 18.8 for shortage, irregular delivery, nondelivery or delivery directly to the consignee of in-bond merchandise will be assessed for the value of the merchandise or three times the value of the merchandise if the merchandise is restricted or is alcoholic beverages.

B. Documents Filed Late or Merchandise Delivered Late

1. Modified CF 5955A. Notices of liquidated damages incurred for documents filed late or merchandise delivered late 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 the 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.* 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 Fines, Penalties and Forfeitures Officer will 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 Fines, Penalties and Forfeitures Officer 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, the Fines, Penalties and Forfeitures Officer may 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, the Fines, Penalties and Forfeitures Officer may 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 Fines, Penalties and Forfeitures Officer 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. Failure To Deliver, Shortage or Delivery Directly to the Consignee

1. If the in-bond carrier can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the in-bond carrier can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered, delivered short or delivered directly to the consignee could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the in-bond carrier comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was not designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was not delivered, delivered short or delivered directly to the consignee was designated for Customs examination and the in-bond carrier cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs

examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the in-bond carrier has a history of not delivering, delivering short or delivering directly to the consignee, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

10. Theft of in-bond merchandise. In-bond merchandise which is stolen from the carrier prior to having been delivered to Customs at the port of destination or exportation will be treated as having been not been delivered. The carrier will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 U.S.C. 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from the bonded carrier. Claims assessed for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

D. Mitigating and Aggravating Factors

1. Mitigating Factors

a. Carrier inexperienced in the handling of in-bond cargo.

b. Carrier has a general good performance and low error rate in the handling of in-bond cargo.

c. Carrier demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. Carrier refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. Carrier has a rising error rate which is indicative of deteriorating performance in the delivery of in-bond cargo.

E. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not delivered, delivered short or delivered directly to the consignee may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

VII. Guidelines for Cancellation of Claims Arising From the Failure of a Centralized Examination Station (CES) Operator To Deliver Merchandise To or Retain Merchandise at the CES (19 CFR 151.15, 19 CFR 113.63)

A. Assessment

Merchandise not delivered to or retained at a Centralized Examination Station (CES) by the CES operator will be the subject of a claim for liquidated damages for violation of the provisions of 19 CFR 151.15(b)(3) and 19 CFR 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising for Failure To Deliver Merchandise to the CES or Removal or Delivery of Merchandise From the CES Without Authorization

1. If the CES operator can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CES operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not delivered to the CES or removed or delivered from the CES without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the CES operator comes forward and discloses the violation to Customs prior to Customs discovery of the violation, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. By its very nature, merchandise not delivered to a CES or removed or delivered from a CES without authorization is designated for Customs examination. If the CES operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case shall the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the merchandise was not delivered to a CES or was removed or delivered from a CES without authorization, and the CES operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

7. If the CES operator has a history of receipting for merchandise which has not been delivered to the CES or allowing merchandise to be removed or delivered from the CES without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

8. Theft of bonded merchandise. Merchandise which is stolen from the CES shall be treated as having been removed without authorization. The CES operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from a CES. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. CES operator is inexperienced in the handling of cargo.

b. CES operator has a general good performance and low error rate in the handling of cargo.

c. CES operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CES operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. CES operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not delivered to a CES or was removed from the CES without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

E. Failure To Maintain Records as Required by Regulation

1. If a CES operator fails to maintain records as required by Customs, claims for liquidated damages not involving merchandise for violation of 19 CFR 113.63(a)(3) and 19 CFR 118.4 will result.

2. If the breach resulted from clerical error, the claim may be canceled without payment.

3. If the breach resulted from negligence, the claim may be canceled 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.

VIII. Guidelines for Cancellation of Claims Arising From the Removal of Merchandise Without Authorization From a Container Freight Station (CFS) (19 CFR 113.63(b))

A. Assessment

Merchandise not retained at a Container Freight Station (CFS) by the CFS operator shall be the subject of a claim for liquidated damages for violation of the provisions of 19 CFR 113.63(b)(2) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising for Removal or Delivery of Merchandise From the CFS Without Authorization

1. If the CFS operator can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the CFS operator can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was removed or delivered from the CFS without authorization could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. If the CFS operator comes forward and discloses the violation to Customs prior to discovery of the violation by Customs, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made, plus $50.

5. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $250 and $2,000 depending on the presence of aggravating or mitigating factors.

6. If the merchandise which was removed or delivered from the CFS without authorization was not designated for Customs examination and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $300 and $2,500 depending on the presence of aggravating or mitigating factors.

7. If the merchandise removed or delivered from a CFS without authorization was designated for Customs examination and the CFS operator can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

8. If the merchandise which was removed or delivered from a CFS without authorization and was designated for Customs examination and the CFS operator cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

9. If the CFS operator has a history of receipting for merchandise which has been removed or delivered from the CFS without authorization or allowing merchandise to be removed from the CFS without authorization, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch must be sought to determine appropriate mitigation.

10. Theft of merchandise from the CFS. Merchandise which is stolen from the CFS shall be treated as having been removed without authorization. The CFS operator will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from a CFS. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. CFS operator is inexperienced in the handling of cargo.

b. CFS operator has a general good performance and a low error rate in the handling of cargo.

c. CFS operator demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. CFS operator refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. CFS operator has a rising error rate which is indicative of deteriorating performance in the handling and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was removed from the CFS without authorization may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

IX. Guidelines for Cancellation of Claims Arising From the Failure To Hold Merchandise at the Place of Examination (19 CFR 113.62(f))

A. Assessment

The importer of record (or Customs broker if the broker is acting as importer of record) may seek and obtain 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. The importer obligates the provisions of its basic importation bond guaranteeing to deliver the merchandise to the place of examination and hold it there until examination occurs. If merchandise which is to be held at the place of examination or delivered to the place of examination as obligated by the importer of record under the terms and conditions of the basic importation bond is not so held or delivered, a claim for liquidated damages arises for violation of the provisions of 19 CFR 113.62(f) equal to the value of the merchandise or three times the value of the merchandise if it is restricted or prohibited or is alcoholic beverages.

B. Mitigation of Claims Arising for Failure To Hold Merchandise at or Deliver Merchandise to the Place of Examination Pursuant to the Provisions of the Basic Importation Bond

1. If the importer of record can show that the violation occurred solely as a result of Customs error, the claim for liquidated damages should be canceled without payment.

2. If the importer of record can show that the merchandise was never received or landed, the claim for liquidated damages should be canceled without payment.

3. If the merchandise which was not held at or delivered to the place of examination could have been the subject of an informal entry, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $100 and $500, depending on the presence of aggravating or mitigating factors.

4. By its very nature, merchandise not held at or delivered to the place of examination is considered to be designated for Customs examination. If the importer of record can show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount between $2,500 and $20,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

5. If the merchandise was not held at or delivered to the place of examination and the importer of record cannot show that the merchandise was entered and duties, fees, taxes and charges paid thereon, the claim for liquidated damages may be canceled upon payment of an amount equal to the duties, fees, taxes and charges that would have been due on the merchandise had entry been properly made plus an amount between $3,000 and $25,000 depending on the presence of aggravating or mitigating factors. In no case should the amount upon which the claim may be canceled be lower than any chargeable costs which are incident to such Customs examination. Conversely, the amount upon which the claim may be canceled can never exceed the value of the claim for liquidated damages.

6. If the importer of record has a history of not holding merchandise at or not delivering merchandise to the place of examination, or particularly aggravating circumstances exist with regard to a claim, the Fines, Penalties and Forfeitures Officer may cancel the claim for liquidated damages upon payment of a higher amount than that authorized by these guidelines; however, the advice of Headquarters, Office of Regulations and Rulings, Penalties Branch will be sought to determine appropriate mitigation.

7. Theft of merchandise from the place of examination or while being delivered to the place of examination. Merchandise which is stolen from the custody of the importer of record at or on its way to the place of examination will be treated as having been removed without authorization. The importer of record will be liable for liquidated damages and mitigation will occur in accordance with these guidelines. It should also be noted that penalties under 19 USC 1595a(b) for violation of 19 USC 1448 or 1499 (as well as criminal sanctions under 18 U.S.C. 549) may also be assessed against the individuals who steal the merchandise from the importer of record. Claims for theft of merchandise in those instances will be administered in accordance with guidelines articulated in Section V.B.10. above.

C. Mitigating and Aggravating Factors

1. Mitigating Factors

a. The importer of record is inexperienced in the handling of cargo.

b. The importer of record has a general good performance and a low error rate in the delivery and safekeeping of cargo.

c. The importer of record demonstrates remedial action has been taken to prevent future claims.

2. Aggravating Factors

a. The importer of record refuses to cooperate with Customs or acts to impede Customs activity with regard to the case.

b. The importer of record has a rising error rate which is indicative of deteriorating performance in the delivery and safekeeping of cargo.

D. Restricted or Prohibited Merchandise

If Customs has reason to believe that the merchandise which was not held at the place of examination or was not delivered to the place of examination may have been restricted or prohibited from entry, that will be considered an extraordinary aggravating factor and will result in either no mitigation or mitigation at the high end of the mitigation range.

E. Failure to Keep Customs Seal or Cording Intact

The importer of record also agrees to keep any Customs seals or cording intact until the merchandise is examined. For a violation which involves the failure to keep any Customs seal or cording intact until the

merchandise is examined, the claim will be canceled 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 will be canceled upon payment of an amount equal to the value of any missing merchandise. Tampering with seals also may result in criminal sanctions under 18 U.S.C. 549.

[FR Doc. 99–7410 Filed 3–26–99; 8:45 am]
BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Amendment Determinations: "Gustave Moreau: 1826–1898"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: On January 14, 1999, notice was published at page 2536 of the **Federal Register** Vol. 64, No. 9 by the United States Information Agency pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), to Pub. L. 89–249 relating to the exhibit "Gustave Moreau: 1826–1898." I hereby determine that five additional works of art to be included in the exhibit (see list) and imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of these works of art as part of the exhibit at the Metropolitan Museum of Art, New York, New York, on or about May 24, 1999, to on or about August 22, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of imported exhibit objects or for further information, contact Carol B. Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: March 22, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–7411 Filed 3–25–99; 8:45 am]
BILLING CODE 8230–01–M

Friday
March 26, 1999

Part II

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6316–4]

Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule—State program revision: aquifer exemption approval.

SUMMARY: The State of Wyoming has submitted a revision to its Underground Injection Control (UIC) Program, requesting that EPA approve an exemption from classification as an underground source of drinking water (USDW) portions of the Lance Formation in the Powder River Basin in Johnson County, Wyoming. The exemption area surrounds two Class I Non-Hazardous deep injection wells that will be used to dispose of operational bleed streams (excess fluids derived from the uranium mining) from commercial *in-situ* leaching uranium mining operations and fluids resulting from the ground water sweep (pumping out of contaminated fluids from the aquifer) operations for restoration of the Wasatch Formation aquifer being mined for uranium under a UIC Class III permit. After careful review of the exemption request and accompanying documents, EPA has determined that they contain sufficient information to meet the criteria for exempting portions of the Lance formation aquifer from the definition of a USDW. Based on the Wyoming Department of Environmental Quality (WDEQ) concurrence with the exemption, the request of the WDEQ director, the supporting technical documentation, and the lack of any public comment on the public notice to exempt the stated portions of the Lance Formation, EPA has decided to approve Wyoming's revision of its UIC program which exempts the designated portions of the Lance Formation from classification as an Underground Source of Drinking Water (USDW).

DATES: This rule shall become effective on April 26, 1999. In accordance with 40 CFR 23.7, this rule shall be considered promulgated for the purposes of judicial review at 1:00 p.m. Eastern Time on April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Valois Shea-Albin, US EPA Region VIII, 8P–W–GW, 999 18th Street, Suite 500, Denver, CO 80202; (303) 312–6276.

SUPPLEMENTARY INFORMATION:

Regulated—Entities—Entities potentially affected by this action include the Wyoming Department of Environmental Quality (WDEQ) and the COGEMA Mining Company. The latter requested the exemption and the former recommended the approval of the exemption in October 1997. Any effect on these two entities would be positive, as they will be able to operate the disposal wells that are used for disposal of excess fluid in the uranium mining process and the restoration of the aquifer being mined.

I. Introduction

The Underground Injection Control (UIC) Program, established by the Safe Drinking Water Act (SDWA), provides for the protection of underground sources of drinking water (USDWs) from potential contamination from injection well practices. The UIC program regulations also provide for exempting aquifers from the definition of USDW, in 40 CFR 144.3, so that injection can occur. The UIC regulations, specifically 40 CFR 144.7 and 146.4, define and provide criteria for exempting aquifers.

In October, 1997, COGEMA Mining, Inc., (COGEMA) and the Wyoming Department of Environmental Quality (WDEQ) requested that EPA approve an aquifer exemption for the Lance Formation in the areas encompassed by a radius of 1,320 feet surrounding two Class I non-hazardous injection wells, the COGEMA DW No. 1 and the Christensen 18–3, in Johnson County, WY. The proposed injection intervals are 3,818 to 6,320 feet and 4,009 to 6,496 feet in depth below ground surface, respectively. The total area of the Lance Formation included in the exemption is approximately 0.4 square miles (0.2 square miles for each well).

The Lance Formation fluids contain less than 3,000 mg/l Total Dissolved Solids (TDS) and the exemption is associated with a Class I [1] injection well permit. These two criteria dictate that this aquifer exemption be a substantial revision of the Wyoming Underground Injection Control (UIC) program approved under section 1422 of the Safe Drinking Water Act. Criteria for classification of a program revision as substantial or not are in UIC Guidance #34, Guidance for Review and Approval of State UIC Programs and Revisions to Approved State Programs. The procedures to follow to approve or disapprove substantial program revisions in the UIC program are in 40 CFR 145.32 and in UIC Guidance #34. The aquifer proposed for exemption has been determined by WDEQ to be too deep to be considered as an economically feasible source of drinking water. On August 27, 1998, EPA published in the **Federal Register** a notice (63 FR 45810) requesting public comment on a substantial revision to Wyoming's UIC program to exempt a portion of the Lance Formation from designation as an underground source of drinking water. There were no comments or requests for public hearing submitted as a result of this notice. EPA has examined the aquifer exemption request, the accompanying information, and responses from WDEQ and COGEMA to EPA requests for additional supporting information, and, for reasons described herein, approves this request to exempt the designated portions of the Lance Formation from classification as a USDW.

II. Background

COGEMA operates the Christensen Ranch *in-situ* leaching uranium mine within the Wasatch Sandstone Formation in Johnson and Campbell Counties, WY. The Wasatch Formation overlies the Lance Formation by about 2,600 feet at the mine site. The mining operation has comprised five well fields to date, two of which are currently producing, and three that have been mined out. The operation has reached the phase where large scale restoration of the ground water within the mined out well fields is being conducted simultaneously with mineral extraction in the two producing well fields.

Ground water restoration is conducted to return the ground water affected by mining to its baseline condition or to a condition consistent with its pre-mining or potential use upon completion of mining activities. After the restoration process is completed, the concentrations of contaminants are reduced to levels below drinking water standards. For the successful restoration of the ground water quality within the mined-out areas of the Wasatch Formation, a wastewater disposal capacity of 300 to 500 gallons per minute (gpm) will be required over the next 18 years. Additionally, this type of operation requires the bleed-off [2] of part of the

[1] Injection wells are divided into 5 classes. Class I wells are associated with the disposal of industrial, municipal or radioactive waste into formations below the lowermost USDW. These wells have very strict standards for siting, construction and operation.

[2] In order to prevent fluids in the underground formation from polluting adjacent aquifer portions, more fluid is extracted than is injected. In the process of leaching out the Uranium salts, the leaching agent is also replenished. The combination of excess fluid extracted and the equivalent of the fluid that is replenished is called the "bleed"

fluid extracted in order to keep underground water flow into the mining area and prevent the contamination of adjacent aquifers in the Wasatch Formation. To date, COGEMA has managed disposal of the fluid wastes under an NPDES permit to discharge to the surface, and through using evaporation ponds and limited non-hazardous Class I injection well disposal. The recent regulatory requirement that reduces the concentration of selenium that can be discharged to surface waters permitted under NPDES has force COGEMA to discontinue this type of discharge. After evaluating treatment methods to remove selenium from the wastewater in order to continue surface discharge, COGEMA found that reverse osmosis was the only method that consistently met the new selenium standard. The reverse osmosis process would treat 75% of the waste stream resulting in water of high enough quality for surface discharge. However, the high volume of remaining concentrated brine produced by the reverse osmosis process would still require the use of the two Class I injection wells and the aquifer exemption.

COGEMA was previously granted an aquifer exemption for the COGEMA DW No. 1 and the Christensen 18–3 wells to inject into the Teckla, Parkman, and Teapot Formations (between 3,000 and 10,000 TDS, containing traces of oil and gas, and too deep to be an economically feasible source of drinking water). The original exempted interval for the COGEMA DW No. 1 was 7,500 to 8,470 feet in depth and 7,631 to 8,604 feet in depth for the Christensen 18–3. Trial injection into these formations revealed they were only capable of receiving less than 10 gpm instead of the 75 to 150 gpm anticipated from the evaluation of porosity logs. As a result, the company has now requested a permit modification to inject into the Lance Formation, instead of the Teckla, Parkman and Teapot formations, an overlying geologic unit to the ones originally exempted.

III. Injectate

The fluid that will be injected (injectate) will consist of operational bleed streams from commercial *in-situ* leaching uranium mining operations as well as fluids from the restoration of the Wasatch formation. The constituents in the injectate include the following process and restoration bleed streams: normal overproduction (well field bleed) streams, laboratory wastewater, reverse osmosis brine, and ground water sweep [3] solutions. The bleed streams are defined as non-hazardous, and as beneficiation [4] wastes exempt from regulation as hazardous waste under the Resource Conservation and Recovery Act as stipulated by the Bevill Amendment (40 CFR 261.4(b)(7)).

IV. Basis for Approval of the Aquifer Exemption

The information provided by COGEMA in the reports included in the docket adequately addresses the requirements of 40 CFR 146.4 supporting approval of the aquifer exemption request for the Lance Formation.

Section 146.4 (a) The Formation Does Not Currently Serve as a Source for Drinking Water in the Vicinity of the Well Sites

There are no drinking water wells extracting water from the Lance formation in the intervals and areas that are recommended for exemption. Current information indicates that there are no wells that could be affected by the injection of the waste in the two injection wells in question. The general ground water flow in the area is from the West-North West, putting the proposed injection wells and the exemption formation "down-flow" (down gradient) and at a considerable distance from any water well developed in the Lance formation. The nearest documented water well completed in the Lance formation is over 24 miles to the west of the site. The exact use of this well is unknown, but appears to be associated with oil or gas development. Approximately 30 miles to the west, the Lance outcrops to the surface and wells developed there are for livestock use. Where the Lance Formation occurs near the surface at the western edge of the Powder River Basin 30 miles southwest of the exemption area, five wells extracted water from the Lance and Fox Hills formations to supply the municipalities of Midwest and Edgerton, WY, until 1997. At that time, the wells were abandoned because of low water productivity (40 gpm sustainable flow) and the expense of treatment that would be required to continue using these wells as a public water supply. The towns of Midwest and Edgerton have determined that piping in pre-treated water 50 miles from Casper, WY is more economically feasible than continuing operation of the wells completed in the Lance/Fox Hills formations, even at the relatively shallow depth of 1,500 to 2,000 feet. The capital costs associated with the development and operation of a new well field for the municipalities prevented them from taking this option. Therefore, the Lance is no longer supplying water to a public drinking water system within 30 miles of the aquifer exemption area.

Section 146.4(b)(2) The Formation Cannot and Will Not Serve as a Source of Drinking Water Because It Is Situated at a Depth or Location Which Makes Recovery of Water for Drinking Water Purposes Economically or Technologically Impractical

The depth of the Lance Formation within the aquifer exemption area ranges from 4,009 to 6,496 feet at the location of Christensen 18–3, and from 3,818 to 6,320 feet at the location of the COGEMA DW No. 1 well.

The Wasatch Formation overlies the Lance Formation in the aquifer exemption area and provides a shallower, potential water supply source available for use in the area. According to the USGS publications referenced by COGEMA, any water supply wells (aside from water flood wells related to oil production) in the aquifer exemption area are completed in the Wasatch Formation. The Wasatch Formation is a high quality, prolific aquifer, located at approximately 1,200 feet in depth or shallower throughout the Powder River Basin, which includes the aquifer exemption area. The Wasatch Formation, alone, contains a volume of water that would supply a population of approximately 1.3 million people for 100 years. Given this abundant, shallow supply of high quality ground water, it is reasonable to conclude that the deeper Lance Formation will never be required to provide drinking water in the area of the aquifer exemption.

COGEMA provided a cost evaluation for the capital costs and estimated operating costs for developing a private (50 gpm) and a public (750 gpm) drinking water well, including treatment costs based on the water quality analysis of samples collected from the Lance Formation as a water supply source within the aquifer exemption area. The costs to develop the Lance Formation within the exemption area were compared with estimated costs to develop the Wasatch Formation as an alternative public water supply (at the 750 gpm rate). The incremental cost increase to develop the

stream. This volume of fluid has to be treated and/or disposed in an environmentally safe process.

[3] The operator is required to restore the aquifer being mined for Uranium. To restore this aquifer, ground water is pumped out of the formation and treated and/or disposed. Eventually the water in the formation will be restored to a pre-agreed baseline.

[4] For a list of the processes included under beneficiation, please see Title 40 CFR 261.4(b)(7).

Lance Formation versus Wasatch Formation as a drinking water source for a public water supply is approximately $3,691,250. The incremental increase in operations and maintenance cost of using the Lance water over the Wasatch water as a drinking water source would be $2.40/1,000 gallons.

The Midwest-Edgerton public water supply scenario should be noted as the most compelling support for the approval of this aquifer exemption request and the infeasibility of using the Lance Formation as a public water supply. The five wells were abandoned in favor of piping drinking water in from Casper, WY. The decision to abandon these wells was based on the economic burden of treating the water and the low production rates of the wells, even though the costs of development had already been expended. Furthermore, the wells that used to serve the two municipalities tapped shallower portions of the Lance Formation as compared to any potential well tapping the Lance Formation within the aquifer exemption area. This added depth translates into significantly more expensive costs for the drilling and the operation of the wells.

In summary, the Lance Formation will never be considered to be an economically feasible source of drinking water in the area of the aquifer exemption due to the great depth, low water production capacity, and treatment costs that will be incurred as shown by the Midwest-Edgerton wells experience. The cost of developing the Lance Formation as a drinking water supply within the aquifer exemption area is high compared to that of developing shallow, more prolific, and higher quality sources of drinking water, such as the Wasatch Formation. The Wasatch is better suited for development in this area as a source of drinking water due to higher producing capability, significantly better water quality, and lower or no water treatment costs.

V. Regulatory Impact/Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045: Children's Health Protection

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

This rule is not subject to E.O. 13054 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks authorized by this action impact children. The rule authorizes injection in a formation that is deep underground and separated from any aquifer that can provide drinking water. Therefore, it does not present any foreseeable effect on children's health and well being.

C. Paperwork Reduction Act

There are no information collection requirements established by this rule. Therefore, the Paperwork Reduction Act does not apply.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. First, EPA is unaware of any small entities currently injecting into this aquifer, or using this aquifer as a source of drinking water. Furthermore, since this rule relieves existing regulatory requirements for entities injecting into the aquifer, this rule would have no regulatory impact on small entities, were there any.

E. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875 (48 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of the EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on a State, local or tribal government. The rule does not impose any enforceable duties on these entities. The rule merely approves a request, from the State of Wyoming, to exempt the designated portions of the Lance Formation from classification as an underground source of drinking water.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA), for State, local or tribal governments, or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affects small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA does not believe that this rule addresses any technical standards subject to the NTTAA.

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

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no tribal jurisdictions on or near the area of the exemption. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on April 26, 1999.

List of Subjects in 40 CFR Part 147

Environmental protection, Intergovernmental relations, Water supply.

Dated: March 22, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 147 is amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart ZZ—Wyoming

2. A new § 147.2555 is added to subpart ZZ to read as follows:

§ 147.2555 Aquifer exemptions since January 1, 1999.

In accordance with § 144.7(b) and § 146.4 of this chapter, the aquifers described in the following table are hereby exempted from the definition of an underground source of drinking water, as defined in 40 CFR 144.3:

Aquifer Exemptions Since January 1, 1999

Formation	Approx. depth	Location
Powder River Basin, only approximately 0.4 square miles of the Lance Formation which is less than 0.005% of the Basin at indicated depths and location..	3,800 to 6,800 feet from surface.	Two cylindrical volumes with centers in the wells COGEMA DW No. 1 and 18–3 Christensen respectively, and radius of 1,320 feet. Both wells are located in the Christensen Ranch, in Johnson County, WY. The COGEMA DW No. 1 well is located at approximately 450 feet West of N/S line and 100 feet North of E/W line of SE/4, NW/4, Section 7, T44N, R76W. The 18–3 Christensen well is located approximately 600 feet West of N/S line and 550 South of E/W line of NE/4, NW/4, Section 18, T44N, R76W.

[FR Doc. 99–7432 Filed 3–25–99; 8:45 am]
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federal register

Friday
March 26, 1999

Part III

The President

Proclamation 7175—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1999

Federal Register
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Friday, March 26, 1999

Presidential Documents

Title 3—

The President

Proclamation 7175 of March 24, 1999

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1999

By the President of the United States of America

A Proclamation

America has deep roots in Greece, and today we celebrate the friendship, values, and aspirations our two countries have shared for more than 2 centuries. Greek thought and the passion for truth and justice deeply influenced many of our Nation's earliest and greatest leaders. The documents our founders wrote to establish our democracy and the political and legal institutions they created to preserve our independence and protect our rights reveal that influence.

Later, recognizing this profound debt to Greek thought and culture and inspired by the struggle of modern Greece in the War of Greek Independence, many Americans left home to join in that distant fight for freedom between 1821 and 1832. In this century, the relationship between the Greek and American peoples deepened as we fought together in two world wars. The U.S. desire to help preserve freedom in Greece after the devastation of World War II moved President Truman to stand firm against isolationism and for postwar engagement abroad. Our nations stood together in Korea and in the Gulf War, and we continue to work shoulder-to-shoulder today in our efforts to find a lasting solution in the Balkans and to promote democracy around the world.

The bonds of family have further reinforced our ties of friendship and shared ideals. All across our Nation, Americans of Greek descent have brought their energy, grace, and determination to every field of endeavor, and they have added immeasurably to the richness and diversity of our national life. The sons and daughters of Greece have flourished in America, and with their help, America too has flourished.

Today, as we celebrate the 178th anniversary of the onset of modern Greece's struggle for independence, let us celebrate as well the great partnership between our nations and the precious heritage of freedom and democracy we share.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 1999, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

[FR Doc. 99–7705
Filed 3–25–99; 10:33 am]
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S. 447/P.L. 106–3
To deem as timely filed, and process for payment, the applications submitted by the Dodson School Districts for certain Impact Aid payments for fiscal year 1999. (Mar. 23, 1999; 113 Stat. 6)
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