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Presidential Documents

Title 3—

The President

Proclamation 7104 of June 5, 1998

National Homeownership Week, 1998

By the President of the United States of America

A Proclamation

Homeownership has always been the foundation of the American Dream. Generations of Americans have worked hard and set aside their savings so that they might enjoy the security and stability of owning their own home. The partnership forged between the Federal Government and the private sector during this century has succeeded in bringing that dream closer to reality for all our citizens.

The National Housing Act, which President Franklin Roosevelt signed into law more than 60 years ago, made homeownership available to millions of families who previously could not have afforded to buy their own homes. The G.I. Bill of Rights extended the opportunity of homeownership to a whole new generation of Americans, enabling millions of our service men and women to start a new life in their own homes.

Building on this legacy, in 1995 I convened the National Partners in Homeownership—a coalition of 139 community-based local partnerships and 65 national groups representing the housing industry, lenders, nonprofit organizations, and all sectors of government—to dramatically increase homeownership opportunity in America. And my Administration's economic strategy to reduce the deficit, invest in our people, and open foreign markets has led to lower mortgage rates, more jobs, and higher family incomes. Thanks to the success of our strategy and the efforts of the National Partners in Homeownership, we now have the highest homeownership rate in America's history.

Our Nation's commitment to homeownership has brought us extraordinary rewards, invigorating the construction and related industries, creating new jobs, and enhancing our prosperity. The next generation of American homes will also improve our environment. The new partnership I recently launched with America's building industry—the Partnership for Advancing Technology in Housing—will dramatically improve the energy efficiency of new homes, reducing the greenhouse gases that cause global warming and cutting homeowners' energy bills. Most important, homeownership has encouraged millions of Americans to save and invest, to take pride in their neighborhoods, and to take an active, responsible role in the life of their communities.

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 June 7 through June 13, 1998, as National Homeownership Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities that celebrate the rewards of homeownership.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98–15601
Filed 6–9–98; 8:45 am]
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–29]

RIN 0579–AA83

Karnal Bunt; Compensation for the 1996–1997 Crop Season

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations by adding compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incur losses and expenses because of Karnal bunt in the 1996–1997 crop season. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt regulations on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts. The amendments are necessary to make compensation appropriate for circumstances in the 1996–1997 crop season.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247, or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14. Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of certain regulated articles, including wheat seed and grain, from the regulated areas.

On May 6, 1997, we published a document in the **Federal Register** (62 FR 24745–24753, Docket No. 96–016–17, effective April 30, 1997) making final an interim rule that amended the regulations to provide compensation for certain growers and handlers of wheat grain, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred in the 1995–1996 crop season because of actions taken by the Secretary to prevent the spread of Karnal bunt. The final rule also added compensation provisions for handlers of wheat grain that was tested and found negative for Karnal bunt, handlers and growers with wheat inventories from past crop seasons, and participants in the National Karnal Bunt Survey whose wheat grain tested positive for Karnal bunt in the 1995–1996 crop season. On January 9, 1998 (63 FR 1321–1331, Docket No. 96–016–25), we published a final rule providing compensation for growers and seed companies for the loss in value of wheat seed and straw in the 1995–1996 crop season. The compensation regulations in both these final rules are set forth at 7 CFR 301.89–14.

On July 11, 1997, we published in the **Federal Register** (62 FR 37159–37166, Docket No. 96–016–15) a proposal to amend the regulations to add a compensation program for wheat harvested in 1997. The proposed provisions for 1996–1997 crop season wheat provided compensation for certain growers and handlers of wheat grain and seed, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey who incurred losses and expenses because of Karnal bunt in the 1996–1997 crop season.

We solicited comments concerning our proposal for 60 days ending September 9, 1997. We received nine comments by that date. They were from wheat growers and wheat industry associations. All the commenters recommended additions or revisions to the compensation provisions. They are discussed below.

Six of the nine commenters requested compensation for growers whose fields are located in the areas listed as surveillance areas under the Karnal bunt regulations. Specifically, several of the commenters stated that they ''wished to register the strongest opposition to this proposed rule for its failure to provide compensation to those growers whose fields are located in the Arizona surveillance area.'' It is unclear to us what the concerns are. Under the Karnal bunt regulations, regulated areas are divided into restricted areas and surveillance areas. The proposed rule provided compensation for growers and handlers with positive testing wheat grown in regulated areas. The proposal made no distinction between whether or not the regulated area was a restricted area or a surveillance area. Any wheat grown in a regulated area, including a surveillance area, that is tested by the Animal and Plant Health Inspection Service (APHIS) and found positive for Karnal bunt in the 1996–1997 crop season will be eligible for compensation under this rule.

Under the regulations, designation of an area as a surveillance area has an impact only on the movement of wheat grain from that area; wheat seed is subject to the same restrictions whether it is grown in a surveillance area or in any other part of the regulated area. Therefore, because the commenters are specifically concerned about compensation to growers with fields in surveillance areas, we can conjecture that they are concerned about loss in value of wheat grain. Wheat grain from a surveillance area that tests negative for Karnal bunt may be moved under certificate to any destination without restriction. We do not expect growers with negative-testing wheat grain to experience a loss in value of the grain due to our regulations. For this reason, this final rule does not offer compensation to growers for wheat

grain that tests negative for Karnal bunt. Wheat grain from a surveillance area that tests positive for Karnal bunt may be moved only under a limited permit and will be subject to measures intended to mitigate the risk of the grain spreading Karnal bunt. Due to our restrictions, most positive-testing grain will be sold for use as animal feed. This final rule offers compensation to growers for the loss in value of positive-testing grain. We have made no changes to the rule based on these comments.

Two comments specified that compensation should be paid to growers with fields in surveillance areas who chose not to plant wheat in the 1996–1997 crop season in order to avoid losses due to Karnal bunt. According to the comments, alternative crops to wheat (for example, barley) are of lower value than wheat; therefore, the comments claim that the choice to plant alternative crops resulted in losses in annual income for these farmers. The commenters said that, since it is APHIS' desire to encourage growers in regulated areas to stop growing wheat, APHIS should consider growers who voluntarily planted alternative crops as contributing to the Karnal bunt eradication effort, and should compensate them accordingly.

We are not making any changes to the proposed rule based on these comments. At the time growers were making planting decisions for the 1996–1997 crop season, the Karnal bunt regulations did not prohibit growers with fields in surveillance areas from planting wheat, unless the field had been planted with known contaminated seed in 1995. Growers who chose to plant alternative crops in order to avoid losses related to Karnal bunt did so as a business decision, and not as a result of any restrictions placed on them by the regulations. Currently, and at the time planting decisions were being made for the 1996–1997 crop season, wheat grain from surveillance areas that tests negative for Karnal bunt may be moved under a certificate to any destination without restriction. Therefore, when making planting decisions, growers should not have expected to experience losses due to Karnal bunt unless their wheat tested positive. If their wheat tested positive, this final rule offers them compensation for the loss in value.

Three comments requested compensation for losses such as demurrage charges on railcars, the cost of cleaning and sanitizing railcars prior to loading, losses due to delays in transportation caused by the Karnal bunt regulations, extra storage costs due to shipping delays, and labor costs for cleaning and disinfecting combines. We are not making any changes to the proposal for 1996–1997 crop season compensation in response to these comments. Compensation has not been offered for these costs and losses in the 1995–1996 crop season. In determining what specific losses to compensate, a top priority was compensation for wheat and other articles the Agency ordered destroyed or prohibited movement. For this reason, the focus of compensation for Karnal bunt related losses is the loss in value of wheat seed and grain. We recognize that the compensation we have offered may not fully account for every loss experienced by growers and handlers resulting from Karnal bunt. However, we believe the compensation provisions in this final rule will significantly mitigate losses due to the actions taken by USDA to control Karnal bunt.

One comment requested compensation for decontaminating storage facilities and conveyances found with wheat testing positive for Karnal bunt. Both the proposed rule and this final rule provide for compensation for this purpose. Section 301.89–16(a) provides that, in States where the Secretary has declared an extraordinary emergency, owners who have decontaminated their grain storage facilities pursuant to an Emergency Action Notification (EAN) (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility. Grain storage facility is defined in § 301.89–1 of the regulations to mean ''That part of a grain handling operation or unit of a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.''

Two comments said that growers and handlers should not have to provide copies of Karnal bunt certificates in order to claim compensation, and also asked that we remove the requirement that growers and handlers provide copies of Emergency Action Notifications (EANs) for wheat grown in an area that was not regulated for Karnal bunt but for which an EAN had been issued. The commenters' reason was that Karnal bunt certificates and EANs were issued by USDA, and should not have to be provided back to USDA to claim compensation.

We are making no changes to the proposed rule based on these comments. We understand that filing claims for compensation does require claimants to provide a number of documents, and collecting these documents may seem cumbersome. Claims submitted under this final rule for 1996–1997 crop season wheat seed and grain will be processed by the Farm Service Agency (FSA). APHIS will process claims for decontamination of grain storage facilities and treatment of millfeed. While FSA and APHIS are both a part of USDA, they do not share offices, computer systems, or recordkeeping systems. This would make it difficult and time-consuming for APHIS and FSA to exchange copies of the required documents for each claimant. In addition, in most cases, claimants were provided with copies of EANs and Karnal bunt certificates. If they were not, copies may be obtained by the claimant from APHIS for submission to FSA. Claimants should not have difficulty in collecting EANs or Karnal bunt certificates. At this time, the most efficient way for FSA and APHIS to process compensation claims is for the claimant to provide the documents to FSA and APHIS.

We have been made aware, however, that some owners of grain storage facilities ordered decontaminated due to Karnal bunt were not issued EANs. A number of owners of grain storage facilities found to have positive grain in the 1996–1997 crop season were issued letters from APHIS declaring their grain to be positive for Karnal bunt and ordering the grain storage facilities to be decontaminated. To accommodate this, owners of grain storage facilities may claim compensation under this final rule if their facility was decontaminated pursuant to an EAN issued by APHIS or pursuant to a letter issued by APHIS ordering the facility to be decontaminated. We will require that, to claim compensation, claimants provide APHIS with either a copy of the EAN or a copy of the letter from APHIS ordering decontamination of the facility. These changes appear in § 301.89–16 (a) and (c).

Two commenters were concerned about the proposed compensation for heat treating millfeed. The proposed compensation is the same as what was offered for heat treating millfeed in the 1995–1996 crop season. The commenters said that they believe heat treating millfeed is not necessary, and were under the impression that APHIS was eliminating this requirement.

In the preamble to the proposed rule, we stated that APHIS was considering proposing to eliminate the requirement to heat treat millfeed. We also stated that, if this requirement is eliminated by a future rulemaking, compensation will not be paid for millfeed that is heat treated after the effective date of such a rule. To date, the requirement for heat treating millfeed has not been eliminated from the regulations. On January 28, 1998 (63 FR 4198–4204, Docket No. 96–016–22), we published in the **Federal Register** a proposed rule to, among other things, amend the requirements for treating millfeed, so that only millfeed resulting from the milling of wheat, durum wheat, or triticale that tested positive for Karnal bunt would require heat treatment. However, this proposed rule would have no effect on millfeed from grain milled in the 1996–1997 crop season. Any millfeed that has been treated in the 1996–1997 crop season in accordance with a compliance agreement with APHIS will be eligible for the compensation offered in this final rule.

One commenter said that since the proposal would compensate only for wheat that tests positive for Karnal bunt, the industry needs assurance that there will not be any restrictions on the movement of wheat that tests negative. In the 1996–1997 crop season, no host material was allowed to be planted in fields in restricted areas for regulated articles other than seed. As a result of an interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket No. 96–016–19), wheat grain that is from a surveillance area and that tests negative on one test conducted at the means of conveyance may move under certificate to any destination without further safeguarding or sanitation requirements. Restricted areas for seed encompass and extend beyond surveillance areas. Grain from fields that are in restricted areas for seed outside a surveillance area may move without testing and without restriction for any purpose but seed. Seed grown in a restricted area for seed that tests negative for Karnal bunt may be planted within the regulated area only. These regulations remain in effect.

One commenter asked that we be more flexible in dealing with individual claims for compensation that do not fit the regulations precisely. Specifically, the commenter requested that we consider compensation for a grower who plowed down a field outside of the regulated area, and for test plots that were plowed down in California. The plow downs to which the commenter refers occurred in the 1995–1996 crop season, and are therefore outside the scope of this final rule. Additional compensation claims for 1996–1997 crop season losses that do not fit the provisions of this final rule will be considered by USDA.

One commenter requested that compensation be extended to wheat growers and handlers in Alabama. APHIS conducted a National Karnal Bunt Survey in the 1996–1997 crop season to demonstrate to our trading partners that areas producing wheat for export are free of the disease. During the survey, grain in a number of storage facilities located in the States of Alabama, Florida, Georgia, and Tennessee was found to be contaminated with spores which we believed to be teliospores of the smut fungus *Tilletia indica* (Mitra) Mundkur. The presence of teliospores of this smut fungus can result in an outbreak of Karnal bunt. Based on these findings, USDA considered declaring an extraordinary emergency for Karnal bunt in the States of Alabama, Florida, Georgia, and Tennessee.

USDA did not, however, declare an extraordinary emergency in these States. In May of 1997, APHIS announced that regulation of an area for Karnal bunt would be based only on the presence of bunted wheat kernels. APHIS based this decision on the fact that a substantial portion of ryegrass seed produced in the United States contains teliospores produced by an as yet unnamed smut that are indistinguishable from Karnal bunt teliospores. Ryegrass is one of the most common weeds occurring in wheat fields, and is frequently planted with wheat in forage and pasture mixes. For this reason, APHIS determined that at the present time, it is not possible to determine whether a teliospore is indicative of ryegrass smut or Karnal bunt without the presence of bunted wheat kernels. Because no bunted kernels were found in wheat storage facilities located in the States of Alabama, Florida, Georgia, and Tennessee, USDA determined that a declaration of extraordinary emergency in these States was not warranted.

The commenter said that, despite the absence of regulatory restrictions, farmers in Alabama experienced losses due to planting decisions made in the 1996–1997 crop season as a result of the threat of a quarantine. The commenter also said that the Secretary should have the authority to compensate regardless of whether or not a declaration of extraordinary emergency is declared.

As we have explained in other rules on Karnal bunt compensation, the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) authorizes the Secretary of Agriculture to take emergency action in States where the Secretary has declared an extraordinary emergency. The Federal Plant Pest Act also authorizes the Secretary to compensate growers and other persons in those States for economic losses incurred by them as a result of those emergency actions. (See specifically 7 U.S.C. 150dd.) Congress has not authorized the Secretary to pay compensation in States for which an extraordinary emergency has not been declared. The determination that Karnal bunt does not exist in the States of Alabama, Florida, Georgia, and Tennessee saved wheat producers in those States from Federal regulation that would have required testing of all wheat grown in regulated areas, and substantial restrictions on the movement and potential uses of their wheat crop. Some wheat producers may have experienced a loss in income in the 1996–1997 crop season due to planting decisions made as a result of uncertainty as to the State's Karnal bunt status. However, because an extraordinary emergency was not declared in these States, we are unable to offer compensation for any losses that may have been experienced.

We received one comment concerning the difference in compensation rates offered to growers and handlers in areas under the first regulated crop season and growers and handlers in areas under the second regulated crop season. We proposed different levels of compensation for growers and handlers of positive wheat, depending on which of the following two sets of circumstances applies: (1) The wheat is from an area that became regulated for Karnal bunt after the 1996–1997 crop was planted, or for which an EAN was issued after the 1996–1997 crop was planted; or (2) the wheat is from an area that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an EAN was issued before the 1996–1997 crop was planted. We proposed to call these ''areas under the first regulated crop season'' and ''areas under the second regulated crop season,'' respectively. In both cases, the area must have remained regulated or under an EAN at the time the wheat was sold in order for wheat grown in that area to be eligible for compensation.

We proposed compensation for positive wheat grown in areas under the second regulated crop season of $.60 per bushel; the proposed compensation for positive wheat grown in areas under the first regulated crop season is set at a maximum of $1.80 per bushel. One commenter said that the proposed $.60 per bushel compensation for positive

wheat grown in areas under the second regulated crop season is inadequate, and that growers and handlers in those areas should be eligible for the same maximum $1.80 compensation as growers and handlers of wheat grown in an area under the first regulated crop season.

As we explained in the preamble to the proposed rule, growers and handlers in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time they made their planting and many of their contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in areas under the second regulated crop season knew they were in an area regulated for Karnal bunt at the time they made planting and contracting decisions for the 1996–1997 crop season. Understanding the restrictions, growers and handlers could have chosen to alter their planting or contract decisions. For these reasons, we believe that the proposed compensation amounts are appropriate for the circumstances in each area.

One commenter was concerned that the proposed rule does not include a provision for review or appeal of APHIS' compensation decisions. We are making no changes to the proposed rule based on this comment. The amount of compensation to be offered to individuals affected by actions taken to control Karnal bunt are at the discretion of the Secretary. The compensation amounts offered in this final rule, therefore, reflect the decisions of the Secretary, and are final. Provisions for review or appeal of compensation decisions may be more appropriate, for example, in cases where compensation is based on appraisal of a claimant's property. In such cases, there may be provisions for review or appeal of the appraisal amount accepted by APHIS. Under the Karnal bunt compensation program, compensation amounts are based on regulations that apply equally to all claimants, with no individual appraisal of the relative value of a claimant's wheat. Therefore, it is not necessary to include provisions for review or appeal of APHIS' compensation decisions.

One commenter requested complete deregulation of all wheat producing areas that were not found to have bunted kernels under the sampling program in the past 2 years. The commenter also requested changes in the regulations regarding testing and treatment of seed in areas where bunted kernels have been found. These comments are outside the scope of this rulemaking on 1996–1997 crop season compensation. However, we will consider these comments as we continue to evaluate the Karnal bunt regulations concerning regulated areas and testing and treatment of seed.

Miscellaneous

On January 9, 1998, we published a final rule in the **Federal Register** (63 FR 1321–1331, Docket No. 96–016–25, effective on December 23, 1997) to provide compensation to growers and seed companies for the loss in value of wheat seed in the 1995–1996 crop season. In the July 11 proposed rule on which this final rule is based, we proposed to provide compensation to growers and handlers for the loss in value of wheat seed and grain in the 1996–1997 crop season. Even though compensation provisions for 1996–1997 crop season seed were included in the July 11 proposal, we mistakenly failed to include seed companies as being eligible for compensation as we did in the January 9 final rule for 1995–1996 crop season seed. Seed companies are also referred to as handlers with regard to seed. However, in order to be consistent with the final rule for 1995–1996 crop season seed published on January 9, we have added the term ''seed companies'' throughout this final rule to make it clear that seed companies are eligible for compensation for the loss in value of 1996–1997 crop season wheat seed.

Also, under the January 9 final rule for the 1995–1996 crop season, only certified seed or seed grown with the intention of producing certified seed is eligible for compensation. The requirement that wheat seed be certified or grown with the intention of producing certified seed was not in the proposed rule on 1995–1996 wheat seed compensation, but was added in the January 9 final rule in response to commenters' concerns that this is the most reliable way to establish a grower or seed company's intent to produce wheat as a seed crop. Further, requiring that wheat seed be certified or grown with the intention of producing certified wheat seed ensures that the compensation is limited, as was our intent, to market-ready seed, and will not be paid for seed in other stages of development. For this reason, this final rule requires that 1996–1997 crop season wheat seed must be certified or grown with the intent of producing certified seed in order to be eligible for compensation.

Further, we have added a requirement in this final rule that growers and seed companies claiming compensation for seed must submit documentation that provides evidence that the wheat being considered for compensation is classified as certified seed or is considered certifiable as certified seed by a State seed certification agency. Seed certification agencies usually require that applicants for seed certification keep records of the amount of certifiable seed harvested. This documentation may include one or more of the following types of documents: An application to the State seed certification agency for field inspection (to show that seed is eligible for certification); a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed. Growers who do not have copies of such documentation can obtain it from the seed company or from their State's seed certification agency.

We proposed to require that, in order to claim compensation, claimants submit a number of documents. Among them, we proposed that claimants would have to submit verification as to the actual (not estimated) weight of the wheat for which compensation is being claimed, such as a copy of the limited permit under which the wheat is being moved, or other verification. We have been made aware that a limited permit often gives an estimated weight of the wheat, not the actual weight. A facility weigh ticket does give the actual weight of the wheat, and is a document to which all claimants would have access. Therefore, this final rule states that claimants must submit verification as to the actual (not estimated) weight of the wheat for which compensation is being claimed, such as a copy of a facility weigh ticket, or other verification. This change was made in § 301.89–15(c)(1) for growers, handlers, and seed companies and in § 301.89–16(b) and (c)(1) for flour millers and National Karnal Bunt Survey participants.

The proposed rule also provided compensation for flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed ''made from wheat produced in areas that require such treatment.'' As discussed previously in this document, a proposed rule was recently published that would amend the requirements for heat treating millfeed, so that the area in which the wheat was grown would no longer be the determining factor for requiring heat treatment. To accommodate this potential change, and any other changes that may occur with regard to millfeed requirements, this final rule states that flour millers are eligible for compensation if they heat

treat millfeed ''that is required by APHIS to be heat treated.'' This statement will exclude from compensation eligibility any millfeed that is heat treated at the request of any entity other than APHIS.

Finally, the proposed rule stated that claims for compensation must be received by APHIS or FSA on or before March 31, 1998. We do not believe that this will provide enough time for claimants to submit their claims. Therefore, this final rule requires that claims for compensation must be received by APHIS or FSA on or before 120 days after the date the final rule is published in the **Federal Register**.

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

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule provides compensation to persons who experienced economic losses in the 1996–1997 crop season because of the Karnal bunt quarantine and emergency actions. Immediate action is necessary to compensate for these losses. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This final rule establishes compensation provisions for certain growers, handlers, seed companies, owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey to mitigate losses and expenses incurred in the 1996–1997 crop season because of the Karnal bunt quarantine and emergency actions.

In accordance with Executive Order 12866, this analysis examines the economic impact of providing such compensation. The wheat industry within the regulated area is largely composed of businesses that can be considered as ''small'' according to guidelines established by the Small Business Administration. Therefore, this analysis also fulfills the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which require agencies to consider the economic impact of rule changes on small entities.

Upon detection of Karnal bunt in Arizona in March 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat producing areas in the United States. The unexpected discovery of Karnal bunt and subsequent Federal emergency actions disrupted the production and marketing flows of wheat in the quarantined areas. It was estimated that the impact of Karnal bunt and subsequent Federal actions on the wheat industry totaled $44 million in the 1995–1996 crop season.

In order to alleviate some of the economic hardships and to ensure full and effective compliance with the quarantine program, compensation to mitigate certain losses has been offered to growers, handlers, seed companies, and other affected persons in the areas regulated for Karnal bunt. The payment of compensation is in recognition of the fact that while benefits from regulation accrue to a large portion of the wheat industry outside the regulated areas, the regulatory burden falls predominately on a small segment of the affected wheat industry within the regulated areas. For the 1995–1996 wheat crop, $39 million in compensation funding was made available to USDA through budget apportionment.

As additional information from sampling and testing became available in subsequent months following the outbreak, the Agency was able to ease the quarantine in order to minimize the disruption to affected entities. An interim rule effective on April 25, 1997, and published in the **Federal Register** on May 1, 1997 (62 FR 23620–23628, Docket No. 96–016–19), substantially reduced the size of the area regulated for Karnal bunt and eased restrictions on the movement of grain and other regulated articles from those areas that remain under regulation. The interim rule also revised the categories of regulated areas into restricted areas for seed, restricted areas for regulated articles other than seed, and surveillance areas. No host material was grown in the 1996–1997 crop season in restricted areas for regulated articles other than seed. Wheat grain that is from a surveillance area and that tests negative for Karnal bunt may move under certificate to any destination without restriction. Wheat seed that is from a restricted area for seed and that tests negative for Karnal bunt may be planted only within a regulated area.

Under this final rule, growers, handlers, and seed companies will be eligible for compensation for losses in the 1996–1997 crop season due to wheat grain or seed that tested positive for Karnal bunt. Only positive-testing wheat will be eligible for compensation because of the lack of restrictions on the movement of negative testing wheat. Different levels of compensation will be offered depending on whether the wheat was grown in an area under the first regulated crop season or under the second regulated crop season. The rule defines an area in the first regulated crop season as an area that became regulated for Karnal bunt after the 1996–1997 crop was planted. An area under the second regulated crop season is an area that became regulated for Karnal bunt before the 1996–1997 crop was planted. At the time that we proposed this compensation in July 1997, there were no areas under the first regulated crop season. Since then, an area in San Saba County, TX, has been added to the list of regulated areas. Growers, handlers, and seed companies in that area will be eligible for first regulated crop season compensation. Growers, handlers, and seed companies in all other regulated areas will be eligible to receive second regulated crop season compensation.

For growers, handlers, and seed companies in the second regulated crop season, compensation for positive grain or seed will be $.60 per bushel. Growers, handlers, and seed companies in the first regulated crop season will be eligible for compensation at a rate not to exceed $1.80 per bushel. These compensation rates apply to both wheat grain and seed. The differential in compensation rates reflects the fact that affected entities in areas under the first regulated crop season would not have known that their area was to become regulated for Karnal bunt at the time that they made planting and contracting decisions, and would not have been prepared for the loss in value of their wheat due to Karnal bunt. Growers and handlers in the second regulated crop season knew they were in an area regulated for Karnal bunt at the time that they made planting and contracting decisions for the 1996–1997 crop season. Given the restrictions, growers and handlers could have chosen to alter planting or contract decisions to avoid experiencing potential losses due to Karnal bunt. Information on the regulated acreage in the 1996–1997 crop season, and the wheat plantings expected within these areas, is presented in Table 1.

TABLE 1.—KARNAL BUNT REGULATED AREAS AND WHEAT PLANTINGS IN REGULATED AREAS

	Arizona	California	New Mexico	Texas (El Paso) [1]	Texas (San Saba) [2]
Acres Restricted for Other than Seed 1996–1997	6,162	3,113	3,990	469	1,050.
Acres in Surveillance Area 1996–1997	135,000	84,000	N/A	N/A	15,000.
Acres Restricted for Seed 1996–1997 [3]	797,000	100,000	58,650	469	20,000.
Acres of Planted Wheat in Regulated Area 1995–1996	181,000	129,883	10,235	705	(*)
Acres of Planted Wheat in Regulated Area 1996–1997	89,000	9,087	3,327	703	20,000.

[1] The Texas-El Paso area is designated as a second regulated crop season area.
[2] The Texas-San Saba area is designated as a first regulated crop season area.
[3] Acreage restricted for seed encompasses both restricted areas for regulated articles other than seed and surveillance areas.
* Not within regulated area in 1995–1996.

APHIS has completed testing of wheat from the regulated areas in the 1996–1997 crop season. In California, for the 1996–1997 crop, 1 railcar of wheat tested positive for spores out of 219 railcars tested. In Arizona, 5 railcars tested positive for spores out of a total of 203 railcars tested. In New Mexico and in Texas (El Paso), no grain or seed was found to be positive for Karnal bunt. The testing of wheat conducted under the National Karnal Bunt Survey in the 1996–1997 crop season found one new area with Karnal bunt, in San Saba County, TX. Positive wheat from this area will be compensated for under the provisions for first regulated crop season areas. Approximately 76,000 bushels of harvested wheat that were in storage in this area were found positive for Karnal bunt. Compensation calculations are provided in Table 2.

TABLE 2.—COMPENSATION FOR POSITIVE TESTING WHEAT IN THE 1996–1997 CROP SEASON

Area	Wheat acreage grown in regulated area [1]	Positive wheat grain (Bu.)	Positive wheat seed (Bu.)	Maximum compensation (per bushel)	Total compensation
California [2]	9,087	3,333	0	$.60	$2,000
Arizona [3]	89,000	16,667	([4])	.60	10,000
Texas-San Saba	20,000	65,641	10,494	1.80	137,044
Totals	118,087	85,691	10,494	.....	149,044

[1] One acre of wheat yields approximately 100 bushels of wheat grain in this region.
[2] In California only one railcar tested positive for Karnal bunt. The bushels of positive wheat is estimated by assuming that each railcar carries a load of 100 tons or 200,000 pounds. At 60 pounds per bushel, one railcar therefore holds 3,333 bushels per car.
[3] In Arizona, 5 railcars tested positive for Karnal bunt.
[4] Only 25 pounds of research seed tested positive in Arizona.

Assuming an average market value of $5 per bushel for wheat in this region, we estimate the total value of wheat produced in the regulated areas to be $59 million in the 1996–1997 crop season. According to the calculations in Table 2, approximately 96,185 bushels of wheat grain and seed, or 0.8 percent of the wheat grown in the regulated areas, tested positive for Karnal bunt in the 1996–1997 crop season. We estimate that the 96,185 bushels would bring about $481,000 in the absence of Karnal bunt regulations. Under the provisions of this final rule, we expect compensation for this wheat grain and seed will total about $150,000.

This final rule also provides compensation for the decontamination of grain storage facilities found with positive wheat, the treatment of millfeed, and participants in the National Karnal Bunt Survey whose wheat or grain storage facility is found to be positive for Karnal bunt. Compensation for decontamination of grain storage facilities will be on a one-time only basis for up to 50 percent of the cost of decontamination, not to exceed $20,000. Ten facilities that stored seed testing positive for Karnal bunt in San Saba County, TX, will be eligible for this compensation. Eight of these are small, on-site storage facilities; for purposes of this analysis, we estimate the maximum compensation for which these small facilities will be eligible is about $10,000 per facility. The remaining two facilities are large-capacity storage facilities that, for purposes of this analysis, we estimate will be eligible for the maximum compensation of $20,000 each. Using these estimates, compensation for the decontamination of grain storage facilities under this rule should total a maximum of $120,000.

No millfeed made from wheat grown in the regulated area has been heat treated in the 1996–1997 crop season, so it will not be necessary to compensate for heat treatment of millfeed. Owners of grain storage facilities found to contain positive-testing wheat during the National Karnal Bunt Survey are all within the newly regulated area in San Saba County, TX. The owners will, therefore, be eligible for first regulated crop season compensation.

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat grain and seed, and wheat seed companies, are those most affected by this rule change. It is estimated that there are a total of 373 wheat growers in the regulated area: 248 in Arizona, 21 in California, 23 in New Mexico, and 81 in Texas. There are 99 growers in the surveillance area, and 274 growers in regulated areas lying beyond surveillance areas.[1] Most of

[1] The 99 growers in surveillance areas are distributed as follows: 21 in Arizona, 18 in California, 60 in Texas, and none in New Mexico. The 274 growers in regulated areas lying beyond surveillance areas are distributed as follows: 227 in Arizona, 3 in California, 23 in New Mexico, and 21 in Texas.

these entities have total sales of less than $0.5 million, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic impact of this rule will largely be on small entities. However, grain in the five railcars that tested positive for Karnal bunt in Arizona is owned by one handler who is not considered a small entity under the criteria established by the Small Business Administration.

This final rule is expected to have a positive economic impact on all affected entities, large and small. Compensation for the loss in value of wheat that tests positive for Karnal bunt serves to encourage compliance with testing requirements within the regulated area, thereby aiding in the preservation of an important wheat growing region in the United States. It also serves to encourage participation in the National Karnal Bunt Survey program.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control numbers are 0579–0121 and 0579–0126.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–1, a definition for *Actual price received* is added in alphabetical order to read as follows:

§ 301.89–1 Definitions.

Actual price received. The net price after adjustment for any premiums or discounts stated on the sales receipt.

* * * * *

3. New §§ 301.89–15 and 301.89–16 are added to read as follows:

§ 301.89–15 Compensation for growers, handlers, and seed companies in the 1996–1997 crop season.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt after the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the 1996–1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1996–1997 crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in an area under the first regulated crop season, who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. However, compensation for positive-testing wheat will not exceed $1.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated, compensation will equal the contract price minus the actual price received by the grower.

(ii) If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in an area under the first regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler or seed company, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler or seed company. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain. However, compensation will not exceed $1.80 per bushel under any circumstances.

(b) *Growers, handlers, and seed companies in areas under second regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and

(b)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and, the wheat was grown in an area of that State that became regulated for Karnal bunt before the 1996–1997 crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the 1996–1997 crop was planted; and, the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in areas under the second regulated crop season are eligible for compensation only for 1996–1997 crop season wheat. The compensation provided in this section is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers*. Growers of wheat in an area under the second regulated crop season who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of $.60 per bushel of positive testing wheat.

(2) *Handlers and seed companies*. Handlers and seed companies who sell wheat grown in an area under the second regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid by the handler or seed company is not contingent on the test results. Compensation will be at the rate of $.60 per bushel of positive testing wheat.

(c) *To claim compensation*. Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Compensation claims must be received by FSA on or before October 8, 1998. The Administrator may extend the deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

(1) *Growers, handlers, and seed companies*. A grower, handler, or seed company must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523) (EAN) has been issued, the grower, handler, or seed company must submit a copy of the EAN. Growers, handlers, and seed companies must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of a facility weigh ticket, or other verification). For compensation claims for wheat seed, a grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed (this documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed);

(2) *Growers*. In addition to the documents required in paragraph (c)(1) of this section, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under paragraph (a)(1) of this section (first regulated crop season) must submit a copy of the contract the grower has for the wheat, if the wheat was under contract. Growers compensated under paragraph (b)(1) of this section (second regulated crop season) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

(3) *Handlers and seed companies*. In addition to the documents required in paragraph (c)(1) of this section, handlers and seed companies must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the handler or seed company. The handler or seed company must also submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (such as a copy of the receipt for the purchase of the wheat or a copy of the contract the handler or seed company has with the grower, if this information appears on those documents).

§ 301.89–16 Compensation for grain storage facilities, flour millers, and National Survey participants for the 1996–1997 crop season.

Owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1996–1997 crop season to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Decontamination of grain storage facilities*. Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facilities, are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed $20,000 per grain storage facility (as defined in § 301.89–1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered by APHIS to be decontaminated. The records must include a copy of the Emergency Action Notification or the letter from an inspector ordering decontamination, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation must be received by APHIS on or before October 8, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date.

(b) *Flour millers*. Flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed that is required by APHIS to be

heat treated are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation must be received by APHIS on or before October 8, 1998. The Administrator may extend this deadline, upon written request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date.

(c) *National Karnal Bunt Survey participants*. If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facility. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

(1) *Loss in value of positive wheat*. The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed $1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit to FSA a copy of the Emergency Action Notification or letter from an inspector under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation must be received by FSA on or before October 8, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date.

(2) *Decontamination of grain storage facilities*. The owner of the facility will be compensated on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (a) of this section (up to 50 per cent of the direct costs of decontamination, not to exceed $20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (a) of this section. Claims for compensation must be received by APHIS on or before October 8, 1998. The Administrator may extend this deadline, upon request in specific cases, when unusual and unforeseen circumstances occur which prevent or hinder a claimant from requesting compensation on or before that date.

Done in Washington, DC, this 4th day of June 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15405 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–040–1]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by removing areas from 12 counties in North Carolina and 3 counties in South Carolina. This action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles from North Carolina and South Carolina.

DATES: Interim rule effective June 4, 1998. Consideration will be given only to comments received on or before August 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–040–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–040–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Operational Support, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga* spp.), a parasitic plant that feeds off the roots of its host, causes degeneration of corn, sorghum, and other grassy crops. It is found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in areas designated as suppressive areas. Currently, there are no areas designated as generally infested areas.

Removal of Areas From List of Regulated Areas

We are amending § 301.80–2a of the regulations, which lists generally infested and suppressive areas, by removing areas in Bladen, Columbus, Craven, Cumberland, Duplin, Greene, Lenoir, Pender, Pitt, Robeson, Sampson, and Wayne Counties, NC, and areas in Dillon, Horry, and Marion Counties, SC, from the list of suppressive areas. As a result of this action, there are no longer any regulated areas in Craven, Duplin, Greene, Lenoir, Pitt, and Wayne Counties, NC.

We are taking this action because we have determined that witchweed no longer occurs in these areas; therefore, there is no longer a basis for listing these areas as suppressive areas for the purpose of preventing the spread of witchweed. This action relieves unnecessary restrictions on the interstate movement of regulated articles from these areas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service (APHIS) has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of regulated articles from North Carolina and South Carolina.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Witchweed (*Striga* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Witchweed is found in the United States only in parts of North Carolina and South Carolina.

The witchweed regulations quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed into noninfested areas of the United States.

Regulated areas are designated as either suppressive areas or generally infested areas. The eradication of witchweed is an objective in suppressive areas, and APHIS conducts surveys and applies chemical treatments to achieve that objective. The cost of treatments and surveillance is borne by the Federal Government.

We are amending the regulations by removing 357 farms in North Carolina and South Carolina from the list of suppressive areas because witchweed has been eradicated from these premises. There are no direct economic benefits associated with this removal; however, the regulated articles produced by some small entities may receive better interstate and intrastate market access as a result of originating in an area free of witchweed.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 301.80–2a is revised to read as follows:

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

NORTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Bladen County. That area north of a line beginning at the intersection of the Robeson-Bladen County line and State Highway 211, then east along State Highway 211 Bypass to State Highway 242, then northeast along State Highway 242 to U.S. Highway 701, then north along U.S. Highway 701 to the Cape Fear River, then southeast along the Cape Fear River to the Bladen-Columbus County line.

The Blanks, Alex, farm located on the north side of State Secondary Road 1734 and 0.5 mile southeast of its intersection with State Highway 87.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

The Jacobs, Sammy, farm located on a field road 2.0 miles southwest of its intersection with State Secondary Road 1708 and 0.25 mile south of its intersection with State Secondary Road 211.

The Maultsby, T.N., farm located on both sides of State Highway 87 at 0.7 mile northwest of its intersection with State Secondary Road 1743.

The Williams, Johnny, farm located west of State Highway 211 Business and 0.1 mile from its intersection with State Highway 211 Bypass and 0.5 mile southeast of the Robeson-Bladen County line.

Columbus County. The Biggs, K.M., farm located on the north side of State Secondary Road 1574 and 1.1 miles southeast of its intersection with State Secondary Road 1506.

The Border Belt Research Station farm located on the west side of State Secondary Road 1537 and 0.3 mile northeast of its intersection with State Secondary Road 1002.

The Britt, J.T., farm located on the east side of State Secondary Road 1504 and 1.3 miles northeast of its intersection with State Secondary Road 1504.

The Gore, Nettie, farm located on the west side of U.S. Highway 76 and 0.6 mile north of its intersection with State Secondary Road 1355.

The Griffin, Wilson, farm located on the east side of State Secondary Road 1512 and 1.4 miles southwest of its intersection with State Highway 242.

The Ivey, William, farm located on the south side of State Secondary Road 1504 and 0.3 mile from its intersection with State Secondary Road 1506.

The Keaton, Willie, farm located on the south side of State Secondary Road 1852 and 0.5 mile southwest of its intersection with State Highway 87.

The Lennon, Calvin, farm located on the southwest side of State Secondary Road 1002 and 0.7 mile southeast of its intersection with State Highway 242.

Cumberland County. That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast along U.S. Highway 301 to Interstate 95, then northeast along Interstate 95 to U.S. Highway 13, then east and northeast along U.S. Highway 13 to the Cumberland-Sampson County line.

The Bullock, Berline, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its intersection with U.S. Highway 301.

The Lewis, David, farm located on the west side of U.S. Highway 301 and 0.1 mile south of its intersection with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The McKeithan, Sarah, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its intersection with State Secondary Road 1856.

The McKeithan, Zela, farm located on the east side of U.S. Highway 301 and 0.3 mile south of its intersection with State Secondary Road 1856.

The McLaughlin, Cornell, farm located on the south side of State Secondary Road 2221 and 0.2 mile east of its intersection with State Secondary Road 2367.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its intersection with U.S. Highway 301.

The McNeill, Clifton, farm located on both sides of State Secondary Road 2241 at its intersection with State Secondary Road 2252.

The Odom, Marshall, farm located on the north side of State Secondary Road 1722 and 0.1 mile west of its intersection with U.S. Highway 301.

The Patterson, Theodore, farm located on the north side of State Road 1288 at its intersection with State Secondary Road 1116.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Williams, Howard, farm located at the end of State Secondary Road 2243, which is a dead end road.

Pender County. The Kea, Leo, farm located 0.3 mile east of State Secondary Road 1105 and 1.2 miles south of its intersection with State Secondary Road 1104.

The Keith, F.R., farm located on both sides of State Secondary Road 1130 and 0.7 mile west of its junction with State Highway 210.

The Manuel, George, farm located 0.1 mile south of State Highway 210 and 0.2 mile west of its junction with State Secondary Road 1103.

The McCallister, Mary, farm located 0.2 mile east of State Secondary Road 1105 and 1.1 miles south of its intersection with State Secondary Road 1104.

The Zibelin, John R., farm located 0.5 mile east of State Secondary Road 1105 and 1.2 miles south of its intersection with State Secondary Road 1104.

Robeson County. That area west and south of a line beginning at the intersection of Interstate 95 and the Cumberland-Robeson County line and extending southeast along Interstate 95 to State Highway 211 then northeast along State Highway 211 to the Robeson-Bladen County line.

The Epps, Frank, farm located on the northeast side of a field road 0.5 mile east of its intersection with State Secondary Road 1935 and 0.7 mile east of its intersection with U.S. Highway 301.

The Smith, Josephine, farm located on the west side of State Secondary Road 1937 and 0.2 mile south of its intersection with State Secondary Road 1933.

The Warwick, W.M., farm located on a field road 0.3 mile north of State Secondary Road 2120 and 0.5 mile west of its intersection with State Highway 211.

Sampson County. That area south of a line beginning at a point where U.S. Highway 421 intersects the Sampson-Harnett County line, then southeast along U.S. Highway 421 to the Sampson-Pender County line.

The Bryant, Ermon Estate, farm located on the north side of State Secondary Road 1943 and 0.6 mile northwest of its intersection with State Secondary Road 1942.

The Hobbs, Ed, farm located 0.7 mile south of State Secondary Road 1736 and 1 mile south of its intersection with State Secondary Road 1731.

The Merritt, David, farm located on a field road 0.5 mile south of State Secondary Road 1943 and 0.4 mile southwest of its intersection with State Secondary Road 1944.

The Pate, Ray, farm located on the west side of State Secondary Road 1738 and 0.6 mile southeast of its intersection with State Secondary Road 1740.

The Quarter M Farms farm located on a field road 0.2 mile southeast of State Secondary Road 1955 and 0.7 mile southeast of its intersection with State Secondary Road 1945.

The Strickland, Edgebert, farm located on the north side of State Highway 421 and 1 mile east of its intersection with State Secondary Road 1703.

SOUTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Dillon County. The Adams, Coble, farm located west of State Secondary Highway 23 and 0.2 mile north of its intersection with State Secondary Highway 286.

The Wise, Wilbur, farm located on the south side of a field road and 0.15 mile southeast of the junction of the road with State Secondary Road 626 and 0.55 mile southwest of the intersection of State Secondary Road 625 with State Highway 38.

Horry County. That area bounded by a line beginning at a point where U.S. Highway 76 intersects the South Carolina-North Carolina State line, then south along U.S. Highway 76 to State Secondary Highway 44, then south along State Secondary Highway 44 to State Secondary Highway 19, then south along State Secondary Highway 19 to Honey Camp Branch, then southwest along Honey Camp Branch to Lake Swamp, then east along Lake Swamp to Prince Mill Swamp, then south along Prince Mill Swamp to State Secondary Highway 309, then southwest along State Secondary Highway 309 to State Secondary Highway 45, then southwest along State Secondary Highway 45 to State Secondary Highway 129, then northwest along State Secondary Highway 129 to U.S. Highway 501, then northwest along U.S. Highway 501 to the Little Pee Dee River, then northeast along the Little Pee Dee River to the Lumber River, then northeast along the Lumber River to the South Carolina-North Carolina State line, then southeast along the State line to the point of beginning.

That area south of a line beginning at the intersection of the Waccamaw River and State Secondary Highway 638, then southeast along State Secondary Highway 638 to State Primary Highway 90, then north along State Primary Highway 90 to an unpaved road known as Water Tower Road, then east along Water Tower Road to an unpaved road known as Telephone Road, then southeast along Telephone Road to the northern tip of Long Bay, then west along Long Bay to Dogwood Road, then northwest along Dogwood Road to South Carolina Primary Highway 90, then northeast along South Carolina Primary Highway 90 to the north branch of Mills Swamp, then west along this branch to the Waccamaw River, then northeast along the Waccamaw River to the point of beginning.

The Harden, John, farm located on the northwest side of a dirt road and 0.4 mile northeast of the junction of this dirt road with State Secondary Roads 105 and 377.

The Stevens, James, farm located on the south side of a dirt road and 0.3 mile northeast of its junction with State Secondary Highway 112, this junction being 1.2 miles east of the junction of State Secondary Highway 112 with State Secondary Highway 139.

Marion County. That area north, west, and east of a line beginning at the intersection of State Primary Highway 41A and the North Carolina-South Carolina State lines, then southwest along State Primary Highway 41A to the Marion city limits, then southeast along the Marion city limits to U.S. Highway 76, then east along U.S. Highway 76 to the Mullins city limits, then southeast along the Mullins city limits to State Primary Highway

917, then southeast along State Primary Highway 917 to the Little Pee Dee River.

Done in Washington, DC, this 4th day of June 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15404 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AF77

License Term for Medical Use Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations pertaining to the medical use of byproduct material to eliminate the 5-year term limit for medical use licenses. License terms for licenses issued under these regulations will be set by policy. Other materials licenses are issued for up to 10 years. The NRC will issue some licenses for shorter terms if warranted by the individual circumstances of license applicants. The amendment reduces the administrative burden of license renewals on a 5-year cycle for both NRC and licensees and supports NRC's goal of streamlining the licensing process.

EFFECTIVE DATE: This regulation becomes effective on July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail JMM2 @ nrc.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1995, the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) initiated a review to determine whether the license term for materials licenses could be lengthened so that NRC's licensing resources could be redirected to other areas of the materials program. At that time, the resources devoted to renewals constituted over 50 percent of the total resources expended for licensing. NMSS undertook this review as a part of NRC's ''business process redesign'' efforts.

The license renewal process has been used as an opportunity for the Commission to review the history of the licensee's operating performance (e.g., the record on compliance with regulatory requirements) and the licensee's overall materials safety program. This review is performed to ascertain if the licensee employs up-to-date technology and practices in the protection of health, safety, and the environment, and complies with any new or amended regulations. As part of a license renewal, the licensee is asked to provide information on the current status of its program as well as any proposed changes in operations (types and quantities of authorized materials), personnel (authorized users and radiation safety officers), facility, equipment, or applicable procedures. The renewal process has been perceived to benefit both the licensee and NRC because it requires both to take a comprehensive look at the licensed operation. However, in practice, comprehensive program reviews occur when proposed changes are identified and requested by licensees as license amendments rather than during the license renewal process.

License terms have been reviewed on numerous occasions since 1967. On May 12, 1967 (32 FR 7172), the Commission amended 10 CFR part 40 to eliminate a 3-year limit on the term of source material licenses. At that time, there was no restriction on the term of byproduct licenses under 10 CFR part 30 or special nuclear material licenses under 10 CFR part 70. In the notice of proposed rulemaking associated with amending 10 CFR part 40, dated December 22, 1966, NRC indicated that if the proposed amendment to eliminate the 3-year restriction were adopted, licenses would be issued for 5-year terms, except when the nature of the applicant's proposed activities indicated a need for a shorter license period. At that time, the Commission believed there was little justification for granting licenses under 10 CFR parts 30, 40, and 70 for terms of less than 5 years, in view of the cumulative experience up to that time and the means available to NRC to suspend, revoke, or modify such licenses if public health and safety or environment so required.

In March 1978, NMSS conducted a study (SECY–78–284, ''The License Renewal Study for parts 30, 40, and 70 Licenses'') to consider changing the 5-year renewal period for parts 30, 40, and 70 licenses. The study concluded, in part, that the NRC should continue its practice of issuing specific licenses for 5-year terms and should retain an option to write licenses for shorter terms, if deemed necessary, for new types of operations or if circumstances warranted.

On July 26, 1985 (50 FR 30616), NRC proposed revising 10 CFR part 35, ''Medical Use of Byproduct Material.'' The proposed rulemaking indicated that the Commission had selected a term of five years for a license. It was believed that a term shorter than 5 years would not benefit health and safety because past experience indicated that medical programs did not generally change significantly over that period of time. The notice also indicated that a longer term may occasionally result in unintentional abandonment of the license. On October 16, 1986 (51 FR 36932), NRC issued the final rule that consolidated and clarified radiation safety requirements related to the medical use of byproduct materials, and included a license term of 5 years.

On June 19, 1990 (55 FR 24948), the Commission announced that the license term for major operating fuel cycle licensees (i.e., licenses issued pursuant to 10 CFR parts 40 or 70) would be increased from a 5-year term to a 10-year term at the next renewal of the affected licenses. This change enabled NRC resources to be used to improve the licensing and inspection programs. The bases for this change were that major operating fuel cycle facilities had become stable in terms of significant changes to their licenses and operations and that licensees would be required to update the safety demonstration sections of their licenses every 2 years.

On July 2, 1996, the Commission approved the NRC staff's proposal to extend the license term for uranium recovery facilities from 5 years to 10 years. Extending the license term reduces the administrative burden associated with the license renewal process for both the NRC staff and the uranium recovery licensees. Also, the extension reduces licensee fees, makes the license term for these facilities more commensurate with the level of risk, and supports NRC's goal of streamlining the licensing process. Licensees were informed of the extensions in July 1996.

On February 6, 1997 (62 FR 5656), the Commission gave notice that the license term for materials licenses issued pursuant to 10 CFR parts 30, 40, or 70 would be increased from a 5-year term to up to a 10-year term at the next renewal of the affected licenses. However, whereas the 10-year term for

other licenses was set by this policy, the term for licenses issued pursuant to 10 CFR part 35 was established by regulation at 5 years.

On July 31, 1997 (62 FR 40975), the NRC published a proposed rule to revise 10 CFR part 35 to eliminate the 5-year term limit in 10 CFR 35.18 for medical use licenses. The term for medical licenses could then be set by policy for up to 10 years. The NRC could issue a license for a shorter term, depending on the individual circumstances of the license applicant. The public comment period closed on October 14, 1997. A summary of the public comments is provided in Section IV, below.

II. Discussion

The change described above (i.e., increasing the license term for materials licenses issued under 10 CFR parts 30, 40, and 70 to up to 10 years) has created an inconsistency between the license terms for medical use and nonmedical use materials licenses. NRC believes that the license duration period for medical use licenses may also be extended without adverse impacts on public health and safety, such as increases in the unintentional abandonment of licensed material or decreases in the licensees' attention to licensed activities, for the following reasons:

(1) Licensees would continue to be required to adhere to the regulations and their license conditions, and to apply for license amendments for certain proposed changes to their programs;

(2) No changes in either the frequency or elements of the medical inspection program are being proposed;

(3) NRC would continue to be in a position to identify, by inspection or other means, violations of its regulations or the license conditions that affect public health and safety, and to take appropriate enforcement actions;

(4) Cases of abandonment of NRC licenses would be identified through nonpayment of the annual licensing fees and regional NRC office follow-up;

(5) The NRC staff would continue to make licensees aware of health and safety issues through the issuance of generic communications (such as information notices, generic letters, bulletins, and the NMSS Licensee Newsletter); and

(6) NRC is moving to a more performance-based regulatory approach, where emphasis is placed on the licensee's execution of commitments rather than on rereview of the details of the licensee's program.

III. Statement of Regulatory Action

The NRC is revising part 35 to eliminate the 5-year term limit in 10 CFR 35.18 for medical use licenses so that the term for medical use licenses will be set by policy.

IV. Discussion of Public Comments

Five letters of public comment were received on the proposed rule. Comments were received from National Physics Consultants, Ltd., the American Association of Clinical Endocrinologists, the Mayo Clinic, the University of Cincinnati, and the American Hospital Association.

All commenters fully supported the proposed amendment to eliminate the reference to the 5-year term limit for medical use licenses in 10 CFR 35.18. In addition, the commenters endorsed the change in license terms for licenses issued pursuant to part 35, to be set by policy for as many as 10 years, as are the license terms for other material licenses.

In general, commenters disparaged the license renewal process, on a 5-year frequency, as requiring a significant expenditure of time and fees with minimal benefit, and supported NRC's proposal to eliminate this requirement, citing a reduction of staff time and costs for both the NRC and individual licensees with no decrease in public health and safety. Commenters recognized that the NRC may issue some licenses for shorter terms if warranted by the individual circumstances of license applicants.

One commenter stated that routine license reviews by the local Radiation Safety Committee will ensure operation of a radiation safety program that protects public health and safety.

Another commenter indicated that because the NRC is in contact with the licensees on an ongoing basis, any changes in operations, personnel, facility, equipment, or applicable procedures are identified during the inspection and license amendment process.

One of the commenters agreed that the radiation safety programs at most medical facilities are very stable and pointed out that significant changes in the radiation safety program require license amendments.

Another commenter recommended that NRC extend the license term for medical use licenses from 5 years to 10 years as soon as possible to reduce the license fees and achieve further cost savings. This commenter expressed support for the NRC's ''business process redesign'' efforts to reduce both the administrative burden of license renewals and license fees. According to the commenter, this will allow that organization's members to redirect their resources to support and implement NRC's initiative to move to a more performance-based regulatory approach.

V. Agreement States Compatibility

This rulemaking will be a matter of compatibility between the NRC and the Agreement States. Compatibility Category D has been assigned to the changes in 10 CFR 35.18. Category D means the provisions are not required for purposes of compatibility. No problems have been identified regarding Agreement State compatibility implementation of this rule change.

VI. Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i) for amendments to Part 35 that relate to renewals of licenses. Therefore, neither an environmental statement nor an environmental assessment has been prepared for this final regulation.

VII. Paperwork Reduction Act Statement

This final rule reduces the burden for both medical licensees and the NRC because license terms for Part 35 licensees could be established by policy, for as many as 10 years, as is the case for other materials licensees. However, the reduced burden from less frequent license renewal will not be realized in the near future because the affected licenses are operating under a 5-year extension of current licenses granted in 1995. The impact of that one-time extension is addressed in the current supporting statement for NRC Form 313, ''Application for Material License,'' which was approved by the Office of Management and Budget (OMB) under OMB Clearance No. 3150–0120 and which expires on July 31, 1999. The data on reduced burden from extension of the license term for all material licenses and from other actions taken to streamline the licensing process will be included in the request for renewal of the information collection requirements on NRC Form 313 in 1999. This is appropriate because the next OMB clearance extension will cover 1999–2002, when the medical licenses currently under the 5-year extension will expire and will be affected by this rulemaking. Send comments on any aspect of this information collection, including suggestions for further reducing the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150–0014), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

Problem

The current rule requirement, regarding the term of medical licenses, is codified in 10 CFR 35.18 and states that ''The Commission shall issue a license for the medical use of byproduct material for a term of five years.'' The license term of other materials licenses, as established by Commission policy, is up to 10 years. There is an inconsistency as to duration and manner of specifying the license terms of medical use licenses and all other materials licenses. Based on the above, the following options were considered.

Alternative Approaches

1. *Take no Action:* Maintain the requirement that licenses issued pursuant to Part 35 would be issued for 5 years.

This option would continue the inconsistencies between medical licenses and all other materials licenses as to the duration and specification of license terms. Terms for medical use licenses are established in codified regulations, whereas the term for other materials licenses is now set by policy. Also, this option would result in disparities in the duration of the term for materials licenses. Medical use licenses would continue to be issued for 5-year terms whereas the duration of the term for other materials licenses is up to 10 years.

2. *Revise 10 CFR 35.18:* Revise the regulations to delete any reference to the license term for licenses issued pursuant to part 35.

This option would result in consistency between how license terms for medical licenses and all other materials licenses are established and in the duration of these licenses. Commission decisions regarding the duration of a materials license could therefore apply uniformly to all types of materials licenses. After final rulemaking action to revise 10 CFR 35.18, the license term for licenses issued pursuant to part 35 would be set by the already established policy for as many as 10 years.

Value and Impact

The license renewal process is resource-intensive for both the licensee and NRC. At the time of license renewal, licensees submit to NRC any changes in operations, personnel, facility, equipment, or applicable procedures. Because NRC is in contact with the licensees on an ongoing basis, many of these changes are identified during the inspection and license amendment process. Therefore, the rulemaking to remove the 5-year license term for medical use of byproduct material would not change the health and safety requirements imposed on licensees.

By removing the reference to the 5-year term in 10 CFR 35.18 and, with the Commission's February 1997 extension of the license term for as many as 10 years for all materials licenses issued pursuant to parts 30, 40, and 70, there is a reduction in the regulatory burden for approximately 1,900 NRC licensees that use byproduct material for medical procedures. Estimated savings are based on the assumption that these licensees would only be required to submit a renewal application every 10 years as opposed to every 5 years, resulting, on average, in a savings of 190 applications per year. However, offsetting these savings, medical licensees may need to submit an average of one additional amendment during the 10-year period to account for changes in operations that would have routinely been addressed when the license was renewed on a 5-year cycle. Assuming that a typical license renewal application and typical amendment involves 19 hours and 4 hours of licensee professional effort, respectively, there would be a net savings per licensee of 15 hours. Based on an industry professional labor rate of $125 per hour, the annual industry-wide savings would approximate $356,000. Over a 30-year time frame, based on a 7-percent real discount rate, the present worth savings to industry would approximate $4.4 million.

Similarly, this rulemaking is also cost effective for the NRC because fewer resources would be required to review and process renewal applications. On average, it takes approximately 14 hours of NRC professional time to renew a medical license and 4 hours to review and issue a license amendment. This means a net savings to the NRC of 10 hours per licensee. Assuming an NRC labor rate of $125 per hour, and on average, 190 applications per year, the annual NRC savings would equal $237,000. The 30-year present worth savings to the NRC would approximate $2.9 million.

Conclusion

This rulemaking, to remove the 5-year license term for medical use of byproduct material, is promulgated so the term for medical licenses will be consistent with that of other materials licenses (set by policy to be as many as 10 years). The extension will reduce the administrative burden of license renewals for both NRC and licensees and will support NRC's goal of streamlining the licensing process without any reduction in health and safety. NRC may issue some licenses for shorter terms if warranted by the individual circumstances of license applicants.

Decisional Rationale

Based on the desire to reduce burden whenever it is possible to do so without reducing protection of public health and safety, to maintain consistency among license terms for materials licensees, and the cost effectiveness of longer license terms, the NRC is amending 10 CFR part 35 to eliminate the 5-year term limit for medical use licenses and allow the license term to be set by policy, as is the case for other materials licenses.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. By removing the reference to the 5-year license term in 10 CFR 35.18, the duration of medical use licenses will be set by policy, resulting in a reduction in the regulatory burden for NRC medical use licensees.

X. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because the amendment does not involve any provision that would impose backfits as defined in 10 CFR 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. The introductory text of § 35.18 is revised to read as follows:

§ 35.18 License issuance.

The Commission shall issue a license for the medical use of byproduct material if:

* * * * *

Dated at Rockville, Md., this 20th day of May 1998.

For the Nuclear Regulatory Commission.

L. Joseph Callan,

Executive Director for Operations.

[FR Doc. 98–15400 Filed 6–9–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–97–AD; Amendment 39–10582; AD 98–12–28]

RIN 2120–AA64

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that requires repetitive inspections for cracking in the false spar of the wing, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking in the false spar, which could result in reduced structural integrity of the wing.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 CASA Model C–212 series airplanes was published in the **Federal Register** on April 9, 1998 (63 FR 17341). That action proposed to require repetitive inspections for cracking in the false spar of the wing, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $73,800, or $1,800 per airplane, per inspection cycle.

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:

98–12–28 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–10582. Docket 98-NM–97-AD.

Applicability: All Model C–212 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the false spar of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 1,200 flight hours after the effective date of this AD, perform a detailed visual inspection for cracking in the false spar of the wing, on the left and right sides of the airplane, in accordance with CASA Product Support Document COM 212–224, dated November 28, 1990.

(1) If no cracking is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 1,200 flight hours.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain (or its delegated agent). Repeat the detailed visual inspection thereafter at intervals not to exceed 1,200 flight hours.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The inspections shall be done in accordance with CASA Product Support Document COM 212–224, dated November 28, 1990. 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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. 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.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 02/96, dated May 13, 1996.

(e) This amendment becomes effective on July 15, 1998.

Issued in Renton, Washington, on June 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15254 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–53–AD; Amendment 39–10581; AD 98–12–27]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive magnetic particle inspections to detect cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking of the splined operating shaft of the internal door handle, which could result in failure of the internal door handle, inability to operate the door during an emergency evacuation, and consequent injury to airplane occupants.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on April 9, 1998 (63 FR 17342). That action proposed to require repetitive magnetic particle inspections to detect cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required magnetic particle inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the magnetic particle inspection required by this AD on U.S. operators is estimated to be $10,800, or $1,080 per airplane, per inspection cycle.

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:

98–12–27 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10581. Docket 98–NM–53–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2067 inclusive; 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door, which could result in failure of the internal door handle, inability to operate the door during an emergency evacuation, and consequent injury to airplane occupants; accomplish the following:

(a) Prior to the accumulation of 2,000 flight cycles on the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door; or within 60 days after the effective date of this AD; whichever occurs later: Accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Perform a magnetic particle inspection to detect cracking of the splined operating shaft of the internal door handle on the forward passenger door, rear passenger door, and rear baggage door, in accordance with British Aerospace Regional Aircraft BAe ATP Alert Service Bulletin ATP–A52–30, dated March 19, 1997.

(i) If any crack is found, prior to further flight, accomplish the actions required by paragraph (a)(2).

(ii) If no crack is found, repeat the actions required by paragraph (a) of this AD at intervals not to exceed 1,000 flight cycles.

(2) Replace the existing splined operating shaft with a new splined operating shaft, in accordance with the alert service bulletin. Repeat the actions required by paragraph (a) of this AD within 2,000 flight cycles after the replacement, and thereafter at intervals not to exceed 1,000 flight cycles.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with British Aerospace Regional Aircraft BAe ATP Alert Service Bulletin ATP–A52–30, dated March 19, 1997. 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–03–97.

(e) This amendment becomes effective on July 15, 1998.

Issued in Renton, Washington, on June 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15253 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–10–AD; Amendment 39–10576; AD 98–12–22]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters that requires shimming the tail rotor drive system bearing supports (bearing supports). This amendment is prompted by reports of cracked bearing hangar support arms in the area of the fillet radius. The actions specified by this AD are intended to prevent failure of the bearing supports, which could result in excessive tail rotor drive system vibration, loss of tail rotor drive, and subsequent loss of control of the helicopter.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jurgen Priester, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham

Blvd., Fort Worth, Texas 76137, (817) 222–5159, fax (817) 222–5960.

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 BHTC helicopters was published in the **Federal Register** on April 1, 1998 (63 FR 15790). That action proposed to require shimming the bearing supports within the next 25 hours time-in-service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for small editorial change. The FAA has determined that these changes will neither increase the scope of the AD nor increase the economic burden on any operator.

The FAA estimates that 160 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the shimming of the bearing support, and that the average labor rate is $60 per work hour. Required parts will cost approximately $30 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,200.

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 a new airworthiness directive to read as follows:

AD 98–12–22 Bell Helicopter Textron Canada: Amendment 39–10576. Docket No. 98-SW–10-AD.

Applicability: Model 407 helicopters, serial numbers 53000, 53002 through 53065, 53067, and 53069 through 53075, 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 use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

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

To prevent failure of the bearing supports, which could result in excessive tail rotor drive system vibration, loss of tail rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Shim the tail rotor drive system bearing supports in accordance with the Accomplishment Instructions contained in Bell Helicopter Textron Alert Service Bulletin No. 407-97–7, dated February 27, 1997.

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

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

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

(d) The shimming shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin No. 407–97–7, dated February 27, 1997. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 15, 1998.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–97–08, dated May 30, 1997.

Issued in Fort Worth, Texas, on June 2, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–15264 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–02–AD; Amendment 39–10575; AD 98–12–21]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA. 315B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA. 315B helicopters that requires an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This amendment is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by this AD are

intended to prevent fatigue failure of the spar tube, separation and impact of the horizontal stabilizer with the main or tail rotor and subsequent loss of control of the helicopter.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

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 Eurocopter France Model SA. 315B helicopters was published in the **Federal Register** on April 21, 1998 (63 FR 19670). That action proposed to require an initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 28 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per helicopter to accomplish the inspections and 3 work hours per helicopter to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1100 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1310 per helicopter.

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 a new airworthiness directive to read as follows:

AD 98–12–21 Eurocopter France: Amendment 39–10575. Docket No. 98–SW–02–AD.

Applicability: Model SA. 315B helicopters with horizontal stabilizers, part number (P/N) 315A35–10–000–1, 315A35–10–000–2, or higher dash numbers, 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 use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fatigue failure of the horizontal stabilizer spar tube (spar tube), impact of the horizontal stabilizer with the main or tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer installation to determine whether Modification 072214 (installation of the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 3, dated April 25, 1997 (service bulletin). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the service bulletin.

Note 2: Modification kit P/N 315A–07–0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2)a) of the service bulletin. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) Within 90 calendar days and thereafter at intervals not to exceed 24 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the service bulletin.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months, whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective

treatment as described in paragraph 2.B.1(b) of the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance 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.

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

(g) The modification shall be done in accordance with Eurocopter France Service Bulletin No. 55.01, Revision 3, dated April 25, 1997. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 15, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–277–337(B)R1, dated May 21, 1997.

Issued in Fort Worth, Texas, on June 2, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–15263 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–45–AD; Amendment 39–10580; AD 98–12–26]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires a one-time inspection to determine the torque values of the coupling fitting attachment bolts at fuselage station 10790, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent loss of the coupling fitting attachment bolts between the center wing section and the fuselage, and consequent reduced structural integrity of the airplane.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 certain Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the **Federal Register** on April 6, 1998 (63 FR 16711). That action proposed to require a one-time inspection to determine the torque values of the coupling fitting attachment bolts at fuselage station 10790, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 128 work hours per airplane to accomplish the required inspection, 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 $207,360, or $7,680 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:

98–12–26 Fokker Services B.V.: Amendment 39–10580. Docket 98–NM–45–AD.

Applicability: Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes; serial numbers 11003 through 11201 inclusive, 11991, and 11992; on which Fokker Service Bulletin F28/53–125, dated January 23, 1993, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the coupling fitting attachment bolts between the center wing section and the fuselage, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Within 3,000 flight cycles or 1 year after the effective date of this AD, whichever occurs later, perform a one-time inspection to determine the torque values of the coupling fitting attachment bolts between the fuselage and the center wing section at fuselage station number 10790, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/53–143, dated August 30, 1996.

(1) If the torque values are within the limits specified by the service bulletin, no further action is required by this AD.

(2) If the torque value of any bolt is outside the limits specified by the service bulletin, prior to further flight, re-torque the bolt in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/53–143, dated August 30, 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 Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. 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.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1996–119 (A), dated September 30, 1996.

(e) This amendment becomes effective on July 15, 1998.

Issued in Renton, Washington, on June 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15251 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–312–AD; Amendment 39–10579; AD 98–12–25]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires a one-time inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the main landing gear (MLG); operational inspections to ensure smooth operation of the MLG operating mechanism; and follow-on actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent partial seizure of the forward door of the MLG operating mechanism, which could result in the inability to lower or retract the MLG.

DATES: Effective July 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on April 6, 1998 (63 FR 16713). That action proposed to require a one-time inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the main landing gear (MLG); operational inspections to ensure smooth operation of the MLG operating mechanism; and follow-on actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 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 $4,800, or $480 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:

98–12–25 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10579. Docket 97–NM–312–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2001 through 2063 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent partial seizure of the forward door of the main landing gear (MLG) operating mechanism, which could result in the inability to lower or retract the MLG, accomplish the following:

(a) Within 300 flight hours or within 90 days after the effective date of this AD, whichever occurs first, perform a one-time visual inspection to detect corrosion, wear, or damage of the operating mechanism of the forward door of the MLG; and clean, degrease, and relubricate the door operating mechanism; in accordance with British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997.

(1) If no corrosion, wear, or damage is detected during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(2) If any corrosion, damage, or worn component is detected during the inspection required by paragraph (a) of this AD, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, as applicable.

(i) If any corrosion or damage is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(ii) If any worn component is detected, within 600 flight hours after performing the inspection required by paragraph (a) of this AD, replace the component with a new or serviceable part in accordance with the service bulletin.

(b) Within 300 flight hours after accomplishing the inspection required by paragraph (a) of this AD, perform an operational inspection to ensure smooth operation of the spring strut of the forward door of the MLG, and relubricate the operating spring and sliding tube of the forward door 'A' frame, in accordance with British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997.

(1) Repeat the operational inspections thereafter at intervals not to exceed 300 flight hours, until the accumulation of 1,500 flight hours after the accomplishment of the inspection required by paragraph (a) of this AD.

(2) Following the accomplishment of all inspections required by paragraph (b)(1) of this AD, repeat the operational inspections and relubrication required by paragraph (b) of this AD at intervals not to exceed 1,500 flight hours.

(c) If any discrepancy is detected during any operational inspection and relubrication required by paragraph (b) of this AD, prior to further flight, replace any discrepant part with a new or serviceable part in accordance with a method approved by the Manager, International Branch, ANM–116.

(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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

(f) Except as provided by paragraphs (a)(2)(i) and (c) of this AD, the actions shall be done in accordance with British Aerospace Service Bulletin ATP–32–84, Revision 1, dated September 26, 1997. 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. 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.

(g) This amendment becomes effective on July 15, 1998.

Issued in Renton, Washington, on June 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15249 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–182–AD; Amendment 39–10578; AD 98–12–24]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes Equipped With General Electric Model CF6–80A3 Series Engines

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 Airbus Model A310 series airplanes. This action requires a one-time inspection to detect

cracked or broken links of the aft engine mounts, and replacement of any cracked or broken link with a serviceable link. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct cracking of the links of the aft engine mounts, which could result in failure of the aft engine attachment and consequent separation of the engine from the airplane.

DATES: Effective June 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–182–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that, during a routine maintenance inspection of a General Electric Model CF6–80A3 series engine for an Airbus Model A310 series airplane, a crack was discovered on the left-hand link of the aft engine mount assembly. The crack measured 10 mm in length and was located at the upper end of the link, at the gearing location. The cause of the crack is still under investigation. This condition, if not corrected, could result in failure of the aft engine attachment and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 71 06, dated October 21, 1997, which describes procedures for a one-time detailed visual inspection to detect cracked or broken links of the aft engine mounts, and replacement of any cracked or broken link with a serviceable link. The DGAC classified this AOT as mandatory and issued French telegraphic airworthiness directive T97–324–234(B), dated October 22, 1997, and airworthiness directive 97–324–234(B), dated November 5, 1997; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane 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.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking of the links of the aft engine mounts, which could result in failure of the aft engine attachment and consequent separation of the engine from the aiplane. This AD requires accomplishment of the actions specified in the AOT described previously. This AD also requires that operators report results of inspection findings (positive and negative) to Airbus.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

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 98–NM–182–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:

98–12–24 Airbus Industrie: Amendment 39–10578. Docket 98–NM–182–AD.

Applicability: Model A310 series airplanes, equipped with General Electric Model CF6–80A3 series engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 as indicated, unless accomplished previously.

To detect and correct cracking of the links of the aft engine mounts, which could result in failure of the aft engine attachment and consequent separation of the engine from the airplane, accomplish the following:

(a) Within 5 days after the effective date of this AD, perform a one-time detailed visual inspection to detect cracked or broken links of the aft engine mounts, in accordance with Airbus All Operators Telex (AOT) 71 06, dated October 21, 1997. If any cracked or broken link is detected, prior to further flight, replace the cracked or broken link with a serviceable link, in accordance with the AOT.

(b) Within 10 days after the effective date of this AD, submit a report of the inspection results (positive and negative) to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) 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.

(e) The actions shall be done in accordance with Airbus All Operators Telex 71 06, dated October 21, 1997. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

Note 3: The subject of this AD is addressed in French telegraphic airworthiness directive T97–324–234(B), dated October 22, 1997, and airworthiness directive 97–324–234(B), dated November 5, 1997.

(f) This amendment becomes effective on June 25, 1998.

Issued in Renton, Washington, on June 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15250 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–04–AD; Amendment 39–10583; AD 98–12–29]

RIN 2120–AA64

Airworthiness Directives; Lucas Air Equipment Electric Hoists

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lucas Air Equipment electric hoists (hoists) installed on, but not limited to, all models of Eurocopter France SA–360 and SA–365 helicopters that requires visually inspecting the cable for damage before the next hoist operation, blanking (plugging) the electronic control box upper vent, and performing an end-of-travel procedure before each hoist operation. This amendment is prompted by several incidents of cable failures caused by dynamic overload on the winding-up limit due to uncontrolled excessive speed of the cable, which is normally regulated by the automatic speed-reducing mechanism or the operator. The actions specified by this AD are intended to prevent breaking of the cable, which could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, phone (817) 222–5120, fax (817) 222–5961.

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 Lucas Air Equipment hoists installed on, but not limited to, all models of Eurocopter France SA–360 and SA–365 helicopters was published in the **Federal Register** on April 10, 1998 (63 FR 17738). That action proposed to require visually inspecting the cable for damage before the next hoist operation, plugging the electronic control box upper vent, and performing an end-of-travel procedure before each hoist operation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No

comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for an editorial change in the ''Applicability'' section of the AD where the word ''and'' has been changed to ''or.'' The FAA has determined that this change will neither increase the economic burden on an operator nor increase the scope of the AD.

The FAA estimates that 1 helicopter of U.S. registry will be affected by this proposed AD, that it will take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $775. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $895 to replace the hoist and electronic control box.

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 FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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 98–12–29 Lucas Air Equipment: Amendment 39–10583. Docket No. 98–SW–04–AD.

Applicability: Electric hoists, part numbers (P/N) 76375–030, 76375–130, 76378, or 76378–100, equipped with electronic control boxes, P/N 61148–001, 002, or 006, installed on, but not limited to all models of Eurocopter France SA–360 and SA–365 helicopters, certificated in any category.

Note 1: This AD applies to each electric hoist (hoist) equipped with an electronic control box (control box) 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 hoists that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any hoist or control box from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent breaking of the cable, which could become entangled with a main rotor or tail rotor blade, and result in damage or separation of a rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the next hoist operation, visually inspect the cable for damage in accordance with the applicable maintenance manual, and blank (plug) the electronic control box upper vent with a potting compound. If the control box has only one vent, install it with the vent hole in the lowest position.

(b) Apply red paint to the hoist cable starting at 0.8 meter (m) and extending to the 3m point (31.5 inches to 118 inches) from the upper plate of the hook assembly.

Note 2: Lucas Air Equipment Service Telex 61148–25–CW–01, Revision 01, dated April 26, 1994, pertains to the subject of this AD.

(c) Thereafter, before each hoist operation, perform the end-of-travel procedure as follows:

(1) With approximately 3m of cable remaining before the hook assembly reaches the up-limit switch operating lever (upper end of red-painted cable), reduce the cable speed to approximately one-third of the normal speed with the control knob. Release the control knob to the neutral position to stop the hook at a distance approximately 0.8m from the hoist up-limit switch operating lever (lower end of red-painted cable). Continue controlling the cable speed by exclusive use of the control on the pendant, making short and repetitive inputs until the hook reaches a position with 5 to 10 centimeters (2 to 4 inches) between the upper plate of the hook assembly and the up-limit switch operating lever. After stopping the cable at that point, place the hook against the up-limit switch operating lever. The procedure required by this paragraph may be accomplished by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this paragraph in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations.

(2) If the hook comes fully home at an uncontrolled speed, or the hoist exhibits uncontrolled speed variation or absence of automatic speed reduction, remove the hoist assembly (hoist and control box) and replace it with an airworthy hoist assembly before any further hoist operation.

(d) Installation of an electronic control box, P/N 61148–016 or P/N 61148–012, as applicable, with installation of a hoist, P/N 76375–060, 76375–160, 76378–060, or 76378–160, is a terminating action for the requirements of this AD.

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

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

(g) This amendment becomes effective on July 15, 1998.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 94–116(AB)R1, dated May 21, 1997.

Issued in Fort Worth, Texas, on June 3, 1998.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–15443 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–5]

Revocation and Establishment of Class D; and Revocation, Establishment and Modification of Class E Airspace Area; Olathe, Johnson County Industrial Airport, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

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

SUMMARY: This document confirms the effective date of a direct final rule which revokes the Class D and Class E airspace at Olathe, Johnson County Industrial Airport, KS; establishes Class D and a larger Class E airspace area in their place designated Olathe, New Century Aircenter, KS; and corrects the Airport Reference Point, as published in the direct final rule.

DATES: The direct final rule published at 63 FR 10758 is effective on 0901 UTC, June 18, 1998.

This correction is effective on June 18, 1998.

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 March 5, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments which revoked the Class D and Class E airspace areas at Olathe, Johnson County Industrial Airport, KS; and established Class D and Class E airspace areas at Olathe, New Century Aircenter, KS, (FR Document 98–5697, 63 FR 10758, Airspace Docket No. 98–ACE–5). An error was subsequently discovered in the Airport Reference Point Class E airspace designations. After careful review of all available information related to the subject present above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error 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 June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–5697 published in the **Federal Register** on March 5, 1998, 63 FR 10758, make the following correction to the Olathe, New Century Aircenter, KS, Class E airspace designation incorporated by reference in 14 CFR 71.1:

§ 71.1 [Corrected]

ACE KS E5 Olathe, New Century Aircenter, KS [Corrected]

On page 10759, in the third column, under Olathe, New Century Aircenter, KS correct ''(Lat. 38°49′51″N., long. 954°53′25″W.)'' to read ''(Lat. 38°49′51″N., long 94°53′25″W.)''.

Issued in Kansas City, MO on May 6, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–15305 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–8]

Establish Class E Airspace; Atkinson, NE

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace area at Atkinson, NE. The development of a Global Positioning System (GPS) Runway (RWY) 29 Standard Instrument Approach Procedure (SIAP) and a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 29 SIAP has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) operations at Stuart-Atkinson Municipal Airport, Atkinson, NE.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 1998, a proposal to amend part 71 of the Federal Regulations (14 CFR part 71) to establish Class E airspace area at Atkinson, NE, was published in the **Federal Register** (63 FR 14387). This proposal was to establish controlled airspace extending upward from 700 feet AGL. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing GPS RWY 29 and VOR/DME RWY 29 SIAPs at Stuart-Atkinson Municipal Airport, Atkinson, NE.

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.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) establishes the Class E airspace area at Atkinson, NE.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 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

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE NE E5 Atkinson, NE [New]

Stuart-Atkinson Municipal Airport, NE
(Lat. 42°33′45″N., long. 99°02′16″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stuart-Atkinson Municipal Airport, excluding that airspace within the O'Neill, NE, Class E airspace.

* * * * *

Issued in Kansas City, MO on May 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–15306 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–7]

Amendment to Class E Airspace; Le Mars, 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 Le Mars, IA.

DATES: The direct final rule published at 63 FR 14604 is effective on 0901 UTC, June 18, 1998.

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 March 26, 1998 (63 FR 14604). 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 June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 6, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–15308 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–13]

Amendment to Class E Airspace; Aurora, NE

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 Aurora, NE.

DATES: The direct final rule published at 63 FR 14606 is effective on 0901 UTC, August 13, 1998.

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 March 26, 1998 (63 FR 14606). 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 August 13, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on May 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–15309 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–28]

Revision of Class E Airspace; Sabine Pass, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Sabine Pass, TX. The development of global positioning system (GPS) standard instrument approach procedures (SIAP), helicopter point-in-space approaches, to heliports in the Sabine Pass, TX, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliports.

DATES: Effective 0901 UTC, October 8, 1998. Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–28, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, 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 at the Airspace Branch, Air Traffic Division, Federal Aviation

Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Sabine Pass, TX. The development of GPS SIAP's, helicopter point-in-space approaches, to heliports in the Sabine Pass, TX, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliports.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. 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 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 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 is 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 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. 98–ASW–28.'' 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.

Further, 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, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedure (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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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. The incorporated by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ASW TX E5 Sabine Pass, TX [Revised]

Point in Space Coordinates
(Lat. 29°43′00″ N., long. 93°54′30″ W.)

That airspace extending upward from 700 feet above the surface within a 10.0-mile radius of the point in space in Sabine Pass, TX, excluding that airspace within the Beaumont, TX, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on June 2, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–15460 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–27]

Revision of Class E Airspace; Leeville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Leeville, LA. The development of global positioning system (GPS) standard instrument approach procedures (SIAP), helicopter point-in-space approaches, to heliports in the Leeville, LA, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to the heliports.

DATES: Effective 0901 UTC, October 8, 1998.

Comments must be received on or before July 27, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–27, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, 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 at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Leeville, LA. The development of GPS SIAP, helicopter point-in-space approaches, to heliports in the Leeville, LA, area has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to the heliports.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. 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 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 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 is 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 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. 98–ASW–27.'' 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.

Further, 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, I certify that 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, 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.

§ 7.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective

September 16, 1997, is amended as follows:

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

* * * * *

ASW LA E5 Leeville, LA [Revised]

Point in Space Coordinates
(Lat 29°10′40″ N.,long. 90°11′30″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the point in space in Leeville, LA, excluding that airspace within the Grand Isle, LA Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on June 2, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–15461 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 705

[Docket No. 980508121–8121–01]

RIN 0694–AB58

Effect of Imported Articles on the National Security

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is revising its regulation on the ''Effect of Imported Articles on the National Security'' (47 FR 14693, April 6, 1982; redesignated at 54 FR 601, January 6, 1989; and amended at 54 FR 19355, May 5, 1989 (15 C.F.R. Part 705)) to reflect amendments to Section 232 of the Trade Expansion Act of 1962. These amendments include requirements for additional action to be taken by the Secretary of Commerce upon commencing, conducting, and completing an investigation, and reporting the disposition of an investigation to the Congress. The amendments also specify action to be taken by the President in making a determination to take action to adjust the imports of the article which is the subject of the investigation.

EFFECTIVE DATE: This rule is effective July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson, Section 232 Investigations Program Manager, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–3795, FAX: (202) 482–5650, and E-Mail: bnilsson@bxa.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) (the Act) authorizes investigations to determine the effects on the national security of imports of articles which are the subject of a request for an investigation. The implementing regulation, ''Effect of Imported Articles on the National Security'' (47 FR 14693, April 6, 1982; redesignated at 54 FR 601, January 6, 1989; and amended at 54 FR 19355, May 5, 1989 (15 C.F.R. Part 705)), prescribes procedures to be followed by the Department of Commerce (the Department) to commence and conduct such investigations. Because of amendments in 1988 to Section 232 of the Act, this regulation must be revised to set forth requirements for additional action to be taken by the Secretary of Commerce upon commencing, conducting, and completing an investigation, and reporting the disposition of the investigations to the Congress. The amendments also specify action to be taken by the President in making determinations to take action to adjust the imports of the article which is the subject of the investigation.

Changes to the regulation with reference to the applicable sections of the Act include the following:

1. Section 705.3 (Commencing an investigation) is revised to require the Secretary of Commerce to provide immediate notice to the Secretary of Defense of any investigation initiated under the regulation [Section 232(b)(1)(B) of the Act; 19 U.S.C. 1862(b)(1)(B)].

2. Section 705.7(d) (Conduct of an investigation) is revised to require consultation by the Secretary of Commerce with the Secretary of Defense regarding the methodology and policy questions raised in an investigation, and, upon the request of the Secretary of Commerce, to require the Secretary of Defense to provide an assessment of the defense requirements of the article being investigated [Section 232(b)(2) of the Act; 19 U.S.C. 1862(b)(2)].

3. Section 705.10 (Report of an investigation and recommendation) is revised to simplify the organization of the report of an investigation, to reduce the time from one year to 270 days for the Department to conduct an investigation and report to the President, and to provide for publication in the **Federal Register** of an Executive Summary of the report and availability to the public of the full report [Section 232(b)(3); 19 U.S.C. 1862(b)(3)].

4. A new section 705.11 (Determination by the President and adjustment of imports) is added to include in the regulation the requirements imposed upon the President under Section 232(c) of the Act [19 U.S.C. 1862(c)]. Upon submission of the report of an investigation by the Secretary of Commerce in which the Department has found that an article is being imported into the U.S. in such quantities or under such circumstances as to threaten to impair the national security, the President must take certain action within a specified period of time as set forth in the Act.

5. A new section 705.12 (Disposition of an investigation and report to the Congress) is also added to require reports to the Congress pertaining to the disposition of each request, application, or motion for an investigation and the operation of the Act's provisions [Section 232(e); 19 U.S.C. 1862(e)].

6. Finally, in sections 705.5(a) (Request or application for an investigation), 705.7(b) (Conduct of an investigation), and 705.8(b)(6) (Public hearings), technical revisions are made to update the references to the Office of Industrial Resource Administration and the room number of the Bureau of Export Administration Freedom of Information Records Inspection Facility.

Rulemaking Requirements

The Department has made certain determinations with respect to the following rulemaking requirements:

1. *Classification under E.O. 12866:* The revision of this regulation (15 CFR Part 705) has been determined to be ''not significant'' for purposes of Executive Order 12866.

2. *Administrative Procedure Act and Regulatory Flexibility Act:* Because this rule pertains to agency procedures and the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) or any other are not applicable, this rule is not subject to the analytical requirements of Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612).

3. *Paperwork Reduction Act:* This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

4. *Executive Order 12612:* This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National Security.

For the reasons set forth in the preamble, part 705 of Subchapter A, National Security Industrial Base Regulations is amended as follows:

PART 705—[AMENDED]

1. The authority citation for 15 CFR part 705 is revised to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

2. Section 705.3 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b), as follows:

§ 705.3 Commencing an investigation.

(a) * * *

(b) The Secretary shall immediately provide notice to the Secretary of Defense of any investigation initiated under this part.

§ 705.5 [Amended]

3. In § 705.5(a), the reference to ''Office of Industrial Resource Administration'' is revised to read ''Office of Strategic Industries and Economic Security.''

4. Section 705.7 is amended by revising paragraph (d) to read as follows:

§ 705.7 Conduct of an investigation.

* * * * *

(d) The Department shall, as part of an investigation, seek information and advice from, and consult with, appropriate officers of the United States or their designees, as shall be determined. The Department shall also consult with the Secretary of Defense regarding the methodological and policy questions raised in the investigation. Upon the request of the Secretary, the Secretary of Defense shall provide the Secretary with an assessment of the defense requirements of the article in question. Communications received from agencies of the U.S. government or foreign governments will not be made available for public inspection.

* * * * *

§§ 705.7 and 705.8 [Amended]

5. In §§ 705.7(b) and 705.8(b)(6), the references to room number ''H–4886'' are revised to read ''H–4525''.

6. Section 705.10 is revised to read as follows:

§ 705.10 Report of an investigation and recommendation.

(a) When an investigation conducted pursuant to this part is completed, a report of the investigation shall be promptly prepared.

(b) The Secretary shall report to the President the findings of the investigation and a recommendation for action or inaction within 270 days after beginning an investigation under this part.

(c) An Executive Summary of the Secretary's report to the President of an investigation, excluding any classified or proprietary information, shall be published in the **Federal Register**. Copies of the full report, excluding any classified or proprietary information, will be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4525, U.S. Department of Commerce, 14th Street, N.W., Washington, D.C. 20230; tel. (202) 482–5653.

7. A new section 705.11 is added to read as follows:

§ 705.11 Determination by the President and adjustment of imports.

(a) Upon the submission of a report to the President by the Secretary under § 705.10(b) of this part, in which the Department has found that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President is required by Section 232(c) of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862(c)) to take the following action

(1) Within 90 days after receiving the report from the Secretary, the President shall determine:

(i) Whether the President concurs with the Department's finding; and

(ii) If the President concurs, the nature and duration of the action that must be taken to adjust the imports of the article and its derivatives so that the such imports will not threaten to impair the national security.

(2) If the President determines to take action under this section, such action must be taken no later than fifteen (15) days after making the determination.

(3) By no later than thirty (30) days after making the determinations under paragraph (a)(1) of this section, the President shall submit to the Congress a written statement of the reasons why the President has decided to take action, or refused to take action.

(b) If the action taken by the President under this section is the negotiation of an agreement to limit or restrict the importation into the United States of the article in question, and either no such agreement is entered into within 180 days after making the determination to take action, or an executed agreement is not being carried out or is ineffective in eliminating the threat to the national security, the President shall either:

(1) Take such other action as deemed necessary to adjust the imports of the article so that such imports will not threaten to impair the national security. Notice of any such additional action taken shall be published in the **Federal Register**; or

(2) Not take any additional action. This determination and the reasons on which it is based, shall be published in the **Federal Register**.

8. A new section 705.12 is added to read as follows:

§ 705.12 Disposition of an investigation and report to the Congress.

(a) Upon the disposition of each request, application, or motion made under this part, a report of such disposition shall be submitted by the Secretary to the Congress and published in the **Federal Register**.

(b) As required by Section 232(e) of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862(c)), the President shall submit to the Congress an annual report on the operation of this part.

Dated: June 5, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–15411 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Boehringer Ingelheim Animal Health, Inc., to Boehringer Ingelheim Vetmedica, Inc.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Hwy., St. Joseph, MO 65406, has informed FDA of a change of sponsor name to Boehringer Ingelheim Vetmedica, Inc. Accordingly, the agency is amending 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Boehringer Ingelheim Animal Health, Inc.'' and by alphabetically adding a new entry for ''Boehringer Ingelheim Vetmedica, Inc.''; and in the table in paragraph (c)(2) in the entry for ''000010'' by removing the sponsor name ''Boehringer Ingelheim Animal Health, Inc.'' and adding in its place ''Boehringer Ingelheim Vetmedica, Inc.''

Dated: May 22, 1998.

Andrew J. Beaulieu,

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

[FR Doc. 98–15481 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst Roussel Vet. The supplemental NADA provides for expanding the indications to include treatment of encysted mucosal cyathostome (small strongyle) larvae including early third stage (hypobiotic), late third stage, and fourth stage larvae.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed supplemental NADA 120–648 that provides for oral administration of Panacur® and Safe-Guard® (fenbendazole l0 percent) paste to horses. The product is currently approved for use concomitantly with an approved form of trichlorfon. Trichlorfon is approved for the treatment of stomach bots (*Gasterophilus spp.*) in horses. The supplemental NADA provides for expanding the indications to include treatment of encysted mucosal cyathostome (small strongyle) larvae including early third stage (hypobiotic), late third stage, and fourth stage larvae when administered at 10 milligrams per kilogram per day for 5 consecutive days. The supplemental NADA is approved as of April 20, 1998, and the regulations are amended in 21 CFR 520.905c(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act, this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning April 20, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

2. Section 520.905c is amended by adding paragraph (d)(1)(iii) to read as follows:

§ 520.905c Fenbendazole paste.

* * * * *

(d) * * *

(1) * * *

(iii)(*a*) *Amount.* 4.6 milligrams per pound of body weight (10 milligrams per kilogram) daily for 5 consecutive days.

(*b*) *Indications for use.* For treatment of encysted mucosal cyathostome (small strongyle) larvae including early third stage (hypobiotic), late third stage, and fourth stage larvae in horses.

(*c*) *Limitations.* (Consult your veterinarian for assistance in the diagnosis, treatment, and control of encysted mucosal cyathostomes). Do not use in horses intended for food.

* * * * *

Dated: May 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–15480 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4054–C–03]

RIN 2577–AB63

Section 8 Certificate and Voucher Programs Conforming Rule; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule that was published Thursday, April 30, 1998 (63 FR 23826). That final rule combined and conformed the provisions of the Section 8 certificate and the voucher programs and made some regulatory streamlining changes.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Gloria Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4204, 451 7th Street, SW, Washington, DC 20410. Her telephone numbers are (202) 708–2841 (voice) and (202) 708–0850 (TTY). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains three errors that may prove to be misleading and is in need of clarification. The first error is the omission of the definition of ''Housing quality standards'' from § 982.4. The definition as found in the rule before the revision is restored in this document. The second error is the failure to include the term ''near-elderly'' in a discussion in § 982.316 concerning the family composition of a family eligible to seek approval of a live-in aide. Such a family, as described in 24 CFR 5.403, may include near-elderly persons without either elderly persons or disabled persons. The omission of that term in this rule would create confusion, so it is added to § 982.316 in this document. The third error is that the statement of how to calculate the amount of the monthly housing assistance payment for a manufactured home space in § 982.623 contains a typographical error that cites an incorrect paragraph reference. This document corrects the reference.

Correction of Publication

Accordingly, FR Doc. 98–10374, a final rule published on April 30, 1998 (63 FR 23826), which amended 24 CFR part 982, is corrected as follows:

1. On page 23858, in the third column, § 982.4 is corrected by inserting, after the definition of ''Housing assistance payment'', the following definition of ''Housing quality standards'':

§ 982.4 Definitions.

* * * * *

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the tenant-based programs. See § 982.401.

* * * * *

§ 982.316 [Corrected]

2. On page 23860, in the third column, in the first sentence of § 982.316, the word ''elderly'' is corrected to read ''elderly, near-elderly''.

§ 982.623 [Corrected]

3. On page 23869, in the second column, in § 982.623(b)(2)(i), the reference to ''the lesser of paragraphs (b)(2)(i)(A) or (b)(2)(ii)(B)'' is corrected to read ''the lesser of paragraphs (b)(2)(i)(A) or (b)(2)(i)(B)''.

Dated: June 3, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–15479 Filed 6–9–98; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–022]

Drawbridge Operating Regulation; Atchafalaya River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. on Monday, July 27, 1998 through 6 p.m. on Monday, August 3, 1998. This temporary deviation is issued to allow for the replacement of the electric motors, gears and associated machinery of the swing span operating mechanism

DATES: This deviation is effective 7 a.m. on Monday, July 27, 1998 through 6 p.m. on Monday, August 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana has a vertical clearance of 6 feet above mean high water, elevation 38.5 feet Mean Sea Level, in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal.

The Union Pacific Railroad requested a temporary deviation from the normal operation of the bridge in order to accomplish the maintenance work. The work consists of replacing the electric motors, gears and other components of the operating machinery. This work is essential for the continued operation of the swing span. Alternate navigation routes are available. Mariners may transit the Atchafalaya River to the site of the bridge from both upstream via the Red River and Mississippi River and from downstream via Atchafalaya Bay.

The District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad swing span bridge across the Atchafalaya River, mile 95.7 at Krotz Springs, Louisiana to remain in the closed-to-navigation position from 7 a.m. on July 27, 1998 through 6 p.m. on August 3, 1998.

Dated: June 1, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 98–15422 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 98–004]

RIN 2115–AA97

Safety Zone; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Pedro Bay, California. This safety zone is established as a result of the construction of an artificial habitat and is necessary to protect vessels from the hazards associated with the construction.

All vessels with a draft of 50 feet or more are prohibited from entering this area, unless specifically authorized by the Captain of the Port, for the entire

time that this regulation is enforced by the Captain of the Port. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when construction activities are in progress.

DATES: This safety zone will be in effect from 6 a.m. PDT on May 17, 1998 until 11:59 p.m. PDT on May 17, 1999. Comments must be received on or before August 10, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Waterways Management Division at Marine Safety Office Los Angeles-Long Beach. Normal office hours are 8 a.m. to 4 p.m., PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Rob Coller, Chief, Waterways Management Division, Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Ave., Long Beach, CA 90802; (562) 980–4425.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the sequence of construction activities, location of work, selection of a contractor, and the issuance of a notice to proceed for this construction project were not finalized until a date fewer than 30 days prior to the anticipated start of work.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Those providing comment should identify the docket number for the regulation (COTP Los Angeles-Long Beach, CA: 98–004) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing to Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Discussion of Regulation

Construction of an artificial habitat south of the San Pedro Bay Federal Breakwater is underway. This safety zone is necessary for safeguarding recreational and commercial vessels from the dangers of the construction activities in the project area and to prevent interference with vessels engaged in these operations.

All vessels with a draft of 50 feet or more are prohibited from entering this exclusionary area, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is in effect. All other vessels are prohibited from entering the area, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress. The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft because construction activities are in progress.

This safety zone consists of all navigable waters within the geographic area bounded by lines connecting the following coordinates:

	Latitude	Longitude
Safety Zone Point #1:	33°41′16″ N,	118°13′15″ W; thence to
Safety Zone Point #2:	33°40′45″ N,	118°13′01″ W; thence to
Safety Zone Point #3:	33°40′34″ N,	118°13′37″ W; thence to
Safety Zone Point #4:	33°41′04″ N,	118°13′51″ W; thence returning to the point of beginning.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Cost Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen when vessel traffic is directed around the area of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Small entities may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance For Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for

compliance, please contact Lieutenant Rob Coller, U.S. Coast Guard Marine Safety Office Los Angeles-Long Beach, at (562) 980–4425.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), this rule is categorically excluded from further environmental documentation. This regulation is expected to have no significant effect on the environment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart F of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A new § 165.T11–054 is added to read as follows:

§ 165.T11–054 Safety Zone: San Pedro Bay.

(a) *Location.* All navigable waters bounded by a line connecting the following coordinates are established as safety zone:

	Latitude	Longitude
Safety Zone Point #1:	33°41′16″ N,	118°13′15″ W; thence to
Safety Zone Point #2:	33°40′45″ N,	118°13′01″ W; thence to
Safety Zone Point #3:	33°40′34″ N,	118°13′37″ W; thence to
Safety Zone Point #4:	33°41′04″ N,	118°13′51″ W; thence returning to the point of beginning.
Datum: NAD 83		

(b) *Effective Dates:* This section will be in effect from 6 a.m. PDT on May 17, 1998 until 11:59 p.m. PDT on May 17, 1999.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into, transit through, or anchoring within this safety zone is prohibited for all vessels with a draft of 50 feet or more, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port.

(1) All other vessels are prohibited from entering into, transiting through, or anchoring within this safety zone, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress.

(2) The Captain of the Port will announce, via Broadcast Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft because construction activities are in progress.

Dated: May 15, 1998.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles-Long Beach, California.

[FR Doc. 98–15424 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6106–6]

Approval of Colorado's Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 1998, 1999, and 2000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is approving the State of Colorado's January 21, 1998, petition to relax the Reid Vapor Pressure (RVP) standard that applies to gasoline introduced into commerce in the Denver-Boulder area from June 1 to September 15. The standard is relaxed from 7.8 pounds per square inches (psi) to 9.0 psi for the years 1998, 1999, and 2000. This action is being taken under section 211(h)(1) of the Clean Air Act as Amended in 1990 (CAA) to modify EPA's gasoline volatility regulations promulgated June 11, 1990 and modified December 12, 1991. The Agency does not believe that this action will cause environmental harm to Denver-Boulder's residents. The area has been in compliance with the ozone standard since 1987. The Denver-Boulder area's gasoline has had a 9.0 psi

standard since 1992. In addition to today's approval, EPA has approved relaxations of Denver-Boulder's RVP standard from 7.8 psi to 9.0 psi for the past six years, from 1992 through 1997.

DATES: This rule is effective on July 27, 1998 without further notification unless the Agency receives relevant comments by July 10, 1998. Should the Agency receive such comments, it will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–98–04 by EPA. The docket is located at the Docket Office of the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Room M–1500 in Waterside Mall and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket CO–RVP–98 has been established at U. S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO, 80202–2466, and is available for inspection during normal working hours. Interested persons wishing to examine the documents in this docket should make an appointment with the appropriate contact at least 24 hours before the visiting day. Contact Scott P. Lee at (303) 312–6736. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material. Comments should be submitted (in duplicate if possible) to the two dockets listed above at the above addresses.

A copy should also be sent to the EPA contact person listed below at the following address: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406–J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall of the Fuels and Energy Division at 202–564–9029 at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulated Entities

Entities potentially affected by this action are those involved with the production, distribution, and sale of conventional gasoline that is supplied and consumed in the Denver-Boulder, Colorado area. Regulated categories include:

Category	Examples of regulated entities
Industry	Gasoline refiners and importers, gasoline terminals, gasoline truckers, gasoline retailers and wholesale purchaser-consumers.

B. Regulatory History of Gasoline Volatility

In 1987, EPA determined that gasoline had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered sources. These emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors for ozone and are a major contributor to the nation's serious ground-level ozone problem. Ground-level ozone causes health problems, including damaged lung tissue, reduced lung function, and lungs that are sensitized to other pollutants.

Under authority in section 211(c)(4) of the Clean Air Act (as Amended in 1977), EPA promulgated regulations on March 22, 1989 that, beginning in 1989, set maximum volatility levels for gasoline sold during the summer ozone control season. These regulations were referred to as Phase I of a two-phase nationwide [1] program, which was designed to reduce the volatility of commercial gasoline during the summer high ozone season [2] by setting maximum RVP standards. On June 11, 1990, EPA promulgated more stringent volatility controls for Phase II.[3] The requirements established maximum volatility standards of 9.0 psi and 7.8 psi (depending upon the state and the month, and the area's ozone attainment status) during the ozone control season.

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. It further requires EPA to establish more stringent RVP standards in nonattainment areas if EPA finds such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' Section 211(h) bans EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991, EPA promulgated regulations to modify the Phase II volatility regulations [4] pursuant to section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi during the summer ozone season in all areas designated attainment for ozone, beginning in 1992. Areas designated as nonattainment retained the original Phase II standards published on June 11, 1990.

As stated in the preamble for the Phase II volatility controls [5] and reiterated in the proposed change to the volatility standards published on May 29, 1991,[6] EPA will rely on states to initiate changes to the EPA volatility program that they believe will enhance local air quality and/or increase the economic efficiency of the program, within the statutory limits. The Governor of a state may petition EPA to set a less stringent volatility standard for some month or months in a nonattainment area. The petition must demonstrate the existence of a particular local economic impact that makes such changes appropriate and must demonstrate that sufficient alternative programs are available to achieve attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS).

C. Colorado's Petition

On January 21, 1998, Governor Roy Romer sent a letter to William Yellowtail, EPA Regional Administrator for Region VIII, requesting EPA to waive the federal RVP standard for the Denver-Boulder area. The specific change requested was to ''retain the 9.0 psi Reid Vapor Pressure standard for gasoline volatility in the Denver-Boulder area for the summers of 1998 and 1999.'' (Denver-Boulder has received waivers of

[1] Hawaii, Alaska and U. S. territories were excepted.

[2] For more details, see 54 FR, 11868 (March 22, 1989).

[3] For more details, see 55 FR 23658 (June 11, 1990).

[4] For more details, see 56 FR 64704 (December 12, 1991).

[5] The Phase II final rulemaking discussed procedures by which states could petition EPA for more or less stringent volatility standards. 55 FR at 23660 (June 11, 1990).

[6] 56 FR 24242 (May 29, 1991).

the 7.8 psi RVP standard since 1992.) The Governor further stated that this waiver should only be necessary until EPA acts on the submittal of the ozone maintenance plan for the area or takes an alternative action regarding the implementation of the new standard for ozone. The request was based on discussions and reviews held in November 1997, by the Colorado Air Quality Control Commission (AQCC) of the environmental and economic impacts of the 7.8 psi standard. On December 10, 1997, the AQCC issued a resolution which recommended that the Governor submit a petition to EPA to request EPA to waive the 7.8 psi standard and replace it with a 9.0 psi standard.

D. History of Denver-Boulder Ozone Attainment Status Prior to Establishment of New NAAQS for Ozone

On November 6, 1991, the Denver-Boulder metropolitan area was designated nonattainment for the ozone NAAQS (see 56 FR 56694 (November 6, 1991)). The nonattainment area encompasses Denver's entire six-county Consolidated Metropolitan Statistical Area, with the exception of Rocky Mountain National Park in Boulder County and the eastern portions of Adams and Arapahoe Counties.

Under the Phase II rule promulgated on December 12, 1991, the standard applicable in the Denver-Boulder nonattainment area beginning in 1992 was 9.0 psi in May and 7.8 psi from June 1 to September 15. The standard applicable in other areas of Colorado was 9.0 psi from May 1 to September 15.

On November 6, 1991, EPA issued ozone nonattainment designations pursuant to section 107(d)(1)(C) of the Act (56 FR 56694). In that notice, EPA designated the Denver-Boulder area as a nonattainment area and classified it as a ''transitional area'' as determined under section 185A of the CAA. Section 185A defines a transitional area as ''an area designated as an ozone nonattainment area as of the date of enactment of the Clean Air Act Amendments of 1990 [that] has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989.'' In fact, according to monitoring data, the Denver-Boulder area attained and has continued to maintain the 0.12 parts per million (ppm) 1-hour standard since 1987.

E. Establishment of the New NAAQS for Ozone and Denver-Boulder's Current Attainment Status

On July 18, 1997, EPA promulgated a new 8-hour ozone standard of 0.08 ppm effective September 16, 1997 (see 62 FR 38856). EPA indicated in its December 29, 1997, guidance memorandum entitled ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' that designations for areas regarding the new 8-hour ozone NAAQS would take place in the future. EPA currently plans to designate areas as nonattainment for the new 8-hour ozone standard by July 2000, based on the most recently available three years of air quality data at that time (e.g., 1997, 1998, and 1999). Therefore, EPA is granting Colorado's request to relax the 7.8 psi standard until the year 2000. Taking into account Denver-Boulder's ozone attainment status for the new 8-hour standard, EPA will make a determination at that time as to which volatility standard will apply to the Denver-Boulder area.

F. Previous Petitions for Waivers of the 7.8 psi RVP Standard Granted by EPA

In separate rulemakings, EPA previously granted petitions by the Governor of Colorado for a relaxation of the Federal RVP volatility standard for the Denver-Boulder area for the years 1992 and 1993,[7] for the years 1994 and 1995,[8] and for the years 1996 and 1997.[9] For in-depth discussions of these actions, please refer to the **Federal Register** notices.

In summary, EPA granted these petitions to relax the 7.8 psi standard based on evidence presented to EPA by Colorado that showed economic hardship to consumers and industry if the 7.8 psi standard were retained. Evidence also demonstrated that the 7.8 psi standard was not necessary given the area's record of continued attainment of the 0.12 ppm 1-hour ozone standard.

G. Justification for Granting Colorado's Petition to Waive the 7.8 psi RVP Standard for 1998, 1999, and 2000

The Denver-Boulder area has attained the 1-hour ozone standard and EPA has proposed to revoke that standard for the area (see Notice of Proposed Rulemaking, 63 FR 2804, January 16, 1998). Ambient air quality data archived in EPA's national data base—Aerometric Information and Retrieval System (AIRS)—show continuous attainment of the 1-hour standard in Denver-Boulder since 1987, with a summertime gasoline RVP of 9.0 psi. Furthermore, even with the 9.0 RVP gasoline, data in AIRS show that the Denver-Boulder area has been attaining the new 8-hour ozone standard for 1994, 1995, and 1996, and in addition, a preliminary analysis also indicates continued attainment of the 8-hour standard through 1997. Thus, the Denver-Boulder area to date has been able to attain the 1-hour standard and the 8-hour standard with a 9.0 psi RVP gasoline standard in place.

Available evidence indicates that retention of the 7.8 psi standard would impose significant, additional costs for consumers and the gasoline industry in the area. Previous documentation submitted in support of Colorado's petitions for relaxation of the 7.8 psi RVP standard indicate that implementation of that standard would be costly. This documentation shows that implementation of the 7.8 psi RVP standard would cost the consumer about 1.1 cents more per gallon of gasoline with an overall seasonal cost of over $3,000,000.

In a letter of June 20, 1995, the local refinery industry stated that the imposition of a 7.8 psi standard in the Denver-Boulder area at that time would cause many refiners to make irreversible capital improvements. It was stated that these improvements may not be needed if Denver-Boulder implemented a 9.0 psi RVP standard after redesignation to attainment, which at that time seemed imminent. EPA notes that because the rest of the Colorado market requires a 9.0 psi RVP standard, any refinery changes made in order to comply with the 7.8 psi standard would be in response only to the market demand in the Denver-Boulder areas.

In testimony and documentation presented at a 1995 hearing held before the Colorado Air Quality Control Commission, the Air Pollution Control Board of the Colorado Department of Health stated that these increased costs would vary among refiners. Also minutes and documentation from that hearing indicated that the Air Pollution Control Board supported a relaxation of the RVP standard since there had been no monitored violations of the ozone (1-hour) NAAQS since 1986.

As stated above, with a 9.0 RVP gasoline standard in place, the Denver-Boulder area has attained the 1-hour ozone standard since 1992, (when the Phase II volatility standards were implemented), and has shown attainment with the 8-hour standard for 1994, 1995, and 1996, (with a

[7] For more details, see 53 FR 26067 (April 30, 1993).

[8] For more details, see 59 FR 15629 (April 4, 1994).

[9] For more details, see 61 FR 16391 (April 15, 1996).

preliminary analysis also showing attainment for 1997). Therefore, EPA believes that keeping in place the 9.0 psi RVP gasoline standard for the next three years in Denver-Boulder will not cause Denver-Boulder's air quality to deteriorate significantly. Additionally, since 1989, summertime gasoline volatility has been reduced significantly through federal volatility regulations. Moreover, ongoing vehicle fleet turnover, as well as several requirements under the 1990 CAA Amendments (tighter tailpipe standards, longer periods for a vehicle's ''useful life'' during which it must comply with the standards, requirements for on-board diagnostic equipment to detect failures of the emissions control system, requirements for on-board vapor recovery equipment to capture emissions during refueling, and enhanced inspection and maintenance requirements) will continue to help control overall mobile source emissions of VOCs in the Denver-Boulder area.

Under the CAA, EPA has up to three years from promulgation of a new NAAQS to designate areas for the new NAAQS. If an area is designated in 2000 as nonattainment for the 8-hour NAAQS, that area will be required to develop and submit a State Implementation Plan (SIP) revision to provide for attainment of the 8-hour standard. EPA believes that when the Agency determines the Denver-Boulder area's ozone attainment status for purposes of the initial designations (by July 2000), that will be the appropriate time to assign a permanent RVP standard for the Denver-Boulder area.

II. Direct Final Rulemaking

This action is being taken without prior proposal because EPA believes that this continuation of the relaxation of the RVP requirements is noncontroversial. The effect of this rulemaking is limited to the Denver-Boulder, Colorado nonattainment area, and EPA anticipates no significant comments on this action. This action extends the RVP standard that has been in effect in the Denver-Boulder area since 1992.

III. Administrative Requirements

A. Public Participation

This rule will become effective without further notification unless the Agency receives relevant adverse comments on the parallel document of proposed rulemaking published in today's **Federal Register** within 30 days of this document. Should the Agency receive such comments, it will publish a notice informing the public that this rule did not take effect. All relevant public comments received within the 30-day comment period will then be addressed in a subsequent final rule based on EPA's proposal to approve Colorado's petition published in the proposed rules section of today's **Federal Register**. No second comment period on this rule will be instituted.

B. Environmental Impact

The proposed amendment is not expected to have any adverse environmental effects. The Denver-Boulder six-county area has met the 1-hour NAAQS for ozone since 1987. Current air quality is expected to be further maintained by a 9.0 psi RVP gasoline standard for the years 1998, 1999, and 2000.

C. Economic Impact

The proposed continued relaxation of the 7.8 psi RVP gasoline standard to 9.0 psi will avoid a cost increase in gasoline refining and decrease in summertime gasoline supply levels in the Denver-Boulder area. No new economic burdens will be placed on the local refining industry to implement a change in the RVP standard.

D. Executive Order 12866

Under Executive Order 12886 [10], the Agency must determine whether a 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. Specifically, this rule will not have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. In fact, as discussed above, this action will reduce the cost of compliance with Federal requirements in this area.

[10] 58 *FR* 51735 (October 4, 1993).

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from ten or more non-Federal respondents. This direct final rule does not create any new information requirements or contain any new information collection activities.

F. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have significant economic impact on substantial number of small entities. Small entities include small businesses, small for profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because the overall impact of this rule is a net decrease in requirements on all entities including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or

the selection of this alternative is inconsistent with the law.

The Agency has determined that this rule does not include a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule reduces costs to such entities by relaxing a regulatory requirement. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

H. Submission to Congress and the Comptroller General

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

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 1998. 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 it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

J. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at www.epa.gov/OMSWWW under the title: ''Relaxation of Federal Gasoline RVP Standard in Denver-Boulder Metropolitan Area.''

K. Statutory Authority

The promulgation of this regulation is authorized by sections 211(h) and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990(42 U.S.C. 7545(h) and 7601(a)).

L. Children's Health Protection

This direct final 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 does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental Protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 28, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(a) * * *

(2) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * * * * *					
Colorado[2]	9.0	7.8	7.8	7.8	7.8
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi).

[2] The standard for 1992 through 2000 in the Denver-Boulder area designated nonattainment for the 1-hour ozone NAAQS in 1991 (see 40 CFR 81.306) will be 9.0 for June 1 through September 15.

[FR Doc. 98–15449 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300652; FRL 5788–4]

RIN 2070–AB78

Glyphosate; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of Roundup Ultra and Roundup Ultra RT (Glyphosate [*N*-(Phosphonomethyl)glycine) and its metabolites in or on dry peas, lentils, and chickpeas at 5 part per million (ppm) for an additional 18 month, to February 29, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry peas, lentils, and chickpeas. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective June 10, 1998. Objections and requests for hearings must be received by EPA, on or before August 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300652], 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–300652], 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, 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@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Jackie Gwaltney, 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. 274, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6792; e-mail: gwaltney.jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of August 11, 1997 (62 FR 42921) (FRL 5732–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of Roundup Ultra and Roundup Ultra RT (Glyphosate [*N*-(Phosphonomethyl)glycine) and its metabolites in or on dry peas, lentils, and chickpeas at 5 ppm, with an expiration date of February 29, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

In the final rule published on August 11, 1997 (62 FR 42921), EPA stated that an emergency exemption had been granted to Idaho, Oregon and Washington for use of glyphosate on dry peas, garbanzo beans (chickpeas) and lentils. The final rule was intended to establish tolerances for residues of glyphosate and its metabolites in or on all of these commodities. All of the commodities, including chickpeas, were included in EPA's assessment of the aggregate risk from exposure to glyphosate and in the Agency's determination that there is a reasonable certainty that no harm would result from such exposure. However, the commodity garbanzo beans (chickpeas) and its tolerance of 5 ppm was inadvertently omitted from the regulatory text. Therefore, in this final rule EPA is also adding a tolerance of 5 ppm for chickpeas with an expiration date of February 29, 2000 to the table at 40 CFR 180.346(b).

EPA received a request to extend the use of Roundup Ultra and Roundup Ultra RT (Glyphosate [*N*-(Phosphonomethyl)glycine) on dry peas, lentils, and chickpeas for this year growing season due to a combination of weather and environmental conditions that encouraged the excessive spread of Canada thistle. Canada thistle is a severe threat to Eastern Washington dry peas, lentils, and chickpeas cropland. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of Roundup Ultra and Roundup Ultra RT (Glyphosate [*N*-(Phosphonomethyl)glycine) on dry peas, lentils, and chickpeas for control of Canada thistle in dry peas, lentils, and chickpeas.

EPA assessed the potential risks presented by residues of Roundup Ultra and Roundup Ultra RT (Glyphosate [*N*-(Phosphonomethyl)glycine) in or on dry peas, lentils, and chickpeas. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 11, 1997 (62 FR 42921) [(FRL 5732–7)]. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18 months. Although this tolerance will expire and is revoked on August 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry peas, lentils, and chickpeas after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) 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 August 10, 1998, 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 above (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). 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.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above 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 rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300652]. No 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.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, 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 prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), 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).

Since this extension of an existing time-limited tolerance does 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 has 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.

IV. 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 reportcontaining this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR part 180

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

Dated: May 21, 1998.

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. 346a and 371.

2. In § 180.364, by revising paragraph (b) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide glyphosate, per se in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ revocation date
Cattle, kidney	4	2/29/00
Chickpeas	5	2/29/00
Goats, kidney	4	2/29/00
Horses, kidney ..	4	2/29/00
Lentils	5	2/29/00
Pea, hay	200	2/29/00
Pea, vines	60	2/29/00
Peas, dry	5	2/29/00
Sheep, kidney ...	4	2/29/00
Silage, hay	90	2/29/00

* * * * *

[FR Doc. 98–15327 Filed 6–9–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300662; FRL 5791–5]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fenbuconazole and its metabolites in or on blueberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of

the pesticide on blueberries in several States. This regulation establishes a maximum permissible level for residues of fenbuconazole in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1999.

DATES: This regulation is effective June 10, 1998. Objections and requests for hearings must be received by EPA on or before August 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300662], 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–300662], 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, 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@epamail.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–300662]. 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: Daniel Rosenblatt, 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: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9375; e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for the fungicide fenbuconazole and its metabolites, in or on blueberries at 1.0 part per million (ppm). This tolerance will expire and is revoked on December 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL 5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fenbuconazole on Blueberries and FFDCA Tolerances

Mummy berry disease *Monilinia vaccinii-corymbosi* is a plant disease which causes a variety of leaf, flower, and fruit damage. Of special concern for blueberry producers are the blighted flower clusters on blueberry bushes and mummified fruit that the disease will produce. Yield loss projections suggest that mummy berry disease may produce losses of 25–50% of the blueberry crop. In addition, the mummified fruit will serve as the inoculum for subsequent outbreaks of mummy berry disease so it is important to gain control over the pest in order to avert future problem outbreaks.

In past growing seasons, blueberry growers typically used triforine to control mummy berry disease. However, triforine was voluntarily canceled by its manufacturer. Now that triforine pesticides have been canceled, there do not appear to be any registered pesticidal or cultural measures that growers can use. Therefore, EPA concurs that the pressures presented by mummy berry disease on blueberry growers represent an urgent and non-routine situation and has authorized under FIFRA section 18 the use of fenbuconazole on blueberries to numerous States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenbuconazole in or on blueberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary

tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fenbuconazole meets EPA's registration requirements for use on blueberries or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fenbuconazole by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than those authorized under section 18 to use this pesticide on this crop without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenbuconazole, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregateexposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (females 13 years and older) was not regionally based.

IV. 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 fenbuconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fenbuconazole and its metabolites on blueberries at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* For the purposes of the acute dietary risk assessment, EPA assessments are based on an acute RfD of 0.3 milligrams/kilogram/day (mg/kg/day). This figure is derived from developmental toxicity data from laboratory animals where the NOEL was determined to be 30 mg/kg/day. The observed effect was a decrease in the number of live fetuses at the Lowest Effect Level (LEL) of 75 mg/kg/day and an uncertainty factor of 100. EPA determined that an additional safety factor of 3x for the protection of infants and children was appropriate. Therefore, the FQPA acute allowable risk is 0.1 mg/kg/day.

2. *Short - and intermediate - term toxicity.* No dermal or systemic toxicity endpoints were identified for this exposure duration. Therefore, a risk assessment is not needed.

3. *Chronic toxicity.* EPA has established the RfD for fenbuconazole at 0.03 mg/kg/day. This RfD is based on a chronic toxicity study in the rat with a NOEL of 3.03/4.02 in males/females. The NOEL is based on decreased body weight gains (females), hepatocellular enlargement and vaculation (females), increases in thyroid weight (both sexes) and histopathological lesions in the thyroid glands (males), at the LEL of 30.62/43.04 mg/kg/day in males/females. For the population subgroup of infants and children an uncertainty factor of 300 was used. The FQPA chronic allowable risk is 0.01 mg/kg/day for infants, children, and females 13 years and older.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment, EPA has classified fenbuconazole as a Group C (possible human carcinogen) chemical. EPA believes it is appropriate to use the Q_1^* approach of 3.59×10^{-3} $(mg/kg/day)^{-1}$.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.480) for the use of fenbuconazole and its metabolites, in or on a variety of raw agricultural commodities. Time-limited tolerances have been established for residues of fenbuconazole, alpha-2-(4-chlorophenyl)-ethyl-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H* 1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole in or on commodities ranging from 0.1 ppm in pecans to 2.0 ppm in the stone fruit crop group. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenbuconazole 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 one day or single exposure. In conducting an acute dietary risk assessment for fenbuconazole, EPA has made conservative assumptions which result in an overestimate of human dietary exposure. The acute dietary (food only) risk assessment used TMRC. The resulting high-end exposure estimate is 0.015 mg/kg/day. This exposure level utilizes 15% of the dietary (food only) FQPA acute allowable risk for females 13+ years. Refinement using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis would result in lower acute dietary exposure estimates.

ii. *Chronic exposure and risk.* The chronic dietary risk assessment is partially refined. Tolerance level residues were assumed for all commodities, including stone fruits. Percent crop treated data were used for

stone fruits only and 100% crop-treated data were used for all other commodities. The existing tolerances for fenbuconazole plus exposures connected with the section 18 on blueberries result in an anticipated residue contribution (ARC) that is equivalent to 3% of the RfD for non-nursing infants (<1 year old), the highest exposed subpopulation.

2. *From drinking water.* There are no established Maximum Contaminant Level for residues of fenbuconazole in drinking water and no health advisory levels for fenbuconazole in drinking water have been established.

Fenbuconazole is moderately persistent and slightly mobile to immobile in soil. Because of its adsorption to soil, the potential for fenbuconazole to leach to ground water appears to be slight. However, the potential to contaminate ground water may be greater at vulnerable sites, where soils are low in organic matter and where ground water is relatively close to the surface. The long half-lives of aerobic soil and terrestrial field dissipation indicate that when fenbuconazole is applied over multiple growing seasons, soil residue accumulation may result. These residues may be available for rotational crop uptake or may be transported with sediments during runoff events.

For the purposes of EPA's water screening assessments, it is assumed that adult males weigh 70 kg, adult females 60 kg, and children 10 kg. Average consumption is assumed to be 2 liters/day for adults and 1 liter/day for children.

EPA performed a ground water assessment with its ground water screening tool to establish an estimated environmental concentration (EEC). The Tier I estimate projected that the concentration of fenbuconazole in drinking water from ground water sources is not likely to exceed an acute and chronic EEC of 0.019 µg/l for ground and aerial applications.

A Tier I drinking water assessment of fenbuconazole was also conducted for surface water. The EECs are generated for high exposure agricultural scenarios and correspond to a stagnant pond with no outlet that receives pesticide loading from an adjacent 100% cropped, 100% treated field. As such, these computer generated EECs represent conservative screening levels for ponds and lakes and are thought to represent an overestimate of the actual EEC. The peak EEC projection for surface water involved aerial applications. The acute peak EEC was 4.27 µg/l. The chronic 56–day EEC was 2.29 µg/l. Because the surface water EECs appear to be higher, EPA used these worst case calculations in its dietary risk assessment.

i. *Acute exposure and risk.* EPA calculated the acute risks from drinking water for fenbuconazole based on dietary (food) exposure and the default assumptions mentioned above. To calculate the acute drinking water level of concern (DWLOC), the acute dietary food exposure estimate is subtracted from the acute RfD.

The calculations were based on the following: the acute RfD for fenbuconazole is 0.3 mg/kg/day; the FQPA acute allowable risk is 0.1 mg/kg/day based on an uncertainty factor of 3. If the acute food exposure estimate (0.015 mg/kg/day) is subtracted from the FQPA acute allowable risk (0.1 mg/kg/day) the result is the maximum acute water exposure which is 0.085 mg/kg/day or 2,600 parts per billion (ppb).

The peak EEC (acute) value is 4.27 ppb, based on aerial application of fenbuconazole. This figure is significantly lower that the DWLOC of 2,600 ppb. Therefore, EPA concludes with reasonable certainty that the acute exposure to fenbuconazole in drinking water is less than the level of concern.

ii. *Chronic exposure and risk.* To calculate the chronic DWLOC, the chronic dietary food exposure is subtracted from the RfD. Chronic DWLOCs were calculated for various subpopulations ranging from 1,050 ppb for the U.S. population to 92 ppb for infants and children (non-nursing < 1 year). The computer model suggested that the chronic EEC for fenbuconazole is 2.29 ppb for aerial applications of the pesticide. Since the EEC is less than the DWLOC, EPA concludes that there is reasonable certainty that chronic exposure is less than the level of concern.

EPA calculated the cancer risk associated with fenbuconazole and drinking water. To calculate the DWLOC for cancer, the chronic dietary food exposure was subtracted from the negligible risk standard (1×10^{-6}) divided by the Q_1^* (0.00359 mg/kg/day). EPA's drinking water level of concern from cancer is 5.4 ppb for the U.S. population. This compares to the level of 2.29 ppb from the conservative computer model EPA used to estimate exposures. Since the DWLOC is higher than the calculated EEC of 2.29 ppb, EPA concludes with reasonable certainty that exposure to fenbuconazole in drinking water does not pose a level of concern with respect to cancer risks.

3. *From non-dietary exposure.* Fenbuconazole is not currently registered for any residential or non-food use sites. Therefore, a discussion of the toxicity endpoints for non-dietary exposure and a risk assessment for these uses is not germane to this review.

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.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether fenbuconazole 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, fenbuconazole 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 fenbuconazole has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* For the population subgroup of concern, females 13 years and older, EPA used the TMRC approach and calculated that exposure would utilize 15% of the RfD. EPA generally has no concerns for exposures below 100% of the acute RfD. In addition, for acute exposures associated with drinking water, EPA has concluded that the level of concern is 2,600 ppb. The EEC value is 4.27 ppb. This leads EPA to conclude that acute exposure to fenbuconazole does not pose a level of concern.

2. *Chronic risk.* Using ARC exposure assumptions, EPA has concluded that aggregate exposure to fenbuconazole from food will utilize less than 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants where 3% of the RfD is utilized. A full discussion of the risks associated with exposure to infants and children is presented 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. EPA's level of concern from chronic exposure to drinking water is 1,050 ppb for the U.S. population. The EEC for aerial application is projected to be 2.29 ppb. Therefore, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenbuconazole residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term endpoints were not identified for fenbuconazole. Therefore, an aggregate risk assessment was not conducted for these endpoints. Furthermore, fenbuconazole has no residential uses.

D. Aggregate Cancer Risk for U.S. Population

Fenbuconazole has been classified as a Group C Carcinogen with a Q_1^* of 3.59 x 10^{-3} (0.00359 mg/kg/day). The Q^* approach was used for risk assessments involving carcinogenic effects. Using partially refined exposure estimates, the cancer risk estimate for the U.S. population is 3.25 x 10^{-7}. For exposures connected with drinking water, EPA's level of concern is 5.4 ppb. EPA projects that the EEC for fenbuconazole is 2.29 ppb. Therefore, EPA concludes with reasonable certainty that exposure to fenbuconazole does not exceed the level of concern for cancer risks.

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

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for 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 MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined 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. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal (systemic) NOEL was 30 mg/kg/day, based on decreases in body weight and body weight gain at the LOEL of 75 mg/kg/day. The developmental (fetal) NOEL was 30 mg/kg/day, based on an increase in post implantation loss and a significant decrease in the number of live fetuses per dam at the LOEL of 75 mg/kg/day. In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 10 mg/kg/day, based on decreased body weight gain at the LOEL of 30 mg/kg/day. The developmental (pup) NOEL was 30 mg/kg/day, based on increased resorptions at the LOEL of 60 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2-generation reproductive study in rats, the paternal (systemic) NOEL was 4 mg/kg/day, based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights at the LOEL of 40 mg/kg/day. The reproductive (pup) NOEL was 40 mg/kg/day, the highest dose tested (HDT).

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre-and post-natal toxicity for fenbuconazole is complete with respect to EPA's current data requirements. Based on the developmental and reproductive toxicity studies there is not adequate evidence to completely remove the FQPA 10x factor. There is some evidence suggestive of increased susceptibility in developing offspring. An increase in post implantation loss and a significant decrease in the number of live fetuses per dam in rats in the presence of effects on maternal weight gain may be indicative of increased susceptibility in the fetus. However, the increased incidence does not appear to be very great at 75 mg/kg/day for either effect. Similarly, in rabbits there are reported resorptions at 60 mg/kg/day and effects on maternal weight gain at 30 mg/kg/day. Therefore, EPA determined that the 10x factor required by FQPA for protection of infants and children from exposure to fenbuconazole should be reduced to 3x.

The retention of the 3x factor for this risk assessment does not result in exposure values which exceed EPA's level of concern. This action should not pose an unacceptable aggregate risk to infants and children.

2. *Acute risk.* Toxicological effects relevant to infants and children that could be attributed to a single exposure (dose) were not observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. A dose and endpoint was not identified. Therefore, an aggregate risk assessment is not required for this subpopulation.

3. *Chronic risk.* Using ARC exposure assumptions, EPA has concluded that aggregate exposure to fenbuconazole from food will utilize 3% of the RfD for non-nursing infants less than 1 year old to less than 1% for children 1–6 years old. 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. EPA's level of concern for chronic exposure to infants and children through drinking water is 92 ppb. EPA's water exposure model suggests that aerial application could result in an EEC of 2.29 ppb. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenbuconazole residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of fenbuconazole for this action is adequately understood. The residue of concern is fenbuconazole (alpha-[2-4-chlorophenyl)-ethyl]alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanoneandtrans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone, expressed as fenbuconazole as specified in 40 CFR 180.480.

No livestock feed items are associated with this request. Thus, the nature of the residue in livestock is not of concern.

B. Analytical Enforcement Methodology

Analytical methodology is available to enforce the tolerances forfenbuconazole.

C. Magnitude of Residues

Residues of fenbuconazole and its regulated metabolites are not expected to exceed 1.0 ppm in/on blueberries. Secondary residues are not expected as no livestock feed items are associated with this use.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) for fenbuconazole on blueberries.

E. Rotational Crop Restrictions

Blueberries are not rotated. Rotational crop restrictions are not germane to this action.

VI. Conclusion

Therefore, the tolerance is established for residues of fenbuconazole (alpha-[2-4-chlorophenyl)-ethyl]alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H* 1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole in blueberries at 1.0 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) 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 August 10, 1998, 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 above (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). 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.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300662] (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 Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above 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 rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior

consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), 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 these tolerances and exemptions that are established under FFDCA section 408 (l)(6), 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 has 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.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 20, 1998.

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. 346a and 371.

2. Section 180.480 is amended by adding a heading to paragraph (a); by designating the text in paragraph (a) as paragraph (a)(1); by redesignating paragraph (b) as paragraph (a)(2) and amending it to revise the phrase ''paragraph (a) of this section'' to read ''paragraph (a)(1) of this section''; by adding a new paragraph (b); and by adding and reserving with headings paragraphs (c) and (d) to read as follows:

§ 180.480 Fenbuconazole; tolerances for residues.

(a) *General.* (1) * * *

(2) * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for fenbuconazole (alpha-[2-4-chlorophenyl)-ethyl]alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, cis-5-(4-chlorophenyl)-dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone and trans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H* 1,2,4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole in or on blueberries in connection with use of the pesticide under a section 18 exemption granted by EPA. The time-limited tolerance will expire on the date specified in the following table.

Commodity	Parts per million	Expiration/ revocation date
Blueberries	1.0	12/31/99

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

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

[FR Doc. 98–15173 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300657; FRL–5789–8]
RIN 2070–AB78

Clopyralid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide clopyralid in or on canola at 3 part per million (ppm) for an additional one and one-half–year period, to January 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on canola. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective June 10, 1998. Objections and requests for hearings must be received by EPA, on or before August 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300657, 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–300657, 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, 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@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, 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. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 16, 1997 (62 FR 26949) (FRL–5718–2), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of clopyralid in or on canola at 3 ppm, with an expiration date of July 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clopyralid on canola for this year growing season due to the continued emergency situation involving perennial sowthistle and Canadian thistle in North Dakota, Minnesota, Montana, Idaho and Washington. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of clopyralid on canola for control of perennial sowthisle and/or Canada thistle in canola.

EPA assessed the potential risks presented by residues of clopyralid in or on canola. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 16, 1997 (62 FR 26949) (FRL–5718–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half–year period. Although this tolerance will expire and is revoked on January 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) 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 August 10, 1998, 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 above (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). 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.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above 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 rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300657]. No 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.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerancethat was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, 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 prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), 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).

Since this extension of an existing time-limited tolerance does 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 has 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.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 26, 1998.

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. 346a and 371.

§ 180.431 [Amended]

2. In § 180.431, by amending the tolerance listed for ''Canola'' in the table under paragraph (b) by changing the date ''7/31/98'' to read ''1/31/00''.

[FR Doc. 98–15172 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300656; FRL–5789–7]

RIN 2070–AB78

Polyvinyl Chloride; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of polyvinyl chloride when used as an inert ingredient carrier in pesticide formulations applied to growing crops or raw agricultural commodities after harvest. American Cyanamid Company requested this exemption from the requirement of a tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective June 10, 1998. Objections and requests for hearings must be received by EPA on or before August 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300656, 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–300656, 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, 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@epamail.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–300656. 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: Bipin Gandhi, Registration Division 7505W, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Fourth Floor, CS#1, 2800 Crystal Drive, Arlington, VA, (703) 308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 1997 (62 FR 45804) (FRL–5738–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of pesticide petition (PP) 3E4246 for a tolerance exemption by American Cyanamid Company, Agricultural Products Research Division, P.O. Box 400, Princeton, NJ 08543–0400. This notice included a summary of the petition prepared by American Cyanamid Company, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001 be amended by establishing an exemption from the requirement of a tolerance for residues of polyvinyl chloride when used as an inert ingredient carrier in pesticide formulations applied to growing crops or raw agricultural commodities after harvest.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities

under a new section 408 with a new safety standard and new procedures.

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance for a pesticide chemical residue on food only if EPA determines that the exemption is ''safe.'' Section 408(c)(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, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of 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'' and specifies factors EPA is to consider in establishing an exemption.

II. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactant such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient in food, drinking water, and other nonoccupational exposures. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

IV. 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 polyvinyl chloride and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance exemption for residues on polyvinyl chloride on growing crops and raw agricultural commodities after harvest. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

The data submitted in the petitions and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305) (FRL–3190–1), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient.

A. Toxicological Profile

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting these criteria will present minimal or no risk. Polyvinyl chloride (PVC) conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low risk polymers:

1. PVC is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. PVC contains as an integral part of its composition the atomic elements carbon, chlorine, and hydrogen.
3. PVC does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR section 723.250 (d)(2)(ii).
4. PVC is not designed, nor is it reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. PVC is not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substance Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. PVC is not a water absorbing polymer.
7. PVC does not contain any group as reactive functional groups.
8. The minimum number-average molecular weight of PVC is listed as 29,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.
9. PVC has a minimum number-average molecular weight of 29,000 and contains less than 2 percent oligomeric material below molecular weight 500 and less than 5 percent oligomeric material below 1,000 molecular weight.

In addition, PVC is approved by the Food and Drug Administration (FDA) under 21 CFR for contact with food as a component in adhesives (21 CFR 175.105), coatings (21 CFR 175.320), and paper and paperboard (21 CFR 176.180). PVC is also approved by FDA as an indirect food additive used as a basic component of acrylic (21 CFR 177.1010) and cellophane (21 CFR 177.1200) polymers. PVC is also cleared for use as water pipe for potable water as per FFDCA 201(s).

Based on the conformance of polyvinyl chloride to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation or dermal exposure to polyvinyl chloride.

B. Exposures and Risks

1. *From food and feed uses, drinking water, and non-dietary exposures.* For the purposes of assessing the potential

dietary exposure, EPA considered that under this tolerance exemption polyvinyl chloride could be present in all raw and processed agricultural commodities and drinking water and that non-occupational, non-dietary exposure was possible. EPA concluded that, based on this chemical's categorization as a polymer conforming to the definition of a polymer under 40 CFR 723.250(b) that also meet the criteria used to identify low risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable.

2. *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.''

In the case of polyvinyl chloride, the lack of expected toxicity of this substance based on its conformance to the definition of polymers as given in 40 CFR 723.250(b) as well as the criteria that identify low risk polymers results in no expected cumulative effects; a cumulative risk assessment is therefore not necessary.

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

Based on this chemical's conformance to the definition of a polymer given in 40 CFR 723.250(b) as well as the criteria that are used to identify low risk polymers, EPA concludes that there is a reasonable certainty that no harm to the U.S. population will result from aggregate exposure to polyvinyl chloride. EPA believes this compound presents no dietary risk under reasonably foreseeable circumstances.

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

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 postnatal 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 MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of polyvinyl chloride, EPA has not used a safety factor analysis in assessing the risk of this compound. For the same reasons the additional safety factor is unnecessary.

V. Other Considerations

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for polyvinyl chloride.

There are no Codex Alimentarius Commission (Codex), Canadian or Mexican residue limits for polyvinyl chloride.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of polyvinyl chloride.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) 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 August 10, 1998, 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 above (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). 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 Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the 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.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300656] (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, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above 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 rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), 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).

The Agency has 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.

X. Submission to Congress and the General Accounting Office

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).

List of Subjects in 40 CFR Part 180

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

Dated: May 21, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

PART 180 — [AMENDED]

Therefore, 40 CFR chapter I is amended as follows:

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

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

2. In section 180.1001 the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemption from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Polyvinyl chloride (CAS Reg. No. 9002–86–2), minimum number average molecular weight (in amu) 29,000.	.....	Carrier
* *	* * *	* *

* * * * *

[FR Doc. 98–15174 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 94–45; FCC 98–96]

Marketing and Equipment Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order,* the Commission amends its regulations to increase the number of radio frequency products that can be imported, prior to receiving a grant of equipment authorization, for the purpose of testing and evaluation or demonstration at industry trade shows. This increase applies only to products designed to be operated within one of the allocated radio services and under the provisions of license issued by the Commission. In addition, manufacturers operating equipment for demonstration or evaluation purposes will be permitted to operate under the authority of a local FCC licensed service provider on the condition that the licensee gives the manufacturer permission to operate in this manner and accepts responsibility for the operation of the equipment. These amendments to the regulations respond to a Petition for Reconsideration and Clarification, filed by Ericsson, Inc.

EFFECTIVE DATE: August 10, 1998.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418–2455.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in ET Docket No. 94–45, adopted May 14, 1998, and released May 28, 1998. The complete 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, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of the Memoranudum Opinion and Order

1. In the *Memorandum Opinion and Order,* the Commission amended part 2 of its rules regarding the importation and operation of radio frequency (RF) devices. Previously, the rules limited the importation of RF products, prior to receiving a grant of equipment authorization, to no more than 200 units for testing and evaluation purposes and to no more than 10 units for demonstrations at trade shows. A greater number could be imported only if written authorization was first obtained from the Chief, Office of Engineering and Technology, FCC.

2. Ericsson, Inc. filed a Petition for Reconsideration and Clarification to the *Report and Order* (''R&O'') in this proceeding, 62 FR 10466, March 7, 1997. It requested that the above

importation limits be eliminated, stating that these limits unfairly restrict the ability of foreign manufacturers to compete with domestic manufacturers. Ericsson also requested that the Commission eliminate its requirement that manufacturers obtain a license to operate transmitters for demonstrations at trade shows, demonstrations at exhibitions, or evaluation of product performance. Ericsson adds that the requirement to obtain a license should apply only to entities that intend to provide services using the product.

3. In the *R&O* in this proceeding, the Commission chose not to amend its rules limiting the importation of RF devices that had not yet received a grant of equipment authorization because of the difficulties sometimes associated with identifying the responsible party, e.g., the importer. With many products, especially low-power, unlicensed, consumer devices, the name of the responsible party may not be on the product. Thus, it may not be possible to trace a product to a specific importer or to have a product recalled should it later be found to be a source of harmful interference.

4. The Commission continues to believe that importation limits for unauthorized devices are necessary and that these limits do not impose a significant barrier to foreign trade. However, Ericsson has made a compelling argument that the current limits are inappropriate for equipment intended to be used in the authorized radio services where a license to operate is required to be obtained from the Commission. In some authorized services, there are several hundred licensees, each of which may be interested in evaluating small quantities of sample base and mobile units before making larger purchases. This could result in frequent requests to import larger quantities. In order to reduce administrative burden, the rules are amended to allow the routine importation of up to 2000 units for test and evaluation and up to 200 units for display at trade shows, but only for equipment intended to be operated in an authorized radio service and under a Commission-issued license.

5. The Commission does not agree with Ericsson that the requirement to obtain a license, where currently required, should be eliminated for equipment manufacturers. However, the Commission is amending its regulations to permit a manufacturer to operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. The licensee must grant permission to the manufacturer to operate in this manner. Further, the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license.

6. The changes to the regulations shown in this document incorporate the changes adopted in this proceeding as well as the changes to 47 CFR 2.1204(a)(3) and (a)(4) that were adopted by the Commission on May 18, 1998 in CI Docket No. 98–69, FCC 98–97. The changes to these paragraphs were made in separate orders adopted in close proximity to each other. For clarity, we are showing all of the resulting rule changes.

7. *Final Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice)* in ET 94–45. The Commission sought written Comments on the proposals in the *Notice* including the IRFA. No commenting parties raised issues specifically in response to the IRFA and a Final Regulatory Flexibility Analysis (FRFA) as included in the *Report and Order* in this proceeding. The rules adopted in this Memorandum Opinion and Order (MO&O) provide clarification and further relaxation of the marketing regulations adopted in the *Report and Order.* We therefore certify, pursuant to section 605(b) of the RFA, that the rules adopted in this MO&O do not have a significant economic impact on a substantial number of small entities.

8. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this final certification, along with this Memorandum Opinion and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 605(b).

9. *It Is Further Ordered* that this proceeding is *Terminated.*

List of Subjects in 47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble part 2 of title 47 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

2. Section 2.803 is amended by revising paragraph (e)(3) to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(e)(3) The provisions of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section do not eliminate any requirements for station licenses for products that normally require a license to operate, as specified elsewhere in this chapter.

(i) Manufacturers should note that station licenses are not required for some products, e.g., products operating under part 15 of this chapter and certain products operating under part 95 of this chapter.

(ii) Instead of obtaining a special temporary authorization or an experimental license, a manufacturer may operate its product for demonstration or evaluation purposes under the authority of a local FCC licensed service provider. However, the licensee must grant permission to the manufacturer to operate in this manner. Further, the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license.

* * * * *

3. Section 2.1204 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(3) The radio frequency device is being imported in limited quantities for testing and evaluation to determine compliance with the FCC Rules and Regulations or suitability for marketing. The devices will not be offered for sale or marketed. The phrase ''limited quantities,'' in this context means:

(i) 2000 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 200 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

(4) The radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for

sale or marketed. The phrase ''limited quantities,'' in this context means:

(i) 200 or fewer units, provided the product is designed solely for operation within one of the Commission's authorized radio services for which an operating license is required to be issued by the Commission; or

(ii) 10 or fewer units for all other products.

(iii) Prior to importation of a greater number of units than shown above, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC.

(iv) Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

* * * * *

[FR Doc. 98–15395 Filed 6–9–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB94

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Klamath River and Columbia River Distinct Population Segments of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines threatened status for the Klamath River and the Columbia River distinct population segments of bull trout (*Salvelinus confluentus*), with special rules, pursuant to the Endangered Species Act of 1973, as amended (Act). The Klamath River population segment is limited to seven geographically isolated stream areas representing a fraction of the historical habitat. The distribution and numbers of bull trout have declined in the Klamath River basin due to habitat isolation, loss of migratory corridors, poor water quality, and the introduction of non-native species. The Columbia River population segment is represented by relatively widespread subpopulations that have declined in overall range and numbers of fish. A majority of Columbia River bull trout occur in isolated, fragmented habitats that support low numbers of fish and are inaccessible to migratory bull trout. The few remaining bull trout ''strongholds'' in the Columbia River basin tend to be found in large areas of contiguous habitats in the Snake River basin of central Idaho mountains, upper Clark Fork and Flathead Rivers in Montana, and several streams in the Blue Mountains in Washington and Oregon. The decline of bull trout is primarily due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices, and the introduction of non-native species. The special rules allow the take of bull trout in the Columbia River and Klamath River population segments if in accordance with applicable State and Native American Tribal fish and wildlife conservation laws and regulations and conservation plans approved by the Service.

The listing proposal was restricted by court order to information contained in the 1994 administrative record. This final determination was based on the best available scientific and commercial information including current data and new information received during the comment period. As a result, the threatened listing status for the Columbia River population segment has been retained, however, the listing status for the Klamath River population segment is changed from endangered to threatened. This listing status change occurred because bull trout interagency management and recovery efforts for the Klamath River basin are being implemented and, consequently, threats have been reduced. This rule implements the protection and conservation provisions afforded by the Act for the Klamath River and Columbia River population segments of bull trout.

DATES: Effective July 10, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Basin Field Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, Snake River Basin Office (see **ADDRESSES** section) (telephone 208–378–5243, facsimile 208–378–5262).

SUPPLEMENTARY INFORMATION:

Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. Bull trout historically occurred in major river drainages in the Pacific Northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of British Columbia, Canada, and southeast Alaska (Bond 1992). Bull trout are wide-spread throughout tributaries of the Columbia River basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River basin of south central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River, and subsequently described under a number of names such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992). Cavender (1978) presented morphometric (measurement), meristic (geometrical relation), osteological (bone structure), and distributional evidence to document specific distinctions between Dolly Varden and bull trout. Bull trout and Dolly Varden were formally recognized as separate species by the American Fisheries Society in 1980 (Robins et al. 1980). Although bull trout and Dolly Varden co-occur in several northwestern Washington river drainages, there is little evidence of introgression (Haas and McPhail 1991) and the two species appear to be maintaining distinct genomes (Leary et al. 1993; Williams et al. 1995; Kanda et al. 1997; Spruell and Allendorf 1997).

Bull trout exhibit resident and migratory life-history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their entire life cycle in the tributary (or nearby) streams in which they spawn and rear. Migratory bull trout spawn in tributary streams where juvenile fish rear from one to four years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, to saltwater (anadromous), where maturity is reached in one of the three habitats (Fraley and Shepard 1989; Goetz 1989). Resident and migratory forms may be found together and it is suspected that bull trout give rise to offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Bull trout have more specific habitat requirements compared to other salmonids (Rieman and McIntyre 1993). Habitat components that appear to influence bull trout distribution and

abundance include water temperature, cover, channel form and stability, valley form, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Howell and Buchanan 1992; Rieman and McIntyre 1993, 1995; Rich 1996; Watson and Hillman 1997). Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide habitat requirements for bull trout to successfully spawn and rear, and that the characteristics are not necessarily ubiquitous throughout these watersheds. Because bull trout exhibit a patchy distribution, even in pristine habitats (Rieman and McIntyre 1993), the fish should not be expected to simultaneously occupy all available habitats (Rieman et al. *in press*).

Bull trout are found primarily in colder streams, although individual fish are found in larger river systems throughout the Columbia River basin (Fraley and Shepard 1989; Rieman and McIntyre 1993, 1995; Buchanan and Gregory 1997; Rieman et al. *in press*). Water temperature above 15° C (59° F) is believed to limit bull trout distribution, which may partially explain the patchy distribution within a watershed (Fraley and Shepard 1989; Rieman and McIntyre 1995). Spawning areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman et al. *in press*). For example, the only stream with substantial bull trout spawning in the upper Blackfoot River in Montana was Copper Creek, which had maximum water temperatures less than 15° C (59° F) (Hillman and Chapman 1996). Goetz (1989) suggested optimum water temperatures for rearing of about 7 to 8° C (44 to 46° F) and optimum water temperatures for egg incubation of 2 to 4° C (35 to 39° F). In Granite Creek, Idaho, Bonneau and Scarnecchia (1996) observed that juvenile bull trout selected the coldest water available in a plunge pool, 8 to 9° C (46 to 48° F) within a temperature gradient of 8 to 15° C (46 to 60° F).

All life history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Oliver 1979; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Pratt 1992; Thomas 1992; Rich 1996; Sexauer and James 1997; Watson and Hillman 1997). Jakober (1995) observed bull trout overwintering in deep beaver ponds or pools containing large woody debris in the Bitterroot River drainage, Montana, and suggested that suitable winter habitat may be more restrictive than summer habitat. Maintaining bull trout habitat requires stream channel and flow stability (Rieman and McIntyre 1993). Juvenile and adult bull trout frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). These areas are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Preferred spawning habitat consists of low gradient streams with loose, clean gravel (Fraley and Shepard 1989) and water temperatures of 5 to 9° C (41 to 48° F) in late summer to early fall (Goetz 1989). Pratt (1992) indicated that increases in fine sediments reduce egg survival and emergence. High juvenile densities were observed in Swan River, Montana, and tributaries with diverse cobble substrate and low percentage of fine sediments (Shepard et al. 1984). Juvenile bull trout in four streams in central Washington occupied slow-moving water less than 0.5 m/sec (1.6 ft/sec) over a variety of sand to boulder size substrates (Sexauer and James 1997).

The size and age of bull trout at maturity depends upon life-history strategy. Growth of resident fish is generally slower than migratory fish; resident fish tend to be smaller at maturity and less fecund (Fraley and Shepard 1989; Goetz 1989). Bull trout normally reach sexual maturity in 4 to 7 years and live as long as 12 years. Repeat and alternate year spawning has been reported, although repeat spawning frequency and post-spawning mortality are not well known (Leathe and Graham 1982; Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1996).

Bull trout typically spawn from August to November during periods of decreasing water temperatures. However, migratory bull trout frequently begin spawning migrations as early as April, and have been known to move upstream as far as 250 kilometers (km) (155 miles (mi)) to spawning grounds (Fraley and Shepard 1989). In the Blackfoot River, Montana, bull trout began migrations to spawning areas in response to increasing temperatures (Swanberg 1996). Temperatures during spawning generally range from 4 to 10° C (39 to 51° F), with redds often constructed in stream reaches fed by springs or near other sources of cold groundwater (Goetz 1989; Pratt 1992; Rieman and McIntyre 1996). Bull trout require spawning substrate consisting of loose, clean gravel relatively free of fine sediments (Fraley and Shepard 1989). Depending on water temperature, incubation is normally 100 to 145 days (Pratt 1992), and after hatching, juveniles remain in the substrate. Time from egg deposition to emergence may surpass 200 days. Fry normally emerge from early April through May depending upon water temperatures and increasing stream flows (Pratt 1992; Ratliff and Howell 1992).

Growth varies depending upon life-history strategy. Resident adults range from 150 to 300 millimeters (mm) (6 to 12 inches (in)) total length and migratory adults commonly reach 600 mm (24 in) or more (Pratt 1985; Goetz 1989). The largest verified bull trout is a 14.6 kilogram (kg) (32 pound) specimen caught in Lake Pend Oreille, Idaho, in 1949 (Simpson and Wallace 1982).

Bull trout are opportunistic feeders with food habits primarily a function of size and life-history strategy. Resident and juvenile migratory bull trout prey on terrestrial and aquatic insects, macro-zooplankton and small fish (Boag 1987; Goetz 1989; Donald and Alger 1993). Adult migratory bull trout are primarily piscivorous, known to feed on various fish species (Fraley and Shepard 1989; Donald and Alger 1993).

Bull trout evolved with, and, in some areas, co-occur with native cutthroat trout (*Oncorhynchus clarki* ssp.), resident (redband) and migratory rainbow trout (*O. mykiss*), chinook salmon (*O. tshawytscha*), sockeye salmon (*O. nerka*), mountain whitefish (*Prosopium williamsoni*), various sculpin (*Cottus* spp.), sucker (Catastomidae) and minnow species (Cyprinidae spp.) (Mauser et al. 1988; Rieman and McIntyre 1993). Bull trout habitat overlaps with the range of several fishes listed as threatened, endangered, proposed, and petitioned for listing under the Act, including the endangered Snake River sockeye salmon (November 20, 1991; 56 FR 58619); threatened Snake River spring and fall chinook salmon (April 22, 1992; 57 FR 14653); endangered Kootenai River white sturgeon (*Acipenser transmontanus*) (September 6, 1994, 59 FR 45989); threatened and endangered steelhead (August 18, 1997, 62 FR 43937); and westslope cutthroat trout (*O. c. lewisi*) (petitioned for listing in July 1997). Widespread introductions of non-native fishes, including brook trout

(*S. fontinalis*), lake trout (*S. namaycush*) (west of the Continental Divide), and brown trout (*Salmo trutta*), have also occurred across the range of bull trout. These non-native fish have caused local bull trout declines and extirpations (Bond 1992; Ziller 1992; Donald and Alger 1993; Leary et al. 1993; Montana Bull Trout Scientific Group (MBTSG) 1996h).

Bull trout habitat in the coterminous United States is composed of a complex mosaic of land ownership, including Federal lands administered by the U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), U.S. National Park Service (NPS), and Department of Defense (DOD); numerous Indian tribal lands; State land in Montana, Idaho, Oregon, Washington and Nevada; and private lands. It is estimated that as much as half of present bull trout habitat is bordered by non-Federal lands.

Migratory corridors link seasonal habitats for all bull trout life-history forms. For example, in Montana, migratory bull trout make extensive migrations in the Flathead River system (Fraley and Shepard 1989) and resident bull trout move to overwinter in downstream pools in tributaries of the Bitterroot River (Jakober 1995). The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; M. Gilpin, University of California, *in litt.* 1997; Rieman et al. *in press*). Migrations facilitate gene flow among local subpopulations because individuals from different subpopulations interbreed when some stray and return to non-natal streams. Subpopulations that are extirpated by catastrophic events may also become reestablished in this manner.

Metapopulation concepts of conservation biology theory are applicable to the distribution and characteristics of bull trout (Rieman and McIntyre 1993). A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them (Meefe and Carroll 1994). Local subpopulations may become extinct, but can be reestablished by individuals from other subpopulations. Metapopulations provide a mechanism for spreading risk because the simultaneous loss of all subpopulations is unlikely. Habitat alteration, primarily through the construction of impoundments, dams, and water diversions that create unsuitable conditions, has fragmented habitats, eliminated migratory corridors, and isolated bull trout often in the headwaters of tributaries (Rieman et al. *in press*).

Though wide-ranging in parts of Oregon, Washington, Idaho and Montana, bull trout in the interior Columbia River basin presently occur in only about 44 to 45 percent of the historical range (Quigley and Arbelbide 1997; Rieman et al. *in press*). Declining trends and associated habitat loss and fragmentation have been documented rangewide (Bond 1992; Schill 1992; Thomas 1992; Ziller 1992; Rieman and McIntyre 1993; Newton and Pribyl 1994; Idaho Department of Fish and Game (IDFG), *in litt.* 1995; McPhail and Baxter 1996). Several local extirpations have been reported, beginning in the 1950s (Rode 1990; Ratliff and Howell 1992; Donald and Alger 1993; Goetz 1994; Newton and Pribyl 1994; Berg and Priest 1995; Light et al. 1996; Buchanan et al. 1997; Washington Department of Fish and Wildlife (WDFW) 1997). For example, bull trout were apparently extirpated around 1975 from the McCloud River, California, the southernmost range (Moyle 1976; Rode 1990).

Distinct Population Segments

The Service's June 13, 1997, proposal to list the Klamath River and the Columbia River population segments of bull trout (62 FR 32268) was based on the 1994 administrative record, as required by the court. The Service's original June 10, 1994 (59 FR 30254), 12-month petition finding found that listing the bull trout was warranted but precluded throughout the coterminous United States. As explained in the proposed rule, the approach to break the range of bull trout into distinct population segments in the reanalysis of the 1994 petition finding was undertaken because the fish occurs in widespread, but fragmented habitats and has several life-history patterns. In addition, the threats to bull trout are diverse, and the quality and quantity of information regarding the population status and trends varies greatly throughout the range. By examining bull trout distinct population segments, the Service was better able to evaluate proposed listing of those segments, based on the 1994 administrative record, that were a priority in need of Federal protection. Future listing actions could, thereby, be based on best available rather than outdated scientific information.

In the process of making this final listing determination, the Service reexamined the appropriateness of applying the bull trout distinct population segments (DPSs) for the purposes of listing. The joint National Marine Fisheries Service (NMFS) and Service policy regarding the recognition of distinct vertebrate populations published February 7, 1996 (61 FR 4722), was the basis for this reexamination. Three elements are considered in the decision on whether a population segment could be treated as threatened or endangered under the Act—discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria—(1) marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; and (2) populations delimited by international boundaries. Significance is determined either by the importance or contribution, or both, of a discrete population to the species throughout its range. Four criteria were used to determine significance—(1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. If a population segment is discrete and significant, its evaluation for endangered or threatened status is based on the Act's standards.

Based on the best available information, numerous bull trout subpopulations are isolated from each other by either unsuitable habitat or impassible dams and diversions, or both. Although many subpopulations could be considered discrete, few meet the ''significance'' criteria. For example, although some genetic differences were identified among subpopulations of bull trout in specific watersheds of the Columbia River basin, the subpopulations did not differ markedly and they inhabit similar habitats. The best available current information supports designating five DPSs in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. For purpose of this final determination only the Klamath River and Columbia River DPSs will be addressed. The three remaining DPSs

are the subject of a proposed rule published concurrently.

Although the range of bull trout extends into Canada and Alaska, subpopulations outside the coterminous United States are not being considered in this rulemaking. In accordance with the distinct vertebrate population policy, the Service may determine a population to be discrete at an international border where there are significant differences in the control of exploitation, management of habitat, conservation status, or regulatory mechanisms. Bull trout management and conservation strategy in Canada differs from the United States and such activities are beyond the regulatory scope of the Act. The best available information also disclosed uncertainty regarding the status of bull trout in Canada. Throughout British Columbia and Alberta, data on bull trout status, distribution, and the presence of ongoing threats is incomplete and covers only a portion of the species' range within the provinces. The status of bull trout in Alaska is unknown.

Within the coterminous United States, bull trout distribution is highly fragmented and many subpopulations are geographically isolated. The best available information indicates that bull trout in the coterminous United States, although still wide-ranging, have suffered a significant reduction in range. In addition, bull trout are faced with varying degrees of ongoing threats. The Service now determines that listing bull trout distinct population segments only within the coterminous United States is warranted at this time.

Klamath River

The Klamath River originates in south central Oregon near Crater Lake National Park, and flows southwest into northern California where it meets the Trinity River and empties into the Pacific Ocean. Bull trout in this drainage are discrete because of physical isolation from other bull trout by the Pacific Ocean and several small mountain ranges in central Oregon. Leary et. al. (1991) determined genetic characteristics of bull trout in the Klamath River and Columbia River drainages using protein electrophoresis. They concluded that these two groups of fish were reproductively isolated and evolutionarily distinct. In addition, Williams et al. (1995) separated bull trout in the Klamath and Columbia Rivers into different clades (i.e., groups derived from different lineages) based on genetic diversity patterns. As a result, the Klamath River DPS is significant because it differs markedly in genetic characteristics from bull trout in the Columbia River basin.

Columbia River

The Columbia River DPS occurs throughout the entire Columbia River basin within the United States and its tributaries, excluding bull trout found in the Jarbidge River, Nevada. Although Williams et al. (1995) identified two distinct clades in the Columbia River basin (upper and lower Columbia River) based on genetic diversity patterns, a discrete geographical boundary between the two clades was not documented. The Columbia River DPS is significant because the overall range of the species would be substantially reduced if this discrete population were lost.

Status and Distribution

The Service evaluated the status and distribution of bull trout for each subpopulation in the Klamath River and Columbia River population segments. The complete review of this evaluation is found in a status summary compiled by the Service (Service status summary 1998). A synopsis of the summary is presented in this rule.

To facilitate evaluation of current bull trout distribution and abundance for both the Klamath River and Columbia River population segments, the Service analyzed data on bull trout relative to subpopulations because fragmentation and barriers have isolated bull trout throughout their current range. A subpopulation is considered a reproductively isolated group of bull trout that spawns within a particular area of a river system. In areas where two groups of bull trout are separated by a barrier (e.g., an impassable dam or waterfall, or reaches of unsuitable habitat) that allows only individuals upstream access to those downstream (i.e., one-way passage), both groups were considered subpopulations. In addition, subpopulations were considered at risk of extirpation from naturally occurring events if they were—(1) unlikely to be reestablished by individuals from another subpopulation (i.e., functionally or geographically isolated from other subpopulations); (2) limited to a single spawning area (i.e., spatially restricted); and either (3) characterized by low individual or spawner numbers; or (4) primarily of a single life-history form. For example, a subpopulation of resident fish isolated upstream of an impassable waterfall would be considered at risk of extirpation from naturally occurring events if the subpopulation had low numbers of fish that spawn in a restricted area. In such cases, a natural event such as a fire or flood affecting the spawning area could eliminate the subpopulation, and reestablishment from fish downstream would be prevented by the impassable waterfall. However, a subpopulation residing downstream of the waterfall would not be considered at risk of extirpation from naturally occurring events because there would be establishment potential by fish from the subpopulation upstream. Because resident bull trout may exhibit limited downstream movement (Nelson 1996), the Service's determination of subpopulations at risk of extirpation from naturally occurring events may overestimate the number of subpopulations that are likely to be reestablished.

The status of subpopulations was based on modified criteria of Rieman et al. (*in press*), including the abundance, trends in abundance, and the presence of life-history forms of bull trout. The Service considered a subpopulation ''strong'' if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms were likely to persist; and ''depressed'' if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost. If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either ''strong'' or ''depressed,'' the status was considered ''unknown.''

Based on abundance, trends in abundance, and the presence of life-history forms, bull trout were considered strong (i.e., 5,000 individuals or 500 spawners likely occur in the subwatershed or larger area, abundance is stable or increasing with at a minimum of half of historic abundance, and the presence of all life-history forms historically present) in 13 percent of the occupied range in the interior Columbia River basin (Quigley and Arbelbide 1997). Using various estimates of bull trout range, Rieman et al. (*in press*) estimated that bull trout were strong in 6 to 24 percent of the subwatersheds in the Columbia River basin. Bull trout declines have been attributed to the effects of land and water management activities, including forest management and road building, mining, agricultural practices, and livestock grazing (Furniss et al. 1991; Meehan 1991; Nehlsen et al. 1991; Craig and Wissmar 1993; Frissell 1993; McIntosh et al. 1994; Platts et al. 1995). Isolation and habitat fragmentation from dams and agricultural diversions (Rode 1990; Mongillo 1993; Jakober 1995),

fisheries management practices, poaching and the introduction of non-native species (Rode 1990; Bond 1992; Howell and Buchanan 1992; WDFW 1992; Donald and Alger 1993; Leary et al 1993; Pratt and Huston 1993; Rieman and McIntyre 1993; MBTSG 1996h; Palmisano and Kaczynski, Northwest Forest Resources Council (NFRC), *in litt.* 1997) also threaten bull trout populations.

Klamath River Population Segment

Historical records suggest that bull trout were once widely distributed and exhibited diverse life-history traits in the Klamath River basin (Gilbert and Evermann 1894; Dambacher et al. 1992; Ziller 1992; Oregon Chapter of the American Fisheries Society (OCAFS) 1993). The earliest records of bull trout in the basin are from Fort Creek (formerly Linn Creek), a tributary to the Wood River (L. Dunsmoor and C. Bienz, Klamath Tribe, *in litt.* 1997). Records from the late 1800s suggest that migratory fish (adfluvial) inhabited Klamath Lake (OCAFS 1993). Other migratory bull trout (i.e., fluvial) were evidently present in some of the larger streams in the basin as recently as the early 1970s (Ziller 1992). Bull trout are thought to have been extirpated from the Sycan River, the South Fork of the Sycan River, and four streams in the Klamath River basin (Cherry, Sevenmile, Coyote, and Callahan creeks) since the 1970s.

Currently, bull trout in the Klamath River basin occur only as resident forms isolated in higher elevation headwater streams (Goetz 1989) within three watersheds—Upper Klamath Lake, Sprague River, and Sycan River (Light et al. 1996). Factors contributing to isolation include habitat degradation, water diversion, and habitat fragmentation (OCAFS 1993; Light et al. 1996). In addition, long distances separate each isolated subpopulation (Schroeder and Weeks, *in litt.* 1997). According to Light et al. (1996), bull trout occupy approximately 38.2 km (22.9 mi) of streams in the Klamath River basin. More recently, Buchanan et al. (1997) indicated that bull trout occupy approximately 34.1 km (20.5 mi) of streams. The risk of extinction for Klamath River bull trout over the next 100 years was recently estimated at 70 to 90 percent (K. Schroeder and H. Weeks, OCAFS, *in litt.* 1997). The Service identified seven bull trout subpopulations in three watersheds (number of subpopulations in each watershed)—Upper Klamath Lake (2), Sycan River (1), and Sprague River (4). The Service considers six of the subpopulations at risk of extirpation caused by naturally occurring events due to their isolation, single life-history form and spawning area, and low abundance (Service status summary 1997).

Columbia River Population Segment

The Columbia River DPS includes bull trout residing in portions of Oregon, Washington, Idaho, and Montana. Bull trout are estimated to have occupied about 60% of the Columbia River Basin, and presently occur in 45% of the estimated historical range (Quigley and Arbelbide 1997). The Columbia River population segment is composed of 141 subpopulations. For discussion and analysis, the Service considered four geographic areas of the Columbia River basin—(1) lower Columbia River (downstream of the Snake River confluence), (2) mid-Columbia River (Snake River confluence to Chief Joseph Dam), (3) upper Columbia River (upstream from Chief Joseph Dam), and (4) Snake River and its tributaries (including the Lost River drainage).

Lower Columbia River Geographical Area

The lower Columbia River area includes all tributaries in Oregon and Washington downstream of the Snake River confluence near the town of Pasco, Washington. The Service identified 20 subpopulations in watersheds of nine major tributaries of the lower Columbia River (number of subpopulations in each watershed)—the Lewis River (2), Willamette River (3), White Salmon River (1), Klickitat River (1), Hood River (2), Deschutes River (3), John Day River (3), Umatilla River (2), and Walla Walla River (3). The present distribution of bull trout in the lower Columbia River basin is less than the historic range (Buchanan et al. 1997; Oregon Department of Fish and Wildlife (ODFW) 1993). Bull trout are thought to be extirpated from several tributaries in five river systems in Oregon—the Middle Fork Willamette River, the North and South Forks of the Santiam River, the Clackamas River, the upper Deschutes River (upstream of Bend, Oregon) and the Crooked River (tributary to the Deschutes River) (Buchanan et al. 1997).

Hydroelectric facilities and large expanses of unsuitable, fragmented habitat have isolated these subpopulations. Large dams, such as McNary, John Day, The Dalles, and Bonneville, separate four reaches of the lower Columbia River. Although fish may pass each facility in both upstream and downstream directions, the extent to which bull trout use the Columbia River is unknown. In addition, the nine major tributaries have numerous facilities, many of which do not provide upstream passage.

Migratory bull trout are present with resident fish or exclusively in at least 13 of the 20 subpopulations in the lower Columbia River. Many migratory fish are adfluvial and inhabit reservoirs created by dams. However, this area includes the only extant adfluvial subpopulation in Oregon, which exists in Odell Lake in the Deschutes River basin (Ratliff and Howell 1992; Buchanan et al. 1997). The Metolius River-Lake Billy Chinook subpopulation is also found in the Deschutes River basin. It is the only subpopulation considered ''strong'' and exhibits an increasing trend in abundance. The Service considers 5 of the 20 subpopulations at risk of extirpation caused by naturally occurring events exacerbated by isolation, single life-history form and spawning area, and low abundance.

Mid-Columbia River Geographical Area

The mid-Columbia River area includes watersheds of four major tributaries of the Columbia River in Washington, between the confluence of the Snake River and Chief Joseph Dam. The Service identified 16 bull trout subpopulations in the four watersheds (number of subpopulations in each watershed)—Yakima River (8), Wenatchee River (3), Entiat River (1), and Methow River (4). Historically, bull trout occurred in larger areas of the four tributaries and Columbia River. Bull trout are thought to have been extirpated in 10 streams within the area—Satus Creek, Nile Creek, Orr Creek, Little Wenatchee River, Napecqua River, Lake Chelan, Okanogan River, Eightmile Creek, South Fork Beaver Creek, and the Hanford Reach of the Columbia River. Most bull trout in the mid-Columbia River geographic area are isolated by dams or unsuitable habitat created by water diversions.

Bull trout in the mid-Columbia River area are most abundant in Rimrock Lake of the Yakima River basin and Lake Wenatchee of the Wenatchee River basin. Both subpopulations are considered ''strong'' and increasing or stable. The remaining 14 subpopulations are relatively low in abundance, exhibit ''depressed'' or unknown trends, and primarily have a single life-history form. The Service considers 10 of the 16 subpopulations at risk of extirpation because of naturally occurring events due to isolation, single life-history form and spawning area, and low abundance.

Upper Columbia River Geographic Area

The upper Columbia River geographic area includes the mainstem Columbia River and all tributaries upstream of Chief Joseph Dam in Washington, Idaho, and Montana. Bull trout are found in two large basins, the Kootenai River and Pend Oreille River, which include the Clark Fork River. Historically, bull trout were found in larger portions of the area. Numerous dams and degraded habitat have fragmented bull trout habitat and isolated fish into 71 subpopulations in 9 major river basins (number of subpopulations in each basin)—Spokane River (1), Pend Oreille River (3), Kootenai River (5), Flathead River (24), South Fork Flathead River (3), Swan River (3), Clark Fork River (4), Bitterroot River (27), and Blackfoot River (1). Bull trout are thought to be extirpated in 64 streams and lakes of various sizes—Nespelam, Sanpoil, and Kettle rivers; Barnaby, Hall, Stranger, and Wilmont creeks; 8 tributaries to Lake Pend Oreille; 5 tributaries to Pend Oreille River below Albeni Falls Dam; Lower Stillwater Lake; Arrow Lake (Montana); upper Clark Fork River, 12 streams in the Coeur d'Alene River basin; and approximately 25 streams in the St. Joe River basin (e.g., IDFG, *in litt.* 1995).

The upper Columbia River area contains ''strongholds'' for bull trout. Bull trout are considered ''strong'' in Hungry Horse Reservoir and Swan Lake. Trends in abundance are stable in Hungry Horse Reservoir, and increasing in Swan Lake. Although high numbers of bull trout are found in Lake Pend Oreille and the upper Kootenai River, trends in abundance are either negative or unknown. The high number of subpopulations (27) in the Bitterroot River basin, Montana, indicates a high degree of habitat fragmentation where numerous groups of resident bull trout are restricted primarily to headwaters. The Service considers 47 of the 71 subpopulations at risk of extirpation because of naturally occurring events due to isolation, single life-history form and spawning area, and low abundance.

Snake River Geographical Area

Bull trout occupy portions of 14 major tributaries in the Snake River basin of Idaho, Oregon, and Washington. The Service identified 34 bull trout subpopulations in the Snake River basin. The area consists of two primary portions separated by Hells Canyon Dam. Downstream of Hells Canyon Dam, major tributaries that support bull trout include (number of subpopulations in each tributary)—Tucannon River (2), Clearwater River (3), Asotin Creek (2), Grande Ronde River (1), Imnaha River (4), and Salmon River (2). Upstream of Hells Canyon Dam, major tributaries that support bull trout include—Pine Creek (4), Powder River (3), Malheur River (2), Payette River (4), Weiser River (2), and Boise River (2). Although bull trout distribution upstream of Hells Canyon Dam is limited primarily to the basin downstream of Shoshone Falls in southern Idaho, three geographically isolated bull trout subpopulations occur upstream of Shoshone Falls in the Little Lost River drainage. Bull trout subpopulations upstream of Hells Canyon Dam are generally low in abundance, fragmented, and isolated. The current distribution of bull trout in the Snake River basin is less than historically (Ratliff and Howell 1992; Batt 1996; Buchanan et al. 1997; Quigley and Arbelbide 1997), with recent extirpations documented in Eagle Creek (Powder River basin) and Wallowa Lake (Grande Ronde River basin) (Ratliff and Howell 1992; Batt 1996; Buchanan et al. 1997); and possibly in South Fork Asotin Creek (WDFW 1997). Numerous impassable dams and large expanses of unsuitable habitat have isolated subpopulations within the historic range. Isolation is most prominent upstream of Hells Canyon Dam (southwest Idaho and southeast Oregon). The basin downstream of Hells Canyon Dam is relatively intact, and connectivity among bull trout subpopulations may still occur.

Bull trout occupy large areas of contiguous habitat in the Snake River basin downstream of Hell's Canyon Dam, such as in the Clearwater River and Salmon River basins. High numbers of bull trout have been observed in the Tucannon River, Imnaha River, Clearwater River, Salmon River, and Malheur River subpopulations, however, trends in abundance are largely unknown or declining. The Service considers 9 of the 34 subpopulations at risk of extirpation because of naturally occurring events due to isolation, single life-history form and spawning area, and low abundance.

In summary, the Columbia River population segment of bull trout has declined in overall range and numbers of fish. Though still widespread, there have been numerous local extirpations reported throughout the Columbia River basin. In Idaho, for example, bull trout have been extirpated from 119 reaches in 28 streams (IDFG *in litt.* 1995) . The population segment is composed of 141 subpopulations indicating habitat fragmentation, isolation, and barriers that limit bull trout distribution and migration within the basin. Although some strongholds still exist, bull trout, generally, occur as isolated subpopulations in headwater lakes or tributaries where migratory fish have been lost.

Previous Federal Action

On September 18, 1985, the Service published an animal notice of review in the **Federal Register** (50 FR 37958) designating the bull trout a category 2 candidate for listing in the coterminous United States. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. The Service published updated notices of review for animals on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), reconfirming the bull trout category 2 status. The Service elevated bull trout in the coterminous United States to category 1 for Federal listing on November 15, 1994 (59 FR 58982). Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the bull trout as a candidate species. Candidate species are those which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

On October 30, 1992, the Service received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana—Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicated that the species was in imminent threat of extinction. A 90-day finding, published on May 17, 1993 (58 FR 28849), determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. The Service initiated a rangewide status review of the species concurrent with publication of the 90-day finding.

On June 6, 1994, the Service concluded in the original finding that listing of bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, the Service determined that

sufficient information on the biological vulnerability and threats to the species was available to support a warranted finding to list bull trout within the coterminous United States. Because the Service concluded that the threats were imminent and moderate to this population segment, the Service gave the bull trout within the coterminous United States a listing priority number of 9. As a result, the Service found that listing a distinct vertebrate population segment of bull trout residing in the coterminous United States was warranted but precluded due to higher priority listing actions.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the U.S. District Court of Oregon (Court) arguing that the warranted but precluded finding was arbitrary and capricious. After the Service issued a ''recycled'' 12-month finding for the coterminous population of bull trout on June 12, 1995, the Court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals, which found that the plaintiffs' challenge fell ''within the exception to the mootness doctrine for claims that are capable of repetition yet evading review.'' On April 2, 1996, the circuit court remanded the case back to the district court. On November 13, 1996, the Court issued an order and opinion remanding the original finding to the Service for further consideration. Included in the instructions from the Court were requirements that the Service limit its review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. In addition, reliance on other Federal agency plans and actions was precluded. The reconsidered 12-month finding based on the 1994 Administrative Record was delivered to the Court on March 13, 1997.

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel the Service to issue a proposed rule to list the Klamath River and Columbia River bull trout populations within 30 days based solely on the 1994 Administrative Record. In response to this motion, the Service ''concluded that the law of this case requires the publication of a proposed rule'' to list the two warranted populations. On April 4, 1997, the Service requested 60 days to prepare and review the proposed rule. In a stipulation between the Service and plaintiffs filed with the Court on April 11, 1997, the Service agreed to issue a proposed rule in 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record.

Based upon the Court agreement and stipulation, and information contained solely in the 1994 record, the Service proposed the Klamath River population of bull trout as endangered and Columbia River population of bull trout as threatened on June 13, 1997 (62 FR 32268). The proposal included a 60-day comment period and gave notice of five public hearings in Portland, Oregon; Spokane, Washington; Missoula, Montana; Klamath Falls, Oregon; and Boise, Idaho. The comment period on the proposal, which originally closed on August 12, 1997, was extended to October 17, 1997 (62 FR 42092), to provide the public with more time to compile information and submit comments.

On December 4, 1997, the Court ordered the Service to reconsider several aspects of the 1997 reconsidered finding. On February 2, 1998, the Court gave the Service until June 12, 1998, to respond. The final listing determination for the Klamath River and Columbia River population segments of bull trout and the concurrent proposed listing rule for the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River DPSs constitute the Service's response.

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service 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 Comments and Recommendations

In the June 13, 1997, proposed rule (62 FR 32268), all interested parties were requested to submit comments or information that might contribute to the final listing determination for bull trout. Announcements of the proposed rule and notice of public hearings were sent to at least 370 individuals, including Federal, State, county and city elected officials, State and Federal agencies, interested private citizens and local area newspapers and radio stations. Announcements of the proposed rule were also published in nine newspapers—the Oregonian, Portland, Oregon; the Spokesman Review, Spokane, Washington; the Yakima Herald, Yakima, Washington; the Missoulian, Missoula, Montana; the Kalispell Interlake, Kalispell, Montana; the Idaho Statesman, Boise, Idaho; the Lewiston Tribune, Lewiston, Idaho; the Post Register, Idaho Falls, Idaho; and the Herald and News, Klamath Falls, Oregon. Public hearings were held on July 1, 1997, in Portland, Oregon; July 8, 1997, in Spokane, Washington; July 10, 1997, in Missoula, Montana; July 15, 1997, in Klamath Falls, Oregon; and July 17, 1997, in Boise, Idaho. In response to numerous requests for additional time to complete compilation of information and meaningfully participate in the public comment process, the Service published a notice on August 5, 1997 (62 FR 42092), extending the comment period to October 17, 1997.

Eighty-four oral and 278 written (including electronic mail) comments were received on the proposed rule. These included comments from 7 Federal agencies, 9 State agencies, 6 counties in Oregon and Idaho, 2 Native American tribes, 6 private timber companies, and 20 industry or trade associations and bureaus. Comments were also received from the Idaho Congressional delegation, and Governors from the states of Montana, Idaho and Oregon.

The Service did not specifically solicit formal scientific peer review of the proposal as outlined in the Service's July 1, 1994, Interagency Cooperative Policy (59 FR 34270) because the proposal was based on the 1994 administrative record and not the best available scientific information. However, in the process of making this final listing determination, a number of professional fishery biologists were consulted and their comments and information were either incorporated into the listing decision as appropriate or are addressed below.

The Service considered all comments, including oral testimony at the five public hearings. A majority of comments supported the listing proposal and 65 comments were in opposition. Opposition was based on several concerns, including conflicts between ongoing State conservation efforts and Federal listing; possible economic impacts from listing the bull

trout; lack of solutions to the bull trout decline that would result from listing; and because the proposed rule was not peer-reviewed or based on the most current information. Seventy-three respondents provided new scientific information considered by the Service for this determination. The states of Idaho and Montana submitted conservation plans for bull trout for consideration by the Service in lieu of listing. The USFS (R. Joslin, USFS, *in litt.* 1997), BLM (A. Thomas, BLM, *in litt.* 1997) and U.S. Bureau of Reclamation (USBR) (M. McClendon, USBR, *in litt.* 1997) provided the Service with information on respective agency efforts to date to assess, evaluate, monitor, and conserve bull trout populations in habitats affected by each agency's management. Because multiple respondents offered similar comments in some cases, comments of a similar nature or point are grouped. These comments and the Service's response are discussed below—

Issue 1: Several respondents urged the Service to list bull trout throughout its entire range. Two respondents recommended that the Service include the Jarbidge River bull trout population as a threatened species. Another respondent stated that the proposal to list the entire Columbia River bull trout population was too broad and suggested that the area be analyzed for listing purposes by major river segments. Conversely, another respondent requested that the Service designate bull trout in the Clark Fork and Kootenai River basins as distinct population segments, citing geographic and historic isolation, and biological significance to the species as a whole as reasons. Additionally, several other commenters suggested that smaller, more manageable distinct population segments be established to avoid listing healthy populations so that conservation efforts can be applied to areas where restoration is truly needed. Other commenters, at the Federal, State and local level suggested other delineations for the distinct population segments, and questioned whether listing would afford protection of bull trout only in currently occupied habitat.

Service response: Based on the best available scientific and commercial information, and consistent with the distinct vertebrate population policy (61 FR 4722, February 7, 1997), the Service has determined that bull trout should be divided into five distinct vertebrate populations for listing purposes, but only in the coterminous United States (see Distinct Population Segment section). The Klamath River and the Columbia River population segments are the subject of this final rule and the remaining three population segments are addressed in an accompanying proposed rule.

In addressing the appropriateness in designating additional DPSs within the Columbia River basin, the Service reviewed new genetic and other biological data developed since 1994, and determined that there is insufficient information available to further divide this DPS. Although many bull trout groups in the Columbia River basin were discrete according to the DPS policy, they failed to meet criteria for significance (e.g. bull trout in the Little Lost River basin in Idaho and portions of the upper Columbia River basin). However, during the recovery process, further division of the Columbia River DPS into recovery units or zones including separation of the bull trout in the Kootenai River, Clark Fork-Pend Oreille River, Little Lost River, 17 potential genetic conservation groups (GCGs) in the State of Washington, and 8 additional GCGs in Oregon can be considered. For wide-ranging species, designation of recovery units can focus recovery objectives on the specific threats, status and habitat requirements within the defined geographic area. Although recovery units cannot be individually delisted without consideration of the entire listed entity (species or DPS), the Service can develop ''special rules'' (under section 4(d) of the Act) for individual recovery units (see issue #6 below for more information on special rules).

Issue 2: Several respondents stated that because the proposed rule was based on information gathered prior to June 1994, listing should be deferred until new information is analyzed and updated. Comments that ''* * * quality of peer reviewed scientific data is noticeably lacking'' were also received. Some respondents questioned why the bull trout is now being considered for listing when the Service's analysis in the proposed rule concluded that bull trout had a widespread range and threats to the fish were only moderate. Respondents also stated that conclusions in the proposed rule regarding population distribution and population trends were inaccurate.

Service response: The U.S. District Court of Oregon ordered the Service on November 13, 1996, to reconsider the original 1994 bull trout finding based only information available to the agency when it made the original 1994 finding. Therefore, the Service was mandated to move ahead with a listing proposal based on the information contained in the 1994 administrative record. In making this final listing determination, however, the Service has reviewed and considered new information regarding distribution and life history for the Klamath River and Columbia River population segments of bull trout. This includes, but is not limited to, new bull trout status, distribution, and threats information, and also descriptions of ongoing conservation actions, contained in reports and other written correspondence available since 1994 concerning bull trout in Idaho (Adams and Bjornn 1997; Batt 1996; Bonneau and Scarnecchia 1996; Corley 1997; Elle 1995; Espinoza et al. 1997; N. Horner, IDFG, *in litt.* 1997); Montana (Berg and Priest 1995; Hillman and Chapman 1996; Hansen and DosSantos 1997; Kanda et al. 1997; Long 1995, 1997; Mathieus 1996; McDowell et al 1997; MBTSG 1995a–e; MBTSG 1996a–h; Rich 1996; Swanberg 1996; Swanberg and Burns 1997); Oregon (Buchanan et al. 1997; Buchanan and Gregory 1997; Capruso 1997; Crabtree 1996; Germond et al. 1996a, b; Ratliff et al. 1996; Spruell and Allendorf 1997); Washington (Faler and Bair 1996; Northrop 1997; Raekes 1996; Sexauer and James 1997; WDFW 1997); the Klamath River basin (Buktenica 1997; Buktenica and Larson 1997; Light et al. 1996; ODFW 1996) and bull trout in the Columbia River basin (Platts et al. 1995; Quigley and Arbelbide 1997; Rieman et al *in press;* Rieman and McIntyre 1995, 1996; Watson and Hillman 1997; Williams et al 1995; R. Joslin, *in litt,* 1997; J. Kraft, Plum Creek, *in litt.* 1997; M. McClendon, *in litt,* 1997; Palmisano and Kacynski, *in litt,* 1997; Thomas, *in litt,* 1997).

Based on the best information currently available, bull trout in the Klamath River and Columbia River population segments are not more widespread or found in other areas of the Klamath or Columbia River basins than shown in the 1994 administrative record. Bull trout occur over a large geographic area in four states within the Columbia River drainage. However, bull trout display a generally patchy distribution (Rieman and McIntyre 1993). The best available information indicates that bull trout are in widespread decline across the historic range and restricted to numerous reproductively isolated subpopulations in the Columbia River basin with many recent local extirpations. The largest contiguous areas supporting bull trout are ''strongholds'' in central Idaho and Montana, such as the upper Flathead River basin. Many remaining bull trout subpopulations are characterized by declining trends, low relative subpopulation size, loss of migratory

fish or the presence of a single life-history form, and isolated from other bull trout by large geographic separation(s). Habitat loss, fragmentation and other changes that have isolated and continue to impact bull trout subpopulations also increase their susceptibility to naturally occurring processes (both demographically and environmentally). Many remaining subpopulations in both the Klamath River and Columbia River population segments are at risk of extirpation from the combined effects of habitat loss and fragmentation, loss of migration corridors, and inability to reestablish extirpated subpopulations through emigration, and recovery actions are required to slow the rate of habitat loss and continued reductions in range. Existing regulations have not arrested the decline of bull trout and newly developed State and local conservation strategies are largely not implemented.

Issue 3: Several respondents opposed the Federal listing or believed it not necessary, and expressed support for various State and local conservation plans developed for bull trout. Two respondents stated that State forest practice rules and regulations are adequate to conserve and restore bull trout. In addition, others recommended that if the bull trout is eventually listed, the Service should defer to the States for management and recovery.

Service response: Section 4(b)(1)(A) of the Act, requires that listing decisions be made solely on the best scientific and commercial data available after conducting a review of the status of the species. The Act also instructs the Service to consider ''existing regulatory mechanisms, including taking into account those efforts by State, local and other entities to protect a species, including conservation plans or practices.'' However, several recent Federal court decisions have limited the extent to which the Service may rely upon land management plans, agreements and other documents that are under development and promise proposed future actions, as a basis for determining that listing is not warranted (Southwest Center for Biological Diversity v. Babbitt, 926 F. Supp. 920 (D. Ariz. 1996); Biodiversity Legal Foundation v. Babbitt, 943 F. Supp. 23 (D. D.C. 1996).

The Service has reviewed conservation plans developed by the States of Montana and Idaho, and other local conservation agencies for bull trout. These actions are encouraging for long term bull trout conservation and recovery. It is recognized that individual restoration projects have been undertaken by States (for instance, the Klamath River Basin Bull Trout Working Group has been implementing conservation activities and planning efforts since 1993), and harvest regulations for bull trout have become more restricted. However, based on the best available information, the Service cannot determine or predict the effectiveness of the conservation actions in reducing threats to the bull trout in the Klamath River and Columbia River population segments to the extent that listing is unnecessary.

The Idaho Bull Trout Conservation Plan (Plan) (Batt 1996), approved in July 1996, addresses bull trout conservation in 59 key watersheds to provide for the conservation and recovery of bull trout statewide. The Plan emphasizes locally developed, site-specific programs with technical assistance from appropriate State and Federal agencies. Although the Plan establishes a mechanism for generating 59 conservation plans by the year 2008, it lacks any description of how specific practices that currently affect bull trout (e.g., timber harvest, mining, grazing, hydropower operations) will be modified. This specificity would provide a basis for the development of future conservation plans and help ensure adequate protection for bull trout. It must also be clear how Federal agencies and private landowners in key watersheds will be required to institute bull trout conservation measures. Given the extent of Federal lands in Idaho, implementation of bull trout conservation measures by the USFS and BLM are critical to the Plan. The Plan also cites hydropower and irrigation practices contributing to the decline of bull trout, but the Plan needs to address these practices in light of the existing Idaho water law, USBR water commitments, and existing Federal Energy Regulatory Commission (FERC) licenses. The Plan provides potential future benefits to bull trout conservation and recovery once adequate funding and full implementation occurs.

The Montana bull trout conservation effort was initiated in 1994. Since 1994, 11 basin-specific status reports and two technical, peer-reviewed papers have been completed. Local watershed groups are being established; however, few on-the-ground local efforts have been completed or are underway. The Service is a member of the Montana Bull Trout Restoration Team which has been formed as part of the State's Montana Bull Trout Plan. Although actions taken to date under the Montana Plan have provided some benefits, not all threats to bull trout have been addressed, partly by lack of State jurisdiction, except in a few local areas. The Service is encouraged by State of Montana's progress in implementing the Montana plan and developing appropriate strategies to remove threats and promote conservation and recovery of bull trout.

The Wallowa County-Nez Perce Tribe Salmon Recovery Plan (Wallowa County and Nez Perce Tribe, *in litt.* 1997) in Oregon is intended to primarily aid in the recovery of listed chinook salmon and steelhead. Twenty-six stream segments in the County have been identified for restoration, with two to five stream segments scheduled to be addressed each year over the next 15 years. By 2008, some positive steps towards improved land and water management in Wallowa County should occur; however, the limited scope of the plan will not benefit bull trout outside the County or necessarily address threats on Federal lands.

Bull trout conservation and planning efforts in the Klamath River basin were initiated earlier than similar State conservation efforts, and incorporated all land owners of occupied bull trout habitat. The Klamath River Basin Bull Trout Working Group (Working Group) functions under a Memorandum of Understanding, and has been actively implementing portions of the Klamath Basin Bull Trout Conservation Strategy (Light et al. 1996). These proactive interagency efforts to stabilize and expand bull trout in the Klamath River basin are unique in their early initiation and multi-entity approach. The Service supports and encourages the Working Group to continue implementing phases I and II of the Conservation Strategy and complete a formal implementation plan for conservation of bull trout in the Klamath River basin.

Bull trout have declined across much of their former range due to a variety of factors, including effects of dam construction, agricultural practices, introduced non-native fishes, and forest practices. A thorough discussion of the factors affecting bull trout is found in ''Summary of Factors Affecting the Species.'' Existing State law addressing forest practices is discussed under Factor D in the ''Summary of Factors Affecting the Species.'' Although State rules and regulations governing forested land management activities are improving, they are generally not adequate to conserve and recover bull trout or remedy the effects of past damage to bull trout habitats.

Issue 4: Several respondents opposed the proposed listing of bull trout because possible ''activity restrictions'' and economic impacts might occur.

Service response: Section 4(b)(1)(A) of the Act, requires that a listing

determination be based solely on the best scientific and commercial information available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions'' (H.R. Rep. No. 97–835, 97th Congress 2nd Session 19 (1982)). Because the Service is specifically prohibited from considering economic and other non-biological impacts of species listing, such impacts are not addressed in this final rule.

Issue 5: Some respondents suggested that bull trout listing and recovery may conflict with recovery of other listed fish, notably endangered Snake River salmon species.

Service response: Concerns regarding the possible adverse environmental and non-biological effects from implementing future recovery measures cannot be considered in a decision to list a species. However, these concerns are important in developing recovery measures that take into account environmental effects on other species, including listed Snake River salmon. The Service will fully evaluate the environmental effects and consequences of implementing future recovery measures for bull trout in the Columbia River and Klamath River basins. It should be noted that bull trout co-evolved with Snake River salmon and recovery actions that benefit one species may also benefit other native fishes.

Issue 6: The Service received several comments on the proposed special rule that would allow for take of bull trout within the Columbia River population segment when it is in accordance with applicable State fish and wildlife conservation laws and regulations. While some respondents supported the proposed special rule, others were opposed to the special rule in its current form. Various activities were cited that continue to threaten bull trout, including poaching, electrofishing, and mis-identification of bull trout by fisherman.

Service response: Based on comments received during the public comment period, the Service modified the special rule to address those concerns. The 4(d) special rule conditions in this final rule relate to existing State and Tribal conservation laws and harvest regulations pertaining to bull trout at the time of publication of this rule. The Service has determined that, as currently constituted, the applicable State and Tribal fishing regulations provide conservation of bull trout. In the event any of these laws and regulations are modified in a manner that is inconsistent with conservation of bull trout, the 4(d) rule would not allow the take of bull trout.

The Service also has discretion under section 4(d) of the Act to issue special regulations for activities other than harvest regulations for a threatened species that are deemed necessary and advisable for its conservation. The Service recognizes that on-going and future land-use activities will occur on non-Federal lands that may result in take of bull trout. In the future, the Service will consider issuing special rules that would define the conditions under which take associated with State permitted, or other activities deemed necessary and advisable for the species' conservation, would be authorized for bull trout. Special rules allow for more efficient management of threatened species, and encourage and enhance the conservation of species through the development of regulations the Service deems necessary and advisable to provide for conservation of the species. For example, conservation actions or other activities implemented as part of the Idaho Governor's bull trout plan, Wallowa County-Nez Perce Salmon Plan, Montana Bull Trout Recovery Plan, and Klamath Basin Bull Trout Conservation Strategy may qualify for consideration under a special rule. The Service will consider the development and approval of special rules that will lead to the conservation of bull trout, allowing certain specific land management activities that may allow take of bull trout to continue or occur, with certain restrictions. Under a special rule, this take of bull trout as a result of these activities would not be considered a violation of section 9 of the Act.

This process can provide non-Federal landowners with the flexibility to develop prescriptions or restrictions for their lands which would achieve the level of bull trout conservation consistent with the special rule.

Issue 7: Several respondents stated that since hatcheries will be relied on for bull trout restoration efforts, habitat threats would not be addressed and hatchery-reared fish could transmit and introduce disease to wild bull trout.

Service response: According to section 2(b) of the Act, one of the purposes of the Act is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Once a species becomes listed as threatened or endangered, section 4(f) of the Act directs the Service to develop and implement recovery plans for that species. Recovery means improvement in the status of a listed species to the point at which listing is no longer appropriate under the criteria provided in section 4 of the Act (50 CFR 402.02). Two goals of the recovery process are: (1) The maintenance of secure, self-sustaining wild populations of the species; and (2) restoration of the species to the point where it is a viable, self-sustaining component of its ecosystem.

The Service recognizes that captive propagation and hatchery supplementation can be valid conservation tools and assist in recovery efforts, but by themselves, do not contribute to secure, self-sustaining bull trout populations in the wild. For example, the Service agrees with the findings of the Montana Bull Trout Scientific Group that stocking or supplementation is a potential tool in the restoration of bull trout and should only be used if the actual cause(s) of local extirpations are identified and corrected first (MBTSG 1996g). Any such project ''* * * involving stocking must be appropriate in scope, judiciously applied, rigorously designed, and thoroughly monitored.''

Issue 8: Several respondents stated that the introduction of exotic fishes, hybridization with brook trout, and past agency efforts to eradicate bull trout are the primary causes of decline.

Response: The Service agrees that the introduction of exotic fishes by fish management agencies, ongoing hybridization with brook trout, and past efforts to eradicate bull trout have contributed to the decline of the species. The significance of these threats, however, varies by subpopulation location and habitat characteristics (See Factors B, C and E of the ''Summary of Factors Affecting the Species'' section).

Issue 9: Several respondents requested that the Service designate critical habitat as part of the final rulemaking process. A representative of the Oregon Cattlemen's Association, stated that ''* * * the delineation of critical habitat should be based on repeatable, verifiable scientific data followed by a common sense approach to economics.''

Service response. A majority of the comments in this regard were standardized requests advocating critical habitat designation with special attention on roadless areas and riparian buffers. These comments included no sight-specific analysis and provided no information to aid the Service in delineation of critical habitat. The proposed rule included a ''not determinable'' finding for designation of critical habitat based on the 1994 administrative record and solicited comments on whether any habitat

should be determined critical bull trout habitat. The Service received no substantial new information regarding critical habitat during the open comment period for the proposed rule. Therefore, based on the best scientific information currently available, the Service finds in this final rule that critical habitat designation is ''not determinable'' (see Critical Habitat section).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Klamath River and Columbia River distinct population segments of bull trout should be classified as threatened. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR part 424) were followed. 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 Klamath River and Columbia River population segments of bull trout (*Salvelinus confluentus*) are as follows—

A. *The present or threatened destruction, modification, or curtailment of bull trout habitat or range.* Land and water management activities that degrade and continue to threaten bull trout and its habitat include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta et al. 1987; Chamberlain et al. 1991; Furniss et al. 1991; Meehan 1991; Nehlsen et al. 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995; Henjum et al. 1994; McIntosh et al. 1994; Wissmar et al. 1994; Light et al. 1996; MBTSG 1995a–e, 1996a–h; USDA and USDI 1996, 1997).

Dams

Dams affect bull trout by changing various biological and physical processes. Dams can alter habitats; flow, sediment, and temperature regimes; migration corridors; and interspecific interactions, especially between bull trout and introduced species (Rode 1990; Washington Department of Wildlife (WDW) 1992; Craig and Wissmar 1993; ODFW, *in litt.* 1993; Rieman and McIntyre 1993; Wissmar et al. 1994; T. Bodurtha, Service, *in litt.* 1995; USDA and USDI 1996, 1997). Impassable dams have caused declines of bull trout primarily by preventing access of migratory fish to spawning and rearing areas in headwaters and precluding recolonization of areas where bull trout have been extirpated (Rieman and McIntyre 1993).

Existing dams can be passage and migratory barriers for bull trout and these structures may isolate bull trout subpopulations, eliminate individuals from subpopulations, reduce or eliminate genetic exchange, and separate spawning areas from productive overwintering and foraging areas (Ratliff and Howell 1992; Rieman and McIntyre 1993; MBTSG 1995a, 1996b,c). Dams have fragmented bull trout habitat and resulted in numerous isolated subpopulations. Within the Columbia River population segment, 66 percent of bull trout subpopulations are isolated by dams or indirectly by dam or water diversion operations that alter habitat conditions. Individuals that pass downstream over or through dams are often lost from the upstream subpopulations. Dams have converted historic rearing habitats for migratory fish in the larger river system to reservoirs with conditions that frequently are unsuitable for bull trout (MBTSG 1996b), especially where non-native salmonids occur.

Although the predominant effects of dams affect the long term viability of bull trout subpopulations (Rieman and McIntyre 1993; Gilpin, *in litt.* 1997), dams can benefit bull trout by preventing introduced non-native species access to upstream areas. For example, dams on the Swan River and South Fork Flathead River, Montana, have prevented lake trout from moving into these major river systems (MBTSG 1995e, 1996a). Dams may also increase the potential forage base for bull trout by creating reservoirs that support prey species (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993).

The extirpation of bull trout in the McCloud River basin, California, has been attributed primarily to construction and operation of McCloud Dam, which began operation in 1965 (Rode 1990). McCloud Dam inundated bull trout spawning and rearing habitats, and isolated these fish from habitats used by migratory adults. The dam also altered the stream flow regime and elevated water temperature to levels detrimental to bull trout.

Klamath River Population Segment

Dams are not known to affect bull trout subpopulations in the Klamath River basin.

Columbia River Population Segment

Bull trout passage is prevented or inhibited at hydroelectric, flood-control, or irrigation dams in almost every major river in the Columbia River basin except the Salmon River in Idaho. For instance, six dams were constructed without fish passage in the Boise River, Idaho, and of these, Arrowrock and Anderson Ranch dams isolate bull trout subpopulations. Historically, bull trout in the Boise River likely functioned as a single subpopulation with migratory adults moving among areas that are now isolated (Rieman and McIntyre 1995). Similarly, bull trout were thought to have ranged throughout the Yakima River, Washington, prior to construction of several dams beginning in 1905 (WDFW 1997). Storage dams (Tieton, Bumping Lake, Keechelus Lake, Kachess Lake, and Cle Elum Lake dams) now isolate five of eight bull trout subpopulations in the Yakima River basin, with agricultural diversion dams isolating three additional bull trout subpopulations (WDFW 1997). Operation of irrigation diversion dams also disrupts annual migrations of fluvial bull trout in five of seven spawning streams in the Methow River basin, Washington (WDFW 1997). In the mainstem Methow River, up to 79 percent of the average flow is removed from a 64 km (40 mi) reach, occasionally stranding and killing bull trout (Mullan et al. 1992). Due primarily to temperature constraints in partially dewatered tributaries to the Methow River, 60 percent of the total spawning and rearing areas for bull trout has been lost (Mullan et al. 1992; WDFW, *in litt.* 1995). Also in Washington, bull trout in the North Fork Lewis River were separated into two subpopulations by the construction of Swift and Yale reservoirs, and the Condit Dam on the White Salmon River also isolated a subpopulation (WDFW 1997). In Oregon, bull trout were thought to have historically occurred throughout the Willamette River basin, but are presently found only in the McKenzie River basin. Dams in the basin (Trailbridge and Carmen) isolate bull trout into three subpopulations.

In the mainstem Clark Fork River, Idaho and Montana, bull trout moved and migrated freely from Lake Pend Oreille upstream to the headwaters of the Clark Fork and Flathead rivers prior to construction of five dams (Pratt and Huston 1993; MBTSG 1996b; Frissell 1997). The construction of Albeni Falls, Cabinet Gorge, Noxon Rapids, Thompson Falls, and Milltown dams isolated four bull trout subpopulations in the mainstem Clark Fork-Pend Oreille rivers. The uppermost dam, Milltown, isolates downstream fish from those in the upper Clark Fork River and prevents fish downstream of the dam from

moving into the Blackfoot River, a major tributary of the upper Clark Fork River. Annually, some bull trout congregate below Milltown Dam, attempting to move upstream. Radio-tagged bull trout collected below Milltown Dam and released above the dam moved into Rock Creek, a tributary to the upper Clark Fork system (Swanberg 1996). Movement of bull trout from the mainstem Clark Fork River to the Flathead Lake system is prevented by Kerr Dam on the lower Flathead River. Sport harvest of bull trout from Lake Pend Orielle, Idaho, abruptly declined more than 50 percent after Albeni Falls and Cabinet Gorge dams blocked access to historic spawning streams and reduced adult numbers (Ellis 1940; Pratt and Huston 1993).

Major tributaries of the Flathead River basin, Montana, were historically interconnected so that migratory bull trout were widely distributed throughout the drainage (MBTSG 1995d). Bull trout from the Flathead River system had access to the South Fork Flathead River drainage and the Swan River drainage. However, upstream passage from the Flathead River has been blocked by dams on the South Fork Flathead River (Hungry Horse Dam) and the Swan River (Bigfork Dam).

On the Kootenai River, Montana, Libby Dam is an upstream passage barrier to bull trout. The dam also has altered the flow regime, water temperature, and sediment load in the Kootenai River (MBTSG 1996e). Dam operation has typically reduced spring flows, which has made upstream passage over Kootenai Falls, located downstream of Libby Dam, impossible. Therefore, fish below the falls do not have the opportunity to interbreed with fish above (MBTSG 1996e).

An additional effect of dams on bull trout is the loss of individuals from a subpopulation. During a 7-month study in the Boise River, bull trout were marked in Arrowrock Reservoir and 5 percent of them were recaptured in Lucky Peak Reservoir (USBR, *in litt.* 1997). Lucky Peak Dam is downstream of the Arrowrock and Anderson Ranch subpopulations, and neither Lucky Peak Reservoir nor the reach downstream of the dam provide any known spawning habitat. Thus, fish entering Lucky Peak Reservoir are lost from the upstream subpopulations.

Forest Management Practices

Forest management activities, including timber extraction and road building, affect streams habitats by altering recruitment of large woody debris, erosion and sedimentation rates, runoff patterns, the magnitude of peak and low flows, and annual water yield (Cacek 1989; Furniss et al. 1991; Wissmar et al. 1994; Spence et al. 1996). Activities that promote excessive substrate movement lower bull trout production by increasing egg and juvenile mortality, and reduce or eliminate habitat important to later life-history stages, such as when pools are filled with substrates (Shepard et al. 1984; Fraley and Shepard 1989; Brown 1992). The length and timing of bull trout egg incubation and juvenile development (typically more than 200 days during winter and spring) and the strong association of juvenile fish with stream substrate make bull trout vulnerable to changes in peak flows and timing that affect channels and substrate (Shepard et al. 1984; Goetz 1989; Pratt 1992).

Logging and road building in riparian zones reduce stream shading and widen stream channels, allowing greater sunlight penetration, surface water warming, and winter anchor ice formation (Beschta et al. 1987; Chamberlain et al. 1991). Timber extraction in riparian areas that results in increased water temperatures in spawning and rearing areas may cause bull trout to decline (Goetz 1989; Pratt 1992; Rieman and McIntyre 1993). Logging in riparian areas reduces recruitment of large woody debris, thereby reducing stream habitat complexity. Loss of riparian vegetation destabilizes streambanks and increases erosion and sediment delivery to streams. Road construction that involves channelizing streams may cause reduced habitat complexity and increased sediment delivery.

Although bull trout occur in watersheds affected by past timber extraction, bull trout strongholds persist in a greater percentage of watersheds experiencing little or no past timber harvest, such as the wilderness areas of Central Idaho and the South Fork Flathead River drainage in Montana (Henjum et al. 1994; MBTSG 1995e; USDA and USDI 1997; Rieman et al. *in press*). One bull trout stronghold subject to extensive logging and road construction is in the Swan River basin (Watson and Hillman 1997). It is difficult to assess the overall effects of forestry practices on bull trout in parts of the basin because of the complex geomorphology and geology of the drainage (MBTSG 1996a). However, the Swan River tributaries also drain large areas of contiguous roadless lands that provide important protected bull trout habitat.

Timber harvest has occurred throughout the Columbia River (Henjum et al. 1994; USDA and USDI 1996, 1997) and Klamath River basins (Light et al. 1996; USDA and USDI 1996, 1997). The effects of timber harvest on streams are long lasting, and recovery is slow (Furniss et al. 1991; Henjum et al. 1994). The MBTSG ranked forestry, especially the legacy left by past forestry practices, as a limitation to bull trout restoration in all major watersheds in Montana (MBTSG 1995a–e, 1996a–f).

Klamath River Population Segment

Much of the forest in the Klamath River basin has been managed for timber production, with substantial activity beginning in 1940. Extensive harvesting, including partial cutting with overstory removal, clearcutting, and selective logging for old-growth pine occurred on private lands, and low intensity harvest occurred on some of the USFS lands. Past forest management activities in the Klamath River basin have temporarily reduced riparian vegetative cover and increased water temperature in some streams, including Threemile Creek (Light et al. 1996). Roads were built in the basin for access to timber, causing increased sedimentation and substrate embeddedness. Sediment from existing roads continues to degrade stream habitat (Light et al. 1996). Weyerhauser Timber Company began an improved road maintenance program in 1994 to reduce sediment inputs from roads on its lands adjacent to occupied bull trout stream reaches in the Klamath River basin, and U.S. Timberlands is presently continuing the practice (B. Johnson, pers. comm. 1997). Two recent timber harvest activities occurred on U.S. Timberlands property along Boulder Creek in 1994 and Long Creek in 1995 (Johnson, U.S. Timberlands, pers. comm. 1997). A review of the activities concluded that leaving buffer strips and obliterating existing roads left the riparian habitat in better condition than before the timber harvest (B. Johnson, pers. comm. 1997). No timber harvests are currently planned for areas adjacent to streams occupied by bull trout. Six of the seven bull trout subpopulations identified in the Klamath River basin have been affected by past forest management practices.

Columbia River Population Segment

Perhaps the greatest threat to bull trout involving forest practices and roads stems from the ongoing and latent adverse effects caused by over a century of logging. Latent threats are illustrated by approximately 2,300 land slides correlated with high logging road density on national forest lands in the Clearwater and Spokane rivers basins during high runoff events in 1995 and

1996 (L. McLaud, Idaho Conservation League, *in litt.* 1997; R. Patten, Panhandle National Forest, *in litt.* 1997). The same runoff events also triggered an estimated 2,000 land slides on adjacent non-Federal timber lands in the Clearwater River basin (McLaud, *in litt.* 1997). On over half of the non-wilderness lands within National Forests across northern Idaho and western Montana, the environmental effects of past forest practices now constrain forest management (USFS map, *in litt.* 1994). For example, 70 percent of stream miles on the Wallowa-Whitman National Forest are degraded beyond Land and Resource Management Plan (LRMP) standards for fine sediment and temperature parameters on the forest (Wissmar et al. 1994). On the Panhandle National Forest, Idaho, pool volumes, quality and frequency in managed watersheds (mainly watersheds with past timber extraction and road construction) were reduced compared to non-managed watersheds. Further, decreases in pool volume and frequency were correlated with decreases in the distribution and abundance of bull trout (Cross and Everest 1995). In the Lake Pend Oreille and Priest River basins, 31 percent of streams in National Forest lands are degraded beyond LRMP standards, and 51 percent of streams are in the most degraded category (B. Kasun, USFS, *in litt.* 1993). Streams in the most degraded category generally do not support bull trout because of stream morphology changes, increased cobble embeddedness and high summer temperatures. Jones and Espinosa (1992) determined that 71 percent of the stream or watershed areas in the managed portion of the Clearwater National Forest did not meet LRMP standards, and that streams in poor condition generally did not support bull trout. Similarly, 67 percent of the non-wilderness portion of the Nez Perce National Forest did not meet LRMP standards, and streams in the most degraded category increased 12 percent over a five year period between 1987 and 1992 (Gloss and Gerhardt 1992).

In the Wenatchee National Forest, Washington, bull trout spawning and rearing is correlated with streams not subject to past timber harvest (Brown 1992). Timber harvest activities were responsible in the decline and isolation of bull trout in Pataha Creek, Washington (WDFW 1997), a tributary in the Tucannon River drainage. In the North Fork Boise River basin, Idaho, the majority of bull trout spawning and rearing habitat for the Arrowrock Reservoir subpopulation exists in the roadless headwaters of the Crooked, Bear, and North Fork Boise rivers (Boise National Forest, *in litt.* 1995).

The long-lasting effects of past timber management activities on aquatic habitats is illustrated by conditions in the 3,289 km^2 (1,270 mi^2) South Fork Salmon River watershed, Idaho. The watershed was first logged in the 1940's and logging activity peaked in 1961 (Chapman et al. 1991). Sedimentation in the South Fork Salmon River increased approximately 350 percent above pre-logging levels (Chapman et al. 1991). Resident and anadromous salmonids, including bull trout, declined after timber extraction and associated road building. Despite a 25-year logging moratorium in the watershed, fish habitat has not returned to pre-logging quality, and salmon production has not recovered (Chapman et al. 1991).

A relationship between forest management, watershed conditions, aquatic habitat degradation, and loss of occupied bull trout range has been documented in the Spokane River basin, Idaho. Streambed aggradation and loss of pool habitat are attributed to forest management and associated roads in the basin (G. Kappesser, Panhandle National Forest, *in litt.* 1993). The loss of pool habitat correlates to reductions in bull trout range and abundance in managed watersheds (Cross and Everest 1995). Sixty-one percent of the basin's managed watersheds do not meet forest plan standards (B. Kasum, Panhandle National Forest, *in litt.* 1992). The Nez Perce National Forest, Idaho, provides an example of the rate of watershed degradation. Significantly degraded watersheds with forest management increased by 12 percent in only 5 years; 40 percent of all non-wilderness land were in degraded condition (Gloss and Gearhardt 1992).

The USFS classified watersheds in the Bitterroot National Forest, Montana, into three categories, ''healthy,'' ''sensitive,'' and ''high risk'' based on sediment yield from road construction and increased water yield and peak flow from timber harvest (Decker 1991 *in* MBTSG 1995b). About one third of all watersheds were assigned to each of the three categories. Bull trout with estimable numbers were found only in watersheds rated as ''healthy'' or ''sensitive drainages'' (Clancy 1993). The effects of past forest practices, including road construction, continue to affect Bitterroot tributaries (MBTSG 1995b). Generally, bull trout numbers were higher where stream substrates were larger, but numbers tended to be lower in areas high in fine sediments (Clancy 1993). In contrast, habitat where brook trout were found were characteristic of areas degraded by land use activities (Rich 1996). Eighty-five percent of the drainages classified as ''high risk'' supported brook trout (Clancy 1993) (see Factor E).

Extensive logging activity has impaired water quality in many tributaries of the Blackfoot River, Montana, including the North Fork Blackfoot River (Montana Department of Health and Environmental Sciences (MDHES) 1994). Wide-spread canopy removal, alterations to riparian vegetation, and water irrigation returns have increased the historic temperature regime of the Blackfoot River (MBTSG 1995c; Pierce et al. 1997). Water temperatures in the mainstem Blackfoot frequently exceeded the bull trout preferred range of 15°C (60°F) in 1994, 1995 and 1996, making coldwater refuges during this time critical for bull trout (Pierce et al. 1997). The effect of forest practices was considered a limitation to bull trout restoration in the Blackfoot River drainage (MBTSG 1995c).

Timber management is the dominant land use in the Kootenai River watershed, Montana. Extensive road construction to support forestry activities exists throughout the watershed. Many reaches of streams in the Kootenai drainage have impaired water quality as a result of silviculture activities (MDHES 1994). As a result of salvage logging in 1996, the number of timber sales and clearcuts have substantially increased over the past three years (Kootenai National Forest 1997).

Past forest practices, including road construction, log skidding, riparian tree harvest, clearcutting, and splash dams, are considered a cause in the historic decline of bull trout and have limited restoration opportunities in the Flathead Lake basin (MBTSG 1995d). This basin supports over 30 subpopulations in wilderness, national park, national forest, and private lands of Montana. Because bull trout are sensitive to habitat and water quality degradation, Fraley and Shepard (1989) considered timber harvest and road construction in both the North and Middle Fork Flathead River drainages to be threats to bull trout spawning and rearing habitat. Although forest practices have improved, effects of past activities still affect bull trout because the existing road systems continue to erode, cause sedimentation, and increase water yield to streams. Silvicultural activities have contributed to 323.2 km (202 mi) in 17 streams being classified as water quality impaired in the Flathead basin (MDHES 1994). Existing roads in two National Forests of Idaho (Boise and Payette)

created slides and slumps during 1997, a high water year. In some areas of Montana and Idaho, culverts, that are passage barriers for bull trout, are being replaced at road crossings (P. Batt, Governor of Idaho, *in litt.* 1997, P. Graham, Montana Fish and Wildlife and Parks (MFWP), and B. Clinch, Montana Department of Natural Resources and Conservation (MDNRC), *in litt.* 1997).

Future proposed timber harvests also threaten bull trout. For instance, in Oregon, the Malheur National Forest proposes to salvage trees and build roads in a roadless area containing bull trout, site of the 1996 Summit Fire in the John Day River watershed, and a designated riparian habitat conservation area in the Environmental Assessment for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH) (USDA 1995). The project has not been completed, but it would likely degrade bull trout habitat if implemented as presently planned.

In summary, forestry activities that adversely affect bull trout and its habitat are primarily timber extraction and road construction, especially when impacting riparian areas. These activities, when conducted without adequate protective measures, alter bull trout habitat by increasing sedimentation, reducing habitat complexity, increasing water temperature, and promoting channel instability. Although certain forestry practices have been prohibited or altered in recent years to improve protection of aquatic habitats, the consequences of past activities continue to affect bull trout and their habitat. Within the Columbia River population segment, approximately 74 percent of bull trout subpopulations are threatened by forestry management practices.

Livestock Grazing

Livestock grazing degrades aquatic habitat by removing riparian vegetation, destabilizing streambanks, widening stream channels, promoting incised channels and lowering water tables, reducing pool frequency, increasing soil erosion, and altering water quality (Platts 1981; Kauffman and Krueger 1984; Henjum et al. 1994; Overton et al. 1993). These effects increase summer water temperatures, promote formation of anchor ice in winter, and increase sediment into spawning and rearing habitats. Cover for bull trout is reduced. Occupied bull trout habitat is also negatively affected by livestock grazing (Howell and Buchanan 1992; Mullan et al. 1992; Platts et al. 1993; R. Uberuaga, Payette National Forest, *in litt.* 1993; Henjum et al. 1994; MBTSG 1995a,b,c; USDA and USDI 1996,1997).

Livestock grazing impacts on bull trout habitat maybe minimized if grazing is managed appropriately for conditions at a specific site. Practices generally compatible with the preservation and restoration of bull trout habitat may include fences to exclude livestock from riparian areas, rotation schemes to avoid overuse of areas, and stock tanks so that livestock would concentrate outside of riparian areas for water.

Klamath River Population Segment

Intensive livestock grazing historically occurred throughout most of the Klamath River basin, and continues to be widespread (Light et al. 1996). Livestock grazing is a major land use within the Sprague River drainage, mostly in the lowland meadows and to a lesser extent in some forested areas. Grazing has been eliminated along bull trout streams on U.S. Timberlands property (B. Johnson, U.S. Timberlands, in litt. 1997) and adjacent National Forest lands. However, documented cattle trespass on Long and Deming creeks indicates that livestock continue to locally affect bull trout habitats (Light et al. 1996; Buchanan et al. 1997). The meadows in upper Long Creek exhibit bank instability and diminished availability of undercut banks caused by livestock (Buchanan et al. 1997). Channelization and intense grazing by cattle degraded lower Sun Creek and an adjoining stream in the Klamath River basin and may have contributed to the extirpation of migratory bull trout in Sun Creek (Dambacher et al. 1992).

Columbia River Population Segment

Livestock grazing has caused habitat degradation in stream reaches supporting bull trout. On Squaw Creek, a tributary of the Payette River, Idaho, livestock grazing has damaged streambank and riparian vegetation. While fencing and grazing changes are underway to reduce impacts in this area, future damage from grazing will not be eliminated (M. Huffman, Boise National Forest (BNF), in litt. 1997). Livestock grazing continues to affect bull trout habitat for spawning, rearing, and migration in Bear Valley Creek and its tributaries in the BNF, Idaho (T. Burton, BNF, pers. comm. 1997). Livestock grazing was a factor in the decline of bull trout habitat in Pataha Creek, Washington (WDFW 1997). In Montana, severe overgrazing occurs in the Bitterroot River valley bottom streams and along the mainstem Clark Fork River in the Deerlodge valley, Flint Creek valley, and parts of Rock Creek, and limits bull trout restoration in these drainages (MBTSG 1995a,b; Maxell 1996). Overall, livestock grazing in portions of the Wieser, Grande Ronde, Imnaha, and Malheur rivers has degraded streamside habitat (Adams 1994; Buchanan et al. 1997). Of the 141 subpopulations the Service identified in the Columbia River population segment, approximately 50 percent were threatened by ongoing livestock grazing.

Agricultural Practices

Agricultural practices, such as cultivation, irrigation, and chemical application can affect bull trout. Agriculture has been identified a source of nonpoint source pollution in some areas within the range of bull trout (Idaho Department of Health and Welfare (IDHW) 1991; Washington Department of Ecology (WDE) 1992; MDHES 1994). These practices can release sediment, nutrients, pesticides and herbicides into streams, increase temperature, reduce riparian vegetation, and alter the hydrologic regime, typically with low flows in the spring and summer. Irrigation diversions also affect bull trout by altering stream flow and through entrainment. Bull trout may enter unscreened irrigation diversions and become stranded in ditches and agricultural fields. Diversion dams, without proper passage facilities, prevent bull trout from migrating and may isolate subpopulations (Dorratcaque 1986; Light et al. 1996).

Klamath River Population Segment

Historical agricultural use in the Klamath River basin has had a profound effect on bull trout habitat in the larger tributaries and mainstem rivers (Buchanan et al. 1997). Channelization, water diversions, removal of streamside vegetarian, and disturbances have altered the aquatic environment by elevating water temperature, reducing water quantity and quality, and increasing sedimentation (Light et al. 1996). Deming, Long, Threemile, and Sun creeks have diversions immediately downstream of occupied bull trout habitat (Dunsmoor and Bienz, in litt. 1997). Unscreened diversions result in the transport of fish into irrigation canals (e.g., Deming and Sun creeks), often resulting in mortality (Light et al. 1996).

Columbia River Population Segment

In 1988, the Idaho Department of Environmental Quality (IDEQ) conducted an assessment of nonpoint source pollution of the Salmon River basin. Of 4,080 km (2,550 mi) of streams assessed, an estimated 2,059 km (1,287

mi) were affected by nonpoint sources, of which 1,374 km (859 mi) were affected by agricultural practices (IDHW 1991). Dewatering of stream reaches due to irrigation has restricted bull trout migration and isolated bull trout into subpopulations. Examples include the Powder, Malheur, Grande Ronde, Umatilla, and John Day rivers in Oregon (Buchanan et al. 1997); the Tucannon, Snake, Yakima, Methow, and Walla Walla rivers in Washington (WDW 1992; WDFW 1997); the upper Salmon and Lemhi rivers in Idaho (Dorratcaque 1986; Chapman et al. 1991); and the Clark Fork, Blackfoot, and Bitterroot rivers in Montana (Clancy 1993; MBTSG 1995a,b,c; 1996b,c; Swanberg 1996).

The mainstem Umatilla River is frequently dry during the irrigation season, effectively isolating bull trout (M. Northrop, Umatilla National Forest, pers. comm. 1997). Moreover, two diversion facilities in the Umatilla River inhibit migration during portions of the year (Buchanan et al. 1997). Walla Walla River basin bull trout subpopulations are segregated in the Touchet River, Mill Creek, and South Fork and North Fork of the Walla Walla River by four irrigation diversion dams (Buchanan et al 1997; WDFW 1997). Streams are also channelized in agricultural areas, reducing stream length and area of aquatic habitat, altering stream channel morphology, and diminishing aquatic habitat complexity.

In Idaho, Dorratcaque (1986) documented chronic flow and passage problems on the Lemhi River, where the stream has been dewatered during the irrigation season. An irrigation diversion dewaters the upper Salmon River in Idaho from mid-July to the end of the irrigation season, preventing chinook salmon access to spawning areas. Juvenile chinook salmon, which are used as prey by bull trout, are, thereby, no longer available (Chapman et al. 1991). Streamflows in the Umatilla River basin in Oregon have been fully appropriated during the irrigation season since 1920 (Oregon Water Resources Division (OWRD), in litt. 1988). Over-appropriations have resulted in dewatered stream reaches that limit bull trout distribution within the basin. Similarly, the Oregon State Game Commission (OSGC) first recognized the negative effects of irrigation diversions on fisheries resources in the Deschutes River as early as 1950 (OSGC, in litt. 1950). In Washington, over 80 percent of the annual stream flow in the Yakima River basin is seasonally diverted for irrigation (WDW 1992). Bull trout in the basin are isolated into eight subpopulations in upper watershed tributaries by reduced summer flows and dams (WDW 1992). The lower reaches of the Walla Walla River in Washington are often dewatered during the irrigation season, isolating three bull trout subpopulations in perennial headwater reaches (Martin et al. 1992).

In 1991, MFWP listed Montana streams that support or contribute to important fisheries and are substantially dewatered from diversions and appropriated streamflows (MFWP, in litt. 1991). Within the range of bull trout, 101 stream reaches totaling 958.4 km (599 mi) were listed as chronically dewatered due to irrigation withdrawals and an additional 220.8 km (138 mi) were listed as periodically dewatered. Although bull trout do not occur in all streams cited, all are within the range of bull trout and dewatering likely affects fish migration and connectivity among subpopulations.

The extirpation of bull trout in the mainstem Bitterroot River, Montana, and the loss of migratory fish are attributed to chronic dewatering of the mainstem Bitterroot and the lower reaches of most of its tributaries (Clancy 1993, 1996; MBTSG 1995b). Some diversions on the mainstem Bitterroot are fish passage barriers or entrain downstream migrants into irrigation ditches (MBTSG 1995b). Nearly 104 km (65 mi) of 18 tributary streams are chronically dewatered in the Bitterroot River basin (MBTSG 1995b). Dewatering of tributary streams is a limitation to restoration of bull trout in the Bitterroot River basin (MBTSG 1995b) and the cause of habitat fragmentation isolating 27 subpopulations.

In the Clark Fork River basin, Montana, irrigation diversions, canals, and dams in the Jocko and lower Flathead rivers eliminated bull trout access to spawning and rearing areas; however, some of these structures are in the process of being modified (MBTSG 1996c; Hansen and DosSantos 1997; MBTRT 1997). The lower reaches of the Jocko River are severely affected by grazing and irrigated agriculture (Hansen and DosSantos 1997). Because migratory bull trout can no longer ascend Grant Creek from the mainstem Clark Fork River due to irrigation diversions, only resident bull trout exist upstream (MBTSG 1996c; R. Berg, MFWP, pers. comm. 1997). Dewatering, irrigation return flows, and denuded riparian areas have increased water temperatures in the Blackfoot River and Clark Fork River basins, Montana (MBTSG 1995a,c). Water temperatures in the mainstem upper Clark Fork River frequently exceed 20°C (68° F) and temperatures in tributaries, including the Little Blackfoot and Flint Creek, may exceed bull trout tolerance limits (MBTSG 1995a). In the Blackfoot River basin, irrigation returns have contributed to the warming of this historic coldwater river (MBTSG 1995c; Pierce et al. 1997). Irrigation diversions, particularly in the Little Blackfoot River and in Flint Creek of the upper Clark Fork River, are physical and thermal passage barriers to bull trout (MBTSG 1995a). Diversion for irrigation is the primary cause of 622 km (389 mi) of streams in the upper Clark Fork basin being chronically dewatered (MDHES 1994). Irrigation diversions also continue to limit restoration of migratory bull trout in the Blackfoot River basin (MBTSG 1995c). Recently, several diversions have been renovated to provide passage and eliminate ditch entrainment (MBTRT 1997).

Unscreened irrigation diversions in eastern Washington are known to trap or divert bull trout in Ahtanan Creek (Yakima River basin), Ingalls and Peshastin creeks (Wenatchee River basin), Roaring Creek (Entiat River basin), and Buttermilk, Little Bridge, Eagle, and Wolf Creeks (Methow River basin) (J. Easterbrooks, WDFW, pers. comm. 1997). Channelization has altered 56 km (35 mi) of the Methow River (Mullan et al. 1992). Approximately 72 km (45 mi) of the lower Coeur d'Alene, St. Joe, and St. Maries rivers of the Spokane River basin have been channelized. These streams were once considered important rearing areas and migratory corridors for migratory (fluvial) bull trout.

Approximately 47 percent of the bull trout subpopulations in the Columbia River population segment are affected by the past and ongoing effects from agricultural practices, including diversions.

Road Construction and Maintenance

Non-forest roads degrade salmonid habitat by creating flow constraints in ephemeral, intermittent, and perennial channels; increasing erosion and sedimentation; creating passage barriers; channelization; and reducing riparian vegetation (Furniss et al. 1991; Ketcheson and Megahan 1996).

Klamath River Population Segment

Streamside roads may have multiple locations of elevated sediment delivery. Some level of sedimentation is normal, and can be documented along parts of Boulder, Deming, Threemile, Brownsworth, and Leonard creeks. In contrast, Long and Sun creeks have relatively little sediment delivery from roads in reaches occupied by bull trout (Light et al. 1996). Streamside roads inadequately constructed with

misplaced water bars and culverts still discharge sediment laden waters directly into streams. Over-road flow can lead to gullying and direct sediment delivery, as found in parts of Deming Creek (Light et al. 1996). Streamside roads can also reduce large woody debris recruitment and vegetation shade by occupying the growing space next to streams. In addition, road construction may require stream straightening or channel reconfiguration next to roads, resulting in channelization as along Boulder and Deming creeks (Light et al. 1996; Dunsmoor and Bienz, *in litt.* 1997). Habitat degradation from channelization includes decreased pool habitat, decreased sediment transport, increased embeddedness, and reduced interstitial space in substrates (Dunsmoor and Bienz, *in litt.* 1997).

Columbia River Population Segment

Construction and improvement of Interstate 90 is a contributing factor to the decline and suppression of bull trout in Gold Creek, a tributary of the Yakima River, Washington (Craig and Wissmar 1993). In Montana, Interstate 90 and a railroad system parallel to the Clark Fork and St. Regis rivers has contributed to channelization and increased the risk of hazardous spills (MBTSG 1996b,c). Approximately 18 percent of the bull trout subpopulations in the Columbia River basin are affected by road construction and ongoing maintenance.

Mining

Mining can degrade aquatic habitat by altering water acidity or alkalinity, changing stream morphology and flow, and causing sediment, fuel, and heavy metals to enter streams (Martin and Platts 1981; Spence et al. 1996). The types of mining that occur within the range of bull trout include extraction of hard rock minerals, coal, gas, oil, and nonminerals. Past and present mining activities have adversely affected bull trout and bull trout habitats in Idaho, Oregon, Montana, and Washington (Martin and Platts 1981; Johnson and Schmidt 1988; Moore et al. 1991; WDW 1992; Platts et al. 1993; MBTSG 1995a,c, 1996b,c).

Klamath River Population Segment

Mining effects are not known to be a factor affecting bull trout subpopulations in the Klamath River basin.

Columbia River Population Segment

Mining severely impacts large portions of the Spokane River basin. Effects include roading, stream diversion and alteration, watershed degradation from airborne emissions, and the discharge of massive quantities of waste materials, including the release into the South Fork Coeur d'Alene River of 72 million tons of hazardous mine wastes laden with heavy metals such as lead, zinc, and cadmium (Coeur d'Alene tribe of Idaho et al. 1991). During the early 1930s, the South Fork Coeur d'Alene River and about 20 miles of the lower Coeur d'Alene River were considered devoid of aquatic life due to mining waste discharge (Ellis 1940). Although some aquatic species have returned to the river, bull trout are not among them. In Montana, bull trout have not recolonized the upper mainstem Clark Fork River where mining-related stream degradation extirpated all fish prior to the turn of the century (MBTSG 1995a; Titan Environmental Corp. 1997). The lingering effects of mining done over the past century in the Butte and Anaconda reaches of the upper Clark Fork River has resulted in four Superfund sites being designated. Mining continues to impair water quality in 558 km (349 mi) of stream in these reaches (MDHES 1994). Eleven fish kills documented between 1959 and 1991 were attributed to mining contamination of the river (Titan Environmental Corporation 1997).

Numerous abandoned mines, such as the Blackbird and Cinnabar mines in the Salmon River drainage, Idaho, degrade water quality where toxic heavy metals continue to leach from mine sites into streams or groundwater. Old mine tailings in the floodplains of Newsome Creek, American River, and Crooked River, tributaries to the Clearwater River in Idaho, continue to prevent recovery of riparian areas (N. Gearhardt, Nez Perce National Forest, pers. comm. 1997). In Idaho, mine tailings abandoned decades ago contaminated a tributary of the Middle Fork Boise River with heavy metals, including arsenic, during flood flows in 1997 when migrating bull trout were present (R. Barker, Idaho Statesman, *in litt.* 1997: S. West, IDEQ, *in litt.* 1997). In Montana, historic mining in many tributaries of the Middle Clark Fork River has impaired water quality in 245 km (153 mi) of stream (MDHES 1994). The MBTSG (1995c) ranked mining in the Blackfoot River drainage as a limitation to bull trout restoration. Many mines exist in the western and southern portions of the Blackfoot River basin causing direct loss of bull trout habitat and contamination of waters from mine effluents (MBTSG 1995c). Fishes in the upper Blackfoot River are still affected by the washout of the Mike Horse tailings dam in 1975, which spilled contaminated tailings into the Blackfoot River (MBTSG 1995c). Research in the Blackfoot drainage demonstrated that heavy metal contaminants released in the headwaters affect chemical trends, metal concentrations, metal bioavailabilty, and fish for 25 km (15.6 mi) from the contaminant source (Moore et al. 1991).

New open-pit mines using cyanide leach pads are planned for watersheds currently occupied by bull trout in the Middle Fork Boise River basin, Idaho, and in the Stibnite area of the East Fork South Fork Salmon River, Idaho (G. Visconty, Boise National Forest, *in litt.* 1996; Payette National Forest (PNF), *in litt.* 1996). In Montana, a large underground copper-silver mine proposed for Rock Creek in the lower Clark Fork River basin is currently in the permitting process. Tailings would be stored at the confluence of Rock Creek and the Clark Fork River (MBTSG 1996b; R. Stewart, USDI, *in litt.* 1995). Rock Creek is one of only two bull trout ''core'' areas in this subpopulation (MBTSG 1996b). A proposal for a large open-pit gold mine using cyanide heap leach processing is proposed for the upper Blackfoot River basin, Montana. Much of the ore body occurs below the water table, requiring pumping of groundwater. Thus, the hydrology of the upper Blackfoot River system could be affected and an increase in contamination risks could result (S. Cody, Environmental Protection Agency (EPA), *in litt.* 1997; K. McMaster, Service, *in litt.* 1997).

The North Fork Flathead River headwaters in Canada contain a large coal deposit that could be developed (MBTSG 1995d). Mining this deposit could destroy spawning habitat and degrade water quality in the Montana portion of the Flathead River system (MBTSG 1995d).

Approximately 20 percent of the bull trout subpopulations in the Columbia River population segment are threatened by past, ongoing, or potential future mining activities.

Residential Development

Residential development is rapidly increasing within portions of the range of bull trout. Development increases threaten to alter stream and riparian habitats through streambank modification and destabilization, increased nutrient loads, and increased water temperatures (MBTSG 1995b). Indirectly, urbanization within floodplains alters groundwater recharge by routing water into streams through drains rather than through more gradual subsurface flow (Booth 1991).

Klamath River Population Segment

Residential development is not known to be factor affecting existing bull trout subpopulations in the Klamath River basin.

Columbia River Population Segment

In Montana, rural residential development is rapidly increasing, particularly in drainages of the Bitterroot, Blackfoot, and Flathead rivers (MBTSG 1995b,c,d). The lower Bitterroot River is a major non-point source of nutrient pollution, primarily from sewage effluent and land development (U.S. Environmental Protection Agency (EPA) 1993 in MBTSG 1995b). Efforts to mitigate effects of rural development in the Blackfoot River basin have been encouraged by an active local group, the Blackfoot Challenge, which has been working to acquire conservation easements, among other projects. Residential development in the Flathead Lake system is considered a limitation for restoration of bull trout because of the threat to water quality from domestic sewage and changes to stream morphology (MBTSG 1995d).

Approximately 26 percent of the bull trout subpopulations in the Columbia River population segment are threatened by the effects of residential development.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Declines in bull trout have prompted states to institute restrictive fishing regulations on all waters throughout bull trout range. Recent observations of increased numbers of adult bull trout in some areas have been attributed to more restrictive regulations. However, illegal harvest and incidental harvest still continue to threaten bull trout.

Klamath River Population Segment

Legal harvest of bull trout in the Klamath River basin was eliminated in 1992 when ODFW imposed a fishing closure. Because recreational fishing for other trout species continues in the basin, incidental fishing mortality of bull trout likely occurs (OCAFS 1993). During recent ODFW angler surveys in the Klamath River basin, all anglers contacted were aware of the no harvest regulation for bull trout (D. Bertram, ODFW, *in litt.* 1995; Light et al. 1996). Incidental bull trout mortality due to angling is unknown, but is not suspected to be suppressing bull trout subpopulations in the Klamath River basin (Light et al. 1996). However, Dunsmoor and Bienz (*in litt.* 1997) consider angling to be a factor negatively affecting bull trout, especially subpopulations with low numbers and proximity to highway access, such as Threemile Creek.

Columbia River Population Segment

Overharvest of bull trout in the Columbia River basin, historically, likely contributed to their decline. In the past, harvest included legal recreational angling, poaching, and State-sponsored eradication programs (Thomas 1992). Bull trout were often targeted for removal by anglers and government agencies because bull trout preyed on salmon and other desirable species (Simpson and Wallace 1982; Bond 1992). As recently as 1990, State and Federal agencies instituted programs to eradicate bull trout through bounties and poisoning of waterways (Ratliff and Howell 1992; ODFW 1993; Newton and Pribyl 1994; Palmisano and Kaczynski, *in litt.* 1997). For instance, during the 1940's and 1950's in Oregon, several hundred bull trout migrating from Wallowa Lake to spawn in Wallowa River were trapped in a weir and exterminated (B. Smith, WDFW, *in litt.* 1997). Bull trout were recently re-introduced to Wallowa Lake in summer 1997 in an effort to re-establish the fish.

In recognition of the decline of bull trout, State management agencies in Idaho, Montana, Washington, and Oregon suspended harvest in the Columbia River basin except in Lake Billy Chinook (Oregon) and Swan Lake (Montana). State regulations still allow catch and release fishing for bull trout, and the harvest of other salmonid species is allowed in most bull trout waters. However, in Montana, (MFWP 1996), the revised regulations are believed to be partially responsible for increasing bull trout numbers in the Swan River basin where the taking or intentional fishing for bull trout is prohibited (MBTSG 1996a). Mortality from incidental catch and release angling of bull trout and harvest as a result of misidentification still continues under existing fishing regulations. For example, about half or fewer of anglers surveyed were able to correctly identify bull trout from other salmonids in west-central Montana (Kelly et al. 1996; M. Long and S.P. Whalen, MFWP, *in litt.* 1997). In 1997, the day after two radio tagged bull trout were released into Wallowa Lake, Oregon, one of the fish was unintentionally, but illegally harvested by a young angler. The MBTSG (1995d) is concerned with the catch and release mortality of bull trout as a result of intense fishing pressure on lake trout in Flathead Lake and the Flathead River. Legal and illegal harvest can seriously affect declining subpopulations already subjected to other factors such as competition, degraded habitat, and isolation (WDW 1992; Donald and Alger 1993; Pratt and Huston 1993; Swanberg and Burns 1997).

Poaching of bull trout likely continues, and can be especially detrimental to small, isolated subpopulations of migratory fish (WDFW 1992; Craig and Wissmar 1993; Pratt and Huston 1993; Long 1997). A study in the Metolius River suggested that 2 of 22 radio-tagged adult bull trout were illegally harvested (Ratliff et al. 1996). Illegal harvest of bull trout in northwest Montana has been a recurring problem for over 50 years, especially in drainages of the Blackfoot, Kootenai, South Fork Flathead, and Clark Fork rivers (MBTSG 1995e; Swanberg 1996; Long 1997). In response, the MFWP instituted a program in 1994 funded by the Bonneville Power Administration to reduce the illegal harvest of bull trout, disperse information to improve anglers' fish identification skills, and increase understanding of the importance of native species (Long 1994). Additionally, the Montana legislature increased the penalties for bull trout poaching, and the Bonneville Power Administration, until recently, funded increased enforcement (M. Racicot, Governor of Montana, *in litt.* 1995).

Approximately 21 percent of the bull trout subpopulations in the Columbia River population segment are threatened by the effects of poaching.

C. *Disease or predation.* Although diseases affecting salmonids are likely present in both the Klamath River and Columbia River basins, they are not thought to be a major factor affecting bull trout. However, interspecific interactions, including predation, are thought to negatively affect bull trout where non-native salmonids have been introduced (Palmisano and Kaczynski, in litt. 1997).

Klamath River Population Segment

Diseases have not been documented affecting bull trout in the Klamath River basin. However, brook trout and brown trout have been introduced in the basin, and either one or both species co-exist with bull trout in all subpopulations except Deming Creek (Buchanan et al. 1997). Brown trout predation on bull trout is evidenced by a direct observation in Boulder Creek (Light et al. 1996). Overall, bull trout co-occur with brown trout and brook trout in about half of the occupied habitat. Buchanan et al. (1997) indicated that bull trout occupy approximately 34.1 km (20.5 mi) of streams. However, allopatric (occurring in different

geographic areas or in isolation) bull trout have been estimated to occupy only 13.4 to 15.7 km (8.3 to 9.8 mi) within the basin (Buchanan et al. 1997; Schroeder and Weeks, *in litt.* 1997).

Columbia River Population Segment

Health samples from 207 juvenile bull trout collected from 8 streams in the Flathead River basin in 1992 and 1993 were negative in tests for furunculus, enteric redmouth, bacterial kidney disease, and viral hemorrhagic septicemia (VHS) or infectious pancreatic necrosis (IPN) (Fredenberg 1993). Bull trout are susceptible to whirling disease, caused by a protozoan parasite (*Myxobolus cerebralis*), and recently detected in bull trout waters in Montana (Montana Whirling Disease Task Force 1996). However, bull trout are less susceptible to whirling disease than rainbow trout (McDowell et al. 1997). Whirling disease is currently untreatable in the wild, and the parasite appears to be rapidly spreading into previously uninfected waters. The consequences of whirling disease on bull trout may not be apparent for years.

Bull trout are most vulnerable to predation as juveniles. Several non-native fishes, such as lake trout, brown trout, brook trout and northern pike (Esox lucius) are considered potential predators (and competitors, see Factor E below) of many bull trout subpopulations in the Columbia River basin (Donald and Alger 1992; Pratt and Huston 1993; Rieman and McIntyre 1993; MBTSG 1995d, 1996a; MFWP 1997).

Dramatic declines in the Priest Lake, Idaho, bull trout harvest began about 20 years ago. Between 1956 and 1970, an annual average of 1,200 fish were harvested. In 1978, a record 2,320 were harvested, declining in 1983 to 159 (Mauser et al. 1988). There has been no legal harvest of bull trout since 1984. Bull trout were extirpated from Priest Lake through interactions with introduced lake trout (Pratt and Huston 1993). Mauser et al. (1988) described bull trout in Priest Lake as ''functionally extinct as long as lake trout abundance is high.'' Similarly, lake trout introduced into Flathead Lake feed on juvenile bull trout entering the lake from the Flathead River, and are thought to be a factor in recent declines of the bull trout subpopulation (MBTSG 1995d). Introduced non-native fishes limit bull trout restoration in all the major drainages in Montana (MBTSG 1995a-e, 1996a-f).

For bull trout in the Columbia River population segment, disease is not considered a listing factor; however, approximately 62 percent of the subpopulations are threatened by introduced non-native fishes, including the effects of predation.

D. *The inadequacy of existing regulatory mechanisms.* Although efforts are underway to conserve bull trout (e.g., Batt, *in litt.* 1997; Joslin, *in litt.* 1997; Thomas, *in litt.* 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not prevented past and ongoing habitat degradation. This inadequacy has led to bull trout declines and isolation and is a factor in the determination to list bull trout population segments. Regulatory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, the Federal Power Act, State Endangered Species Acts and numerous State laws and regulations govern an array of land and water management activities that affect bull trout and their habitat.

National Forest Management Act

The National Forest Management Act (NFMA) and the Federal Land Policy and Management Act (FLPMA) require the USFS and BLM to develop and implement land and resource management plans (LRMPs) and Resource Management Plans (RMPs), respectively) to protect fish and wildlife resources and produce forest and range products. However, reviews by the U.S. Department of Agriculture (USDA) of LRMP monitoring and evaluation reports for 28 national forests indicate that many watersheds do not meet NFMA Forest Plan standards. Compliance with LRMPs and effectiveness of best management practices on current projects is improving, but, a majority of streams that had been affected by past practices were not healing as fast as anticipated (USDA 1995).

Reviews of existing LRMPs implemented outside the range of the northern spotted owl, even as amended by the Environmental Assessment for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH) (USDA 1995), have inadequately protected salmonid habitat on BLM and national forest lands (Henjum et al. 1994; R. Schmitten, NMFS, *in litt.* 1995; Espinosa et al. 1997). While the severe resource damage from forest management that occurred in the 1950s through the 1970s has ceased, the current LRMPs have not fully taken into account the habitat needs of salmonids and recovery of degraded habitats has not occurred as predicted. For example, most LRMPs were developed prior to listing the Snake River salmon stocks, and, consequently, the biological requirements of these fish are not fully considered under the parameters of the LRMPs. The NMFS noted that even though PACFISH provided some improvements in many standards and guidelines of the LRMPs, comprehensive, landscape-scale conservation strategies for salmonid survival and recovery are still lacking (Schmitten, NMFS, in litt, 1995). Espinosa et al. (1997) listed several reasons why the Clearwater National Forest Plan adopted in 1987 has failed to adequately protect salmonid habitats in forest watersheds. Reasons included for this failure were— projected timber harvests and levels of associated road construction too high to achieve fish habitat quality standards; inaccurate riparian habitat inventories; watershed recovery following disturbance was slower than expected; and inaccurate inventories of the timber resources.

Under the NFMA and the FLPMA, livestock grazing occurs on over 70 percent of federally-administered western rangeland, or about 108.5 million ha (268 million acres (ac)) of land in 16 western states (General Accounting Office (GAO) 1988). Ongoing livestock grazing on lands administered by the BLM and USFS continues to occur in watersheds occupied by bull trout (Henjum et al. 1994; McIntosh et al. 1994; USDA and USDI 1997). Technical solutions to improving riparian areas damaged by livestock grazing were available as early as 1988 (GAO 1988). However, the GAO (1988) noted that correcting damage from grazing was not readily solvable due to funding and political pressure to maintain the status quo grazing systems. Within the Interior Columbia River Basin, the BLM and USFS have had difficulty correcting practices that cause grazing damage to streams due to lack of funding, conflicting requirements of different laws, or budget allocations (USDA and USDI 1997). However, in some areas supporting federally listed fish or designated critical habitat, the BLM and the USFS have been able to improve livestock management in riparian areas, including habitat for shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) in the Klamath River basin, and the Lohontan cutthroat trout

(*Oncorhynchus clarki henshawii*) of the Great Basin.

Interior Columbia Basin Ecosystem Management Project

The USFS, BLM, EPA, NMFS, and Service are cooperating in development of the Interior Columbia Basin Ecosystem Management Project (ICBEMP), a large-scale land management plan for lands administered by these agencies in eastern Oregon and Washington, Idaho and western Montana. The alternatives described in the Draft Environmental Impact Statement (DEIS) do not specifically address bull trout conservation in ''depressed'' areas outside the range of steelhead and chinook salmon; the preferred alternative depends on subbasin review and ecosystem analysis at the watershed scale as the basis for decision-making within the Interior Columbia Basin (USDA and USDI 1997). The ICBEMP is in draft, and possible outcomes from implementing future bull trout conservation actions as part of an unapproved management alternative are not predictable. Funding and staffing to implement those components are also not secured.

Streamlined Consultation Procedures

On March 8, 1995, the USFS, Service, BLM, and NMFS, issued a memorandum directing the agencies to participate in ''streamlined'' consultation procedures. These procedures were initiated to address forest health and salvage projects (T. Dwyer, Service, *in litt.* 1995). By May 31, 1995, these procedures were extended indefinitely to include all consultation efforts (Dwyer, *in litt.* 1995). These procedures apply to Federal land management activities in Idaho, Oregon, Washington, Montana and California (California lands managed by BLM are subject to streamlined procedures only when forest ecosystem activities are involved). The purpose of the streamlined procedures is to improve the efficiency of the section 7 consultation process (C. Dunn, Service, *in litt.* 1997). Conservation and protection of bull trout habitat has been inconsistent due in part to the USFS and BLM discretionary option to review non-listed, candidate species or species of concern (R. Vizgirdas, Service, *in litt.* 1997; R. Strach, Service, *in litt.* 1997; P. Zenone, Service, *in litt.* 1997). In Idaho and eastern Oregon, Federal land management agencies have often not considered the effects of projects on bull trout through the streamlining process.

Endangered Species Act

In the Klamath River basin, the Service listed the shortnose sucker and Lost River sucker under the Act as endangered on August 26, 1987 (52 FR 32145), and proposed critical habitat for the species on December 1, 1994 (50 CFR 61744). Bull trout likely used portions of the proposed critical habitat in the past, including tributaries in the upper Klamath River, Crooked Creek, Sevenmile Creek, and Wood River. Although some of the earliest records of bull trout in the basin are from Fort Creek, a tributary of the Wood River (Dunsmoor and Bienz, *in litt.* 1997), bull trout do not presently occur within the habitat occupied by the two suckers. Therefore, conservation and recovery actions undertaken for the listed suckers will not directly benefit bull trout.

In the Columbia River basin, three species of salmon in the Snake River are listed—sockeye salmon (endangered), spring/summer chinook salmon (threatened) and fall chinook salmon (threatened). Critical habitat for all three salmon was designated, including the Columbia River migration corridor, and historically accessible streams in the Snake River basin upstream of Hell's Canyon Dam in Idaho, Oregon and Washington (58 FR 68543–68554). Downstream of Hell's Canyon and Dworshak Dam, the designation extends to reaches historically accessible to salmon, below historically impassible barriers (58 FR 68543–68554). The designation extends protection to bull trout habitat in areas where they co-occur with the salmon. However, in many areas bull trout tend to spawn and rear upstream of listed salmon habitats. For instance, Fall Creek, a tributary of the Salmon River, Idaho, has an impassible waterfall near its mouth, and habitat for the listed salmon ends at the impassible falls (58 FR 68543–68554), but bull trout spawn and rear above the falls. In this example, bull trout spawning and rearing habitat does not overlap with the listed salmon; thus, bull trout would not receive indirect protection under the Act.

On August 18, 1997, five evolutionarily significant units (ESUs) of steelhead were listed as threatened—three in California, one in Washington (Columbia River from the Yakima River to Grand Coulee Dam), and one in the Snake River basin in Oregon, Washington, and Idaho (62 FR 43937). Although protection for bull trout under the Act would be afforded where they co-occur with steelhead, measures to protect steelhead may be insufficient for bull trout due to differences in the life history between the species and lack of complete habitat overlap.

Northwest Forest Plan

The Northwest Forest Plan (NWFP) addresses management of USFS and BLM lands within the range of the northern spotted owl, and implementation began in April 1994 (Tuchmann et al. 1996). The NWFP includes an aquatic conservation strategy, consisting of four inter-related elements. The first element is riparian reserves, which is the system of lands along streams allocated toward the conservation and restoration of aquatic and riparian dependent species. The second is key watersheds, which are watersheds with special values and appropriate management standards. The third element is watershed analysis, which is required to help land managers understand the processes that maintain habitats and to manage to preserve these processes. The fourth element is watershed restoration projects, which are funded to move watersheds toward recovery. For instance, in 1994 through 1996, 1675 watershed restoration projects (or groups of projects) were funded under the NWFP (Tuchmann et al. 1996). The conservation strategy generally addresses the maintenance of the four elements. Although the strategy does not specifically address bull trout needs, it contains objectives for riparian and stream conservation and maintenance that may facilitate conservation of bull trout habitat (W. Cole, Service, *in litt*, 1997). Additionally, the implementation of the NWFP is dependent on interagency collaboration to achieve resource conservation and a sampling of projects unaffected by the 1995 Salvage Rider (see below) indicates that bull trout are generally protected by the NWFP. However, the NWFP covers only a minor portion of bull trout habitat for the Columbia River population segment.

PACFISH and INfish

The USFS and BLM developed the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho and Portions of California, known as PACFISH. PACFISH is intended to be an ecosystem-based, aquatic habitat and riparian-area management strategy for Pacific salmon, steelhead, and sea-run cutthroat trout habitat on lands administered by the two agencies and outside the area subject to implementation of the NWFP (USDA and USDI 1995). PACFISH amended Regional Guides, forest plans and land use plans by applying management

measures for all ongoing and proposed or new projects that pose an unacceptable risk to anadromous fish involving the management of timber, roads, grazing, and other land uses. The Service is participating with NMFS, the USFS, and the BLM in reviewing action-agency PACFISH screening efforts for anadromous fish. Within the area of PACFISH where the habitats of salmon and bull trout overlap, the screening effort is to protect both anadromous fish and bull trout from major effects. However, efforts to include bull trout in the PACFISH review are not always successful (Vizgirdas, *in litt.* 1997; Strach, *in litt.* 1997; Zenone, *in litt.* 1997).

The Inland Native Fish Strategy (INfish) was developed by the USFS to provide an interim strategy for inland native fish in eastern Oregon and Washington, Idaho, western Montana and portions of Nevada (USDA and USDI 1995). It has not been determined whether INfish is an effective strategy for removing the threats for bull trout. In Idaho, the USFS does not place a priority on application of INfish and generally has determined that anadromous watersheds have a higher priority than bull trout watersheds (Vizgirdas, *in litt.* 1997; Strach *in litt.* 1997; Zenone, *in litt.* 1997).

Clean Water Act

Under sections 303 and 304 of the Clean Water Act (CWA), States or EPA set water quality standards, which combine designated beneficial uses and criteria established to protect those uses. Water bodies that are identified as failing water quality standards are designated by States under section 303(d) as water quality limited (MDHES 1994; EPA 1994; ODEQ 1996), and subject to development of management plans to restore water quality and protect designated uses. These management plans, or total maximum daily loads (TMDLs), address both point and non-point sources of pollutants within a watershed. Best Management Practices (BMPs) are used with TMDLs to address non-point sources of pollution, such as mining, forestry, and agriculture; however, regulatory authority to enforce the BMPs varies among the states. It is estimated that 10 percent of total length of streams within the ICBEMP assessment area, including the Klamath River and Columbia River basins, are listed as water quality limited. This may underestimate the true extent and distribution of streams with impaired water quality potentially affecting bull trout (USDA and USDI 1997). In the Klamath River basin, stream reaches designated as water quality limited (i.e., cited on the 303(d) list of Oregon for various water quality standards (ODEQ 1996)) are estimated to apply to six of the seven bull trout subpopulations. In the Columbia River basin, water bodies designated as water quality limited by Oregon, Washington, Idaho, and Montana are estimated to apply to at least 64 of the 141 bull trout subpopulations.

Relative to water temperature, Oregon established a water quality criterion of 10° C (50° F) as a weekly average based on daily maximum temperatures in bull trout spawning and rearing waters (OAR 340–41–685 and OAR 340–41–026); however, water bodies where these criteria would apply have not been identified. In Washington, temperature criteria for waters vary among the different classifications that are assigned to each waterbody, and range from 16 to 22° C (60.8 to 71.6° F) (Chapter 173–201 WAC). Washington is reviewing these standards with the intent of creating more appropriate water quality standards; however, whether the criteria specifically are for bull trout is unknown. In Idaho, EPA disapproved the state's temperature criteria applications within the geographic range of bull trout (EPA 1997). The EPA determined that the criteria did not provide adequate protection for bull trout relative to two designated uses—cold water biota and salmonid spawning (maximum daily average of 13° C (55.5° F) and 9° C (48.2° F) for each respective use). In July 1997, EPA promulgated a temperature criterion of 10° C (50° F) during June through September in designated stream areas, as a weekly average based on daily maximum temperatures for spawning and rearing of bull trout (EPA 1997). To date, the State has not adopted EPA's promulgated criterion, but has adopted 12° C as a daily average during June-August for juvenile rearing and 9° C for September and October for spawning. Additionally, Idaho has established a geographical area where these criteria would apply. It is unknown whether EPA will approve the State's criteria and withdraw the promulgated rule. In Montana, the temperature criterion applied to waters with bull trout is 19° C (66° F); temperature can be raised 0.6° C (1° F) by discharges, but water temperature may not exceed 19.5°C (67°F) (Administrative Rules of Montana 1996).

In accordance with Section 319 of the CWA, States also develop programs to address non-point sources of pollution such as agriculture, forestry, and mining. The effectiveness of controlling water pollution from these activities has been mixed. The State of Washington monitored the effectiveness in meeting water quality criteria for temperature in riparian areas on forest lands and concluded that regulations for stream shading were inadequate to meet criteria (Sullivan et al. 1990).

In summary, it is uncertain whether the CWA can provide sufficient protective measures for conservation of bull trout. Temperature regime is one of the most important factors affecting bull trout distribution (Adams and Bjornn 1997, Rieman and McIntyre 1995). Given the known temperature requirements of bull trout (Buchanan and Gregory 1997), criteria developed by the four States may not be conducive to either spawning, incubation, rearing, migration, or combinations of these life-history stages.

State Regulations and Conservation Planning Efforts

All four States within the range of the Klamath River and Columbia River population segments of bull trout have regulations affecting bull trout and their habitat. Idaho, Montana, and local or county organizations have recently developed or are developing conservation plans to maintain and restore bull trout, primarily through stream habitat protection.

In 1995, Idaho Governor Phil Batt initiated a conservation plan to restore bull trout populations in Idaho. The mission of the Governor's Plan, approved in July 1996, is to ''. . . maintain and/or restore complex interacting groups of bull trout populations throughout their native range in Idaho'' (Batt, *in litt.* 1997). A recent status report of implementation of the Plan stated that advisory groups, which will develop water quality and bull trout conservation measures, have formed only in some areas. Although the harvest of bull trout is closed throughout Idaho and State-sponsored survey and monitoring has increased (S. Mealey, IDFG, *in litt.* 1997), few on-the-ground recovery actions for bull trout have been implemented to date.

Other efforts include a 1994 conservation agreement (CA) between the Idaho Department of Transportation (IDOT) and the Service to protect bull trout (USDI and IDOT, *in litt.* 1994), and recent conservation activities by the IDFG that were funded by Section 6 of the Act. The IDOT finished only one passage restoration project under the CA, and recently declined to renew the CA (R. Howard, Service, pers. comm. 1997). Since 1994, IDFG has used Section 6 funds to begin several habitat restoration actions in northern and southwestern Idaho. Aside from enacting restrictive fishing regulations,

few protective or restoration projects have been completed that substantially reduce threats to bull trout throughout the Columbia River.

Beginning in 1992 and 1993, several interagency bull trout working groups were formed in Oregon (R. Rosen, ODFW, *in litt.* 1995). These working groups have been instrumental in gathering additional status information and developing preliminary conservation strategies for bull trout in their respective basins. These efforts are encouraging for bull trout conservation in the future, but the outcome has not yet been demonstrated.

In March 1997, Oregon also adopted the Oregon Coastal Salmon Restoration Initiative (OCSRI 1997) (Oregon Plan). The Oregon Plan is designed to ''. . . restore salmon to a level at which they can once again be part of people's lives . . .'' in coastal Oregon. The Oregon Plan's initial focus is on areas within the range of Oregon coastal coho salmon, and does not overlap with presently occupied bull trout habitat. Oregon recently acknowledged support for developing future bull trout conservation measures by including bull trout in the Oregon Plan (J. Kitzhaber, Governor of Oregon, *in litt,* 1997), although no conservation measures specific to bull trout have been completed to date.

The Upper Klamath Basin Bull Trout Conservation Strategy (Light et al. 1996) was developed by the Klamath Basin Bull Trout Working Group in response to the limited and shrinking distribution and number of bull trout. The Working Group, formed in 1993, is composed of representatives from the Service, ODFW, Fremont and Winema National Forests, Crater Lake National Park, PacifiCorp, USBR, Sprague River Water Users Association, Klamath Basin Water Users Protective Association, U.S. Timberlands, and Klamath Tribes. The defined goals of this group as identified in the Conservation Strategy are—(1) secure existing bull trout populations and (2) restore populations to some of their former distribution (Light et al. 1996). Phase 1 has concentrated on addressing threats to bull trout from non-native salmonids, including eradication of brook trout and brown trout above barriers where isolated subpopulations of bull trout are found. Stream temperatures and sedimentation problems are being addressed concurrent with eradication of exotic species. Phase 2 will involve expanding the number of subpopulations by reestablishing bull trout in high quality headwater habitats, effectively increasing the size of the Klamath River metapopulation and making it more resilient to natural disturbance, variation in breeding success, disease outbreaks, and other environmental factors (Light et al. 1996). Future objectives likely will include establishing natural movement corridors between adjacent headwater streams.

All habitats currently occupied by bull trout in the Klamath River basin are managed by Working Group members. From 1993 through 1996, conservation actions (phase 1) were implemented by the Working Group, including—watershed assessments; fish distribution, abundance, and spawning surveys; collection of stream temperature and sediment data to help identify limiting factors; brook trout eradication efforts in Long, Sun, and Threemile creeks; reduction or elimination of grazing along bull trout habitat owned by U.S. Timberlands; road system improvements, closures, and rehabilitation; and barrier management to prevent access of non-native fishes (Johnson *in litt.* 1997; Buchanan et al. 1997). Habitat improvement projects have also been implemented in areas historically occupied by bull trout, such as the 9,700 ha (24,000 ac) Nature Conservancy preserve at Sycan Marsh (P. Rexroat, The Nature Conservancy, *in litt.* 1997) and the Sun Pass State Forest on lower Sun Creek. These ongoing conservation efforts have been complicated by recent private land ownership changes and lack of an approved recovery plan that identifies specific conservation tasks and actions.

In addition to the Klamath Basin Bull Trout Working Group, a federally-authorized, interagency and entity group, the Upper Klamath Basin Working Group, was established in 1994. This group, composed of Federal, State, county, city, tribal, environmental, local business, agricultural-ranching, and local community members, works on a consensus-based approach to Klamath basin ecosystem issues. The group focuses on ecosystem restoration projects and has funded bull trout conservation efforts, a high group priority, such as riparian fencing and road maintenance and obliteration projects.

Other State regulations and policies affect bull trout and their habitat in Oregon. For instance, Oregon has a policy ''to prevent the serious depletion of any indigenous species'' (ORS 496.012). As such, the Oregon Department of Fish and Wildlife's Wildlife Diversity Plan (OAR 635–100) provides for a Sensitive Species List. The Sensitive Species List (OAR–635–100–040) is maintained by ODFW, and is updated biennially. The Sensitive Species List is intended as a ''watch list'' of species potentially eligible for listing as endangered or threatened, and constitutes an early warning system for land managers and the public (ODFW 1996). There are no regulatory protections for species listed as sensitive, nor is the habitat on which they depend protected under OAR 635–100.

The Sensitive Species List has four categories—''critical'' (species for which listing is appropriate or pending); ''vulnerable'' (species for which listing is not imminent and can be avoided via adequate protective measures); ''peripheral or naturally rare'' (occurring in Oregon at the edge of their range, in naturally low numbers due to limited in-state distribution); and ''undetermined'' status (species for which status is unclear). Bull trout is listed in the ''critical'' category (ODFW 1993).

The Washington Department of Fish and Wildlife released the final Environmental Impact Statement for the proposed Wild Salmonid Policy in September 1997 (WDFW 1997). Although the environmental impact statement (IS) focused on salmon and steelhead, referring to bull trout and other wild salmonids in an ancillary manner, it described problems and challenges facing the recovery of anadromous and resident salmonids throughout Washington. The IS presented five alternatives ranging from continuation of current management (i.e., policy generally based on maximum sustainable yield) to alternatives providing more protection for wild salmonids. Each alternative addressed harvest, hatcheries, and habitat relative to wild salmonids, and presented obstacles to recovery and possible actions to facilitate recovery. Regardless of the alternative ultimately selected by the Washington State Fish and Wildlife Commission as the Wild Salmonid Policy, implementation of the policy will suggest guidelines for actions taken by the WDFW and will not be binding on other State, tribal, and private entities. Because of uncertainties concerning implementation of the policy, the effect of the policy on bull trout conservation in Washington is unknown.

In Montana, Governor Marc Racicot appointed the Bull Trout Restoration Team in 1994 to produce a plan that maintains, protects, and increases bull trout populations. The team appointed a scientific group that has subsequently prepared eleven basin-specific status reports and two technical, peer-reviewed papers. A third technical

paper is presently undergoing peer review. A Montana Bull Trout Recovery Plan, including a recovery goal, is also nearing completion. Watershed groups are being established in some areas to lead local bull trout restoration efforts. As of October 1997, some localized habitat restoration projects, such as removal of fish passage barriers, screening irrigation diversions, riparian fencing, stream restoration projects, and habitat monitoring, had been completed or were underway (Graham and Clinch, *in litt.* 1997). Because of uncertainties concerning implementation of the restoration plan, the effect of the plan on future bull trout conservation in Montana is unknown.

Oregon, Washington, Idaho, and Montana each have adopted a Forest Practice Act (FPA) or other legislation consisting of rules and regulations addressing forest management on State, Federal, and private lands. In general, the legislation establishes best management practices (BMPs) to be implemented on forests, such as streamside management zones (Montana Department of State Lands 1994), activities allowed in riparian areas, restrictions on harvest adjacent to streams, and location of road construction. The application of BMPs is voluntary in some States. Although audits show that compliance with BMPs is high in Idaho (H. Malany, Idaho Forest Practice Act Advisory Committee Member, *in litt.* 1997) and Montana (Mathieus 1996), the Service is not aware of evaluations of various States' BMPs relative to the protection of bull trout habitat and processes affecting water quality, such as sediment delivery, water temperature, recruitment of woody debris, and bank stability. In Idaho, half of timber sales audited resulted in contributions of sediment to streams, largely from inadequately maintained roads (Zaroban et al. 1996). Even with high implementation rates, Idaho's forestry BMPs have been ineffective at maintaining beneficial uses, including cold water biota (McIntyre 1993). In Montana, McGreer (1994) noted that the Montana legislation may adequately provide for woody debris and bank stability, but it may be inadequate for temperature control and sedimentation. The MDNRC has discontinued timber harvest and grazing in areas directly adjacent to streams containing bull trout (P. Flowers, MDNRC, *in litt.* 1996). Based on current information, the Service is unable to conclude that State FPAs and related legislation are adequate to protect bull trout habitat.

E. *Other natural or manmade factors affecting their continued existence.* Natural and manmade factors affecting the continued existence of bull trout include—previous introductions of non-native species that compete or hybridize with bull trout; fragmentation and isolation of bull trout subpopulations from habitat changes caused by human activities, and subpopulation extirpations due to naturally occurring events such as droughts and floods.

Introduced Non-native Species

Introductions of non-native species by the Federal government, State fish and game departments, and private parties, across the range of bull trout has resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary et al. 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d, 1996g; Platts et al 1995; Palmisano and Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, and isolation (Rieman and McIntyre 1993). Introduced species, such as rainbow trout, may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993). However, introductions of non-native game fish can be detrimental due to increased angling and subsequent incidental catch and illegal harvest of bull trout (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

Non-native fish also threaten bull trout in relatively secure and physically unaltered habitats, including roadless areas, wilderness, and national parks. For instance, brook trout occur in tributaries of the Middle Fork Salmon River within the Frank Church-River of No Return Wilderness, including Elk, Camas, Loon, and Big creeks (Thurow 1985; S. Achord, National Marine Fisheries Service (NMFS), *in litt.* 1994) and Sun Creek in Crater Lake National Park (Light et al. 1996). Glacier National Park has self-sustaining populations of introduced non-native species, including lake trout, brook trout, rainbow trout, Yellowstone cutthroat trout, lake whitefish (*Coregonus clupeaformis*), and northern pike (MBTSG 1995d). Although stocking in Glacier National Park was terminated in 1971, only a few headwaters lakes contain exclusively native species, including bull trout. The introduction and expansion of lake trout into the relatively pristine habitats of Kintla Lake and Lake McDonald in Glacier National Park nearly extirpated the bull trout subpopulation from predation and competition (L. Marnell, NPS, *in litt.* 1995; MBTSG 1995d).

Introduced brook trout threaten bull trout through hybridization, competition, and possibly predation (Leary et al. 1993; Thomas 1992; WDW 1992; Clancy 1993; Rieman and McIntyre 1993; MBTSG 1996). Hybridization between brook trout and bull trout has been reported in Montana (MBTSG 1995a,b, 1996a,c,e; Hansen and DosSantos 1997), Oregon (Markle 1992; Ratliff and Howell 1992), Washington (WDFW 1997), and Idaho (Adams 1996; T. Burton, BNF, pers. comm. 1997). Hybridization results in offspring that are frequently sterile (Leary et al. 1993), but some hybrids show gonadal development (Dunsmoor and Bienz, *in litt.* 1997), raising concern of potential introgression. Hybrids may be significant competitors; Dunsmoor and Bienz (*in litt.* 1997) noted that hybrids are aggressive and larger than resident bull trout, suggesting that hybrids may have a competitive advantage. Brook trout mature faster and have a higher reproductive rate than bull trout. This difference may favor brook trout over bull trout when they occur together, often leading to replacement of bull trout with brook trout (Leary et al. 1993; Clancy 1993; MBTSG 1995b). The threat of hybridization and replacement is likely exacerbated where larger, more fecund migratory forms of bull trout have been eliminated (Rieman and McIntyre 1993). The magnitude of threats from non-native fishes is highest for subpopulations supporting only resident fish because resident bull trout typically are small in number and isolated where the effects of interspecific interactions are likely more intense.

Brook trout apparently adapt better to degraded habitats than bull trout (Clancy 1993; Rich 1996). Brook trout likely have higher survival-to-emergence than bull trout in areas with elevated sediment (MBTSG 1996h), and brook trout also tend to occur in streams with higher water temperatures (Adams 1994; MBTSG 1996h). Because elevated water temperatures and sediments are often indicative of degraded habitat, bull trout may be subject to stresses from both interactions with brook trout and degraded habitat (MBTSG 1996h). Watson and Hillman (1997) found an inverse relationship between bull trout occurrence and the presence of brook trout. Dunsmoor and Bienz (*in litt.* 1997) noted that brook trout have a high probability of displacing bull trout in the Klamath River basin due to degraded bull trout habitat.

Introduced brown trout are established in several areas within the range of bull trout and likely compete with bull trout (Ratliff and Howell 1992;

Platts et al. 1993; Pratt and Huston 1993). Brown trout tend to spawn in the same areas as bull trout, though later in the season, and may compete for spawning and rearing areas and superimpose redds on bull trout redds (Pratt & Huston 1993; Light et al. 1996; MBTSG 1996h). Additionally, brown trout are typically more aggressive than native trout, and can displace brook trout and other native trout species (Fausch and White 1981; Wang and White 1994). Bull trout and brown trout rear in similar areas and may compete for food and space. Elevated water temperatures may favor brown trout over bull trout in competitive interactions (MBTSG 1996h). Brown trout are thought to have been a secondary factor in the decline and eventual extirpation of bull trout in the McCloud River, California, after dam construction altered bull trout habitat (Rode 1990).

Non-native lake trout also negatively affect bull trout (Donald and Alger 1993; MBTSG 1996h). A study of 34 lakes in Montana, Alberta, and British Columbia found lake trout likely limit foraging opportunities and reduce the distribution and abundance of migratory bull trout in mountain lakes (Donald and Alger 1993). Illegal introductions of lake trout and other species have occurred in more than 50 northwest Montana waters in recent years (J. Vashro, MFWP, *in litt.* 1995). The potential for illegal introduction of lake trout into the Swan River basin and Hungry Horse Reservoir on the South Fork Flathead River, both in Montana, is considered a threat to bull trout (MBTSG 1995e, 1996a), potentially affecting up to six subpopulations. In Idaho, lake trout and habitat degradation were factors in the decline of bull trout from Priest Lake (Mauser et al. 1988; Pratt and Huston 1993). Juvenile lake trout are also using river habitats in Montana, possibly competing with bull trout (MBTSG 1996h). State plans to manage lake trout to reduce interactions with bull trout are unknown.

Non-native northern pike (*Esox lucius*), bass (*Micropterus spp.*), and opossum shrimp (*Mysis relicta*) are also thought to negatively affect bull trout. Northern pike were illegally introduced into Swan Lake in the 1970s (MFWP 1997), and predation on juvenile bull trout has been documented (S. Rumsey, MFWP, pers comm. *in* MBTSG 1996a). Management of Swan Lake emphasizes protection of native salmonids, particularly bull trout, and control of northern pike to minimize effects on native species (MFWP 1997). Northern pike were also illegally introduced into Salmon, Inez, Seeley, and Alva lakes in the Clearwater River basin, a tributary to the Blackfoot River, Montana (MFWP 1997). Northern pike numbers have increased in Salmon Lake and Lake Inez, having a negative effect on bull trout (Berg, pers. comm. 1997). Northern pike in Seeley Lake and Lake Alva are also expected to increase in numbers (Berg, pers. comm. 1997).

Introduced bass may negatively affect bull trout where the species co-occur (MFWP 1997). In the Clark Fork River, Montana, Noxon Rapids Reservoir supports fisheries for both smallmouth bass (*Micropterus dolomieui*) and largemouth bass. Both are high priority species in current management of Noxon Rapids Reservoir unless more suitable bull trout habitat is created as a result of dam relicensing. The fishery management objective for Cabinet Gorge Reservoir, downstream of Noxon Rapids Reservoir, is to enhance bull trout while managing the existing bass fishery (MFWP 1997).

Opossum shrimp, a crustacean native to the Canadian Shield area, was widely introduced in the 1970s as supplemental forage for kokanee and other salmonids in several lakes and reservoirs across the northwest (Nesler and Bergerson 1991). The introduction of opossum shrimp in Flathead Lake changed the lake's trophic dynamics, and is widely believed to have been partially responsible for the expanding the lake trout population, resulting in increased competition and predation on bull trout (T. Weaver, MFWP, *in litt.* 1993) Thus, opossum shrimp have had an indirect, negative effect on bull trout. Conversely, in Swan Lake, Montana, opossum shrimp and kokanee have become established and increased the availability of forage for bull trout, contributing to the significant increase in bull trout numbers in the Swan River basin (MBTSG 1996a). Thus, the effects of introduced species on bull trout involve complex interactions that are dependent on several factors.

Klamath River Population Segment

Bull trout have been displaced by brook trout in portions of the Klamath River basin (Light et al. 1996), and hybrids of the two species have been verified in several of the streams (Ratliff and Howell 1992). Either brook trout, brown trout, or both species occur with bull trout in six of seven subpopulations. Where brook trout or brown trout co-occur with bull trout, the distribution of bull trout has contracted and that of introduced salmonids expanded (e.g., Brownsworth, Leonard, and Long creeks) (Buchanan et al. 1997). Only four subpopulations exist in the absence of brook trout, and these are the most abundant (Ratliff and Howell 1992; Ziller 1992). In 1992, chemical eradication of brook trout was initiated in Sun Creek (Buktenica 1997). The chemical treatment apparently killed a number of bull trout due to the difficulty of removing fish prior to treatment (Buktenica 1997). Other eradication programs relying on chemical treatments would likely have similar effects on bull trout. Ongoing management actions in Threemile and Long creeks focus on brook trout eradication via selective electrofishing, snorkel-spearing, trapping, and chemical treatments with the objective of expanding bull trout range. Brook trout have declined in Threemile Creek, but there has been no measurable change in brook trout numbers in Long Creek (Dunsmoor and Bienz, *in litt.* 1997).

Columbia River Population Segment

Within the upper Columbia River basin in Montana, brook trout are found in approximately 65 percent of the stream reaches where bull trout occur (J. Hutten, MFWP, *in litt.* 1993). Brook trout are found in all major basins in Montana that support bull trout except the South Fork of the Flathead River. Brook trout and bull trout hybridization was first documented in the early 1980s in South Fork Lolo Creek in the Bitterroot River basin, Montana (Clancy 1993; MBTSG 1996h). Bull trout have largely been replaced by brook trout.

Introduced brook, brown, and rainbow trout are present in the Bitterroot drainage in Montana (Clancy 1996). The presence of non-native fish may have been a factor causing the fragmentation of bull trout range in the Bitterroot drainage by restricting migratory movements by bull trout (Rich 1996). Brook trout appeared to be replacing bull trout in some streams in the Bitterroot. Bull trout-brook trout hybrids have been documented in at least nine tributaries (MBTSG 1995b). Rich (1996) found a strong negative correlation between the presence of bull trout and brook trout in tributaries of the Bitterroot River.

The MBTSG concluded that introduced species, particularly in the lower Clark Fork River pose a high threat to bull trout (MBTSG 1996b). Non-native fishes have been introduced throughout the Clark Fork River system and brook trout are found throughout. Bull trout-brook trout hybrids exist in the Middle and upper Clark Fork systems (MBTSG 1995a; Hansen and DosSantos 1997).

In Idaho, bull trout densities in Mica Creek, Spokane River basin, during 1972

ranged from 0.03 to 0.23 fish/100 m^2 (0.003 to 0.023 fish/100 ft^2) (Mauser et al. 1972 *in* Platts et al. 1993). Extensive electrofishing surveys in Mica Creek during 1993 did not find bull trout, but brook trout were numerous at one transect (Martin 1994). Brook trout are present or accessible to most of the Clearwater River basin in Idaho, with hybridization and competition the primary threat to bull trout (A. Espinosa, Clearwater National Forest, pers. comm. 1993; D. Johnson, Nez Perce Tribe, pers. comm. 1995). For example, Meadow Creek, a tributary to the North Fork Clearwater River, contained numerous bull trout in 1987 and 1988, but, currently, high numbers of brook trout occur and bull trout numbers have been sharply reduced (Johnson, pers. comm., 1995).

Negative effects of interactions with introduced non-native species may be the most pervasive threat to bull trout throughout the Columbia River basin. Of the 141 subpopulations of bull trout in the Columbia River population segment, approximately 62 percent were threatened by competition, predation, or displacement by non-native species. Often one or more non-native species have been introduced into bull trout habitats; interactions with bull trout are likely exacerbated by factors such as habitat conditions, water temperature, and isolation. The MBTSG concluded that non-native species pose a limitation to bull trout restoration (MBTSG 1995a-e, 1996a-f). The MBTSG is reviewing recommendations for removing or suppressing non-native fishes to benefit bull trout, but success of such an effort on a large scale is questionable (MBTSG 1996h).

Isolation and Habitat Fragmentation

Bull trout are widely distributed over a large geographic area, and exhibit a patchy distribution due, in part, to specific habitat requirements (Rieman and McIntyre 1993). However, the effects of human activities over the past 100 years have resulted in reductions in the overall distribution of bull trout. In general, habitat fragmentation results in reduction in available habitat and increased isolation from conspecifics (Saunders et al. 1991). In studies of extinction in fragmented landscapes, Burkey (1989) concluded that when species are isolated by fragmented habitats, low rates of population growth are typical in each local population (i.e., subpopulations) and their probability of extirpation is directly related to the degree of isolation and fragmentation. Without sufficient immigration, overall growth for subpopulations may be low and the overall probability of extirpation for subpopulations is high (Burkey 1989, 1995). Moreover, habitat fragmentation that isolates subpopulations may increase a species' susceptibility to both demographic and naturally occurring events (Rieman and McIntyre 1993).

Metapopulation concepts of conservation biology theory are applicable to the bull trout (Reiman and McIntyre 1993). A metapopulation is an interacting network of local populations with varying frequencies of migration and gene flow among them (Meffe and Carroll 1994). Subpopulations may be extirpated, but can be reestablished by individuals from other subpopulations. Metapopulations are thought to provide a mechanism for spreading risk because the simultaneous loss of all subpopulations is unlikely. Migratory corridors can also allow individuals access to unoccupied but suitable habitats, foraging areas, and refuges from perturbations (Saunders et al. 1990). Relative to bull trout, maintenance of migratory corridors is essential to provide connectivity among subpopulations thought to be sources and sinks, and enables the reestablishment of extirpated subpopulations. Where migratory bull trout are not present, disjunct subpopulations cannot be replenished when a disturbance makes local habitats unsuitable (Rieman and McIntyre 1993; USDA and USDI 1997). Moreover, limited downstream movement was observed for resident bull trout in the Bitterroot River basin (Nelson 1996) suggesting low probability that extirpated bull trout would be reestablished by resident fish residing nearby. Of the 141 subpopulations in the Columbia River population segment, approximately 79 percent are unlikely to be reestablished if extirpated; and 50 percent are at risk of extirpation from naturally occurring events.

Passage barriers, degraded habitat, absence of migratory fish, and intensified stream perturbations, such as forest fires, floods, and droughts, reduce the ability of isolated bull trout subpopulations to persist following disturbances to streams (Rieman and McIntyre 1993; USDA and USDI 1997). Bull trout evolved with habitat perturbations to streams that were likely factors in shaping bull trout life history (Rieman and McIntyre 1993). Historically, areas suitable for bull trout spawning were likely distributed in a disjunct pattern (Fraley and Shepard 1989; Rieman and McIntyre 1995; USDA and USDI 1997) maintained by natural perturbations. Although the amount and distribution of spawning areas vary through time, sufficient spawning areas were accessible to bull trout to maintain the species (Rieman and McIntyre 1995; USDA and USDI 1997). Migratory bull trout tend to show fidelity to spawning streams, but they have been documented to spawn in different tributaries from one year to the next, including tributaries not previously known to have recent spawning (Ratliff et al. 1996). Thus, migratory bull trout have the ability to reestablish an area where extirpated previously as long as suitable migratory corridors exist (Rieman and McIntyre 1993).

Today, bull trout exhibiting migratory life histories have declined or are absent in many river systems (Bond, 1992; Schill 1992; Ziller 1992; Pratt and Huston 1993; Rieman and McIntyre 1993; Newton and Pribyl 1994; MBTSG 1995a,b; 1996b,c,e; USDA and USDI 1997). Passage barriers (e.g., dams and diversions) and other habitat alterations prevent bull trout migration from following historical patterns. Additionally, suitable spawning areas are more fragmented across the landscape than historically (USDA and USDI 1997). With fewer and more compressed spawning and rearing areas available, bull trout increasingly persist as small, isolated resident populations instead of few, large connected subpopulations (Bond, 1992; Schill 1992; Thomas 1992; Ziller 1992; Rieman and McIntyre 1993, 1995; Rich 1996 Newton and Pribyl 1994; MBTSG 1995a,b; 1996b,c,d,e; USDA and USDI 1997).

As discussed in Factor A, evidence suggests that landscape disturbances, such as floods and fires, have increased in frequency and magnitude of effects within the range of bull trout (Henjum et al. 1994; USDA and USDI 1997). Where recolonization is prevented by passage barriers and suitable habitat, bull trout subpopulations may be extirpated by perturbations (USDA and USDI 1997). Also, isolated subpopulations are typically small, and more likely to be extirpated by local events than larger populations (Rieman and McIntyre 1995). Small populations may be at risk of impaired genetic fitness, as in Gold Creek, Washington (Craig and Wissmar 1993).

An example of the effects of naturally occurring events, such as fire, on bull trout habitat is the Entiat River basin of central Washington. ''Historical and current influences have been significant and include: localized compaction from sheep grazing and trailing; fire exclusion; timber salvage/road building from the early 1970's to present; and recreation. A portion of this (transitional or bull trout) zone has recently been impacted by a large, moderate high

intensity fire'' (Wenatchee National Forest, *in litt.* 1996). This transitional or bull trout zone in the mainstem Entiat River has had a 30 to 60 percent loss of pools since initially surveyed by the U.S. Bureau of Fisheries during 1935 through 1937 (Wenatchee National Forest, *in litt.* 1996). Both bull trout densities and recruitment are depressed in the mainstem Entiat in response to habitat degradation.

Conversely, most bull trout recruitment in the Entiat River basin is now occurring in the transitional zone in the Mad River. Pool frequencies have increased dramatically, 85 percent in one reach surveyed, 1,000 percent in the other, since the 1935 through 1937 surveys (Wenatchee National Forest, *in litt.* 1996). A large fire occurred in the Mad River basin in 1888, and the basin had splash dams and log drives early in this century. It has taken 60 years for the habitat to recover.

Floods or high flows have also been altered by land management (USDA and USDI 1997). Roads and clear cutting forested areas tend to magnify the effects of floods, leading to higher flows, erosion and bedload that scour channels (Furniss et al. 1991; McIntosh et al. 1994; USDA and USDI 1997), and degrade bull trout habitat (Henjum et al. 1994). Erosion from road landslides increases bedload to high stream flows over bedload levels without roads (Furniss et al. 1991). Increased bedload increases the scouring effect of the high water, increasing channel instability, leading to a loss of habitat diversity, especially pools (Henjum et al. 1994; McIntosh et al. 1994). Bull trout eggs and fry in the gravels during the scouring likely survive at lower rates (Henjum et al. 1994). For instance, hundreds of landslides associated with roads on the Clearwater National Forest and Panhandle National Forests (R. Patten and J. Pengkover, Panhandle National Forests, *in litt.* 1996) resulted from high water in 1995, and the effects of flooding on isolated bull trout populations is unknown. Habitat degradation has reduced the number and size of bull trout spawning areas (USDA and USDI 1997).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to bull trout in the Klamath River and Columbia River distinct population segments of bull trout in developing this final rule. Based on this evaluation the preferred action is to list the Klamath River and the Columbia River population segments of bull trout as threatened.

Klamath River Population Segment

Bull trout are currently limited to seven geographically isolated subpopulations that occupy only a fraction of the historical habitat. The species distribution and numbers have declined due to habitat degradation, isolation, loss of migratory corridors, poor water quality, and the introduction of non-native species. Six of seven bull trout subpopulations are small in number, and unlikely to persist over the next 100 years unless conservation and other corrective actions are taken. Remaining Klamath River bull trout subpopulations are threatened by the effects of past, present and future land and water management practices. Most subpopulations also face more than one threat.

Despite the bull trout's current status, the Service is encouraged that recent conservation and recovery actions are being initiated at Federal, State and local levels to begin to reverse the long-term declining trend for bull trout in the Klamath River basin. Progress has already been made toward improving habitat conditions for bull trout. Although the Service proposed the Klamath River population segment as endangered based on the 1994 administrative record, new information indicates that interagency conservation programs are being implemented and have begun to reduce threats to bull trout. Included are efforts of the Klamath Basin Working Group to eradicate brook trout in Long, Sun and Threemile Creeks, reduce livestock grazing along bull trout streams, and monitor watershed conditions and bull trout status. Moreover, bull trout conservation in the Klamath Basin has benefitted from habitat restoration activities of the Upper Klamath Basin Working Group which began in 1994. Habitat improvements derived from these two programs have just begun to be realized. Thus the final determination is to list the Klamath River population of bull trout as threatened because it is no longer in danger of extinction in the foreseeable future and threats have been reduced.

Columbia River Population Segment

Bull trout in the Columbia River basin, despite their relatively widespread distribution, have declined in both their overall range and numbers. Numerous extirpations of local subpopulations have been reported, with bull trout eliminated from areas ranging in size from relatively small tributaries of currently occupied, though fragmented habitat, to large river systems comprising a substantial portion of the species' previous range. Bull trout in the Columbia River population segment are currently limited to 141 isolated subpopulations, which indicates habitat fragmentation and geographic isolation. Many remaining bull trout occur as isolated subpopulations in headwater lakes or tributaries with migratory life histories lost or restricted. Few bull trout subpopulations are considered ''strong'' in terms of relative abundance and subpopulation stability. These remaining important strongholds tend to be found in large areas of contiguous habitats in the Snake River basin of central Idaho Mountains, upper Clark Fork and Flathead rivers in Montana, and the Blue Mountains in Washington and Oregon. The decline of bull trout is due to habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, past fisheries management practices and the introduction of non-native species. Most bull trout subpopulations are affected by one or more threats.

Recent activities to address threats and reverse the long-term decline of bull trout are being initiated at Federal, State and local levels (e.g., restrictive angling regulations, adoption of various land management rules, and development of conservation strategies and plans). While these efforts are important to the long term conservation and recovery of bull trout, threats continue and subpopulation improvement throughout the Columbia River has yet to be demonstrated. Because bull trout in the Columbia River basin are still a wide-ranging species, with some ''strongholds'' in relatively protected areas, the Columbia River population segment is not in immediate danger of extinction. Therefore the Service's final determination is to list the Columbia River population segment of bull trout as threatened.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations 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. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

The Service finds that the designation of critical habitat is not determinable for these distinct population segments based on the best available information. When a ''not determinable'' finding is made, the Service must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. The Service reached a ''not determinable'' critical habitat finding for the proposed rule based on the 1994 administrative record. In the proposed rule the Service specifically requested comments on this issue. While the Service received a number of comments advocating critical habitat designation, none of these comments provided information that added to the Service's ability to determine critical habitat. Additionally, no new information regarding specific physical and biological features essential for bull trout in the Klamath River and Columbia River bull trout population segments was obtained during the open comment period including the five public hearings. The biological needs of bull trout in the two population segments are not sufficiently well known to permit identification of areas as critical habitat. Insufficient information is available on the number of individuals or spawning reaches required to support viable subpopulations throughout the distinct population segment. In addition, the extent of habitat required and specific management measures needed for recovery of these fish have not been identified. This information is considered essential for determining critical habitat for these population segments. Therefore, the Service finds that designation of critical habitat for the Klamath River and the Columbia River population segments is not determinable at this time. Protection of bull trout habitat will be addressed through the recovery process and through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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 the Service.

The Klamath River and Columbia River bull trout population segments occur on lands administered by the USFS and BLM; various State-owned properties in Oregon, Washington, Idaho and Montana; and private lands. Federal agency actions that may require consultation as described in the preceding paragraph include Army Corps of Engineers (Corps) involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344); Federal Energy Regulatory Commission licensed hydropower projects authorized under the Federal Power Act; USFS and BLM timber and grazing management activities; EPA authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

On January 27, 1998, an interagency memorandum between the USFS, BLM and the Service outlined a process for bull trout section 7 conferencing/consultation in recognition of the possibility of an impending listing. The process considers both programmatic actions (e.g., land management plans) and site-specific actions (e.g., timber sales and livestock grazing allotments) and incorporates conferencing/consultation at the watershed level. The process uses a matrix to determine the environmental baseline and the effects of projects on the environmental baseline of bull trout. The goal of this strategy is to complete conferences for all ongoing actions and proposed actions by the effective date of listing through a system of batching and aggregating of projects to the watershed level. A programmatic LRMP/RMP biological assessment would be used to assess ongoing projects for up to 9 months post-listing that result from implementation of Forest Plans/Resource Management Plans as amended in INFISH, PACFISH and the Northwest Forest Plan. The Service would determine in a programmatic biological opinion whether these issues would jeopardize the continued existence of bull trout, and would authorize incidental take. Part of the project description and evaluation process would stipulate that an ongoing project would be completed by May 10, 1999. For projects that are proposed after the initial 9 month post-listing period, the watershed approach, using the bull trout matrix incorporating local watershed biological data, would be project-specific applied in the section 7 process.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to all threatened 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 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 is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been

taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits, authorized under section 10(a)(1) of the Act, may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. 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. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. Private landowners seeking permits under section 10 of the Act for incidental take are a means of protecting bull trout habitat through the voluntary development of habitat conservation plans. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.32.

It is the policy of the Service published in the **Federal Register** on July 1, 1994, (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following actions would not be likely to result in a violation of section 9, provided the activities are carried out in accordance with any existing regulations and permit requirements—

(1) Actions that may affect bull trout in the Klamath and Columbia River basins 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;

(2) Possession of Columbia River basin bull trout caught legally in accordance with authorized State fishing regulations (see Special Rule section);

(3) State, local and other activities that have been approved by the Service through development of Conservation Plans and special rules under section 4(d) and section 6(c)(1) of the Act.

With respect to both the Klamath River and Columbia River bull trout population segments, the following actions likely would be considered a violation of section 9—

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations within the Columbia River bull trout population segment;

(2) To possess, sell, deliver, carry, transport, or ship illegally taken bull trout;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export of bull trout (as discussed in the prohibition discussion earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting bull trout by timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

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. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Supervisor of the Service's Snake River Basin Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503 231–6241; facsimile 503 231–6243).

Special Rule

Section 4(d) of the Act provides authority for the Service to promulgate special rules for threatened species that would relax the prohibition against taking. The Service finds that statewide angling regulations have become more restrictive in an attempt to protect bull trout throughout Idaho, Montana, Nevada, Oregon, and Washington and are adequate to protect the species from excessive taking. The Service intends to continue to work with the States and Tribes in developing management plans and agreements with the objective of recovery and eventual delisting of the Klamath River and Columbia River distinct population segments. This special rule allows for take of bull trout within the Klamath River and Columbia River distinct population segments when it is in accordance with applicable State and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, 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 Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

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. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Office (see Addresses section).

Author(s)

The primary authors of this final rule are: John Bowerman, Klamath Basin Fish and Wildlife Office, Klamath Falls, OR; Timothy Cummings, Columbia River Fisheries Office, Vancouver, WA; Stephen Duke, Snake River Basin Office, Boise, ID; Michael Faler, Idaho Fisheries Resource Office, Ahsahka, ID; Robert Hallock, Upper Columbia River Basin Office, Spokane, WA; Samuel Lohr, Snake River Basin Office, Boise, Idaho; Lori Nordstrom, Helena Field Office, Helena, MT; and Ron Rhew, Oregon State Office, Portland, OR.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below—

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 § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*		*
FISHES							
*	*	*	*		*		*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (Pacific NW), Canada (NW Territories).	Klamath R. (U.S.A.-OR)	T	637	NA	17.44 (v)
Do	do	do	Columbia R. (U.S.A.—ID, MT, OR, WA) mainstem and its tributaries, excluding Jarbidge R., NV, and east of Continental Divide, MT.)	T	637	NA	Do.
*	*	*	*		*		*

3. Amend § 17.44 by adding paragraph (v) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(v) Bull trout (*Salvelinus confluentus*), Columbia River and Klamath River population segments.

(1) Prohibitions. Except as noted in paragraph (v)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout Columbia River and Klamath River population segments within the contiguous United States.

(2) Exceptions. No person shall take this species, except in accordance with applicable State and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on June 10, 1998.

(3) Any violation of applicable State and Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State and Native American Tribal fish and game laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v) (2) through (4) of this section.

Dated: June 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–15319 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 111
Wednesday, June 10, 1998

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

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 97–005–1]

Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment could be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit would also have to meet certain additional requirements, including packaging requirements. We are also proposing to allow durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are proposing to allow certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies. These actions would relieve restrictions on the movement of these fruits from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

DATES: Consideration will be given only to comments received on or before August 10, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–005–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–005–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Phytosanitary Issues Management Team (PIMT), PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. Regulation is necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the Malaysian fruit fly (*Bactrocera latifrons*). These types of fruit flies are collectively referred to in this document as ''fruit flies.''

Abiu, Atemoya, Longan, Rambutan, and Sapodilla

The regulations at § 318.13–4f allow fruits and vegetables listed in § 318.13–4f(a) to be moved interstate from Hawaii if, among other things, the fruits and vegetables undergo irradiation treatment in accordance with that section. Currently, § 318.13–4f(a) lists carambola, litchi, and papaya. We are proposing to allow abiu (*Pouteria caimito*), atemoya (*Annona squamosa* x *A. cherimola*), longan (*Dimocarpus longan*), rambutan (*Nephelium lappaceum*), and sapodilla (*Manilkara sapota*) to be moved interstate from Hawaii in accordance with these same requirements for irradiation. These fruits would be added to the list in § 318.13–4f(a).

Section 318.13–4f provides that:

1. Irradiation treatment must be carried out only in Hawaii or in non-fruit-fly supporting areas of the mainland United States (i.e., States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia);

2. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service (APHIS);

3. In order to be approved, a facility must be capable of administering a minimum absorbed ionizing radiation dose of 250 Gray (25 krad), be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, complete a compliance agreement with APHIS, and be certified by Plant Protection and Quarantine, APHIS, for initial use and annually for subsequent use;

4. Irradiation treatment must be monitored by an inspector, who may be either an APHIS employee or a State plant regulatory official;

5. If treated in Hawaii, the fruits and vegetables must be packaged in pest-proof cartons. Then, the pallet-load of pest-proof cartons must be wrapped, before leaving the irradiation facility, in one of the following ways: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap. In addition, pallet-loads must be labeled before leaving the irradiation facility with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment;

6. If moving to the mainland for treatment, the untreated fruits and vegetables may be packed in either pest-proof or non-pest-proof cartons, but the cartons must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened;

7. The fruits and vegetables must receive a minimum absorbed ionizing irradiation dose of 250 Gray (25 krad);

8. Dosimetry systems in the irradiation facility must map, control, and record the absorbed dose;

9. The absorbed dose must be measured by a dosimeter that can accurately measure an absorbed dose of 250 Gray (25 krad);

10. The number and placement of dosimeters must be in accordance with American Society for Testing and Materials standards;

11. The irradiation facility must keep records or invoices for each treatment

lot for a period that exceeds the shelf life of the irradiated food product by 1 year and must make those records available to an inspector for inspection; and

12. An inspector will issue a certificate for the interstate movement of fruits and vegetables treated and handled in Hawaii in accordance with the regulations at § 318.13–4f. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the mainland United States.

Section 318.37–4f(d) sets forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Section 318.13–4f(e) further provides that the U.S. Department of Agriculture and its inspectors are not responsible for any loss or damage resulting from any treatment prescribed or supervised.

In addition, we are proposing to prohibit the movement of treated and untreated longan from Hawaii into Florida. We have determined that irradiation treatment may not affect one of the pests that may be carried by longan. Like litchi, longan is a host of the litchi rust mite (*Eriphyes litchi*), and this pest cannot be easily detected by an inspector. Therefore, the entry of longan from Hawaii into Florida, where most mainland litchi is grown, would be prohibited as a precaution against the possible introduction of litchi rust mite. Accordingly, § 318.13–4f(b)(4)(iii) would be amended to state that cartons in which longan from Hawaii are packed must be stamped ''Not for importation into or distribution in FL.''

We believe that the proposed requirements described above would be sufficient to allow the safe interstate movement of abiu, atemoya, longan, rambutan, and sapodilla from Hawaii to the mainland United States.

Durian

We are also proposing to allow durian (*Dirio zibethinus*) to be moved interstate from Hawaii if it is inspected and found free of plant pests. Durian is not a fruit fly host. The pests associated with durian produced in Hawaii [1] are readily detectable by inspection. Section 318.13–4 provides that fruits and vegetables listed in § 318.13–2(b) of the regulations may be certified for interstate movement from Hawaii when they have been inspected by an inspector and found apparently free from infestation and infection. We would add durian to the list of fruits and vegetables in § 318.13–2(b).

Green Bananas

We are proposing to add a new § 318.13–4i to the regulations to provide for the interstate movement of green bananas (*Musa* spp.) of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' from Hawaii. Ripe, yellow bananas are a host of fruit flies, and may not be moved interstate from Hawaii. However, we have determined that green bananas of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' from Hawaii are only fruit fly hosts if they have any of the following defects: Prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process). Any of the defects listed may attract fruit flies and provide a pathway for infestation. Therefore, we are proposing to allow green bananas of the varieties named above to be moved interstate from Hawaii under the following conditions, which would ensure that the bananas are free from fruit flies and other pests:

1. The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

2. No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

3. The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: Prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

4. The bananas must be packaged in a pest-proof shipping container or carton.

An inspector would issue a certificate, in accordance with §§ 318.13–3 and 318.13–4, for the interstate movement of green bananas that meet these conditions.

We believe that the conditions described above for the interstate movement of green bananas from Hawaii would provide protection against the spread of injurious plant pests that may be associated with the green bananas to other parts of the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to allow abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment could be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit would also have to meet certain additional requirements, including packaging requirements. We are also proposing to allow durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are proposing to allow certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies.

The mainland United States has very limited, if any, quantities of abiu, atemoya, durian, longan, rambutan, and sapodilla for sale to consumers. Three of these specialty fruits—abiu, durian, and rambutan—are not grown commercially on the mainland United States; atemoya, longan, and sapodilla are grown commercially on the mainland United States but only in relatively small quantities. All mainland production of atemoya, longan, and sapodilla occurs in the State of Florida. It is estimated that Florida's annual production of atemoya amounts to approximately 80,000 pounds; of longan, approximately 2 million pounds; of sapodilla, approximately 350,000 pounds.

Unlike the other fruits listed in this document, bananas are generally not considered to be specialty fruits. Also unlike the other fruits, the mainland United States has abundant quantities of bananas, including green bananas, for sale to consumers. However, virtually all bananas sold in the United States are imported. Less than 1 percent of the U.S. supply of bananas is produced domestically, and only a minuscule portion of domestic production occurs on the mainland United States, in Florida and California. In 1992, Florida produced 158,662 pounds of bananas. Production data for California is not available, but production in California is estimated to be much less than in

[1] Information on the pests that may be associated with the interstate movement of durian, green bananas, or any other fruit listed in this document, may be found in the pest risk analyses prepared for this action. Those pest risk analyses may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

Florida, given that in 1992 there were only 2 banana-producing farms in California and 67 in Florida. Hawaii accounted for the remainder of domestic banana production in 1992, with a total of 12,570,831 pounds. Based on data for 1992, therefore, Hawaii accounts for nearly all of the banana production in the United States.

It is estimated that there are less than 100 farms growing tropical specialty fruits in Florida, and virtually all of these farms are located in the southern part of the State. Information is not available on the gross receipts for each of these farms, but since the farms are generally less than 5 acres in size, it is reasonable to assume that most are small entities under Small Business Administration (SBA) standards. We do not expect the interstate movement of abiu, atemoya, durian, longan, rambutan, and sapodilla to affect these fruit producers for several reasons. First, as discussed earlier, three of the six specialty fruits are not grown commercially on the mainland United States. Second, the demand for the remaining three specialty fruits that are produced in Florida is strong, particularly among Asian Americans on the mainland United States. Florida currently has no difficulty selling all of the atemoya, longan, and sapodilla that it produces. Third, Hawaiian fruit would likely be marketed primarily in western States on the mainland while Florida's fruits are sold primarily in eastern States. Therefore, Hawaii's specialty fruits would likely be in little direct competition with Florida's specialty fruits.

As discussed above, in 1992, 67 farms in Florida and 2 farms in California produced bananas. Like the specialty fruit growers, most banana-producing farms in Florida and California are assumed to be small entities under SBA standards. However, any interstate movement of green bananas from Hawaii should have little or no impact on banana producers on the mainland United States. This is due to the relatively small volume of bananas that may be moved interstate from Hawaii. Even in the unlikely event that Hawaii moves all of its production interstate, Hawaii's bananas would still account for less than 1 percent of the mainland U.S. supply.

We expect that fruit growers in Hawaii would benefit from the interstate movement of abiu, atemoya, durian, green bananas, longan, rambutan, and sapodilla from Hawaii because these growers would have new outlets for their products. In 1995, the State of Hawaii produced 1,250,800 pounds of specialty tropical fruit (of all varieties) with a value of $987,100. Three varieties of fruit—carambola, litchi, and specialty pineapple—accounted for 74 percent of Hawaii's 1995 production. The remaining 26 percent, or approximately 325,000 pounds of fruit, consisted of all other varieties of fruit grown in Hawaii, including the six specialty fruits named in this document. Also, in 1992, Hawaii produced 12,570,831 pounds of bananas, with a value of $5.2 million.

In 1995, 115 farms in the State of Hawaii grew at least one variety of specialty tropical fruit. However, information on which of those farms grew one or more of the six specialty fruits named in this document is not available. Information is also not available on the gross receipts for each of the 115 farms. In all likelihood, most of the 115 farms are small entities because data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards.

The production of tropical specialty fruit is growing rapidly in Hawaii. The State's 1995 production level represents an increase of approximately 126 percent, or 698,100 pounds, over the 1994 level of 552,700 pounds. Carambola and specialty pineapple accounted for more than 80 percent of the increase. The increase in production of tropical specialty fruit is expected to continue, as a response to the decline in the sugar industry and to the recent availability of prime agricultural lands in the State of Hawaii. In 1995, Hawaiian growers devoted 415 acres to tropical specialty fruits, 6 percent more acreage than in 1994. It is estimated that by the year 2000, Hawaii will be producing 2.6 million pounds of tropical specialty fruits annually, more than double the 1995 level. If Hawaiian growers move 200,000 pounds of each of the six specialty fruits named in this document interstate annually, using the 1995 average per pound value of all tropical specialty fruits produced in Hawaii (on all 115 farms) of $.79, the collective annual sales of the fruit would generate $948,000. This amounts to $8,243 per farm when divided equally among the 115 farms growing specialty tropical fruit.

In 1992, bananas were produced on 700 farms in Hawaii, and a total of 1,506 acres were devoted to banana production on those farms. Although data for individual farms in Hawaii that produce bananas is not available, most are probably small entities by SBA standards because, as mentioned earlier, data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards. However, if the proposal is adopted, it would not have a significant impact on Hawaiian banana producers. Even if those producers were to move interstate the equivalent of half of the 1992 banana production (6.3 million pounds), the combined revenues from such sales would amount to $2.6 million dollars, an average of only $3,681 per farm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–005–1. Please send a copy of your comments to: (1) Docket No. 97–005–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Comments on the information collection or recordkeeping requirements included in this proposed rule are due 60 days from the proposed rule's date of publication in the **Federal Register**. A comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow abiu, atemoya, longan, rambutan, and sapodilla to move interstate from Hawaii to the mainland United States if, among other things, the fruit undergoes irradiation treatment in Hawaii or in a non-fruit fly supporting area of the mainland United States. In addition, we are proposing to allow durian and green bananas to move interstate from Hawaii under certain conditions. In order for these fruits to move interstate to the mainland United States, we would have to issue certificates and limited permits, and we would have to mark and seal shipping containers. These information collection activities would help ensure that only those fruits that have been handled in compliance with the regulations move interstate to the mainland United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .2550 hours per response.

Respondents: Importers, exporters, shippers, and irradiation facility operators.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 255.2.

Estimated annual number of responses: 2,552.

Estimated total annual burden on respondents: 651 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, Washington, DC 20250.

List of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, 7 CFR part 318 would be amended as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 318.13–2 [Amended]

2. In § 318.13–2, paragraph (b), the list of fruits and vegetables would be amended by adding, in alphabetical order, ''Durian (*Dirio zibethinus*).''

3. In § 318.13–4f, paragraphs (a) and (b)(4)(iii) would be revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla.

(b) * * *

(4) * * *

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped ''Not for importation into or distribution in FL.''

* * * * *

4. A new § 318.13–4i would be added to read as follows:

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa spp.*) of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian'' may be moved interstate from Hawaii with a certificate issued in accordance with §§ 318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

(a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

(b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

(c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

(d) The bananas must be packaged for interstate movement in a pest-proof shipping container or carton.

Done in Washington, DC, this 4th day of June 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15403 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Austin-Bergstrom International Airport Class C Airspace Area; Revocation of the Austin-Bergstrom International Airport Class D Airspace Area; and Revocation of the Robert Mueller Municipal Airport Class C Airspace Area, TX; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Informal airspace meetings.

SUMMARY: This document announces three fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties the opportunity to present views, recommendations, and comments on the proposal to establish a Class C airspace area for the Austin-Bergstrom International Airport; revoke the Austin-Bergstrom International Airport Class D airspace area; and revoke the Robert Mueller Municipal Airport Class C airspace area, TX.

DATES: The informal airspace meetings will be held on Tuesday, August 11, Wednesday, August 12, and Thursday, August 13, 1998, starting at 7:30 p.m. Comments must be received on or before October 1, 1998.

ADDRESSES: *Meetings:* On August 11, 1998, the meeting will be at the Georgetown Community Center, San Gabriel Park, Georgetown, TX. On August 12, 1998, the meeting will be at the New Airport Project Team Auditorium, 2716 Terminal Drive, Austin-

Bergstrom International Airport, Austin, TX. On August 13, 1998, the meeting will be at the Central Texas Wing CAF Hangar, 1841 Airport Drive, San Marcos Airport, San Marcos, TX.

Comments: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Federal Aviation Administration, 601 Meacham Boulevard, Fort Worth, TX 76137.

FOR FURTHER INFORMATION CONTACT: James Karanian, Air Traffic Division, ASW–500, FAA, Southwest Regional Office, telephone (817) 222–5594.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meetings:

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Southwest Region. Representatives from the FAA will present a formal briefing on the proposed establishment of a Class C airspace area and revocation of the current Class D airspace area at Austin-Bergstrom International Airport; the revocation of the Robert Mueller Municipal Airport Class C airspace area; and proposed changes to the airway and routes associated with the establishment of a new navigational aid, CENTEX VORTAC.

(b) Each participant will be given an opportunity to deliver comments or make a presentation at the meeting.

(c) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(d) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(e) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

Agenda for the Meetings

Opening Remarks and Discussion of Meeting Procedures
Briefing on the Background for Proposals
Public Presentations and Comments
Closing Comments.

Issued in Washington, DC, on May 29, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15312 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–18]

Proposed Realignment of Federal Airways and Jet Routes; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign three jet routes and eight Federal airways in the Austin, TX, area. The FAA is proposing this action due to the decommissioning of the Austin Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the installation of the Centex VORTAC, which will be located approximately 10.5 nautical miles (NM) to the northeast of the present location of the Austin VORTAC. This proposal would realign the affected jet routes and Federal airways from the Austin VORTAC to the Centex VORTAC. The FAA is taking this action in support of a plan to transfer airport operations from the Austin Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport.

DATES: Comments must be received on or before July 29, 1998.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 97–ASW–18, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

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

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ASW–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As part of the relocation of airport operations from the Austin Robert Mueller Municipal Airport to the

Austin-Bergstrom International Airport, the Austin VORTAC will be decommissioned. This relocation will affect the current Austin Robert Mueller Class C airspace area, and realign the affected jet routes and Federal airways from the Austin VORTAC to the new Centex VORTAC, approximately 10.5 NM to the northeast of the present location of the Austin VORTAC.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign three jet routes and eight Federal airways due to the decommissioning of the Austin VORTAC, and the installation of the Centex VORTAC. The Centex VORTAC will be located approximately 10.5 NM northeast of the present location of the Austin VORTAC. Specifically, J–21, J–25, J–86, V–17, V–76, V–306, V–550, V–558, V–565, V–574, and V–583 would be realigned from the Austin VORTAC to the Centex VORTAC. The FAA is taking this action in support of a plan to close the Austin Robert Mueller Municipal Airport and transfer airport operations to the Austin-Bergstrom International Airport.

Jet routes and VOR Federal airways are published in Sections 2004 and 6010(a), respectively, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet routes and airways listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

1.The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–21 [Revised]

From the INT of the United States/Mexican Border and the Laredo, TX, 172° radial via Laredo; San Antonio, TX; Centex, TX; Waco, TX; Ranger, TX; Ardmore, OK; Will Rogers, OK; Wichita, KS; Omaha, NE; Gopher, MN; to Duluth, MN.

* * * * *

J–25 [Revised]

From Matamoras, Mexico, via Brownsville, TX; INT of the Brownsville 358° and the Corpus Christi, TX, 178° radials; Corpus Christi; INT of the Corpus Christi 311° and the San Antonio, TX, 167° radials; San Antonio; Centex, TX; Waco, TX; Ranger, TX; Tulsa, OK; Kansas City, MO; Des Moines, IA; Mason City, IA; Gopher, MN; Brainerd, MN; to Winnipeg, MB, Canada. The airspace within Canada is excluded. The airspace within Mexico is excluded.

* * * * *

J–86 [Revised]

From Beatty, NV; INT Beatty 131° and Boulder City, NV, 284° radials; Boulder City; Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Humble, TX; Leeville, LA; INT Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT Sarasota 103° and La Belle, FL, 313° radials; La Belle; to Dolphin, FL.

* * * * *

Paragraph 6010 VOR Federal Airways

* * * * *

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio, TX; Centex, TX; Waco, TX; Glen Rose, TX; Milsap, TX; Bowie, TX; Duncan, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

* * * * *

V–76 [Revised]

From Lubbock, TX, via INT Lubbock 188° and Big Spring, TX, 286° radials; Big Spring; San Angelo; Llano, TX; Centex, TX; Industry, TX; INT Industry 101° and Hobby, TX, 290° radials; to Hobby.

* * * * *

V–306 [Revised]

From Junction, TX, via Centex, TX; Navasota, TX; INT Navasota 084° and Daisetta, TX, 283° radials; Daisetta; to Lake Charles, LA.

* * * * *

V–550 [Revised]

From Cotulla, TX, via INT Cotulla 046° and San Antonio, TX, 183° radials; San Antonio; INT San Antonio 032°T(026°M) and Centex, TX, 243°T(237°M) radials; Centex, TX.

* * * * *

V–558 [Revised]

From Llano, TX; via INT Llano 088°T(082°T) and Centex, TX, 306°T(300°M) radials; Centex; Industry, TX; Eagle Lake, TX; to Hobby, TX.

* * * * *

V–565 [Revised]

From Llano, TX, via INT Llano 128°T(122°M) and Centex, TX, 277°T(271°M) radials; Centex; College Station, TX; to Lufkin, TX.

* * * * *

V–574 [Revised]

From Centex, TX; INT Centex 116°T(110°M) and Navasota, TX, 258°T(252°M) radials; Navasota; Humble, TX; Daisetta, TX; Beaumont, TX; to Lake Charles, LA.

* * * * *

V–583 [Revised]

From Centex, TX; INT Centex 061°T(055°M) and College Station, TX, 273°T(267°M) radials; College Station; Leona, TX; Frankston, TX; Quitman, TX; Paris, TX; to McAlester, OK.

* * * * *

Issued in Washington, DC, on June 2, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–15311 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE65

Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria

AGENCY: Social Security Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 11, 1998, the Social Security Administration (SSA) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (63 FR 11854), that would delete the ''Obesity'' listing from the Listing of Impairments SSA uses to adjudicate claims for disability involving obesity under titles II and XVI of the Social Security Act (the Act) when we evaluate claims of individuals at step 3 of our sequential evaluation process. A 60-day period within which to comment on the NPRM was provided. To allow the public additional time to send us comments, we are extending the comment period.

DATES: To be sure that your comments are considered, we must receive them no later than July 13, 1998.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'', or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–5121 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: On March 11, 1998 (63 FR 11854), we published ''Revised Medical Criteria for Determination of Disability, Endocrine System and Related Criteria'' as an NPRM. This NPRM would delete the ''Obesity'' listing from the Listing of Impairments we use to adjudicate claims for disability involving obesity under titles II and XVI of the Act when we evaluate claims of individuals at step 3 of our sequential evaluation process. We provided a comment period ending May 11, 1998. We have received a number of requests to extend the comment period. This factor, and the significance of the proposed rule, make it appropriate to extend the comment period through July 13, 1998.

Dated: June 3, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–15486 Filed 6–9–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–98–003]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, Southeast of Narrow Cape, Kodiak Island, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeenth Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or his on scene representative. The intended affect of the proposed safety zone is to ensure the safety of human life and property during the rocket launch.

DATES: Comments must be received on or before July 10, 1998. The proposed safety zone is intended to become effective at 6 a.m. on September 1, 1998, and terminate at 10 p.m. on September 10, 1998.

ADDRESSES: Address all comments concerning this proposal rule to LCDR Rick Rodriguez, Chief of Port Operations, Coast Guard Captain of the Port Western Alaska, 510 L Street, Suite 100, Anchorage, Alaska, 99501.

FOR FURTHER INFORMATION CONTACT: LCDR Rick Rodriguez at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Alaska Aerospace Development Corporation (AADC), in conjunction with the United States Air Force, will be launching unmanned rockets from their facility at Narrow Cape, Kodiak Island, Alaska beginning in September 1998. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The launch time is scheduled to take place sometime between September 1, 1998 and September 10, 1998. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 4 hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

The Coast Guard only recently became aware of the shape and extent of a potential debris path in the unlikely event that a launch is aborted. This information was needed to determine the size and shape of the safety zone protect people and vessels in the vicinity of the launch. Publication of a notice of proposed rulemaking within the usual ninety (90) day comment period is impracticable. A thirty (30) day comment period comment is justified to ensure that a safety zone is in place to protect the safety of human life and property in the trajectory path. The thirty (30) day comment period is also justified because vessel traffic is usually sparse within the safety zone and few comments are expected.

Discussion of the Regulation

The proposed safety zone would include an area approximately 57 square nautical miles in the Gulf of Alaska, southeast of Narrow cape, Kodiak Island, Alaska. Specifically, the proposed zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57°29.7′ North, 152°18.9′ West, thence southeast to a point located by 57°22.3′ North, 152°07.7′ West, thence southwest to a point located at 57°18.5′ North, 152°16.3′ West, and thence northwest to a point located at 57°26.0′ North, 152°27.7′ West, and thence northeast to the point located at 57°29.7′ North, 152°18.9′ West. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Alaskan Aerospace rocket. The proposed safety zone is intended to becomes effective at 6 a.m. on September 1, 1998, and terminate at 10 p.m. on September 10, 1998.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water). Reporting and record keeping requirements, Security measures, Vessels, Waterways.

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

PART 165—AMENDED

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.401–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–003 to read as follows:

§ 165.T17–003 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island safety zones.

(a) *Description.* This safety zone includes an area approximately 57 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located 57°29.7′ North, 152°18.9′ West, thence southeast to a point located at 57°22.3′ North, 152°07.7′ West, thence southwest to a point located at 57°18.5′ North, 152°16.3′ West, and then northwest to a point located at 57°26.0′ North, 152°27.7′ West, and thence northeast to the point located at 57°29.7′ North, 152°18.9′ West. All coordinates reference Datum: NAD 1983.

(b) *Effective Dates.* This proposed regulation would become effective at 6 a.m. on September 1, 1998, and terminates at 10 p.m. on September 10, 1998.

(c) *Regulations.* (1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700 or on VHF marine channel 16.

(2) The Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in § 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, or his on scene representative. The Captain of the Port, Western Alaska, or his on scene representative may be contacted onboard the U.S. Coast Guard cutter in the vicinity of Narrow Cape via VHF marine channel 16.

Dated: June 1, 1998.

E.P. Thompson,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 98–15423 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6106–5]

Approval of Colorado's Petition to Relax the Federal Gasoline Reid Vapor Pressure Volatility Standard for 1998, 1999, and 2000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to approve the State of Colorado's January 21, 1998, petition to relax the Reid Vapor Pressure (RVP) standard that applies to gasoline introduced into commerce in the Denver-Boulder area from June 1 to September 15. The Agency proposes to approve a relaxation of the federal RVP standard for this area from 7.8 pounds per square inch (psi) to 9.0 psi for the years 1998, 1999, and 2000, as an amendment to EPA's gasoline volatility regulations. In the final rules section of this **Federal Register**, the EPA is promulgating this amendment as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this action is set forth in the direct final rule. If no relevant adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all relevant comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rulemaking.

DATES: Comments on this proposed rule must be received in writing by July 10, 1998.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–98–04 by EPA. The docket is located at the Docket Office of the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, Room M–1500 in Waterside Mall and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket CO–RVP–98 has been established at U. S. Environmental Protection Agency Region VIII, 999 18th Street, Suite 500, Denver, CO, 80202–2466, and is available for inspection during normal working hours. Interested persons wishing to examine the documents in this docket should make

an appointment with the appropriate contact at least 24 hours before the visiting day. Contact Scott P. Lee at (303) 312–6736. As provided in 40 CFR part 2, a reasonable fee may be charged for copying docket material. Comments should be submitted (in duplicate if possible) to the dockets listed above, with a copy forwarded to Marilyn Winstead McCall, U. S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW. (Mail Code: 6406J), Washington, D. C. 20460.

FOR FURTHER INFORMATION CONTACT: Marilyn Winstead McCall at (202) 564–9029.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Effective Date

The direct final rule will become effective on July 27, 1998 without further notification unless the Agency receives relevant adverse comments on this proposed rulemaking within 30 days of this document. Should the Agency receive such comments, it will publish a document informing the public that the rule did not take effect. All relevant public comments received within the 30-day comment period will then be addressed in a subsequent final rule based on this proposal. No second comment period on this rule will be instituted.

B. Environmental Impact

This proposed amendment is not expected to have any adverse environmental effects. The Denver-Boulder six-county area has met the 1-hour NAAQS for ozone since 1987. Current air quality is expected to be further maintained by a 9.0 psi RVP gasoline standard.

C. Economic Impact

The proposed continued relaxation of the 7.8 psi RVP gasoline standard to 9.0 psi will avoid a cost increase in gasoline supply levels in the Denver-Boulder area. No new economic burdens will be placed on the local refining industry to implement a change in the RVP standard.

D. Executive Order 12866

Under Executive Order 12866,[1] the Agency must determine whether a 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 proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Specifically, this proposed rule will not have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. In fact, as discussed elsewhere, this proposed action will reduce the cost of compliance with Federal requirements in this area.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from ten or more non-Federal respondents. This proposed rule does not create any new information requirements or contain any new information collection activities.

F. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the overall impact of this proposed rule is a net decrease in requirements on all entities including small entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with the law.

The Agency has determined that this proposed rule does not include a federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule reduces costs to such entities by relaxing a regulatory requirement. Because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

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 August 10, 1998. Filing a petition for reconsideration by the Administrator of the final rule does not affect the finality of the rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must 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).)

I. Electronic Copies of Rulemaking

A copy of this proposed action is available on the Internet at www.epa.gov/OMSWWW under the title: ''Relaxation of Federal Gasoline RVP Standard in Denver-Boulder Metropolitan Area.''

[1] 58 *FR* 51735 (October 4, 1993).

J. Statutory Authority

The statutory authority for the action proposed in this notice today is granted to EPA by sections 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7545 and 7601(a)).

K. Children's Health Protection

This proposed 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 does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 28, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–15450 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 98–76; FCC 98–100]

Proposed Rules To Further Ensure That Scanning Receivers Do Not Receive Cellular Radio Signals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Notice of Proposed Rule Making* (NPRM) the Commission proposes to amend the rules to further prevent scanning receivers from receiving cellular radio telephone signals. The Commission seeks comment on the proposed rule changes.

DATES: Comments must be filed on or before July 10, 1998, and reply comments must be filed July 27, 1998. Interested parties wishing to comment on the information collections should submit comments July 10, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of Secretary, Federal Communications Commission, Washington DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington DC 20554, or via electronic mail to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Rodney P. Conway (202) 418–2904 or Hugh Van Tuyl (202) 418–7506. Via electronic mail: rconway@fcc.gov or hvantuyl@fcc.gov, Office of Engineering and Technology, Federal Communications Commission. For additional information concerning the information collections, or copies of the information collections contained in this NPRM contact Judy Boley at (202) 418–0217, or via electronic mail at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, ET Docket 98–76, FCC 98–100, adopted May 21, 1998, and released June 3, 1998.

This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

A full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, phone (202) 857–3800, facsimile (202) 857–3805, 1231 20th Street, N.W. Washington DC 20036.

Summary of the NPRM

1. The NPRM contains proposed rules that are needed to improve and strengthen the Commission's regulations prohibiting scanning receivers from tuning frequencies allocated to the cellular radio telephone service (Cellular Service). The NPRM proposes to adopt a signal rejection requirement to prevent scanning receivers from intercepting Cellular Service transmissions when they are ''tuned'' to frequencies outside the Cellular Service.

2. In addition, the NPRM proposes specific design requirements to make it more difficult to modify scanning receivers to receive Cellular Service transmissions.

3. Moreover, the NPRM seeks comment on changing the definition of a scanning receiver to include receivers that automatically tune among less than four frequencies.

4. Further, the NPRM proposes a definition for test equipment and seeks to prohibit kits that when assembled would be capable of receiving and decoding Cellular Service transmissions.

5. Moreover, the NPRM also proposes rules to codify the provisions of section 705 of the Communications Act that prohibit any person or persons from knowingly intercepting and divulging the content of transmissions from the Cellular Service frequency bands. This proposed prohibition will not apply to receivers used in the Cellular Service. The NPRM proposes to implement these requirements for scanning receivers manufactured and imported into the United States 90 days after adoption of the final rules.

Initial Regulatory Flexibility Analysis

6. Need for and Objective of the Rules. This NPRM is initiated to obtain comments regarding the proposed rules which seek to further ensure that scanning receivers do not receive signals from the cellular radiotelephone frequency bands.

7. Legal Basis. The proposed action is authorized under sections 4(j), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

8. Reporting, Recordkeeping and Other Compliance Requirements. We propose to establish rules that would require scanning receivers to be manufactured to reduce the possibility of receiving signals from the cellular telephone frequency bands. The proposed rules will require design details and test measurements to be reported to the Commission as part of the normal equipment authorization process under our certification procedure.

9. Federal Rules Which Overlap, Duplicate or Conflict With These Rules. None.

10. Description, Potential Impact and Number of Small Entities Involved. For purposes of this NPRM, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[1] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria

[1] See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

established by the Small Business Administration (''SBA'').[2]

The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees on order to qualify as a small business concern.[3] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[4] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms will manufacture unlicensed communications devices. However, we believe that many of them may qualify as small entities.

11. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives. None.

List of Subjects 47 CFR Parts 2 and 15

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15393 Filed 6–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 68

[GEN Docket No. 98–68; FCC 98–92]

Streamlining the Equipment Authorization Process; Implementation of Mutual Recognition Agreements and the GMPCS MOU

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing to amend the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. It is also proposing rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC) and to allow for similar agreements with other foreign trade parties. These actions are intended to eliminate the need for manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. The Commission is also proposing an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS–MOU Arrangements. That action would benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

DATES: Comments are due July 27, 1998, reply comments are due August 10, 1998.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, (202) 418–7506 or Julius P. Knapp, (202) 418–2468, Office of Engineering and Technology. For part 68 specific questions, contact Geraldine Matise, (202) 418–2320 or Vincent M. Paladini, (202) 418–2332, Common Carrier Bureau. For part 25 specific questions, contact Tracey Weisler at 202–418–0744.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, GEN Docket 98–68, FCC 98–92, adopted May 14, 1998, and released May 18, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Notice of Proposed Rule Making

1. The Commission proposes to further streamline its part 2 equipment authorization program and to commence streamlining of part 68 of its rules in order to enable designated private parties to certify and register equipment. The Commission also proposes modifications to parts 2 and 68 of its rules to implement the Mutual Recognition Agreement between the United States and the European Community (US/EC MRA) and to prepare for future mutual recognition agreements that the United States may enter into. The US/EC MRA serves the interests of the United States by promoting trade and competition in the provision of telecommunications products and increasing access to EC markets by reducing the costs, delays, and other burdens upon manufacturers seeking to have their products approved for sale in the EC. The Commission also proposes to approve terminals used in the GMPCS service prior to domestic implementation of the GMPCS–MoU Arrangements.

Part 2 Authorization Program Streamlining

2. In the *Report and Order* (''Order'') in ET Docket No. 97–94, adopted April 2, 1998, and released, April 16, 1998, the Commission took several important steps to reduce the burden of the part 2 equipment authorization program. Those actions simplified the equipment authorization rules, thus making it easier to understand and comply with the rules. Many types of equipment that previously required Commission approval were shifted to manufacturer self-approval, thereby eliminating delays in bringing products to the market. Finally, the FCC equipment authorization process was streamlined by implementing an electronic filing system for applications.

3. While manufacturer self-approval is appropriate for many types of products, certain products require closer oversight due to such factors as a high risk of noncompliance, the potential to create significant interference to safety and other communications services, and the need to ensure compliance with requirements to protect against radio frequency exposure. Products that currently require FCC certification include mobile radio transmitters, unlicensed radio transmitters and scanning receivers. The Commission is not proposing any further relaxations of the certification requirements for various equipment at this time. It requests comments on these conclusions. The Commission notes, however, that in 1996 Congress gave it explicit authority to authorize the use of private organizations for testing and certifying equipment. See 47 U.S.C. 302(e). The Commission believes that it would be beneficial to exercise this authority by allowing parties other than the Commission to certify equipment. Allowing parties other than the Commission to certify equipment would provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission. Further, by providing for other product certifiers, manufacturers would have the option of obtaining certification from a facility in a more convenient location. An additional benefit of allowing other parties to certify equipment would be a

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[2] See 15 U.S.C. 632.

[3] See 13 CFR 121.201, (SIC) Code 3663.

[4] See U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

reduction in the number of applications filed with the Commission. This would enable the Commission to redirect resources to enforcement of the rules. Finally, allowing equipment to be certified by parties located in other countries is an essential and necessary step for concluding mutual recognition agreements, as discussed further below. In light of these considerations, the Commission is proposing to allow private organizations to certify equipment as an alternative to certification by the Commission. The Commission will refer to these organizations as ''Telecommunication Certification Bodies'', or TCBs, since their purpose will be to grant certification to telecommunication equipment.

4. *Qualification Criteria for TCBs.* The Commission believes that it is important to establish appropriate qualification criteria for Telecommunication Certification Bodies to ensure that the equipment they certify complies with the Commission's rules. The Commission notes that section 302(e) of the Communications Act gives it authority to establish qualifications and standards for private organizations that may be authorized to certify equipment. The Commission observes that an international standard already exists that establishes appropriate qualifications for product certifiers: the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) Guide 65 (1996), *General requirements for bodies operating product certification systems.* ISO/IEC Guide 65 requires that product certifiers must:

- Be impartial.
- Be responsible for their decisions.
- Have a quality system.
- Have personnel with knowledge and experience relating to the type of work performed.
- Document the certification system.
- Maintain records of approvals.
- Conduct internal audits.
- Perform post-market surveillance.

Further requirements and details are included in the standard. The Commission tentatively concludes that for the purposes of part 2 of the Commission's rules, ISO/IEC Guide 65 provides appropriate qualification criteria for TCBs. Further, the Commission notes that ISO/IEC Guide 65 is expected to be used as the primary qualification criteria for TCBs under mutual recognition agreements, so use of this document for domestic purposes will facilitate acceptance of U.S. certifications internationally and thereby promote U.S. trade abroad. The Commission invites comment on its proposal to use ISO/IEC Guide 65 as the qualification criteria for TCBs.

5. In addition to the general requirements of ISO/IEC Guide 65, the Commission believes certain additional specific requirements are appropriate to qualify as a TCB. The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof. The Commission also believes that the telecommunication certification body should have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories,* to demonstrate it is competent to perform such tests. The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. Finally, the Commission will require TCBs to make a commitment to participate in any consultative activities identified by the Commission to establish a common understanding and interpretation of applicable regulations. The Commission invites comments on these proposals and whether any additional requirements may be appropriate.

6. *Procedure for Designating TCBs.* To show compliance with the Commission's qualification criteria, the Commission is proposing to require that parties desiring to be TCBs be evaluated and approved by the National Institute of Standards and Technology under its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. The Commission proposes to designate as a TCB any organization that is accredited by NIST under the NVCASE program, and will publish a list of all designated TCBs. The Commission invites comments as to any concerns about requiring accreditation by NIST, particularly regarding cost issues. An alternative to requiring NVCASE accreditation would be for the Commission to establish and administer its own program for designating TCBs. Comments are invited on this alternative.

7. The Commission understands that under the NVCASE program a TCB's accreditation may be suspended or revoked for just cause. The Commission invites comment regarding enforcement and monitoring of TCB standards and performance. The Commission also invites comment as to the procedures that may be appropriate for suspension or revocation of a TCB's designation. In the event of suspension or revocation or other disciplinary action against a TCB, any equipment that was certified by that TCB can continue to be imported and marketed provided that equipment otherwise conforms with the Commission's rules. The Commission seeks comment on this proposal.

8. *Implementation Matters.* With respect to the designation of TCBs for certification of product compliance with part 2 of the Commission's rules, the Commission recognizes that there are a number of details that must be addressed before it can allow TCBs to certify equipment. As a general matter, the Commission expects TCBs to perform much the same application processing functions that are currently performed at the Commission's laboratory in Columbia, Maryland. In this regard, the Commission is proposing the following policies and guidelines with regard to certification of products by TCBs:

(a) Certification must be based on the submittal to the TCB of an application that contains all the information required under the Commission's rules.

(b) TCBs will be required to issue a written grant of certification.

(c) The grantee of certification will remain the party responsible to the Commission for compliance of the product.

(d) The certification must be based on type testing as defined in subclause 1.2(a) of ISO/IEC Guide 65, and the type testing should normally be done on only one unmodified sample of the equipment for which approval is sought. This is the way the Commission currently handles the certification of products, which its experience has shown works well.

(e) The Commission will not restrict the fees that TCBs may charge for certification.

(f) TCBs may either perform the required compliance testing themselves, or may accept and review the test data from manufacturers or other laboratories. TCBs may also subcontract with others to perform the testing. However, the TCB remains responsible for ensuring that the tests were performed as required and in this regard TCBs are expected to perform periodic

audits to ensure that the data they may receive from others is indeed reliable.

(g) Equipment certified by a TCB must meet all the Commission's labelling requirements, including the use of an FCC Identifier.

(h) The Commission will require TCBs to submit an electronic copy of each granted application to the Commission using the new electronic filing system for equipment authorization applications. This will allow the Commission to easily verify whether a piece of equipment has been approved without having to locate the TCB which approved it and obtain the records. It will also allow the Commission to monitor the activities of the TCBs to determine how many approvals are issued and for what types of equipment. Finally, this would create a common database that all parties can use to verify approvals and obtain copies of applications. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets.

(i) TCBs may approve requests for permissive changes to certified equipment, irrespective of who originally certified the equipment.

(j) The Commission will require TCBs to periodically perform audits of equipment on the market that they have certified to ensure continued compliance.

The Commission invites comment on these proposals and any other implementation issues that may need to be addressed. The Commission is particularly interested in any alternative proposals that are less burdensome while still ensuring the integrity of the certification program.

9. While the Commission proposes to empower TCBs with authority to certify equipment, it believes that certain functions related to certification should not be delegated by the Commission. TCBs may not waive the Commission's rules. TCBs may not address new or novel issues requiring interpretation of the Commission's technical standards, testing requirements, or certification procedures. TCBs will not be empowered to authorize transfers of control of grants of certification. TCBs may not take enforcement action and must refer to the Commission any matters of noncompliance of which they become aware. Finally, any decision made by a TCB would be appealable to the Commission. The Commission solicits comment on these proposals. The Commission intends to give TCBs clear guidelines as to how to exercise their new authority and seek comment on what those guidelines should be.

10. The Commission believes that a transition period of 24 months will be necessary before it may allow TCBs to certify equipment. This is similar to the provisions contained in the EC MRA and would provide parity between domestic and international product certifiers. The Commission would seek to have the 24 month period coincide with the transition period for the EC MRA. During the 24 month period, the Commission will work closely with NIST on the evaluation and accreditation of TCBs. The Commission will also work with the TCBs to ensure that they are fully familiar with the Commission's rules and will follow the same procedures the Commission does in approving equipment. The Commission seeks suggestions for ways it can make the transition to allowing TCBs to certify equipment as quick, smooth and effective as possible.

11. The Commission plans to continue to certify equipment for the foreseeable future, for a number of reasons. First, it will help smooth the transition to the new system until any major problems with it are resolved. Also, some manufacturers may prefer FCC certification for business reasons, since an approval issued by the U.S. Government may seem more legitimate to potential customers than one issued by another party. Finally, it is possible that certifiers may not emerge for certain types of equipment, so the Commission may be the only party available to approve it. However, the Commission requests comments on whether it should eventually stop issuing approvals, and rely solely on designated TCBs. The Commission also invites comments on concerns with the implementation of a new system, and any areas not covered above that need to be addressed.

The Part 68 Registration Program

12. In anticipation of the implementation of the US/EC MRA into part 68 of the Commission's Rules, the Commission recognizes the importance of maintaining parity between TCBs based in the United States and those based in the EC. The Commission tentatively concludes that the regulatory treatment of TCBs and the requirements for certification and registration of terminal equipment should be consistent, regardless of whether a TCB is located in the United States or in the EC. The Commission also tentatively concludes that manufacturers and suppliers in the United States and the EC should face comparable requirements with respect to part 68 certification and registration. The Commission seeks comment on these tentative conclusions.

13. The Commission seeks comment on the specific activities that certification bodies in the United States should be empowered to perform on behalf of domestic manufacturers and suppliers with respect to part 68 certification and registration of products marketed in the United States. In particular, the Commission seeks comment on whether certification bodies should be permitted to perform conformance assessment, certification and registration activities. The Commission also seeks comment on whether and to what extent Commission supervision of these activities is necessary.

14. The Commission seeks comment on practices and requirements that will enable it to designate certification bodies that are competent to perform part 68 activities without direct Commission supervision. With respect to this proposal, the Commission seeks comment on the range of issues presented for TCB designation under part 2 of the Commission's rules, including qualification criteria, procedures for designating TCBs and other implementation matters. Because part 68 test procedures differ from those used for parts 2, 15, and 18, TCBs that propose to certify equipment for compliance with part 68 will need to demonstrate competence in part 68 testing and knowledge of part 68 rules. The Commission tentatively concludes that TCB qualification criteria should be based on ISO/IEC Guide 65 and designation of TCBs would be performed by NIST in consultation with the Commission in the same manner as it has proposed with respect to part 2. The Commission seeks comment on these proposals.

15. The Commission also seeks comment on the methods by which TCBs may demonstrate their competence to test, certify and register products. For example, the Commission seeks comment on whether TCBs should use Form FCC 730 to transmit test data to the Commission for equipment registration. The Commission seeks comment identifying criteria for certification reports or notices that the Commission may require from TCBs that have been designated as competent to perform part 68 certification activity.

Mutual Recognition Agreements

16. The Office of the United States Trade Representative and the Department of Commerce have participated in negotiations over the past several years to develop a mutual recognition agreement for product approvals with the European Community. The Federal

Communications Commission has also participated in these negotiations, as have industry representatives from both the United States and Europe. These negotiations culminated on June 21, 1997 when the US/EC MRA was finalized by the United States Trade Representative and a representative of the European Community. The Agreement is expected to be signed in London on May 18, 1998.

17. A copy of the completed MRA is being inserted in the record for this proceeding. The Commission's regulations apply directly to two industry sectors, telecommunications equipment and electromagnetic compatibility (''EMC''), among the six specifically addressed by the US/EC MRA. The telecommunications sector addresses terminal equipment covered by part 68 of the rules, and transmitters covered by part 2 and other parts of the Commission's rules. The EMC sector applies to equipment addressed by parts 15 and 18 of the Commission's rules.

18. Under the US/EC MRA, products can be tested and certified in the United States in conformance with the European technical requirements. The products may be shipped directly to Europe without any further testing or certification. In return, the MRA obligates the United States to permit parties in Europe to test and authorize equipment based on the United States technical requirements. The US/EC MRA thereby promotes bilateral market access and competition in the provision of telecommunications products and electronic equipment. The US/EC MRA also will reduce industry burdens and delays caused by testing and approval requirements for products marketed in the United States and Europe.

19. The US/EC MRA provides a 24 month transitional period that will be used to implement the regulatory or legislative changes necessary for both parties to implement the US/EC MRA. The period would begin on the effective date of the MRA, which at this time is anticipated to be July 1, 1998. At the end of this period the parties should be prepared for full mutual recognition of product certifications and registrations. The Commission tentatively concludes that legislative changes will not be required for the United States to implement the US/EC MRA with regard to telecommunications equipment and electromagnetic compatibility. In this proceeding, the Commission proposes amendments to its rules to commence regulatory implementation of the US/EC MRA. Accordingly, the Commission tentatively concludes that it is appropriate to issue specific proposals at this time to advance the process as promptly as possible.

20. *Designation of TCBs for equipment exported to the United States from Europe.* In accordance with the US/EC MRA, the United States and each member state of the European Community will identify a ''Designating Authority'' in its territory. A Designating Authority is a body with power to designate, monitor, suspend, remove suspension of or withdraw conformity assessment bodies, such as TCBs, in accordance with the US/EC MRA. Designating Authorities will in turn designate a number of TCBs, also within each country's territory, that will be empowered to certify products for conformity with the technical requirements of countries to which the equipment is exported.

21. *Designation of TCBs for equipment exported to Europe from the United States.* The US/EC MRA lists the Designating Authorities for the United States as the National Institute of Standards and Technology (NIST) and the Federal Communications Commission. The Federal Aviation Administration (FAA) is also a designating authority for EMC aboard aircraft. NIST will designate Conformity Assessment Bodies in the United States for equipment that will be exported to Europe through its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. NIST will oversee the United States Conformity Assessment Bodies on an ongoing basis to ensure that they are performing in a satisfactory manner. The Commission believes it is unnecessary for it to play a direct role in designating or supervising TCBs with respect to equipment going to Europe. However, the Commission will provide assistance and guidance to NIST as may be necessary. For example, if questions arise as to the performance of a United States-based Conformity Assessment Body, the Commission would make its expertise in testing and measurements available as needed to resolve such matters. Comments are invited on this general approach.

22. *Administration of the US/EC MRA.* The US/EC MRA provides for oversight of implementation by a Joint Sectorial Committee (''JSC''). The Agreement provides that Commission representatives will participate as appropriate in the Joint Committee, and will chair the JSCs for the United States with regard to telecommunications equipment and electromagnetic compatibility sectors. The Commission invites comments on this general approach to administration and oversight of the US/EC MRA.

23. The Commission notes that the JSC for telecommunications equipment and EMC will produce a guidance document confronting these and other, more detailed issues relevant to bilateral implementation of this Agreement. The Commission seeks comment, however, recommending and discussing specific additions and modifications to its rules that will support and amplify both the Commission's and the JSC's efforts to ensure that all products introduced into the United States' marketplace remain in conformity with its rules.

24. *Authority to approve equipment.* The Commission proposes amending its rules as required to permit parties in MRA partner economies to certify radio frequency devices for conformance with parts 2, 15, 18 and other rule parts and to test, and eventually register telecommunications equipment for conformance with part 68. The Commission tentatively concludes that these privileges should only be granted subject to the terms and conditions specified in the US/EC MRA. Specifically, the Commission notes that both the United States and its MRA partners retain the right to remove noncompliant equipment and impose penalties for marketing noncompliant equipment as provided under the applicable domestic law. The Commission solicits comments on this general approach and invites suggestions as to any specific or additional steps that may be necessary or appropriate to transition its procedures and ensure continued compliance with the Commission's rules.

25. *Asia-Pacific Economic Cooperation (APEC) MRA.* The Office of the United States Trade Representative, at the request of the United States telecommunication industry, is negotiating an MRA for Conformity Assessment for Telecommunication products in the Asia-Pacific Economic Cooperation (APEC). APEC is a trade cooperative of eighteen economies, soon to be expanded to twenty-one economies, along the Pacific Rim. The APEC Telecom MRA is intended to facilitate trade in telecommunications and radio equipment among the APEC economies.

26. The key elements of the APEC Telecom MRA text are likely to be substantially similar to the key elements of the US/EC MRA text. A copy of the text of the draft APEC Telecom MRA will be placed in the record of this proceeding. The Commission tentatively concludes that the rules proposed in this proceeding to implement the US/EC MRA may be sufficient to implement the APEC Telecom MRA. The

Commission seeks comment on this tentative conclusion, and requests comment identifying further rule changes that may be required to implement the APEC Telecom MRA.

27. *The GMPCS–MoU and Arangments.* The Commission recognizes, that certain GMPCS systems are now in operation or expected to commence operation before it can adopt final rules in the final GMPCS implementation proceeding. The Commission believes it must allow for the expedient certification of GMPCS equipment as soon as possible to remove a potential barrier to the success of the service. Accordingly, the Commission will immediately begin to certify, on an interim basis, GMPCS equipment that meets all the acceptable regulations under parts 1, 2, and 25 of its rules and a stringent out-of-band emission standard.

28. There is currently no requirement in the Commission's rules to obtain an equipment certification for a GMPCS terminal before it can be used or marketed. However, it is evident that the truly global, ubiquitous nature of GMPCS service delivery can be ensured only when the user has the capability of transporting the GMPCS terminal across national territories without delay or fees.

29. To date, the Commission has issued mobile earth terminal authorizations to GMPCS service providers under a ''blanket license.'' These authorizations specify general operating parameters for a specific number of terminals and specific requirements for the protection of radiocommunication services, consistent with § 1.1307, and §§ 25.135(b) and (c), 25.136(a) and (b), 25.202(a)(3), 25.202(a)(4), 25.202(d), 25.202(f), and 25.213(a)(1) and 25.213(b) of the Commission's rules. The Commission also indicated that, when applicable, licensees must meet any spurious emission restrictions established by the Commission in order to protect the Russian Global Navigation Satellite System (GLONASS) which is operating in bands adjacent to those used by some GMPCS terminals.

30. Since granting certain blanket licenses for some MSS systems which fall under the GMPCS umbrella, certain international and domestic organizations have proposed additional requirements for protecting radionavigation systems, beyond those included for Global Positioning Systems (GPS) in section 25.213 of the rules, concerning both suppression of emissions below 1610 MHz and preventing harmful interference from Big LEO systems operating in the adjacent 1610–1626.5 MHz band. First, the International Telecommunication Union's Radio Sector Study Group WP 8D has adopted a recommended standard for suppression of spurious emissions for MSS systems with mobile earth terminals operating in the 1610–1626.5 MHz band and will soon consider setting similar standards for other types of GMPCs terminals. The European Commission/CEPT adopted a European Testing and Standards Institute (ETSI) standard late last year for both CDMA and TDMA-type Mobile Satellite Service (MSS) systems based on this ITU–R recommendation.

31. The National Telecommunications and Information Administration (NTIA) proposed yet another set of standards to protect GPS and GLONASS as part of the Global Navigation Satellite System (GNSS). In September 1997, the NTIA petitioned the Commission to begin a rulemaking to amend part 25 of the FCC's rules to incorporate additional limits to protect GNSS equipment operating within the 1559–1605 MHz radionavigation satellite service band. The NTIA recommended that, for MSS mobile earth terminals operating in the 1610–1660.5 MHz band, out-of-band signals must ultimately be limited to −70 dBW/MHz for wide band emissions and −80 dBW/700 Hz for narrow band emissions in the 1559–1605 range. The Commission will initiate a separate rule making to consider the NTIA proposal.

32. *Authorization of GMPCS transmitters.* The Commission intends to allow GMPCS equipment to be voluntarily submitted for certification, on an interim basis, upon meeting all of the relevant part 1 and 25 standards concerning frequency range, tolerance, out-of-band emission, spurious emission limits to protect GPS, and radiation hazards. Concerning the Commission's pending proceeding on additional protection standards for GNSS, it will be conditioning this interim approval for GMPCS terminal equipment operating in the band 1610–1626.5 MHz on the ability of the applicant to meet the strictest out-of-band emission limit proposed at this time, specifically, NTIA's out-of-band emission limit proposed for implementation by the year 2005. NTIA proposes an out-of-band emission limit of −70 dBW/MHz averaged over any 20 ms period for wide band emissions occurring between 1559–1605 MHz and −80 dBW/700 Hz for narrow band emissions occurring between 1559–1605 MHz. However, the NTIA's proposed limit on narrowband emissions specifies a measurement bandwidth of 700 Hz. As there is some question whether current instrumentation is capable of measuring across 700 Hz, it will suffice for purposes of interim type approval for manufacturers to demonstrate compliance with the narrowband standard of −80 dBW across 700 Hz *or less* in accordance with the RTCA Inc. Final Report in the context of GPS protection requirements.

33. Finally, MSS satellite operators, service providers and mobile earth terminal manufacturers are advised that all final FCC equipment approvals will be conditioned on meeting the requirements and procedures adopted in the future GMPCS MoU implementation proceeding, including the specific spurious and out-of-band emission limits adopted in that proceeding.

Initial Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*.[2] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *NPRM*. The Office of Public Affairs, Reference Operations Division, will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

35. The Commission is proposing to amend parts 2, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also proposing rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC) and to allow for similar agreements with other foreign trade parties. These actions would eliminate the need for manufacturers to wait for approval from the Commission

[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 1998 Biennial Review—Amendment of parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency and Telephone Terminal Equipment and to Implement Mutual Recognition Agreements.

before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We are also proposing an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS–MOU Arrangements.[3] [4] That action would benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

B. Legal Basis

36. The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

37. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). This standard also applies in determining whether an entity is a small business for purposes of the RFA.

38. The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers or ''Radio and Television Broadcasting and Communications Equipment.'' According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[5] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[6] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

39. The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees.[7] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had been between 1,000 and 1,499 employees.[8] We estimate that there fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. We are proposing to allow designated Telecommunication Certification Bodies (TCBs) in the United States to issue equipment approvals. Applicants for equipment authorization may apply either to the FCC or to a TCB, and they will be required to submit the same application form and exhibits that the rules currently require. We are also proposing to carry out a mutual recognition agreement with the European Community that will permit certain equipment currently required to be authorized by the FCC to be authorized instead by TCBs in Europe. As with TCBs in the United States, applicants would be required to submit the same application form and exhibits they do now. We are proposing that TCBs submit a copy of each approved application to the FCC. Applications for equipment authorization under part 2 of the rules will be sent and stored electronically using the new OET electronic filing system. Paper copies of part 68 applications will be required, since there is not yet an electronic filing system for those applications. However, we are requesting comments on alternatives to these proposals.

We are also proposing to require equipment authorization for mobile transmitters used in the Global Mobile Personal Communications by Satellite (GMPCS) service. This will require manufacturers to file an application and technical exhibits to the FCC or a designated TCB and wait for an approval before the equipment can be marketed. While this action would impose a new authorization requirement, it should ultimately reduce the burden on manufacturers. Under the terms of the GMPCS MOU and Arrangements, the single approval obtained in the United States could eliminate the need to obtain approvals from multiple other countries.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. Certain equipment that uses radio frequencies must be approved by the Commission before it can be marketed. Allowing parties other than the Commission to certify equipment would provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission. Further, by providing for other product certifiers, manufacturers would have the option of obtaining certification from a facility in a more convenient location. An additional benefit of allowing other parties to certify equipment would be a reduction in the number of applications filed with the Commission. This would enable us to redirect resources to enforcement of the rules. Finally, allowing equipment to be certified by parties located in other countries is an essential and necessary step for concluding mutual recognition agreements. Therefore, we are proposing to allow private organizations to certify equipment as an alternative to certification by the Commission.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

42. None.

List of Subjects in 47 CFR Parts 2, 25, and 68

Communications equipment, Report and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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BILLING CODE 6712–01–P

[3] ''Global Mobile Personal Communications by Satellite'' (GMPCS) service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: ''any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites.''

[4] The GMPCS MOU and Arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail in the Notice.

[5] *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

[6] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued may 1995), SIC category 3663.

[7] 13 CFR 121.201, SIC 3661.

[8] 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding and Commencement of Status Review for a Petition To List the Westslope Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for an amended petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Endangered Species Act of 1973, as amended. The Service finds that the amended petition provides substantial scientific and commercial information to indicate that listing of this subspecies of cutthroat trout as threatened, throughout all or parts of its range, may be warranted.

DATES: The finding announced in this document was made on June 1, 1998. Comments and materials need to be submitted by August 10, 1998 to be considered in the 12-month finding.

ADDRESSES: Data, information, technical critiques, comments, or questions relevant to this amended petition should be sent to the Chief, Branch of Native Fishes Management, Montana Fish and Wildlife Management Assistance Office, 4052 Bridger Canyon Road, Bozeman, Montana 59715. The amended petition, its appendices, and bibliography are available for public inspection, by appointment, at the above address. Electronic copies of the amended petition and bibliography may be requested and received via e-mail from lynn__kaeding@fws.gov.

FOR FURTHER INFORMATION CONTACT: Lynn Kaeding, at the above address, or telephone (406) 582–0717.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation presents substantial scientific and commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be promptly published in the **Federal Register**. If the finding is positive, the Service also is required to commence a review of the status of the petitioned species.

On June 6, 1997, the Service received a formal petition to list the westslope cutthroat trout as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Endangered Species Act of 1973, as amended. Copetitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

On July 2, 1997, the Service notified the copetitioners that the Service's Final Endangered Species Act Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as a Tier 3 activity, i.e., of lower priority than completion of emergency listings (Tier 1) and processing of pending proposed listings (Tier 2). The Service further indicated that personnel and budget in the Service's Mountain-Prairie Region, which had been assigned responsibility for Service activities pertaining to the petition, would continue to be directed toward accomplishment of ongoing Tier 2 activities and Tier 3 activities for species judged to be in greater need of the Act's protection than westslope cutthroat trout. As these higher-priority activities were accomplished and personnel and funds became available, however, the Service would proceed with its 90-day finding on the westslope cutthroat trout listing petition.

On January 25, 1998, the Service received from the copetitioners an amended petition to list the westslope cutthroat trout as threatened throughout its range and designate critical habitat for this subspecies. The amended petition contained a substantial amount of new information in support of the requested action. In the amended petition, the copetitioners assert that the westslope cutthroat trout should be listed as threatened because the subspecies' present distribution and abundance are substantially reduced from historical conditions; remaining populations are small, widely separated, and continue to decline in abundance; and the threats to the survival of westslope cutthroat trout are pervasive and ongoing. The copetitioners indicate that threats to westslope cutthroat trout include habitat destruction from logging and associated road building; adverse effects on habitat resulting from livestock grazing, mining, urban development, agricultural practices, and the operation of dams; historic and ongoing stocking of nonnative fish species that compete with or prey upon westslope cutthroat trout or jeopardize the genetic integrity of the subspecies through hybridization; and excessive harvest by anglers. The copetitioners further assert that programs to protect and restore westslope cutthroat trout are inadequate or nonexistent, and populations of this fish continue to be threatened by a wide variety of ongoing and proposed activities.

The historic distribution of westslope cutthroat trout (Behnke 1992) in streams and lakes is not known precisely but can be summarized as follows: West of the Continental Divide, the subspecies is native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the entire Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Idaho-Washington border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic distribution of westslope cutthroat trout also includes disjunct areas in Washington (e.g., Methow, Entiat, and Wenatchee River drainages), in the John Day River drainage in Oregon, and in British Columbia. East of the Continental Divide, the historic distribution of westslope cutthroat trout includes the headwaters of the South Saskatchewan River drainage (United States and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton.

In the amended petition, the copetitioners assert that remaining, genetically pure populations of westslope cutthroat trout occur almost exclusively in small, isolated streams in mountainous areas, where the adverse effects of human activities on this subspecies and its habitat are negligible. In Montana, the region for which most data are provided, the copetitioners indicate that populations of genetically pure westslope cutthroat trout occur in about 3.5 percent and 1.5 percent of their historic stream habitat in the Kootenai River and upper Missouri River drainages, respectively. Similar percentages are reported for genetically

pure populations of the fish in other drainages in Montana. Additionally, only 8.3 percent of the 265 lakes believed to be historic habitat for westslope cutthroat trout in Montana are said to now have genetically pure populations. More common today are westslope cutthroat trout populations that have some degree of hybridization with introduced, nonnative trout. Recent investigations (Shepard et al. 1997) suggest that 90 percent of the remaining westslope cutthroat trout populations in Montana's upper Missouri River drainage have a high probability of becoming extinct within 100 years.

The copetitioners further assert that populations of westslope cutthroat trout now occur in 11 percent of historic habitat in Idaho and 41 percent in Oregon, although data on genetic purity are not available for most populations. The status of native populations of the species in Washington is largely unknown, although several populations were apparently confirmed by recent studies. About half of the few streams in Wyoming that are historic habitat for westslope cutthroat trout now have populations of this subspecies, but all are hybridized to some degree with stocked, nonnative trout. In Alberta and British Columbia, Canada, little is known about the status of native westslope cutthroat trout, although genetically pure populations have been found in the upper Kootenai River drainage.

Listing Factors

The following is a brief discussion of the five listing factors set forth in section 4(a)(1) of the Act and related regulations (50 CFR Part 424), and the applicability of these factors to the westslope cutthroat trout.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

As indicated by the copetitioners, reproduction and survival of westslope cutthroat trout are adversely affected by increased stream sedimentation and temperatures and the alteration of natural stream flows that often result from logging and associated road building, livestock grazing, mining, urban development, agricultural practices, and the operation of dams. In many areas where this subspecies remains today, populations of westslope cutthroat trout are threatened by similar ongoing or proposed activities.

B. Overutilization for Commercial, Sporting, Scientific, or Educational Purposes

The copetitioners provide evidence that overfishing contributed to the decline in westslope cutthroat trout populations. Where present angling regulations and their enforcement are not adequate to protect remaining westslope cutthroat trout populations from overfishing, the continued existence of these populations may be threatened.

C. Disease or Predation

Whirling disease was recently detected in Montana and is believed to be responsible for a 90 percent decline in the rainbow trout population of the Madison River. The disease has also been found in Idaho, Oregon, and Washington. The copetitioners provide evidence that westslope cutthroat trout, close relatives to rainbow trout, are equally susceptible to whirling disease. Because there is presently no means to eliminate whirling disease or effectively control its spread, whirling disease may pose a threat to the continued existence of some westslope cutthroat trout populations. The copetitioners also provide evidence that, in some areas, nonnative fish species prey upon westslope cutthroat trout. Where the stocking of such nonnative species continues near areas inhabited by westslope cutthroat trout, and in areas where established populations of such nonnative fish species grow and spread, these nonnative fishes pose a threat to the continued existence of westslope cutthroat trout.

D. Inadequacy of Existing Regulatory Mechanisms

The copetitioners assert that the survival of westslope cutthroat trout is threatened by the absence of a comprehensive conservation strategy to protect and restore aquatic ecosystems and that designation of the subspecies as sensitive or of special concern by various management agencies has done little to control activities that degrade habitat and threaten remaining westslope cutthroat trout populations.

E. Other Natural or Manmade Mechanisms

The copetitioners provide evidence that hybridization with nonnative fish species is one of the most significant threats to the continued existence of westslope cutthroat trout. As the result of extensive stocking of nonnative species beginning in the 1800's and continuing in some areas today, such hybridization has occurred throughout much of the subspecies' range. Where the stocking of such nonnative species continues near areas inhabited by westslope cutthroat trout, and in areas where established populations of such nonnative fish species grow and spread, these nonnative fishes pose a threat to the continued existence of westslope cutthroat trout. The copetitioners also assert that the spatial separation of remaining westslope cutthroat trout populations precludes natural interbreeding and thereby increases the likelihood that these populations will become extinct due to limited genetic variability; and small sizes make these populations more vulnerable to extinction due to natural catastrophes such as floods, landslides, and fires.

Finding

The Service has reviewed the amended petition, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, the Service finds that there is sufficient information to indicate that listing of the westslope cutthroat trout as threatened, throughout all or parts of its range, may be warranted. The Service believes that the decline of westslope cutthroat trout is due mainly to the destruction and adverse modification of habitat and the negative effects of stocked, nonnative fish species, as described above under the listing factors. However, the Service also believes that the present status of westslope cutthroat trout throughout its historic range is not well understood, particularly with regard to the genetic characteristics of many known populations, the possible occurrence of additional populations in areas that have not been studied, and the measures now underway to protect remaining populations. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act. The petitioners also requested that critical habitat be designated for this species. If the Service's 12-month finding indicates that the petitioned action to list the westslope cutthroat trout is warranted, then designation of critical habitat will be addressed in the subsequent proposed rule.

References Cited

Behnke, R. J. 1992. Native trout of western North America. American Fisheries Society Monograph 6.

Shepard, B.B., D. Sanborn, L. Ulmer, and D.C. Lee. 1997. Status and risk of extinction for westslope cutthroat trout in the upper Missouri River basin, Montana.

North American Journal of Fisheries Management 17:1158–1172.

Author

The primary author of this 90-day finding is Lynn Kaeding (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–15317 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AF01

Endangered and Threatened Wildlife and Plants: Proposal To List the Coastal-Puget Sound, Jarbidge River and St. Mary-Belly River Population Segments of Bull Trout as Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Coastal-Puget Sound population segment of bull trout (*Salvelinus confluentus*) from the coastal drainages and Puget Sound in western Washington; the Jarbidge River population segment of bull trout from the Jarbidge River basin in southern Idaho and northern Nevada; and the St. Mary-Belly River population segment of bull trout in the St. Mary and Belly rivers in northwestern Montana as threatened with a special rule, pursuant to the Endangered Species Act of 1973 (Act). The Coastal-Puget Sound population segment, composed of 35 subpopulations of ''native char'', is threatened by habitat degradation, dams and diversions, and interactions with non-native fishes. The Jarbidge River population segment, composed of a single subpopulation, is threatened by habitat degradation from past and ongoing land management activities such as mining, road construction and maintenance, and grazing. The St. Mary-Belly River population segment, composed of four subpopulations, is threatened by the effects of water management such as dewatering, entrainment, and passage barriers at diversion structures, and interactions with introduced non-native fishes. The special rule allows for take of bull trout within the three population segments if in accordance with applicable State and Native American Tribal fish and wildlife conservation laws and regulations, and conservation plans. This proposal, if made final, would extend protection of the Act to these three bull trout population segments.

DATES: Comments from all interested parties must be received by October 8, 1998. Public hearings locations and dates are set forth in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Comments and material concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Field Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, Snake River Basin Field Office, at the above address (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION: Public hearings locations and dates are:

1. *Tuesday, July 7, 1998,* from 2:00–4:00 p.m. and from 6:00–8:00 p.m. at the Norman Worthington Conference Center at St. Martin's College, 5300 Pacific Avenue SE, Lacey, Washington.

2. *Thursday, July 9, 1998,* from 2:00–4:00 p.m. and from 6:00–8:00 p.m. at the Best Western Cotton Tree Inn, Mt. Adams Room, 2401 Riverside Dr, Mount Vernon, Washington.

3. *Tuesday, July 14, 1998,* from 2:00– until 4:00 p.m. and from 6:00–8:00 p.m. at Glacier Park Lodge, East Glacier, Montana.

4. *Tuesday, July 21, 1998,* from 2:00–4:00 p.m. and from 6:00–8:00 p.m. at Cactus Petes, 1385 US Highway 93, Jackpot, Nevada.

Background

Bull trout (*Salvelinus confluentus*), members of the family Salmonidae, are char native to the Pacific northwest and western Canada. Bull trout historically occurred in major river drainages in the Pacific northwest from about 41° N to 60° N latitude, from the southern limits in the McCloud River in northern California and the Jarbidge River in Nevada to the headwaters of the Yukon River in Northwest Territories, Canada (Cavender 1978; Bond 1992). To the west, bull trout range includes Puget Sound, various coastal rivers of British Columbia, Canada, and southeast Alaska (Bond 1992). Bull trout are wide-spread throughout tributaries of the Columbia River basin, including its headwaters in Montana and Canada. Bull trout also occur in the Klamath River basin of south central Oregon. East of the Continental Divide, bull trout are found in the headwaters of the Saskatchewan River in Alberta and the MacKenzie River system in Alberta and British Columbia (Cavender 1978; McPhail and Baxter 1996; Brewin and Brewin 1997).

Bull trout were first described as *Salmo spectabilis* by Girard in 1856 from a specimen collected on the lower Columbia River, and subsequently described under a number of names such as *Salmo confluentus* and *Salvelinus malma* (Cavender 1978). Bull trout and Dolly Varden (*Salvelinus malma*) were previously considered a single species (Cavender 1978; Bond 1992). Cavender (1978) presented morphometric (measurement), meristic (geometrical relation), osteological (bone structure), and distributional evidence to document specific distinctions between Dolly Varden and bull trout. Bull trout and Dolly Varden were formally recognized as separate species distributional evidence to document specific distinctions between Dolly Varden and bull trout. Bull trout and Dolly Varden were formally recognized as separate species by the American Fisheries Society in 1980 (Robins et al. 1980). Although bull trout and Dolly Varden co-occur in several northwestern Washington River drainages, there is little evidence of introgression (Haas and McPhail 1991) and the two species appear to be maintaining distinct genomes (Leary et al. 1993; Williams et al. 1995; Kanda et al. 1997; Spruell and Allendorf 1997).

Bull trout exhibit resident and migratory life-history strategies through much of the current range (Rieman and McIntyre 1993). Resident bull trout complete their life cycles in the tributary (or nearby) streams in which they spawn and rear. Migratory bull trout spawn in tributary streams where juvenile fish rear from one to four years before migrating to either a lake (adfluvial), river (fluvial), or in certain coastal areas, to saltwater (anadromous), where maturity is reached in one of the three habitats (Fraley and Shepard 1989; Goetz 1989). Anadromy is the least studied life-history type in bull trout, and some biologists believe the existence of anadromous bull trout may be uncertain (McPhail and Baxter 1996).

However, historical accounts, collection records, and recent circumstantial evidence suggests an anadromous life-history form for bull trout (Suckley and Cooper 1860; Cavender 1978; McPhail and Baxter 1996). Resident and migratory forms may be found together and bull trout may give rise to offspring exhibiting either resident or migratory behavior (Rieman and McIntyre 1993).

Bull trout have more specific habitat requirements compared to other salmonids (Rieman and McIntyre 1993). Habitat components that appear to influence bull trout distribution and abundance include water temperature, cover, channel form and stability, valley form, spawning and rearing substrates, and migratory corridors (Oliver 1979; Pratt 1984, 1992; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Howell and Buchanan 1992; Rieman and McIntyre 1993, 1995; Rich 1996; Watson and Hillman 1997). Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout watersheds in which bull trout occur. Because bull trout exhibit a patchy distribution, even in undisturbed habitats (Rieman and McIntyre 1993), fish would likely not simultaneously occupy all available habitats (Rieman et al. 1997).

Bull trout are most often found in colder streams, although individual fish can occur throughout larger river systems. (Fraley and Shepard 1989; Rieman and McIntyre 1993, 1995; Buchanan and Gregory 1997; Rieman et al. 1997). Water temperature above 15° C (59° F) is believed to limit bull trout distribution, which partially explains the generally patchy distribution within a watershed (Fraley and Shepard 1989; Rieman and McIntyre 1995). Spawning areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman et al. 1997).

All life history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Oliver 1979; Fraley and Shepard 1989; Goetz 1989; Hoelscher and Bjornn 1989; Sedell and Everest 1991; Pratt 1992; Thomas 1992; Rich 1996; Sexauer and James 1997; Watson and Hillman 1997). Jakober (1995) observed bull trout overwintering in deep beaver ponds or pools containing large woody debris in the Bitterroot River drainage, Montana, and suggested that suitable winter habitat may be more restrictive than summer habitat. Maintaining bull trout populations requires stream channel and flow stability (Rieman and McIntyre 1993). Juvenile and adult bull trout frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). These areas are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Preferred spawning habitat consists of low gradient streams with loose, clean gravel (Fraley and Shepard 1989) and water temperatures of 5 to 9° C (41 to 48° F) in late summer to early fall (Goetz 1989). Pratt (1992) reported that increases in fine sediments reduce egg survival and emergence. High juvenile densities were observed in Swan River, Montana, and tributaries characterized by diverse cobble substrate and a low percent of fine sediments (Shepard et al. 1984). Juvenile bull trout in four streams in central Washington occupied slow-moving water less than 0.5 meters/second (m/sec) (1.6 feet/second (ft/sec)) over a variety of sand to boulder size substrates (Sexauer and James 1997).

The size and age of maturity for bull trout is variable depending upon life-history strategy. Growth of resident fish is generally slower than migratory fish; resident fish tend to be smaller at maturity and less fecund (Fraley and Shepard 1989; Goetz 1989). Bull trout normally reach sexual maturity in 4 to 7 years and live as long as 12 years. Repeat and alternate year spawning has been reported, although repeat spawning frequency and post-spawning mortality are not well known (Leathe and Graham 1982; Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1996).

Bull trout typically spawn from August to November during periods of decreasing water temperatures. However, migratory bull trout frequently begin spawning migrations as early as April, and move upstream as far as 250 kilometers (km) (155 miles (mi)) to spawning grounds (Fraley and Shepard 1989). In the Blackfoot River, Montana, bull trout began spawning migrations in response to increasing temperatures (Swanberg 1997). Temperatures during spawning generally range from 4 to 10° C (39 to 51° F), with redds often constructed in stream reaches fed by springs or near other sources of cold groundwater (Goetz 1989; Pratt 1992; Rieman and McIntyre 1996). Depending on water temperature, incubation is normally 100 to 145 days (Pratt 1992), and juveniles remain in the substrate after hatching. Time from egg deposition to emergence may surpass 200 days. Fry normally emerge from early April through May depending upon water temperatures and increasing stream flows (Pratt 1992; Ratliff and Howell 1992).

Growth varies depending upon life-history strategy. Resident adults range from 150 to 300 millimeters (mm) (6 to 12 inches (in.)) total length and migratory adults commonly reach 600 mm (24 in) or more (Pratt 1985; Goetz 1989). The largest verified bull trout is a 14.6 kilogram (kg) (32 pound (lb)) specimen caught in Lake Pend Oreille, Idaho, in 1949 (Simpson and Wallace 1982).

Bull trout are opportunistic feeders with food habits primarily a function of size and life-history strategy. Resident and juvenile migratory bull trout prey on terrestrial and aquatic insects, macro-zooplankton, amphipods, mysids, crayfish and small fish (Wyman 1975; Rieman and Lukens 1979 *in* Rieman and McIntyre 1993; Boag 1987; Goetz 1989; Donald and Alger 1993). Adult migratory bull trout are primarily piscivorous, known to feed on various trout (*Salmo* spp.) and salmon (*Onchorynchus* spp.), whitefish (*Prosopium* spp.), yellow perch (*Perca flavescens*), and sculpin (*Cottus* spp.) (Fraley and Shepard 1989; Donald and Alger 1993).

Bull trout co-evolved with, and in most areas co-occur with native cutthroat trout (*Oncorhynchus clarki* ssp.), resident (redband) and migratory rainbow trout (*O. mykiss* ssp.), chinook salmon (*O. tshawytscha*), sockeye salmon (*O. nerka*), mountain whitefish (*Prosopium williamsoni*), pygmy whitefish (*P. coulteri*), and various sculpin (*Cottus* spp.), sucker (Catastomidae) and minnow (Cyprinidae) species (Mauser et al. 1988; Rieman and McIntyre 1993; R2 Resource Consultants, Inc. 1993). Bull trout habitat overlaps with the range of several fishes listed as threatened, endangered, proposed, and petitioned for listing under the Act, including the endangered Snake River sockeye salmon (November 20, 1991; 56 FR 58619); threatened Snake River spring and fall chinook salmon (April 22, 1992; 57 FR 14653); endangered Kootenai River white sturgeon (*Acipenser transmontanus*) (September 6, 1994; 59 FR 45989); threatened and endangered steelhead (August 18, 1997; 62 FR 43937); Puget Sound chinook salmon

(March 9, 1998; 63 FR 11481); and westslope cutthroat trout (*O. c. lewisi*) (petitioned for listing in July 1997). Widespread introductions of non-native fishes, including brook trout (*S. fontinalis*), lake trout (*S. namaycush*) (west of the Continental Divide), and brown trout (*Salmo trutta*), have also occurred across the range of bull trout. These non-native fishes are often associated with local bull trout declines and extirpations (Bond 1992; Ziller 1992; Donald and Alger 1993; Leary et al. 1993; Montana Bull Trout Scientific Group (MBTSG) 1996h). East of the Continental Divide, bull trout co-evolved with lake trout and westslope cutthroat trout (Fredenberg et al. 1996). Under these conditions, bull trout and lake trout have apparently partitioned habitat with lake trout dominating lentic (standing waters, such as, lakes, ponds, and marshes) systems, relegating bull trout to the fluvial life-history form (Donald and Alger 1993).

Bull trout habitat in the coterminous United States is found in a mosaic of land ownership, including Federal lands administered by the U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), and Department of Defense (DOD); Native American tribal lands; state land in Montana, Idaho, Oregon, Washington and Nevada; and private lands. As much as half of occupied bull trout habitat occurs on non-federal lands.

Migratory corridors link seasonal habitats for all bull trout life-history forms. The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; M. Gilpin, University of California, *in litt.* 1997; Rieman et al. 1997). Migrations facilitate gene flow among local subpopulations because individuals from different subpopulations interbreed when some return to non-natal streams. Migratory fish can also reestablish extirpated local subpopulations.

Metapopulation concepts of conservation biology theory are applicable to the distribution and characteristics of bull trout (Rieman and McIntyre 1993). A metapopulation is an interacting network of local subpopulations with varying frequencies of migration and gene flow among them (Meffe and Carroll 1994). Local subpopulations may become extinct, but can be reestablisheded by individuals from other subpopulations. Metapopulations provide a mechanism for reducing risk because the simultaneous loss of all subpopulations is unlikely. Habitat alteration, primarily through construction of impoundments, dams, and water diversions, has fragmented habitats, eliminated migratory corridors, and isolated bull trout, often in the headwaters of tributaries (Rieman et al. 1997).

Distinct Population Segments

The best available scientific and commercial information supports designating five distinct population segments (DPSs) of bull trout in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. A final listing determination for the Klamath River and Columbia River bull trout DPSs, published elsewhere in today's **Federal Register**, includes a detailed description of the rationale behind the DPS delineation. The approach is consistent with the joint National Marine Fisheries Service (NMFS) and Service policy for recognizing distinct vertebrate population segments under the Act (February 7, 1996; 61 FR 4722). This proposed rule addresses only the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout DPSs.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout DPS encompasses all Pacific coast drainages within the coterminous United States north of the Columbia River in Washington. This population segment is discrete because it is geographically segregated from other subpopulations by the Pacific Ocean and the crest of the Cascade Mountain Range. The population segment is significant to the species as a whole because it is thought to contain the only anadromous forms of bull trout in the coterminous United States, thus, occurring in a unique (i.e., marine) ecological setting. In addition, the loss of this population segment would significantly reduce the overall range of the taxon.

Jarbidge River Population Segment

The Jarbidge River, in southwest Idaho and northern Nevada, is a tributary in the Snake River basin and contains the southernmost habitat occupied by bull trout. This population segment is discrete because it is segregated from other bull trout in the Snake River basin by a large gap (greater than 240 km (150 mi)) in suitable habitat and several impassable dams on the mainstem Snake River. The occurrence of a species at the extremities of its range is not necessarily sufficient evidence of significance to the species as a whole. However, because the Jarbidge River possesses bull trout habitat that is disjunct from other patches of suitable habitat, the population segment is considered significant because it occupies a unique or unusual ecological setting and its loss would result in a substantial modification of the species' range.

St. Mary-Belly Rivers

The St. Mary-Belly River DPS is located in northwest Montana east of the Continental Divide. Both the St. Mary and Belly rivers are tributaries in the Saskatchewan River basin in Alberta, Canada. The population segment is discrete because it is segregated from other bull trout by the Continental Divide and is the only bull trout population found east of the Continental Divide in the coterminous United States. The population segment is significant because its loss would result in a significant reduction in the range of the taxon. Bull trout in this population segment are believed to migrate into Canada where a substantial amount of habitat still remains.

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments, the Service analyzed data on a subpopulation basis within each segment because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system. In areas where two groups of bull trout are separated by a barrier (e.g., an impassable dam or waterfall, or reaches of unsuitable habitat) that may allow only downstream access (i.e., one-way passage), both groups were considered subpopulations. In addition, subpopulations were considered at risk of extirpation from naturally occurring events if they were: (1) Unlikely to be reestablished by individuals from another subpopulation (i.e., functionally or geographically isolated from other subpopulations); (2) limited to a single spawning area (i.e., spatially restricted); (3) characterized by low individual or spawner numbers; or (4) consisted primarily of a single life-history form. For example, a subpopulation of resident fish isolated upstream of an impassable waterfall would be considered at risk of extirpation from naturally occurring events if it had low numbers of fish that spawn in a relatively restricted area. In such cases, a natural event such as a fire or flood could eliminate the subpopulation, and,

subsequently, reestablishment from fish downstream would be prevented by the impassable waterfall. However, a subpopulation residing downstream of the waterfall would not be considered at risk of extirpation because of potential reestablishment by fish upstream. Because resident bull trout may exhibit limited downstream movement (Nelson 1996), the Service's estimate of subpopulations at risk of naturally occurring extirpation may be underestimated. The status of subpopulations was based on modified criteria of Rieman et al. (1997), including the abundance, trends in abundance, and the presence of life-history forms of bull trout.

The Service considered a subpopulation ''strong'' if 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears stable or increasing, and life-history forms historically present were likely to persist; and ''depressed'' if less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost. If there was insufficient abundance, trend, and life-history information to classify the status of a subpopulation as either ''strong'' or ''depressed,'' the status was considered ''unknown.'' It is emphasized that the assignment of ''unknown'' status implies only a deficiency of data to assign a subpopulation as ''strong'' or ''depressed,'' not a lack of information regarding the status or threats. Section 4 of the Act requires the Service to make a determination solely on the best scientific and commercial data available. Although complete status and trend information is not available for all the subpopulations, bull trout are naturally rare and as discussed in the ''Summary of Factors Affecting These Species'' there is sufficient information on threats to propose these population segments for listing.

Coastal-Puget Sound Population Segment

The Coastal-Puget Sound bull trout population segment encompasses all Pacific coast drainages within Washington, including Puget Sound. No bull trout exist in coastal drainages south of the Columbia River. Within this area, bull trout are sympatric with Dolly Varden. Because the two species are virtually impossible to visually differentiate, the Washington Department of Fish and Wildlife (WDFW) currently manages bull trout and Dolly Varden together as ''native char.'' The Coastal-Puget Sound population segment contain 35 subpopulations of ''native char'' (bull trout, Dolly Varden, or both species) (Service 1998a). The species can be differentiated by both genetic and morphological-meristic analyses, of which one or both analyses have been conducted on 15 of the 35 subpopulations. Bull trout were confirmed in 12 of 15 subpopulations investigated (5 with only bull trout, 3 with only Dolly Varden, and 7 with both species), and it is likely that bull trout occur in the majority of the remaining 20 subpopulations (Service 1998a). In order to identify trends that may be specific to certain geographic areas, the 35 ''native char'' subpopulations were grouped into five analysis areas—Coastal, Strait of Juan de Fuca, Hood Canal, Puget Sound, and Transboundary.

Coastal Analysis Area

Ten ''native char'' subpopulations occur in five river basins in the Coastal analysis area (number of subpopulations)— Chehalis River-Grays Harbor (1), Coastal Plains-Quinault River (5), Queets River (1), Hoh River-Goodman Creek (2), and Quillayute River (1). Recent efforts to determine species composition in three subpopulations have confirmed bull trout in two, the upper Quinault River and Queets River (Leary and Allendorf 1997; WDFW 1997a). Only Dolly Varden have been identified in the upper Sol Duc River (Cavender 1978, 1984; WDFW 1997a).

Subpopulations of ''native char'' in the southwestern portion of the coastal area appear to be in low abundance based on anecdotal information. Because this is the southern extent of coastal bull trout and Dolly Varden, abundance may be naturally low in systems like the Chehalis, Moclips, and Copalis rivers (WDFW 1997a). Although little historical and current information is known concerning bull trout in these river basins, habitat degradation in the past has adversely affected other salmonids (Phinney and Bucknell 1975; Hiss and Knudsen 1993; WDFW 1997a). Habitat degradation in these basins is assumed to have similarly affected bull trout. Although ''native char'' are believed to be relatively more abundant in the Quinault River, extensive portions of the basin have been degraded by past forest management (Phinney and Bucknell 1975; WDFW 1997a).

Most ''native char'' subpopulations in the northwestern coastal area occur partially within Olympic National Park, which contains relatively undisturbed habitats. However, outside Olympic National Park, ''native char'' habitat has been severely degraded by past forest practices in the Queets River and Hoh River basins (Phinney and Bucknell 1975; WDFW 1997a). Non-native brook trout are also present in some park waters and threaten bull trout from competition and hybridization. The Hoh River may have the largest subpopulation of ''native char'' on the Washington coast, although likely greatly reduced since 1982 (Washington Department of Wildlife (WDW) 1992; WDFW 1997a). Reasons for the decline are unknown, but overfishing is believed to be a contributing factor (WDFW 1997a; WDFW, *in litt.* 1997). The Service considers the Hoh River subpopulation ''depressed.'' The current status of the remaining nine ''native char'' subpopulations in the coastal analysis area is ''unknown'' because insufficient abundance, trend, and life-history information is available (Service 1998a).

Strait of Juan de Fuca Analysis Area

Five ''native char'' subpopulations occur in three river basins in the Strait of Juan de Fuca analysis area (number of subpopulations)—Elwha River (2), Angeles basin (1), and Dungeness River (2). Recent efforts to determine species composition in three subpopulations have confirmed bull trout in the upper Elwha River and lower Dungeness River-Gray Wolf River (Leary and Allendorf 1997; WDFW 1997a). Only Dolly Varden have been identified in the upper Dungeness River subpopulation (Cavender 1978, 1984; WDFW 1997a).

The two subpopulations in the Dungeness River basin occur partially within Olympic National Park and Buckhorn Wilderness Area, and likely benefit from the relatively undisturbed habitats located there. However, non-native brook trout occur in some streams in the park. Large portions of the Dungeness River basin lie outside of Olympic National Park, and have been severely degraded by past forest and agricultural practices (Williams et al. 1975; WDFW 1997a). Within Olympic National Park, the lower and upper Elwha River subpopulations are isolated by dams. Although ''native char'' are widespread in some basins within the analysis area, such as the Dungeness and Gray Wolf rivers, fish abundance is thought to be ''greatly reduced in numbers'' (WDW 1992; WDFW 1997a). The Service considers subpopulations in the lower Elwha River and lower Dungeness River-Gray Wolf River ''depressed.'' The remaining three ''native char'' subpopulations in the Strait of Juan de Fuca coastal analysis area are considered ''unknown'' because

insufficient abundance, trend, and life-history information is available (Service 1998a).

Hood Canal Analysis Area

Three ''native char'' subpopulations occur in the Skokomish River basin in the Hood Canal analysis area. Recent surveys have confirmed bull trout in the South Fork-lower North Fork Skokomish River (Leary and Allendorf 1997; WDFW 1997a) and Cushman Reservoir (Brown 1992; Brenkman 1996 *in* WDFW 1997a). Bull trout in Cushman Reservoir have been isolated and restricted to an adfluvial life-history form due to Cushman Dam on the North Fork Skokomish River. Spawner surveys indicate a decline in adult bull trout through the 1970's, subsequent increases from 4 adults in 1985 to 412 adults in 1993, and relatively stable numbers of 250 to 300 adults in recent years (WDFW 1997a). The increase in adults from 1985 to 1993 is likely related to harvest closure on Cushman Reservoir and upper North Fork Skokomish River in 1986 (Brown 1992). Recent surveys indicate low numbers of bull trout in tributaries of the South Fork Skokomish River such as Church, Pine, Cedar, LeBar, Brown, Rock, Flat, and Vance creeks, as well as in the mainstem (L. Oss, Olympia National Forest (ONF), *in litt.* 1997). Habitat in the South Fork-lower North Fork Skokomish River has been degraded by past forest and agricultural practices and hydropower development (Williams et al. 1975; Hood Canal Coordination Council (HCCC) 1995; WDFW 1997a). The upper North Fork Skokomish River subpopulation occurs within Olympic National Park and habitat is likely relatively undisturbed. The Service considers the South Fork-lower North Fork Skokomish River subpopulation ''depressed.'' The remaining two ''native char'' subpopulations in the Hood Canal analysis area are considered ''unknown'' because insufficient abundance, trend, and life-history information is available (Service 1998a).

Puget Sound Analysis Area

Sixteen ''native char'' subpopulations occur in eight river basins in the Puget Sound analysis area (number of subpopulations)—Nisqually River (1), Puyallup River (3), Green River (1), Lake Washington basin (2), Snohomish River-Skykomish River (1), Stillaguamish River (1), Skagit River (4), and Nooksack River (3). Recent surveys of eight subpopulations have confirmed bull trout bull trout in six—Carbon River, Green River, Chester Morse Reservoir, Skykomish River-Snohomish River, lower Skagit River, and upper Middle Fork Nooksack River (R2 Resource consultants, Inc. 1993; Samora and Girdner 1993; Kraemer 1994; M. Barclay, Cascades Environmental Services, Inc., pers. comm. 1997; Leary and Allendorf 1997; E. Warner, Muckleshoot Indian Tribe (MIT), pers. comm. 1997). Only Dolly Varden have been identified in the Canyon Creek (tributary to the Nooksack River) subpopulation (Leary and Allendorf 1997).

The current abundance of ''native char'' in southern Puget Sound is likely lower than occurred historically and declining (T. Cropp, WDW, *in litt.* 1993; F. Goetz, U.S. Army Corps of Engineers (COE), pers. comm. 1994a,b). Historical accounts from southern Puget Sound indicate that anadromous char entered rivers there in ''vast numbers'' during the fall and were harvested until Christmas (Suckley and Cooper 1860). ''Native char'' are now rarely collected in the southern drainages of the area (Cropp, *in litt.* 1993; Goetz, pers. comm. 1994a,b). There is only one record of a ''native char'' being collected in the Nisqually River. A juvenile char was collected during a stream survey for salmon in the mid-1980's (G. Walter, Nisqually Indian Tribe (NIT), pers. comm. 1997; WDFW 1997a). In the Puyallup River, ''native char'' are occasionally caught by steelhead anglers (WDW 1992). In the Green River, ''native char'' are rarely observed (Cropp, *in litt.* 1993; Goetz, pers. comm. 1994a,b; Warner, pers. comm. 1997). Habitat in watersheds of the Nisqually, Puyallup, and Green rivers has been degraded by logging, agriculture, road construction, and urban development. In the Chester Morse Reservoir subpopulation, fewer than 10 redds were observed in 1995 and 1996; and fry abundance was low in spring 1996 and 1997 (D. Paige, Seattle Water Department (SWD), *in litt.* 1997). Logging and extensive road construction have occurred within the basin (Foster Wheeler Environmental 1995; WDFW 1997a), and have likely affected ''native char'' in Chester Morse Reservoir. Only two ''native char'' have been observed during the past 10 years in the Issaquah Creek drainage and none have been observed in the Sammamish River system. Habitat in the Sammamish River and Issaquah Creek drainages has been negatively affected by urbanization, road building and associated poor water quality (Williams et al. 1975, Washington Department of Ecology (WDOE) 1997a). The Service considers the Nisqually River, Puyallup River, Green River, Chester Morse Reservoir, and Sammamish River-Issaquah Creek subpopulations ''depressed.''

Drainages in the northern Puget Sound area appear to support larger subpopulations of ''native char'' than the southern portion (Goetz, pers. comm. 1994a,b; S. Fransen, Service, pers. comm. 1997). The WDFW conducts redd counts in two index reaches of the northern Puget Sound, the upper South Fork Sauk River in the Skagit River basin (lower Skagit River subpopulation) and the upper North Fork Skykomish River (Snohomish River-Skykomish River subpopulation), which have healthy habitats supporting stable numbers of ''native char'' (Kraemer 1994). Redd surveys have been conducted since 1988 in both index reaches. In the upper Sauk River, a substantial increase in redds was observed in 1991, a year after a minimum 508-mm (20-in) harvest restriction was implemented; and redd numbers have remained relatively stable (WDFW 1997a). Harvest restrictions were implemented in the Skagit River and its tributaries in 1990. ''Native char'' in the lower Skagit River subpopulation have access to at least 38 documented or suspected spawning tributaries in the basin (WDFW et al. 1997) and the number of adults is estimated to be 8,000 to 10,000 fish (C. Kraemer, WDFW, pers. comm. 1998). The number of redds in the upper North Fork Skykomish River index reach have averaged 78 redds (range—21 to 159) during 1988 through 1993, with 75 or fewer redds observed since 1993. Within the Puget Sound analysis area, the Service considers the lower Skagit River subpopulation ''strong'' and five subpopulations ''depressed.'' The remaining 10 ''native char'' subpopulations in the Puget Sound analysis area are considered ''unknown'' because insufficient abundance, trend, and life-history information is available (Service 1998a).

Transboundary Analysis Area

One ''native char'' subpopulation occurs in the Chilliwack River basin in the Transboundary analysis area. The Chilliwack River is a transboundary system flowing into British Columbia, Canada. The species composition of the subpopulation has not been determined. In Washington, portions of the Chilliwack River are within the North Cascades National Park and a tributary, Selesia Creek, are within the Mount Baker Wilderness where the habitat is relatively undisturbed (WDFW 1997a). Little information is available for ''native char'' in the Chilliwack River-Selesia Creek subpopulation (Service 1998a). The current status of the ''native

char'' subpopulations in the Transboundary analysis area is ''unknown'' because insufficient abundance, trend, and life-history information is available (Service 1998a).

Jarbidge River Population Segment

The Jarbidge River DPS consists of one bull trout subpopulation occurring primarily in Nevada (Service 1998b). Resident fish inhabit the headwaters of the East Fork and West Fork of the Jarbidge River and several tributary streams, and low numbers of migratory (fluvial) fish are present (Zoellick et al. 1996; L. McLelland, Nevada Division of Wildlife (NDOW), *in litt.* 1998; K. Ramsey, Humboldt National Forest (HNF), *in litt.* 1997). Bull trout were not observed during surveys in the Idaho portion of the Jarbidge River basin in 1992 and 1995 (Warren and Partridge 1993; Allen et al. 1997), however, a single, small bull trout was captured when traps were operated on the lower East Fork and West Fork Jarbidge River during August through October 1997 (F. Partridge, Idaho Department of Fish and Game (IDFG), pers. comm. 1998). A loss of range likely has occurred for migratory bull trout (fluvial) in the lower Jarbidge and Bruneau rivers and perhaps downstream to the Snake River (Johnson and Weller 1994; Zoellick et al. 1996). Low numbers of migratory (fluvial) bull trout have been documented in the West Fork Jarbidge River from the 1970's through the mid-1980's (Johnson and Weller 1994).

The distribution of bull trout in Nevada includes at least six headwater streams above 2,200 m (7,200 ft), primarily in wilderness areas—East Fork and West Fork Jarbidge River and Slide, Dave, Pine, and Jack creeks (Johnson and Weller 1994). Zoellick et al. (1996) compiled data from 1954 through 1993 and estimated bull trout population size in the middle and upper headwater areas of the West Fork and East Fork of the Jarbidge River. In each stream, sampled areas were located at elevations above 1,792 m (5,880 ft), and population estimates were less than 150 fish/km (240 fish/mi) (Zoellick et al. 1996).

In general, bull trout represent a minor proportion of the fish fauna downstream of the headwater reaches; native redband trout are the most abundant salmonid and sculpin the most abundant fish (Johnson and Weller 1994). Although accounts of bull trout distribution in the Jarbidge River basin date to the 1930's, historic abundance is not well documented. In 1934, bull trout were collected in the East Fork Jarbidge River drainage downstream of the Idaho-Nevada border (Miller and Morton 1952). In 1985, 292 bull trout ranging from 73 to 266 mm (2.9 to 10.5 in) in total length, were estimated to reside in the West Fork Jarbidge River (Johnson and Weller 1994). In 1992, the abundance of bull trout in the East Fork Jarbidge River was estimated to be 314 fish ranging from 115 to 165 mm (4.5 to 6.5 in) in total length (Johnson and Weller 1994). In 1993, bull trout numbers in Slide and Dave creeks were estimated at 361 and 251 fish, respectively (Johnson and Weller 1994). During snorkel surveys conducted in October 1997, no bull trout were observed in 40 pools of the West Fork Jarbidge River or in four 30-m (100-ft) transects in Jack Creek (G. Johnson, NDOW, pers. comm. 1998). Only one bull trout had been observed at the four transects in 1992 (Johnson, pers. comm. 1998). However, it is premature to consider bull trout extirpated in Jack Creek (Service 1998b). There is no information on whether bull trout have been extirpated from other Jarbidge River headwater tributaries.

It is estimated that between 50 and 125 bull trout spawn throughout the Jarbidge River basin annually (Johnson, pers. comm. 1998). However, exact spawning sites and timing are uncertain (Johnson, pers. comm. 1998) and only two redds have been observed in the basin (Ramsey, *in litt.* 1997; Ramsey, pers. comm. 1998a). Presumed spawning streams have been identified by records of one or more small bull trout (about 76 mm (3 in)).

Population trend information for bull trout in the Jarbidge River subpopulation is not available, although the current characteristics of bull trout in the basin (i.e., low numbers and disjunct distribution) have been described as similar to that observed in the 1950's (Johnson and Weller 1994). Based on recent surveys, the subpopulation is considered ''depressed.'' Past and present activities within the basin are likely restricting bull trout migration in the Jarbidge River, thus reducing opportunities for bull trout reestablishment in areas where the fish are no longer found (Service 1998b).

St. Mary-Belly River Population Segment

Much of the historical information regarding bull trout in the St. Mary-Belly River DPS is anecdotal and abundance information is limited. Bull trout probably entered the system via postglacial dispersal routes from the Columbia River through either the Kootenai River or Flathead River systems (Fredenberg et al. 1996). The St. Mary River system historically contained native bull trout, lake trout, and westslope cutthroat trout. Although abundance of these fishes is unknown, the presence of lake trout suggests that migratory bull trout were primarily fluvial and not adfluvial (Donald and Alger 1993). Within the St. Mary River system, historic accounts of bull trout date to the 1930's (Fredenberg et al. 1996). Historic distribution of bull trout in the Belly River basin is limited but migratory bull trout from Canada likely spawned in the North Fork and mainstem Belly Rivers.

Both migratory (fluvial) and resident life-history forms are present (Fredenberg et al. 1996), but bull trout within the St. Mary-Belly River DPS are isolated and fragmented by irrigation dams and diversions (Fredenberg et al. 1996; R. Wagner, Service, pers. comm. 1998). Bull trout that migrate across the international border are dependent upon the relatively undisturbed water quality and spawning habitat located in the upper St. Mary and Belly rivers and their tributaries (Fredenberg et al. 1996).

Based on natural and artificial barriers to fish passage within the St. Mary-Belly River DPS, the Service identified four bull trout subpopulations— (1) upper St. Mary River (from the U.S. Bureau of Reclamation (USBR) diversion structure on lower St. Mary Lake upstream to St. Mary Falls, including Swiftcurrent and Boulder creeks below Lake Sherburne, and Red Eagle and Divide creeks); (2) Swiftcurrent Creek (including tributaries and Lake Sherburne and Cracker Lake); (3) lower St. Mary River (St. Mary River downstream of the USBR diversion structure including Kennedy, Otatso, and Lee creeks); and (4) Belly River (mainstem and North Fork Belly River) (Service 1998c). The current status of the bull trout subpopulations in the St. Mary-Belly River DPS is ''unknown'' because insufficient abundance, trend, and life-history information is available (Service 1998c).

In summary, little information is available on the abundance, trends in abundance, and distribution of bull trout in the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River DPSs. The Coastal-Puget Sound population segment includes the only anadromous bull trout found in the coterminous United States. The population segment is composed of 35 ''native char'' subpopulations of which bull trout have been confirmed in 12 of 15 subpopulations examined. The remaining 20 subpopulations consist of ''native char'' that may include bull trout, Dolly Varden, or both species. At this time, Dolly Varden only have been confirmed in three subpopulations. The

status of the lower Skagit River subpopulation is considered ''strong'' and nine additional subpopulations ''depressed.'' The Jarbidge River population segment consists of one subpopulation found in the East Fork and West Fork Jarbidge River and headwater tributaries in Nevada. The population segment is isolated from other bull trout by a large expanse of unsuitable habitat. Migratory fish (fluvial) may be present in low abundance, but resident fish are the predominant life-history form. The total population size is low, with spawner abundance throughout the basin estimated to be from 50 to 125 fish. The status of the Jarbidge River population segment of bull trout is considered ''depressed.'' The St. Mary-Belly River population segment of bull trout is composed of four subpopulations and represents the only area of bull trout range east of the Continental Divide within the coterminous United States. Migratory fish occur in three of the subpopulations and the life-history form in the fourth subpopulation is unknown. The status of bull trout subpopulations in the St. Mary-Belly River DPS is ''unknown.''

Previous Federal Action

On September 18, 1985, the Service published an animal notice of review in the **Federal Register** (50 FR 37958) designating the bull trout a category 2 candidate for listing in the coterminous United States. At that time, a category 2 species was one for which conclusive data on biological vulnerability and threats was not available to support a proposed rule. The Service published updated notices of review for animals on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), reconfirming the bull trout's category 2 status. The Service discontinued using category designations upon publication of a February 28, 1996, notice of review (61 FR 7596) and now maintains a list of candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as threatened or endangered. The Service elevated the bull trout in the coterminous United States to candidate status on November 15, 1994 (59 FR 58982).

On October 30, 1992, the Service received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana—Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition (petitioners). The petitioners also requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicates that the species is in imminent threat of extinction. A 90-day finding, published on May 17, 1993 (58 FR 28849), determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. The Service initiated a range-wide status review of the species concurrent with publication of the 90-day finding.

On June 6, 1994, the Service concluded in the original finding that listing of bull trout throughout its range was not warranted due to unavailable or insufficient data regarding threats to, and status and population trends of, the species within Canada and Alaska. However, the Service determined that sufficient information on the biological vulnerability and threats to the species was available to support a warranted finding to list bull trout within the coterminous United States. Because the Service concluded that the threats were imminent and moderate to bull trout in the coterminous United States, the Service gave the bull trout within the coterminous United States a listing priority number of 9. As a result, the Service found that listing a distinct vertebrate population segment consisting of bull trout residing in the coterminous United States was warranted but precluded due to higher priority listing actions.

On November 1, 1994, Friends of the Wild Swan, Inc. and Alliance for the Wild Rockies, Inc. (plaintiffs) filed suit in the U.S. District Court of Oregon (Court) arguing that the warranted but precluded finding was arbitrary and capricious. After the Service issued a ''recycled'' 12-month finding for the population segment of bull trout in the coterminous United States on June 12, 1995, the Court issued an order declaring the plaintiffs' challenge to the original finding moot. The plaintiffs declined to amend their complaint and appealed to the Ninth Circuit Court of Appeals, which found that the plaintiffs' challenge fell ''within the exception to the mootness doctrine for claims that are capable of repetition yet evading review.'' On April 2, 1996, the circuit court remanded the case back to the district court. On November 13, 1996, the Court issued an order and opinion remanding the original finding to the Service for further consideration. Included in the instructions from the Court were requirements that the Service limit its review to the 1994 administrative record, and incorporate any emergency listings or high magnitude threat determinations into current listing priorities. In addition, reliance on other Federal agency plans and actions was precluded. The reconsidered 12-month finding based on the 1994 administrative record was delivered to the Court on March 13, 1997.

On March 24, 1997, the plaintiffs filed a motion for mandatory injunction to compel the Service to issue a proposed rule to list the Klamath River and Columbia River bull trout populations within 30 days based solely on the 1994 administrative record. In response to this motion, the Service ''concluded that the law of this case requires the publication of a proposed rule'' to list the two warranted populations. On April 4, 1997, the Service requested 60 days to prepare and review the proposed rule. In a stipulation between the Service and plaintiffs filed with the Court on April 11, 1997, the Service agreed to issue a proposed rule in 60 days to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened based solely on the 1994 record. Based upon the Court agreement and stipulation, and information contained solely in the 1994 record, the Service proposed to list the Klamath River population of bull trout as endangered and Columbia River population of bull trout as threatened on June 13, 1997 (62 FR 32268).

The plaintiffs then challenged the Service's determination that listing was not warranted for the Coastal-Puget Sound, Jarbidge River, and Saskatchewan River population segments of bull trout. On December 4, 1997, the Court ordered the Service to reconsider its designation of five distinct bull trout population segments, as well as its determination that listing was not warranted for the Coastal-Puget Sound population. In compliance with the Court's order, the Service reviewed the original 1994 administrative record, as well as a substantial body of new information on the status of bull trout. In light of that review, the Service has reached two conclusions. First, the Service determined that its designation of five distinct population segments remains valid, but has modified the boundraries of two to those segments—the Coastal-Puget Sound segment and the Saskatchewan River segment— to include only those portions within the coterminous United States. The Service now refers to the portion of the Saskatchewan River segment that is in the United States as the St. Mary-Belly River segment. Second, the Service has determined that the listing is warranted for the Coastal-Puget Sound, Jarbidge

River, and St. Mary-Belly River distinct population segments.

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service 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 These Species

Procedures found in section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. 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 Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout (*Salvelinus confluentus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Land and water management activities that degrade and continue to threaten all of the bull trout distinct population segments in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta et al. 1987; Chamberlain et al. 1991; Furniss et al. 1991; Meehan 1991; Nehlsen et al. 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; Henjum et al. 1994; McIntosh et al. 1994; Wissmar et al. 1994; U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995, 1996, 1997; Light et al. 1996; MBTSG 1995a–e, 1996a–h).

Coastal-Puget Sound Population Segment

Bull trout are often migratory (Fraley and Shepard 1989; Pratt 1992; Rieman and McIntyre 1993; Oregon Department of Fish and Wildlife (ODFW) 1995; McPhail and Baxter 1996). In the Coastal-Puget Sound population segment, migratory ''native char'' exhibit both anadromous and fluvial strategies. Flood control structures, hydroelectric projects, water diversion structures including irrigation withdrawals, forest practices, agricultural cultivation, grazing, urbanization, and industrial development have all contributed to degradation of migratory corridors used by bull trout (Rieman and McIntyre 1993; Spence et al. 1996; WDFW 1997a).

In the Coastal-Puget Sound DPS, eight subpopulations (four currently determined solely as bull trout based on genetic samples) are currently known to be isolated or fragmented as a result of man-made barriers. These are the lower Elwha River, upper Elwha River, South Fork-lower North Fork Skokomish River, Cushman Reservoir, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, and upper Middle Fork Nooksack River (Service 1998a).

Past forest management activities have contributed to degraded watershed conditions, including increased sedimentation of bull trout habitat (Salo and Cundy 1987; Meehan 1991; Bisson et al. 1992; USDA et al. 1993; Henjum et al. 1994; Spence et al. 1996). These activities continue to negatively affect ''native char'' in the Coastal-Puget Sound population segment. Timber harvest and road building in riparian areas reduce stream shading and cover, channel stability, large woody debris recruitment, and increase sedimentation and peak stream flows (Chamberlin et al. 1991). These can alternatively lead to increased stream temperatures and bank erosion, and decreased long-term stream productivity.

Strict cold water temperature requirements make bull trout particularly vulnerable to activities that warm spawning and rearing waters (Goetz 1989; Pratt 1992; Rieman and McIntyre 1993). Increased temperature reduces habitat suitability, which can exacerbate fragmentation within and between subpopulations (Rieman and McIntyre 1993). Of the 35 ''native char'' subpopulations in the Coastal-Puget Sound population segment, 11 are likely affected by elevated stream temperatures as a result of past forest practices (lower Nooksack River, Stillaguamish River, Skykomish-Snohomish River, Green River, White River, Nisqually River, South Fork-lower North Fork Skokomish River, Goodman Creek, Copalis River, Moclips River, and Chehalis River-Grays Harbor) (Phinney and Bucknell 1975; Williams et al. 1975; Hiss and Knudsen 1993; WDFW 1997a; WDOE 1997a). Bull trout have been confirmed in 3 of these ''native char'' subpopulations (Green River, South Fork-lower North Fork Skokomish River, and Skykomish-Snohomish River).

Road construction and maintenance account for a majority of man-induced sediment loads to streams in forested areas (Shepard et al. 1984; Cederholm and Reid 1987; Furniss et al. 1991). Sedimentation affects streams by reducing pool depth, altering substrate composition, reducing interstitial space, and causing braiding of channels (Rieman and McIntyre 1993), which reduce carrying capacity. Sedimentation negatively affects bull trout embryo survival and juvenile bull trout rearing densities (Shepard et al. 1984; Pratt 1992). In National Forests in Washington, large deep pools have been reduced 58 percent due to sedimentation and loss of pool-forming structures such as boulders and large wood (USDA et al. 1993). The effects of sedimentation from roads and logging are prevalent in basins containing 10 ''native char'' subpopulations (Nooksack, Skykomish, Stillaguamish, Puyallup, upper Cedar, Skokomish, Dungeness, Hoh, Queets, and Coastal Plain-Quinault basins) (HCCC 1995; ONF 1995a,b; S. Noble and S. Spalding, Service, *in litt.* 1995; WDFW 1997a, WDOE 1997a). Bull trout have been confirmed in six of these subpopulations (upper Cedar, Skokomish, Dungeness, Queets, Quinault, and Skykomish basins).

A recent assessment of the Interior Columbia Basin ecosystem revealed that increasing road densities and associated effects caused declines in four non-anadromous salmonid species (bull trout, Yellowstone cutthrout trout, westslope cutthroat trout, and redband trout) within the basin (Quigley and Arbelbide 1997). Bull trout were less likely to use highly roaded basins for spawning and rearing, and if present, were likely to be at lower population levels (Quigley and Arbelbide 1997). Quigley et al. (1996) demonstrated that when average road densities were between 0.4 to 1.1 km/km^2 (0.7 and 1.7 mi/mi^2) on USFS lands, the proportion of subwatersheds supporting ''strong'' populations of key salmonids dropped substantially. Higher road densities caused further declines. When USFS lands were compared to lands administered by all other entities at a given road density, the proportion of lands supporting ''strong'' bull trout populations was lower on lands administered by other entities. Although this assessment was conducted east of the Cascade Mountain Range, effects

from high road densities may be more severe in western Washington. Higher precipitation west of the Cascade Mountains increases the frequency of surface erosion and mass wasting (USDI et al. 1996b). Limited data concerning road densities are available for the Coastal-Puget Sound DPS; however, two bull trout subpopulations (lower Dungeness River-Gray Wolf River and Chester Morse Reservoir) occur in basins with road densities greater than 1.1 km/km² (1.7 mi/mi²). The effects of relatively high road density on aquatic habitat may contribute to the ''depressed'' status of these two ''native char'' subpopulations. Other basins containing ''native char'' subpopulations also have relatively high road densities, ranging from 1.5 to 3.0 km/km² (2.4 to 4.8 mi/mi²), in portions of the Queets River basin (ONF 1995a; Cederholm and Reid 1987). ''Native char'' in these areas are likely negatively affected by the presence of roads.

Approximately 65 percent of the ''native char'' subpopulations within the Coastal-Puget Sound DPS are affected by past or present forest management activities. Areas not affected by such activities occur primarily within National Parks or Wilderness Areas. Five ''native char'' subpopulations lie completely within National Parks and Wilderness Areas withdrawn from timber harvest. These are the upper Quinault River, upper Sol Duc River, Gorge Reservoir, Diablo Reservoir, and Ross Reservoir. The status of these ''native char'' subpopulations is ''unknown'' at this time. However, all but the upper Quinault River subpopulation are threatened by non-native brook trout (see Factor D). Of these five ''native char'' subpopulations, species composition has been examined in two, and only the upper Quinault River subpopulation is known to contain bull trout. Eleven ''native char'' subpopulations (lower Quinault River, Queets River, Hoh River, upper Elwha River, lower Dungeness River-Gray Wolf River, upper Dungeness River, upper North Fork Skokomish River, Carbon River, Skykomish River-Snohomish River, lower Skagit River, and Chilliwack River-Selesia Creek) lie partially within withdrawn Federal areas. Species composition has been examined in seven subpopulations, and bull trout were confirmed in six (Queets River, upper Elwha River, Dungeness River-Gray Wolf River, Carbon River, Skykomish River-Snohomish River, and lower Skagit River).

Agricultural practices and associated activities can affect bull trout and their habitat. Irrigation withdrawals including diversions can dewater spawning and rearing streams, impede fish passage and migration, and cause entrainment (process by which aquatic organisms suspended in water are pulled through a pump or other device). Discharging pollutants such as nutrients, agricultural chemicals, animal waste and sediment into spawning and rearing waters is also detrimental (Spence et al. 1996). Agricultural practices regularly include stream channelization and diking, large woody debris and riparian vegetation removal, and bank armoring (Spence et al. 1996). Improper livestock grazing can promote streambank erosion and sedimentation, and limit the growth of riparian vegetation important for temperature control, streambank stability, fish cover, and detrital input. In addition, grazing can increase input of organic nutrients into streams (Platts 1991). Ten ''native char'' subpopulations in the Coastal-Puget Sound DPS (Carbon River, White River, Puyallup River, Stillaguamish River, lower Skagit River, lower Nooksack River, Green River, South Fork-lower North Fork Skokomish River, Dungeness River-Gray Wolf River, and Chehalis River-Grays Harbor) are negatively affected by past or ongoing agricultural or livestock grazing practices (Williams et al. 1975; Hiss and Knudsen 1993; Washington Department of Fisheries (WDF) et al. 1993; HCCC 1995; ONF 1995b; WDFW 1997a). Species composition has been examined in five of these subpopulations, and bull trout were confirmed in four (Green River, Carbon River, South Fork-lower North Fork Skokomish River, and Dungeness River-Gray Wolf River).

Dams constructed with poorly designed fish passage or without fish passage create barriers to migratory bull trout, precluding access to former spawning, rearing, and migration habitats. Dams disrupt the connectivity within and between watersheds essential for maintaining aquatic ecosystem function (Naiman et al. 1992; Spence et al. 1996) and bull trout subpopulation interaction (Rieman and McIntyre 1993). Natural recolonization of historically occupied sites can be precluded by migration barriers (e.g., McCloud Dam in California (Rode 1990)). Within the Coastal-Puget Sound DPS, there are at least 41 existing or proposed hydroelectric projects regulated by the Federal Energy Regulatory Commission (FERC) that are within watersheds supporting bull trout (G. Stagner, Service, *in litt.* 1997). Of the 41 projects or proposals, 17 are currently operating and most are run-of-the-river small hydroelectric projects. Negotiated instream flows for these projects have been primarily based on resident cutthroat or rainbow trout flow requirements, and may not meet the needs of species with different life-history strategies, such as bull trout (T. Bodurtha, Service, *in litt.* 1995). Of the 41 existing or proposed projects, fish passage has not been addressed for 28 (Stagner, *in litt.* 1997). In addition, the Service is aware of 10 water diversions or other dams, not regulated by FERC, currently operating in watersheds with ''native char''. None of these 10 facilities provide for upstream fish passage. Dams on the Middle Fork Nooksack, Skagit, Baker (Skagit tributary), Green, Puyallup, White, Nisqually, Skokomish, and Elwha rivers are barriers to upstream fish migration and have fragmented populations of ''native char'' within the Coastal-Puget Sound DPS. A draft Environmental Impact Statement (EIS) has been published for three proposed hydroelectric projects on Skagit River tributaries, and a final EIS recommends two proposed hydroelectric projects on the lower Nooksack River. This illustrates that FERC is close to licensing decisions on these projects.

Urbanization has led to decreased habitat complexity (uniform stream channels and simple nonfunctional riparian areas), impediments and blockages to fish passage, increased surface runoff (more frequent and severe flooding), and decreased water quality and quantity (Spence et al. 1996). In the Puget Sound area, human population growth is predicted to increase by 20 percent between 1987 and 2000, requiring a 62 percent increase in land area developed (Puget Sound Water Quality Authority (PSWQA) 1988 *in* Spence et al. 1996). The effects of urbanization, concentrated at the lower most reaches of rivers within Puget Sound, primarily affect ''native char'' migratory corridors and rearing habitats. Six ''native char'' subpopulations in the Coastal-Puget Sound DPS (lower Dungeness River-Gray Wolf River, Puyallup River, White River, Green River, Sammamish River-Issaquah Creek, and Stillaguamish River) are known to be negatively affected by urbanization (Williams et al. 1975; WDFW 1997a).

Mining can degrade aquatic systems by generating sediment and heavy metals pollution, altering water pH levels, and changing stream channels and flow (Martin and Platts 1981). Although not currently active, mining in the Nooksack River basin, where ''native char'' occur, has adversely affected streams. For example, the Excelsior Mine on the upper North Fork Nooksack River was active at the turn of the

century and mining spoils were placed directly into Wells Creek (Mt. Baker-Snoqualmie National Forest (MBSNF) 1995), a known spawning stream for ''native char.'' Spoils in and adjacent to the stream may continue to be sources of sediment and heavy metals.

Jarbidge River Population Segment

Although timber was historically removed from the Jarbidge River basin, forest management is not thought to be a major factor currently affecting bull trout habitat. The steep terrain of the Jarbidge River basin has been a deterrent to grazing (J. Frederick, HNF, *in litt.* 1998a); and grazing does not occur in approximately 60 percent of the watershed. Although much of the remaining 40 percent of public and private lands are grazed, the effects are localized and considered of relatively minor importance to bull trout habitat in the Jarbidge River basin. For example, livestock grazing is affecting about 3.2 km (2 mi) of the East Fork Jarbidge River and portions of Dave Creek and Jack Creek (Frederick, pers. comm. 1998; Johnson, pers. comm. 1998).

Ongoing threats affecting bull trout habitat have maintained degraded conditions in the West Fork Jarbidge River (McNeill et al. 1997; Frederick, pers. comm. 1998; Ramsey, pers. comm. 1998a). At least 11.2 km (7 mi) of the West Fork Jarbidge River has been affected by over a century of human activities such as road development and maintenance, historic mining and adit (horizontal passage from the surface in a mine) drainage, channelization and removal of large woody debris, residential development, and road and campground development on USFS lands (McNeill et al. 1997). As a result of these activities, the riparian canopy and much of the upland forest has been removed, recruitment of large woody debris has been reduced, and channel stability has decreased (McNeill et al. 1997; Ramsey, *in litt.* 1997; Frederick, *in litt.* 1998a). These activities reduce habitat complexity and likely elevate water temperatures seasonally. For example, water temperatures recorded near Bluster Bridge were 15 to 17°C (59 to 63°F) for 24 days in 1997.

Culverts installed at road crossings may act as barriers to bull trout movement in the Jarbidge River basin. For example, an Elko County road culvert had prevented upstream movement of bull trout in Jack Creek, a West Fork Jarbidge River tributary, for approximately 17 years. Private and public funding was used to replace the culvert with a bridge in the fall of 1997 (Frederick, *in litt.* 1998b); however, a rock structure approximately 300 m (1,000 ft) upstream from the bridge in Jack Creek may still impede bull trout movement, at least seasonally during low flows.

St. Mary-Belly River Population Segment

Forest management practices, livestock grazing, and mining are not thought to be major factors affecting bull trout in the St. Mary-Belly River DPS. However, bull trout subpopulations are fragmented and isolated by dams and diversions (Fredenberg et al. 1996). Specifically, the USBR diversion at the outlet of lower St. Mary Lake is an unscreened trans-basin diversion (i.e., transferring water to the Missouri River drainage via the Milk River) that threatens bull trout. This diversion restricts upstream bull trout passage into the upper St. Mary River. Consequently, migratory (fluvial) bull trout are prevented from reaching suitable spawning habitat in Divide and Red Eagle creeks (Fredenberg et al. 1996; Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) physically blocks bull trout passage into the upper watershed (Fredenberg et al. 1996; Wagner, pers. comm. 1998).

In addition to the dams physically isolating subpopulations, the associated diversions seasonally dewater the streams, effectively decreasing available habitat for migratory and resident bull trout (Fredenberg et al. 1996). The diversion at the outlet of lower St. Mary Lake may result in a reduction (up to 50 percent) of instream flow, possibly affecting juvenile and adult bull trout (Wagner, pers. comm. 1998). The diversion is unscreened and recent information suggests downstream loss through entrainment of bull trout (Wagner, pers. comm. 1998). Similarly, the irrigation dam on Swiftcurrent Creek (Lake Sherburne) seasonally dewaters the creek downstream, effectively eliminating habitat (Fredenberg et al. 1996; Wagner, pers. comm. 1998).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Declines in bull trout have prompted states to institute restrictive fishing regulations and eliminate the harvest of bull trout in most waters in Idaho, Oregon, Washington, Nevada, and Montana. Recent observations of increased numbers of adult bull trout in some areas have been attributed to more restrictive regulations. However, illegal harvest and incidental harvest still threaten bull trout in some areas.

Coastal-Puget Sound Population Segment

Fishing for ''native char'' is currently closed in most of the waters within the Coastal-Puget Sound population segment. Most of these closures were implemented in 1994. Areas where harvest of ''native char'' is still allowed are the mainstem Skagit River and several of its tributaries (Cascade, Suiattle, Whitechuck and Sauk rivers) (508-mm (20-in) minimum size limit); the Snohomish River mainstem and the Skykomish River below the forks (508-mm (20-in) minimum size limit and 2 fish daily bag limit) (WDFW 1997a); and portions of the Quinault and Queets rivers that are within the Quinault Indian Reservation (QIN) boundary (4 fish daily bag limit with no minimum size restriction) (S. Chitwood, Quinault Indian Nation, pers. comm. 1997; WDFW 1997a). Olympic National Park has catch-and-release regulations for ''native char'' in all park waters. Fishing for bull trout in Mount Rainier National Park is prohibited. There is likely some mortality from incidental hook and release of ''native char'' in fisheries targeting other species, especially in streams where restrictive angling regulations (i.e., artificial flies or lures with barbless single hook, bait prohibited) have not been established.

The objective of the 508-mm (20-in) minimum size limit is to allow most females to spawn at least once before harvest (WDFW 1997a), however, there is concern that this size limit will have minimal effects in conserving bull trout (J. Johnston, WDFW, pers. comm. 1995). The regulation protects smaller fish, but older, larger fish are more fecund and able to use a greater range of substrates for spawning (Johnston, pers. comm. 1995). Regulations on the Quinault Indian Reservation in the lower Quinault River and Queets River systems offer less bull trout conservation opportunity because there is no minimum size limit to allow most females to reach maturity before being subject to harvest. Areas of the lower Quinault and Queets rivers outside of the Quinault Indian Reservation have been closed to harvest for ''native char'' (WDFW 1997a).

In 1993, WDFW increased the catch limit for brook trout in order to reduce interactions with bull trout (WDFW 1995). The liberalization of the brook trout catch has the potential to increase harvest of bull trout due to misidentification by anglers. In a Montana study, only 40 percent of the anglers surveyed correctly identified bull trout out of six species of salmonids found locally (M. Long and S. Whalen,

Montana Fish Wildlife and Parks (MFWP), *in litt.* 1997).

Poaching is considered a factor negatively affecting ''native char'' in nine drainages within the Coastal-Puget Sound population segment. These are the South Fork Nooksack River, North Fork Nooksack River (above and below the falls), Sauk River and tributaries, North Fork Skykomish River, Chester Morse Reservoir, lower Dungeness River-Gray Wolf River, Hoh River, Goodman Creek, and Morse Creek (WDW 1992; Mongillo 1993; WDFW 1997a).

Jarbidge River Population Segment

Overutilization by angling was a concern in the past for the Jarbidge River DPS of bull trout. Although Idaho prohibited harvest of bull trout beginning in 1995, Nevada, until recently, allowed harvest of up to 10 trout per day, including bull trout, in the Jarbidge River basin. An estimated 100 to 400 bull trout were harvested annually in the Jarbidge River basin (Johnson 1990; P. Coffin, Service, pers. comm. 1994; Coffin, *in litt.* 1995). Nevada State regulations were recently amended to allow only catch-and-release of bull trout starting March 1, 1998 (G. Weller, NDOW, *in litt.* 1997; Johnson, pers. comm. 1998). We anticipate that this change in the regulations will have a positive effect on conservation of bull trout, however, the effects of the new harvest regulations may require five years to evaluate (Johnson, pers. comm. 1998).

St. Mary-Belly River Population Segment

Historically, the harvest of bull trout in the St. Mary-Belly River DPS was considered ''extensive'' (Fredenberg et al. 1996). Currently, legal angler harvest in the St. Mary-Belly River DPS only occurs on the Blackfeet Indian Reservation, which has a five fish per day limit (Fredenberg et al. 1996).

In 1994, at least 19 adult and subadult bull trout were harvested in gill nets set for a commercial fishery for lake whitefish (*Coregonus clupeaformis*) in lower St. Mary Lake (Blackfeet Tribe, *in litt.* 1998). Given the apparent low abundance of adult bull trout in the upper St. Mary Lake subpopulation, and restricted migration opportunities over the USBR diversion on lower St. Mary Lake, any harvest of bull trout from this subpopulation represents a threat. Record-keeping by the two commercial fishers is a requirement of the Blackfeet Tribal Fish and Game Commission, but not strictly enforced.

C. Disease and Predation

Diseases affecting salmonids are present or likely present in the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly DPSs, but are not thought to be a factor threatening bull trout. However, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids have been introduced (J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council (NFRC), *in litt.* 1997).

Coastal-Puget Sound Population Segment

Disease is not believed to be a factor in the decline of bull trout in the Coastal-Puget Sound DPS. Outbreaks of the parasite *Dermocystidium salmonis* in the lower Elwha River may negatively affect ''native char'' in years of high chinook salmon returns (K. Amos, WDFW, pers. comm. 1997). The susceptibility of bull trout to the parasite is unknown. There is concern about whirling disease (*Myxobolus cerebralis*), which occurs in wild trout waters of western states, but it has not been documented in Washington (Bergersen and Anderson 1997). Apparently, most species of salmonids are susceptible to the organism, and it has been diagnosed in Dolly Varden (Post 1987). However, laboratory testing indicates that bull trout may be one of the least susceptible salmonids (McDowell et al. 1997). It is not currently treatable in the wild.

Predation is not considered a primary factor in the decline of Coastal-Puget Sound ''native char'' and bull trout. However, the recent discovery of largemouth bass (*Micropterus salmoides*) in Cushman Reservoir on the Skokomish River may potentially affect the bull trout subpopulation (S. Brenkman, Oregon State University, pers. comm. 1997; WDFW 1997a). Warm-water species (centrarchids and percids), which may prey on ''native char,'' are also established in portions of the Sammamish River system and Lake Washington.

Jarbidge River Population Segment

Disease or predation are not known to be factors affecting the survival of bull trout in the Jarbidge River basin.

St. Mary-Belly River Population Segment

Disease or predation are not known to be factors affecting the survival of bull trout in the St. Mary-Belly River basin. However, non-native brook trout are present and may prey on juvenile bull trout. Whirling disease has also been documented in numerous Missouri River watersheds in central Montana.

D. The Inadequacy of Existing Regulatory Mechanisms

Although efforts are underway to assist in conserving bull trout throughout the coterminous U.S. (e.g., Batt 1996; R. Joslin, USFS, *in litt.* 1997; A. Thomas, BLM, *in litt.* 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Regulatory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Coastal-Puget Sound Population Segment

In April 1994, the Secretaries of Agriculture and Interior adopted the Northwest Forest Plan for management of late-successional forests within the range of the northern spotted owl (*Strix occidentalis caurina*) (USDA and USDI 1994a). This plan set forth objectives, standards, and guidelines to provide for a functional late-successional and old-growth forest ecosystem. Included in the plan is an aquatic conservation strategy involving riparian reserves, key watersheds, watershed analysis, and habitat restoration. Approximately 22 percent of the total acreage within the Coastal-Puget Sound population segment lies within USFS jurisdiction, and would thus be subject to Northwest Forest Plan standards and guidelines (U.S. Geological Survey (USGS), *in litt.* 1996). An assessment panel determined that the proposed standards and guidelines in the Northwest Forest Plan would result in an 85 percent future likelihood of attaining sufficient aquatic habitat to support well-distributed populations of bull trout on Federal lands (USDA and USDI 1994b). Almost all projects developed under the Northwest Forest Plan in this DPS have been determined to have ''no effect'' on bull trout. However, existing habitat conditions are severely degraded in many subbasins. Effects from past land management activities can be expected to continue into the foreseeable future in the form of increased stream

temperatures, altered stream flows, sedimentation, and lack of instream cover. These effects can be exacerbated due to future slides, road failures, and debris torrents. Many of these aquatic systems will require decades to fully recover (USDA et al.1993). Until then, future habitat losses can be expected due to past activities, potentially resulting in local extirpations, migratory barriers, and reduced reproductive success (Spence et al. 1996).

Washington State Forest Practice Rules (WFPR) apply to all State, city, county, and private lands not currently covered under a Habitat Conservation Plan (HCP) or other conservation agreement in Washington. Approximately 45 percent of the Coastal-Puget Sound population segment is held under private ownership and 1.5 percent under city or county ownership. Bull trout face threats from ongoing and future timber harvest activities on these lands that are in forest production. The WFPR set forth timber harvest regulations for non-Federal and non-Tribal forested lands in the State of Washington. These rules set standards for timber harvest activities in and around riparian areas, in an effort to protect aquatic resources. These riparian management zone widths, as specified by the WFPR, do not ensure protection of the riparian components, because the minimum widths are insufficient to fully protect riparian ecosystems (USDI et al. 1996a). Thus, bull trout will continue to be negatively affected by forest practices on lands guided by the WFPR.

In January 1997, the Washington State Department of Natural Resources (WDNR) entered into a multispecies HCP with the Service, covering all WDNR-owned lands within the range of the northern spotted owl. The WDNR HCP was initiated primarily to address the conservation needs for old-growth forest dependent species, northern spotted owl, and marbled murrelet (*Brachyramphus marmoratus marmoratus*), while allowing WDNR to meet its trust responsibilities to the State. The HCP also addresses the conservation needs of other terrestrial and aquatic species on WDNR lands. Approximately 10 percent of the Coastal-Puget Sound population segment is in State ownership and is managed under the HCP. The HCP specifically provides Riparian Conservation Strategies designed to maintain the integrity and function of freshwater stream habitat necessary for the health and persistence of aquatic species, especially salmonids. Road maintenance and network planning strategies included in the HCP also play important roles in protecting aquatic habitats, but are often reliant on the Riparian Conservation Strategy stream buffers for complete protection.

If fully and properly implemented, the HCP should aid in the restoration and protection of freshwater salmonid habitat on the Olympic Peninsula and the areas on the west slope of the Cascades. There are still continued threats to bull trout subpopulations on State lands even with the HCP in place. For example, the HCP states, ''Adverse impacts to salmonid habitat will continue to occur because past forest practices have left a legacy of degraded riparian ecosystems, deforested unstable hillslopes, and a poorly planned and maintained road network'' (WDNR 1997). Areas that have been logged in the past will take decades to fully recover. In addition, ''Some components of the riparian conservation strategy require on-site management decisions, and adverse impacts to salmonid habitat may occur inadvertently. For example, timber harvesting in the riparian buffer must ''maintain or restore salmonid habitat'', but, at present, the amount of timber harvesting in riparian ecosystems compatible with high quality salmonid habitat is unknown'' (WDNR 1997).

In 1992, the Washington Department of Wildlife (now the Washington Department of Fish and Wildlife) developed a draft bull trout-Dolly Varden management and recovery plan. In 1995, WDFW released a draft EIS for the management plan. The plan establishes a goal of restoring and maintaining the health and diversity of ''native char'' stocks and their habitats in the State of Washington (WDFW 1995). At this time, the management plan has not been finalized and implemented. The Wild Salmonid Policy has been described as an umbrella document to the management plan, and in an effort to avoid contradicting documents, WDFW has postponed finalizing the plan.

Since 1994, WDFW has been in the process of developing a Wild Salmonid Policy (WSP) to address management of all native salmonids in the State. In September 1997, WDFW released the final EIS for the WSP. The policy establishes a goal to protect, restore, and enhance the productivity, production, and diversity of wild salmonids and their ecosystems to sustain ceremonial, subsistence, commercial, and recreational fisheries; non-consumptive fish benefits; and related cultural and ecological values well into the future (WDFW 1997b). The WSP, in its current form, may not adequately protect sensitive salmonid species such as bull trout because the primary focus is wild salmon and steelhead. Although other wild salmonids, including bull trout, are referred to in an ancillary manner in the document, the proposed policy does not address the unique requirements of bull trout. As a result, proposed habitat and water quality standards (current State surface water quality standards), originally developed with a focus on salmon, may fall short in protection for bull trout. The final EIS is not considered a policy document to direct WDFW. The EIS describes a set of alternatives presented to the Washington State Fish and Wildlife Commission (Commission). The Commission has the final responsibility for taking action on the preferred alternative and recommending policy direction. When implemented, the policy would present guidelines for actions that WDFW must follow, but would not be binding on other state, tribal, or private entities. The publication of a WSP will likely occur in the near future, but the format and exact content of the document is unknown. Given the uncertainties surrounding implementation of the plan and lack of specificity concerning bull trout, possible benefits to bull trout can not be evaluated.

Section 305(b) of the 1972 Federal Clean Water Act requires states to identify water bodies biennially that are not expected to meet State surface water quality standards (WDOE 1996). These waters are reported in the Section 303(d) list of water quality limited streams. The Washington State 303(d) list (WDOE 1997a) reflects the poor condition of lower stream reaches of some systems containing bull trout and Dolly Varden. At least 30 stream reaches, occupied by 14 subpopulations of ''native char'', are listed on the Washington State proposed 1998 303(d) list of water quality impaired streams (WDOE 1997a). Waters on the 303(d) list that inhibit these subpopulations because of temperature exceedances are—Chehalis River-Grays Harbor, lower Quinault River, Hoh River, lower Elwha River, Nisqually River, White River, Green River, Sammamish River-Issaquah Creek, Stillaguamish River, and lower Nooksack River. Bull trout have been identified in one of these subpopulations (Green River). The State temperature standards are likely inadequate for bull trout because temperatures in excess of 15°C (59°F) are thought to limit bull trout distribution (Rieman and McIntyre 1993) and the State temperature standard for the highest class of waters is 16°C (61°F).

Waters on the 303(d) list that do not meet instream flow standards and

contain ''native char'' subpopulation include—Dungeness River-Gray Wolf River, South Fork-lower North Fork Skokomish River, Puyallup River, lower Skagit River, and lower Nooksack River. Bull trout are known to occur in three of these subpopulations (Dungeness River-Gray Wolf River; South Fork-lower North Fork Skokomish River; and lower Skagit River). Although minimum instream flow requirements for bull trout have not been determined, variable stream flows and low winter flows are thought to negatively influence the embryos and alevins (a young fish which has not yet absorbed its yolk sac) of bull trout (Rieman and McIntyre 1993).

Subpopulations in waters that occur on the 303(d) list for not meeting the standards for dissolved oxygen are—Chehalis River-Grays Harbor and Sammamish River-Issaquah Creek (WDOE 1997a). Although no dissolved oxygen standards have been developed for bull trout, poor water quality and highly degraded migratory corridors may hinder or interrupt migration (Spence et al. 1996), leading to the further fragmentation of habitat and isolation of bull trout.

Surface waters are assigned to one of five classes under the Water Quality Standards for Surface Waters of the State of Washington (WAC 173–201A–130). These classes are AA (extraordinary), A (excellent), B (good), C (fair) and Lake class. For each of these classes a set of criteria have been established for water quality parameters such as temperature, fecal coliform, turbidity, dissolved oxygen, and toxic deleterious material concentrations. With the exception of dissolved oxygen, parameters are not to exceed the maximum levels specified for each class. Maximum water temperature criteria range from 16° C (60.8°F) (Class AA), 18°C (64.4°F) (Class A), 21°C (69.8°F) (Class B), to 22°C (71.6°F) (Class C). Bull trout streams within the Coastal-Puget Sound population segment have stream segments that fall in classes AA, A, and B. Given the low temperature requirements of bull trout, these temperature standards are inadequate to protect bull trout spawning, rearing or migration (Rieman and McIntyre 1993). Segments of the Quinault, Queets, Elwha, Skokomish, Nisqually, White, Green, and Snohomish rivers do not meet existing State standards for their respective classes. It is unknown whether the current standards established for other water quality parameters (fecal coliform, turbidity, dissolved oxygen, toxic deleterious material concentrations) within the various classes, are adequate to protect bull trout. See Factor A for additional discussion of water quality.

Jarbidge River Population Segment

Regulatory mechanisms addressing alterations to stream channels, riparian areas, and floodplains from road construction and maintenance, and the effects associated with roads and past mining on water quality, have been inadequate to protect bull trout habitat in the Jarbidge River basin. For example, the Jarbidge Canyon Road parallels the West Fork Jarbidge River for much of its length and includes at least seven undersized bridges for the stream and floodplain. Maintenance of the road and bridges requires frequent channel and floodplain modifications that affect bull trout habitat, such as channelization; removal of riparian trees and beaver dams; and placement of rock, sediment, and concrete (McNeill et al. 1997; Frederick, pers. comm. 1998; Frederick, *in litt.* 1998a). In 1995, debris torrents washed out a portion of the upper Jarbidge Canyon Road above Pine Creek, and plans to reestablish the road include channelizing the river (McNeill et al. 1997). The Service has recommended that this road segment be closed to vehicular traffic and that a trail be maintained to reduce the effects of the road and its maintenance on the river (R. Williams, Service, *in litt.* 1998). Periodic channelization in the Jarbidge River by unknown parties has occurred without the oversight provided by the COE Clean Water Act section 404 regulatory program (M. Elpers, Service, pers. comm. 1998), and the HNF has been unable to control trespass (unauthorized road openings) on Federal lands. Several old mines (adits) are releasing small quantities of warm water and other contaminants into the West Fork Jarbidge River.

The Nevada water temperature standards throughout the Jarbidge River are 21°C (67°F) for May through October, and 7°C (45°F) for November through April, with less than 1°C (2°F) change for beneficial uses (Nevada Department of Environmental Protection (NDEP), *in litt.* 1998). Water temperature standards for May through October exceed temperatures conducive to bull trout spawning, incubation, and rearing (Rieman and McIntyre 1993; Buchanan and Gregory 1997). There is no Clean Water Act section 303(d) designation in the destabilized seven mile reach of the West Fork Jarbidge River (J. Heggeness, NDEP, pers. comm. 1998).

In 1994, a local Bull Trout Task Force was formed to gather and share information on bull trout in the Jarbidge River. The task force is open to any representative from Elko and Owyhee counties, the towns of Jarbidge (Nevada) and Murphy Hot Springs (Idaho), road districts, private land owners, NDOW, IDFG, the Boise District of BLM, HNF, and the Service. The task force was successful in 1997 in obtaining nearly $150,000 for replacing the Jack Creek culvert with a concrete bridge to facilitate bull trout passage into Jack Creek. However, the task force has not yet developed a comprehensive conservation plan addressing all threats to bull trout in the Jarbidge River basin.

In 1995, the Humbolt National Forest plan was amended to include the Inland Native Fish Strategy. This fish and wildlife habitat policy sets a no net loss objective and is currently guiding possible reconstruction of a portion of the Jarbidge Canyon Road (Ramsey 1997).

St. Mary-Belly River Population Segment

Two USBR structures likely affect bull trout by dewatering stream reaches, acting as passage barriers, or exposing fish to entrainment (Service 1998c). The Service is not aware that the effects of the structures were considered in their construction (1902 and 1921) or operation. Currently, operators attempt to minimize passage and entrainment problems by staging the fall dewatering of the canal and removing boards in the dam during winter. The effectiveness of the operations has not been evaluated.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors affecting the continued existence of bull trout include—previous introductions of non-native species that compete, hybridize, and prey on bull trout; fragmentation and isolation of bull trout subpopulations from habitat changes caused by human activities; and subpopulation extirpations due to naturally occurring events such as droughts, floods and other environmental events.

Previous introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties, across the range of bull trout has resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary et al. 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d, 1996g; Platts et al. 1995; Palmisano and Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some

lakes and rivers, introduced species, such as rainbow trout or kokanee, may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

Coastal-Puget Sound Population Segment

Competition and hybridization with introduced brook trout threatens the persistence of some ''native char'' subpopulations in the Coastal-Puget Sound DPS. Brook trout have been introduced into headwater areas occupied by bull trout and ''native char''; however, the distribution of brook trout within many of these areas appears to be limited. Brook trout can threaten bull trout even in areas with undisturbed habitats (e.g., National Parks). Brook trout may have a reproductive advantage (earlier maturation) over resident bull trout, which can lead to species replacement (Leary et al. 1993; Thomas 1992). At present, portions of 14 ''native char'' subpopulations overlap with brook trout (Sol Duc River, upper Elwha River, lower Dungeness River-Gray Wolf River, upper North Fork Skokomish River, South Fork-lower North Fork Skokomish River, Green River, Carbon River, Skykomish River-Snohomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, Lower Skagit River, upper Middle Fork Nooksack River, and Canyon Creek) (R. Glesne, North Cascades National Park (NCNP), *in litt.* 1993; Mongillo and Hallock 1993; J. Meyer, ONP, pers. comm. 1995; Morrill and McHenry 1995; Brenkman, pers. comm. 1997; B. Green, MBSNF, pers. comm. 1997). Of the 14 subpopulations, species composition has been examined in 10 and bull trout have been confirmed in 8 (Service 1998a).

''Native char'' subpopulations that have become geographically isolated may no longer have access to migratory corridors. ''First-, and second-order streams in steep headwaters tend to be hydrologically and geomorphically more unstable than large, low-gradient streams. Thus, salmonids are being restricted to habitats where the likelihood of extirpation because of random environmental events is greatest'' (Spence et al. 1996). ''Native char'' subpopulations likely more prone to naturally occurring events as a result isolation are Cushman Reservoir, South Fork-lower North Fork Skokomish River, Gorge Reservoir, Diablo Reservoir, Ross Reservoir, upper Middle Fork Nooksack River, upper Quinault River, upper Sol Duc River, upper Dungeness River, and Chester Morse Reservoir (Service 1998a). Of these 10 ''native char'' subpopulations, species composition has been examined in 7 and bull trout have been confirmed in 5 (Cushman Reservoir, South Fork-lower North Fork Skokomish River, upper Quinault River, Chester Morse Reservoir, and upper Middle Fork Nooksack River) (Service 1998a).

Jarbidge River Populations Segment

''The smaller and more isolated parts of the range [such as the bull trout remaining in the Owyhee Uplands ecological reporting units or Jarbidge River basin] likely face a higher risk'' of naturally occurring extirpation relative to other bull trout populations (Rieman et al. 1997). One such risk is fire. In 1992, a 4,900 hectare (ha) (12,000 acre (ac)) fire (Coffeepot Fire) occurred at lower elevations, up to 2,286 m (7,500 ft), in areas adjacent to the Bruneau River basin and a small portion of the Jarbidge River basin. Although the Coffeepot Fire did not affect areas currently occupied by bull trout, similar conditions likely exist in nearby areas where bull trout occur. Adverse effects of fire on bull trout habitat may include loss of riparian canopy, increased water temperature and sediment, loss of pools, mass wasting of soils, altered hydrologic regime and debris torrents. Fires large enough to eliminate one or two suspected spawning streams are more likely at higher elevations where bull trout are usually found in the Jarbidge River basin (Frederick, *in litt.* 1998a; Ramsey, pers. comm. 1998b).

Hybridization with introduced brook trout is also a potential threat. In the West Fork Jarbidge River, approximately one percent of the harvest from the 1960's through the 1980's was brook trout (Johnson 1990). Some brook trout may spill out of Emerald Lake into the East Fork Jarbidge River during peak runoff events, but the lake lacks a defined outlet so that the event appears unlikely (Johnson, pers. comm. 1994). Although low numbers of brook trout persist in the Jarbidge River basin, conditions are apparently not conducive to the expansion of a brook trout population.

Other naturally occurring risks have been recently documented. The Jarbidge River Watershed Analysis (McNeill et al. 1997) indicates that 65 percent of the upper West Fork Jarbidge River basin has a 45 percent or greater slope. Debris from high spring runoff flows in the various high gradient side drainages such as Snowslide, Gorge, and Bonanza gulches provide the West Fork Jarbidge River with large volumes of angular rock material. This material has moved down the gulches at regular intervals, altering the river channel and damaging the Jarbidge River Canyon road, culverts, and bridge crossings. Most of the river flows are derived from winter snowpack in the high mountain watershed, with peak flows corresponding with spring snowmelt, typically in May and June (McNeill et al. 1997). Rain on snow events earlier in the year (January and February) can cause extensive flooding problems and has the potential for mass-wasting, debris torrents, and earth slumps, which could threaten the existence of bull trout in the upper Jarbidge River and tributary streams. In June, 1995, a rain on snow event triggered debris torrents from three of the high gradient tributaries to the Jarbidge River in the upper watershed (McNeill et al. 1997). The relationship between these catastrophic events and the history of intensive livestock grazing, burning to promote livestock forage, timber harvest and recent fire control in the Jarbidge River basin is unclear. However, debris torrents may potentially affect the long-term viability of the Jarbidge River bull trout subpopulation.

St. Mary-Belly Population Segment

Non-native species are pervasive throughout the St. Mary and Belly rivers (Fitch 1994; Fredenberg et al. 1996; Clayton 1997). Brook, brown, and rainbow trout have been widely introduced in the area. The Service is not aware of any studies conducted in the DPS evaluating the effects of introduced non-native fishes on bull trout. However, because brook trout occur in the four bull trout subpopulations, competition and hybridization are threats in the St. Mary and Belly rivers (Service 1998c), especially on resident bull trout (Wagner, pers. comm. 1998).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout in determining to propose this rule. Based on this evaluation, the proposed action is to list the bull trout as threatened in each of the three population segments. Determinations by distinct population segment follow:

Coastal-Puget Sound. Bull trout and ''native char'' in the Coastal-Puget

Sound population segment, despite their relative widespread distribution, have declined in abundance and distribution within many individual river basins. Bull trout and ''native char'' currently occur as 35 isolated subpopulations, which indicates the level of habitat fragmentation and geographic isolation. Eight subpopulations are isolated by dams or other diversion structures, with at least 17 dams proposed in streams inhabited by other bull trout or ''native char'' subpopulations. Bull trout and ''native char'' continue to be threatened by the effects of habitat degradation and fragmentation, blockage of migratory corridors, poor water quality, harvest, and introduced non-native species.

Jarbidge River. This population segment is composed of a single subpopulation, characterized by low numbers of resident fish. Activities, such as mining and grazing, threaten bull trout in the Jarbidge River basin. Although some of these activities have been modified or discontinued in recent years, the lingering effects continue to alter water quality, contribute to channel and bank instability, and inhibit habitat recovery. Ongoing threats include channel and bank alterations associated with road construction and maintenance, a proposed stream rechannelization project, recreational fishing (intentional and unintentional harvest), and competition with brook trout.

St. Mary-Belly River This population segment is composed of four subpopulations primarily isolated by dams and unsuitable habitat conditions created by irrigation diversions. The primary threat to bull trout are effects of introduced non-native fishes. Three of the four subpopulations are threatened by dams and irrigation diversions.

Based on this evaluation, the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments of bull trout are likely to become endangered within the foreseeable future, and thus, these population segments fit the definition of threatened as defined in the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those biological features (I) essential to the conservation of the species and (II) that may require special management considerations 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. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

The Service finds that the determination of critical habitat is not determinable for these distinct population segments based on the best available information. When a ''not determinable'' finding is made, the Service must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent. The Service reached this conclusion because the biological needs of the species in the three population segments are not sufficiently well known to permit identification of areas as critical habitat. No information is available on the number of individuals required for a viable population throughout the distinct population segment and the extent of habitat required for recovery of these fish has not been identified. In addition, within the Coastal-Puget Sound bull trout are sympatric with Dolly Varden. These two species are virtually impossible to visually differentiate and genetic and morphological-meristic analyses to determine the presence or absence of bull trout and Dolly Varden have only been conducted on 15 of the 35 ''native char'' subpopulations. The presence of bull trout in the remaining 20 subpopulations in the Coastal-Puget Sound along with the information noted above is considered essential for determining critical habitat for these population segments. Therefore, the Service finds that designation of critical habitat for bull trout in the Coastal-Puget Sound, Jarbidge River and St. Mary-Belly River distinct population segments is not determinable at this time. Protection of bull trout habitat will be addressed through the recovery process and through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. 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 State 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 with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities that they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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 the Service.

The three bull trout population segments occur on lands administered by the USFS, NPS, and BLM; various State-owned properties in Washington (Coastal-Puget Sound population segment), Idaho and Nevada (Jarbidge population segment), and Montana (St. Mary-Belly River population segment); Blackfeet Tribal lands in Montana and various Tribal lands in Washington; and

private lands. Federal agency actions that may require conference or consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 et seq.); FERC licensed hydropower projects authorized under the Federal Power Act; USFS and BLM timber, recreational, mining, and grazing management activities; Bureau of Indian Affairs (BIA) land management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; NPS activities such as construction on park lands; and U.S. Housing and Urban Development projects.

The Act and its implementing regulations, found at 50 CFR 17.21 and 17.31, set forth a series of general trade prohibitions and exceptions that apply to all threatened 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 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 is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32. 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. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act. Private landowners seeking permits under section 10 of the Act for incidental take are a means of protecting bull trout habitat through the voluntary development of habitat conservation plans. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.32.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following actions would not be likely to result in a violation of section 9:

(1) Actions that may affect bull trout in the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments that 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;

(2) Possession of Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments bull trout caught legally in accordance with state fishing regulations (see Special Rule section).

With respect to the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout population segments, the following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations within the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout population segments;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken bull trout;

(3) Unauthorized interstate and foreign commerce (commerce across state and international boundaries) and import/export of bull trout (as discussed earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting bull trout by recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

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. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Snake River Basin Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

Special Rule

Section 4(d) of the Act provides authority for the Service to promulgate special rules for threatened species that would relax the prohibition against taking. In this case, the Service proposes a special rule for the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout distinct population segments (see ''Proposed Regulations Promulgation'' section). The Service recognizes that statewide angling regulations have become more restrictive in an attempt to protect bull trout throughout Washington, Idaho, Montana, and Nevada. The Service intends to continue to work with the States in developing management plans and agreements with the objective of recovery and eventual delisting (in the event that they are listed) of the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout distinct population segments. Further, the Service, acting under the June, 1997, Secretarial Order on Federal-Tribal trust responsibilities and the Endangered Species Act, will work with Tribal governments who manage bull trout streams to restore ecosystems and

enhance Tribal management plans affecting the species. The Service is consequently proposing a special rule under section 4(d) that offers additional management flexibility for these population segments. The special rule would allow for take of bull trout within the Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout distinct population segments when it is in accordance with applicable State and Tribal fish and wildlife conservation laws and regulations, and conservation plans approved by the Service. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. The Service also feels that this special rule is consistent with the Secretarial Order designed to enhance Native American participation under the Act and will allow more efficient management of the species on Tribal lands.

Similarity of Appearance

Section 4(e) of the Act authorizes listing based on similarity of appearance if—(A) The species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment will substantially facilitate the enforcement and further the policy of the Act.

Within the Coastal-Puget Sound population segment, bull trout occur sympatrically within the range of Dolly Varden. These two species so closely resemble one another in external appearance, that it is virtually impossible for the general public to visually differentiate the two. Currently, Washington Department of Fish and Wildlife (WDFW) manages bull trout and Dolly Varden together as ''native char''. Fishing for bull trout and Dolly Varden is open in four subpopulations within the Coastal-Puget Sound population segment, two under WDFW regulations and two under Native American Tribal regulations. These ''native char'' fisheries may adversely affect these subpopulations of bull trout. However, under current harvest management there is no evidence that the specific harvest for Dolly Varden creates an additional threat to bull trout within this population segment. Therefore, a similarity of appearance rule is not being proposed for Dolly Varden at this time. However, if bull trout and Dolly Varden are managed in Washington State as separate species in the future, the Service may consider at that time the merits of proposing Dolly Varden under the similarity of appearance provisions of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will follow its peer review policy (59 FR 34270; July 1, 1994) in the processing of this rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning threat (or lack thereof) to these three population segments;

(2) The location of any additional populations of the three segments 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 and updated information concerning the range, distribution, and population size of the three segments;

(4) Current or planned activities in the subject area and their possible impacts on the three population segments; and

(5) Promulgation of the special rule.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final determination that differs from this proposal.

The Act provides for at least one public hearing on this proposal, if requested. However, given the high likelihood of several requests throughout the range of the population segments, the Service has scheduled four hearings in advance of any request. The hearings are scheduled for Lacey, Washington, on July 7, 1998; Mount Vernon, Washington, on July 9, 1998; East Glacier, Montana on July 14, 1998; and Jackpot, Nevada on July 21, 1998. For additional information on public hearings, see the DATES section.

National Environmental Policy Act

The Fish and Wildlife Service has 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, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

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. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Field Office (see **ADDRESSES** section).

Author: The primary authors of this proposed rule include—Jeffery Chan, Western Washington Fishery Resource Office, Olympia, WA; Timothy Cummings, Columbia River Fisheries Program Office, Vancouver, WA; Stephen Duke, Snake River Basin Office, Boise, ID; Robert Hallock, Upper Columbia River Basin Office, Spokane, WA; Samuel Lohr, Snake River Basin Office, Boise, ID; Leslie Propp, Western Washington State Office, Olympia, WA.

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 hereby 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 § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife:

§ 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:							
*	*	*	*	*	*		*
Trout, bull	*Salvelinus confluentus.*	U.S.A. (Pacific NW), Canada (NW Territories).	Coastal-Puget Sound (U.S.A.–WA) all pacific coast drainages north of Columbia R..	T		NA	17.44 (w)
Do.	do	do	Jarbidge R. (U.S.A.—ID, NV).	T		NA	Do.
Do.	do	do	St. Mary-Belly R. (U.S.A.—MT east of Continental Divide).	T		NA	Do.
*	*	*	*	*	*		*

3. Amend § 17.44 by adding paragraph (w) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(w) Bull trout (*Salvelinus confluentus*), Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River bull trout distinct population segments.

(1) Prohibitions. Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout Coastal-Puget Sound, Jarbidge River, and St. Mary-Belly River population segments within the contiguous United States.

(2) Exceptions. No person shall take this species, except in accordance with with applicable State and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all aspects relevant to protection of bull trout in effect on [date of publication of final determination in the **Federal Register**].

(3) Any violation of applicable State and Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State and Native American Tribal fish and game laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (w) (2) through (4) of this section.

Dated: June 1, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–15318 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 980527137–8137–01; I.D. 121597D]

RIN 0648–AL24

Atlantic Swordfish Fishery; South Atlantic Quotas; Quota Adjustment Procedures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing the Atlantic swordfish fishery to establish annual quotas for the South Atlantic swordfish stock. Additionally, NMFS proposes changes to the quota adjustment procedures. The purpose of these proposed actions is to improve conservation and management of the Atlantic swordfish resource, while allowing harvests consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS seeks comment on the proposed measures and on two related issues and will schedule public hearings at a later date.

DATES: Comments must be submitted on or before August 10, 1998.

ADDRESSES: Comments on the proposed rule should be submitted to Rebecca Lent, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Jill Stevenson by calling (301) 713–2347 or by writing to the preceding address.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson: 301–713–2347 or FAX 301–713–1917; Buck Sutter: 813–570–5447 or FAX 813–570–5364.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish. Regulations at 50 CFR part 630 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (codified at 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (codified at 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA implement the recommendations of ICCAT.

ICCAT has identified two management units for Atlantic swordfish; the one comprises fish occurring north and the other fish occurring south of a dividing line designated at 5° N. latitude. ICCAT has noted that high levels of fishing effort over the last several decades have led to a decline in the North Atlantic swordfish stock. In recent years, the South Atlantic swordfish stock has been under increased fishing pressure, and biomass of that stock may also be declining. ICCAT has recommended

management measures, including catch quotas and minimum size limits, to reduce fishing mortality for both the north and south Atlantic swordfish stocks. Management measures contained in this proposed rule would implement the most recent recommendation of ICCAT with respect to quotas for the south Atlantic swordfish stock.

South Atlantic Swordfish Quota

A 1994 ICCAT recommendation established a 188–metric ton (mt) dressed weight (dw) [250 mt whole weight (ww)] South Atlantic swordfish quota for participating countries that had 1993 and 1994 harvest levels below the 188–mt dw threshold. Other contracting parties, whose catches exceeded 188 mt dw, were required to limit catches to no greater than 1993 or 1994 harvest levels, whichever was higher. The 1997 quota for U.S.-flagged vessels operating south of 5° N. latitude was based on the best scientific information available at the time the quota was established (62 FR 55537, October 24, 1997), which indicated that U.S. swordfish catches had not exceeded the 188–mt threshold. However, information has subsequently become available indicating higher U.S. fishing effort and catch in South Atlantic waters during 1993 and 1994.

At the November 1997 meeting, ICCAT recommended that contracting parties identified as minor harvesting nations (including the U.S., Portugal and Korea) limit catch of South Atlantic swordfish to the levels of recent years, a portion estimated at 5.5 percent of the total South Atlantic catch. Given the total recommended quota of 14,620 mt ww, the maximum catch allocated to minor harvesting contracting parties is 804 mt ww. ICCAT did not make any allowances for a carryover of 1997 quota overharvest or underharvest to the 1998 fishing year.

As a result of the renegotiated catch-sharing agreement, the U.S. quota for the South Atlantic can be revised to more closely reflect actual harvest levels during the historical reporting period. Based on this new ICCAT recommendation and on the updated NMFS catch statistics, NMFS has determined that the South Atlantic swordfish quota applicable to the U.S. is 289 mt dw (384 mt ww) annually. Although this proposed quota would be an increase relative to the 1997 quota, it would not result in an increase in catch because it reflects U.S. fishing effort and catch in 1993 and 1994.

NMFS proposes to implement the ICCAT recommendation for U.S.-flagged vessels operating in the South Atlantic for the 1998, 1999, and 2000 fishing years with two semi-annual quotas: June 1 through November 30 and December 1 through May 31. Implementation of the 289–mt dw quota for U.S.-flagged vessels fishing in the South Atlantic quota will ensure that allowable U.S. landings of South Atlantic swordfish are consistent with approved ICCAT recommendations and based on the best available scientific information.

In South Atlantic waters, U.S.-flagged vessels will continue to be prohibited from fishing for swordfish with any gear other than with longline. This prohibition was imposed in 1997 at the time the quota was established because information available to NMFS indicated that no gear other than longlines had been operating in the South Atlantic swordfish fishery during the historical period. Given the limited quota available to U.S. vessels, development of fisheries with new gear would not have been appropriate then or will be at this time. Additionally, it is not anticipated that a significant directed longline fishery for tunas will develop in the South Atlantic. Therefore, no incidental quota is allocated for the South Atlantic swordfish stock.

Quota Adjustment Procedures

Current regulations governing the Atlantic swordfish fishery contain procedures for adjusting quotas. Adjustments may affect the overall quota, the allocation to directed and incidental catch fisheries, or allocations to specific gear categories. NMFS may implement, after prior notice and an opportunity for public comment, adjustments between fishing years and the two semiannual fishing seasons. Generally, the procedures require that proportional allocations between fishery segments are maintained and that underharvest or overharvest of suballocations be carried over within the respective categories.

NMFS proposes revisions to the procedures to expedite adjustments involving simple carryover situations made within a season or between seasons. Specifically, NMFS proposes that the requirement to consult with a swordfish evaluation panel be eliminated and that within and between season carryover adjustments be accomplished by notice action. NMFS will consult on long-term quota adjustments necessary to prevent overfishing with the Magnuson-Stevens Act advisory panels during discussions on the need to amend the FMP.

Request for Comments

NMFS requests comment on the proposed quotas for the South Atlantic swordfish fishery and the proposed changes to quota adjustment procedures for both the North and South Atlantic swordfish fisheries. Additionally, NMFS requests comments on two related issues that concern management of Atlantic swordfish: The offloading of swordfish harvested from the South Atlantic stock during a closure in the North Atlantic fishery and the use of trip limits to extend the length of the North Atlantic swordfish fishery.

Vessel operators fishing in the South Atlantic have reported to NMFS that few offloading sites are available to U.S. vessels south of 5° N. latitude. In some cases, licensing arrangements could require reflagging the vessel or hiring a foreign crew. Under current U.S. regulations, swordfish harvested from the South Atlantic stock may be offloaded at a port north of 5° N. latitude, provided they are sold to a licensed dealer. However, while a closure for the North Atlantic swordfish fishery is in effect, vessels are limited to an incidental catch of no more than 15 swordfish per trip.

Thus, vessels fishing in the South Atlantic may not transit north of 5° N. latitude with more than the incidental catch limit on board. Vessels harvesting more than 15 swordfish in the South Atlantic during a northern closure must offload in a port south of 5° N. latitude or offload in the north after the fishery reopens. South Atlantic swordfish offloaded in the north after a reopening, although assigned to the correct fishing area, are counted against the subsequent fishing period. This could lead to an underharvest in one period while reducing the quota available in the next period.

Given the problems U.S. vessel operators face in landing swordfish from the South Atlantic stock, NMFS seeks comment from the industry on practical solutions. Potential options for consideration include a single season for the South Atlantic fishery that would be set so as to allow more efficient allocation of fishing effort, vessel monitoring systems to allow transit of the closed area with directed catch of South Atlantic swordfish on board, revised quota monitoring procedures to consider not only the area but also the time of catch as recorded in logbooks, a requirement to offload swordfish in a U.S. port, and/or specified points of offloading, such as Puerto Rico. NMFS will consider any additional options presented during the comment period.

NMFS also seeks comment on the North Atlantic swordfish directed fishery trip limit. NMFS implemented a trip limit of 31,600 lb (14,364 kg) for the

directed swordfish longline fishery in an interim final rule issued September 8, 1995 (60 FR 46775). The 31,600 lb (14,364 kg)limit reflected the 90th percentile of swordfish catch by Grand Banks trips in 1992 and 1993. The trip limit was effective for calendar year 1996 only and was considered a short-term measure to address increased fishing effort in the face of a declining swordfish quota. The intent was to extend the season for the directed longline fishery and to reduce potential discard waste, economic disruption, and safety problems which could result from a derby fishery. In the long run, NMFS intends to address these potential problems, at least in part, through limited access management (see proposed rule at 62 FR 8672, February 26, 1997).

In a proposed rule that would consolidate all highly migratory species (HMS) regulations (61 FR 57361, November 6, 1996), NMFS considered making the trip limit permanent. The Blue Water Fishermen's Association commented that making the 31,600 lb (14,364 kg) trip limit permanent would affect only one segment of the swordfish fishery (the few largest distant-water vessels) so NMFS should establish regulations that are fair and equitable to all participants. The South Carolina Department of Natural Resources commented that the proposed permanent trip limit for vessels in the directed swordfish fishery seemed to conflict with the intent of other proposed actions (quotas, gear, time, and area allocations being set and adjusted in one or more annual notices) and would not deal with the possible need to adjust the trip limit in accordance with changing assessments of stock status.

Making the trip limit permanent would eliminate the need for annual regulatory amendments to extend its effectiveness. To allow for contingencies, NMFS could also make the trip limit subject to inseason adjustments based on cumulative and projected catch relative to the available quota. With such flexibility, a trip limit could be more closely aligned with actual fishing conditions. When the trip limit was first implemented, it was intended that it be subject to inseason adjustment. Although the preamble to the interim final rule stated this intention (60 FR 46776, September 8, 1995), the procedure for inseason adjustment of the trip limit was inadvertently omitted from the regulatory text.

NMFS requests comments on whether a trip limit is necessary to prolong the directed swordfish season for either one or both of the North Atlantic and South Atlantic fisheries, whether a trip limit should reflect fishing capacity (e.g., length of trip, size of vessel, distance from shore) and whether a trip limit should be specified annually and/or be subject to inseason adjustment. NMFS will make comments on the swordfish directed fishery trip limit available to the HMS, Longline and Billfish Advisory panels for consideration during the development of the HMS Fishery Management Plan.

Classification

This proposed rule is published under the authority of ATCA and the Magnuson-Stevens Act. The Assistant Administrator has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and the domestic management of the Atlantic swordfish fishery and are necessary to comply with the Marine Mammal Protection Act as required by the Magnuson-Stevens Act.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities as follows:

> The proposed specifications would establish an annual quota of 289 metric tons dressed weight for U.S.-flagged vessels operating in the South Atlantic for the 1998, 1999 and 2000 fishing years, divided into two semi-annual quotas. This quota is consistent with recent year catch levels and would not likely increase fishing effort nor shift activities to new fishing areas. The streamlined quota adjustment procedures will reduce the potential for economic disruptions due to premature closures of the fisheries.

Because a significant economic impact is not anticipated by the implementation of the proposed regulations, a regulatory flexibility analysis was not prepared. The Regulatory Impact Review provides further discussion of the economic effects of the proposed rule.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 5, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.24, paragraph (a)(3) is added; paragraphs (b), and (d) through (f) are revised; and paragraphs (g) and (h) are removed to read as follows:

§ 630.24 Quotas.

(a) * * *

(3) A swordfish will be deemed to have been harvested by a drift gillnet when it is on board or off-loaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from a vessel using or having on board a drift gillnet or when it is on board or off-loaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from a vessel which used or had on board a drift gillnet during its current or most recent fishing trip.

(b) *Directed-fishery quotas.* (1) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 2,098.6 mt dw, of which 2,057 mt dw is allocated for the longline/harpoon fishery and 41.6 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 1,028.5 mt dw, one for the period June 1 through November 30, 1998, and the other for the period December 1, 1998, through May 31, 1999.

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw, of which 1,993 mt dw is allocated for the longline/harpoon fishery and of which 40.2 mt dw is allocated for the drift gillnet fishery. The allocation for the longline/harpoon fishery is divided into two equal semiannual quotas of 996.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

(3) The annual directed fishery quota for the south Atlantic swordfish stock for the period June 1, 1998, through May 31, 1999, is 289 mt dw and is divided into two equal semiannual quotas of 144.5 mt dw, one for period June 1 through November 30, 1998, and the

other for the period December 1, 1998, through May 31, 1999.

(4) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 289 mt dw and is divided into two equal semiannual quotas of 144.5 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

(5) The annual directed fishery quota for the South Atlantic swordfish stock for the period June 1, 2000, through May 31, 2001, is 289 mt dw and is divided into two equal semiannual quotas of 144.5 mt dw, one for the period June 1 through November 30, 2000, and the other for the period December 1, 2000, through May 31, 2001.

* * * * *

(d) *Annual adjustments*. (1) As necessary, NMFS will reevaluate the annual directed fishery quotas for the north and south Atlantic swordfish stocks and the annual incidental catch quota for the north Atlantic swordfish stock. NMFS will consider the best available scientific information regarding the following factors:

(i) Swordfish stock abundance assessments;

(ii) Swordfish stock age and size composition;

(iii) Catch and effort in the swordfish fishery; and

(iv) Consistency with ICCAT recommendations.

(2) Except for the carryover provisions of paragraph (d)(3), of this section, NMFS will announce any adjustments to the annual quotas by publication of a notice in the Federal Register, providing for a 30-day minimum comment period. NMFS will prepare a report of its evaluations, a regulatory impact review, and an environmental assessment, and such documents will be made available to the public. The Assistant Administrator will take into consideration all information received during this comment period and will publish a final rule in the **Federal Register**.

(3) If consistent with applicable ICCAT recommendations, total landings above or below the specific north Atlantic or south Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that management area. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual periods. NMFS will publish notification in the **Federal Register** of any adjustment and of the apportionment made under this paragraph (d)(3), of this section.

(e) *Inseason adjustments*. (1) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed fishery and gear quotas are not exceeded.

(2) If NMFS determines that the annual incidental catch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed fishery quotas.

(3) If NMFS determines that it is necessary to close the directed fishery, any estimated overharvest or underharvest of the directed fishery quota available immediately prior to that closure will be used to adjust the annual incidental catch quota accordingly.

(4) NMFS will publish notification in the **Federal Register** of any inseason adjustment and its apportionment made under this paragraph (e).

(f) *Gear allocations*. If NMFS determines that the annual or semiannual directed fishery or incidental catch quotas must be adjusted pursuant to paragraph (d) or (e) of this section, the annual or semiannual gear quotas will be adjusted so that the new gear quotas represent the same proportion (percentage) of the adjusted quota as they did of the quota before adjustment, provided such adjusted gear quotas are consistent with applicable requirements under the Endangered Species Act and the Marine Mammal Protection Act.

[FR Doc. 98–15438 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 060298A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on June 24 and 25, 1998, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, June 24, 1998, at 10 a.m. and on Thursday, June 25, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone (978) 977–9700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Wednesday, June 24, 1998

At 9 a.m., the Council will convene a meeting of its Interspecies Committee to develop comments on NMFS' proposed list of authorized fisheries and gear and on draft proposed regulations for fishing vessel buyback programs. The full Council meeting will begin at 10 a.m. with discussions on several experimental fishery proposals for sea scallops. The Administrator, Northeast Region, NMFS (Regional Administrator), will seek public input at this time on a proposal to allow the use of Atlantic sea scallop dredge vessels in the Northeast Multispecies Georges Bank closed areas to investigate scallop growth, natural mortality, and population densities and to collect data that would assist the Council in the development of a scallop area management program. The Interspecies Committee will then review their comments on the fisheries/gear list and proposed buyback program regulations and, if necessary, modify them based on feedback from the Council. The Habitat Committee will approve proposed essential fish habitat (EFH) designations and alternatives for American plaice, pollock, redfish, whiting, sea scallops, Atlantic salmon, winter and windowpane flounder, and white hake for purposes of preparing a public hearing document. The Committee also will ask for overall approval of the EFH Amendment public hearing document.

Thursday, June 25, 1998

The meeting will begin with reports from the Council Chairman, Executive Director, Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. Following reports, the Council will provide guidance to the Spiny Dogfish Committee on draft management measures for inclusion in the fishery

management plan public hearing document. The Overfishing Definition Review Panel will present its final report on definitions revised or developed to meet the requirements of the Sustainable Fisheries Act. During the afternoon session, the Enforcement Committee will review its evaluation of the effectiveness of current management measures, including trip limits, closed areas, days-at-sea, and NMFS penalty schedule. The Whiting Committee will ask the Council to approve additional management measures to be considered at public hearings, including a moratorium on commercial permits, limited access qualification criteria, mesh size restrictions, trip limits, and other options for the northern and southern management areas. The Groundfish Committee Chairman will review the Committee's plan to address Gulf of Maine cod management proposals and summarize the most recent Canadian management information on Georges Bank groundfish stocks. Prior to addressing any other outstanding business, the Council will consider interim management measures for the monkfish fishery.

Announcement of Experimental Fishery Applications

The Regional Administrator will consider the authorization of two experimental fisheries based on recently submitted proposals. The first would allow the harvest of dogfish using longlines in the Nantucket Shoals Dogfish Exemption Area. The second proposal would allow the applicant to study the effects of a modified whiting net on flatfish bycatch in the Southern New England Regulated Mesh Area. Exempted fishing permits to conduct experimental fishing would be issued to exempt participating vessels from various restrictions in the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: June 4, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Serivce.

[FR Doc. 98–15440 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 111
Wednesday, June 10, 1998

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

Extension of Currently Approved Information Collection for Mineral Activities in the Smith River National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to seek extension of the approval for the existing information collection required by 36 CFR Part 292, Subpart G, for mineral operations in the Smith River National Recreation Area. The current information collection will expire September 30, 1998.

DATES: Comments must be received in writing on or before August 10, 1998.

ADDRESSES: Send written comments to Director, Minerals and Geology Management, mail stop 1126, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments in the Office of the Director. To facilitate entrance into the building, visitors are encouraged to call ahead (202) 205–1042.

FOR FURTHER INFORMATION CONTACT: Sam Hotchkiss, Minerals and Geology Management, telephone: (202) 205–1535.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Smith River National Recreation Area.

OMB Number: 0596–0138.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of an existing information collection.

Abstract: Forest Service regulations at 36 CFR Part 292, Subpart G, implement Section 8(d) of the Smith River National Recreation Area Act of 1990 and set forth procedures by which the Forest Service regulates mineral operations on National Forest System lands within the Smith River National Recreation Area. These regulations supplement existing Forest Service regulations and are intended to ensure that mineral operations are conducted in a manner consistent with the purposes for which the Smith River National Recreation Area was established..

Section 292.63(b) requires an operator to provide information to support valid existing rights in addition to plan of operations information requirements at §§ 228.4 and 228.8. Also, as part of a plan of operations for the Smith River National Recreation Area, § 292.63(c) requires the following information: (1) a copy of the authorization or agreement by which operations are to be conducted when the operator and mining claim owner are different; (2) the hazardous and toxic materials and similar chemical substances to be used during mineral operations; (3) the character and composition of mineral wastes that will be used or generated; (4) how these materials and substances will be disposed; (5) the proposed method or strategy for handling the wastes; and (6) how public health and safety will be maintained. Section 292.65(b) requires that operator wishing to exercise outstanding mineral rights submit an operating plan.

Estimate of Burden: 20 hours.

Type of Respondents: Mineral operators.

Estimate Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 5, 1998.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 98–15456 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service will host two public teleconference calls for the Committee of Scientists to discuss their report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service. The first teleconference call will be held Wednesday, June 17, 1998, from 11:00 a.m. to 2:00 p.m. (Eastern Standard Time) and the second teleconference call will be held on Wednesday, June 24, also from 11:00 a.m. to 2:00 p.m. (Eastern Standard Time). The public is invited to attend; however, individuals must register for one of the teleconference locations in advance by calling the Committee of Scientists message phone (541–750–7057). The public may be provided an opportunity to commit on the Committee of Scientists' deliberations, only at the request of the Committee.

DATES: The teleconference call will be held on Wednesday, June 17, 1998, and Wednesday, June 24, 1998 from 11:00 a.m. to 2:00 p.m. (Eastern Standard Time). Registration for the teleconference calls should be received by June 15.

ADDRESSES: Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the

Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/. The Supplementary Information section of this notice contains the addresses of teleconference call locations.

FOR FURTHER INFORMATION CONTACT:

For additional information concerning the teleconferences, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, at telephone: (703) 306–1032 or via the Internet at rcunningn@nsf.gov.

SUPPLEMENTARY INFORMATION:

Teleconference call 1 (June 17) will be held at the USDA Forest Service, Franklin Court Building, Suite 5500W, 1099 14th Street, NW, Washington, D.C. and at all Regional Offices of the Forest Service. The regional offices include: Region 1, Northern Region, Federal Building, 200 E. Broadway, Missoula, MT; Region 2, Rocky Mountain Region, 740 Simms Street, Golden, CO; Region 3, Southwestern Region, Federal Building, 517 Gold Avenue, SW., Albuquerque, NM; Region 4, Intermountain Region, Federal Building, 324 25th Street, Ogden, UT; Region 5, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA; Region 6, Pacific Northwest Region, 333 SW 1st Avenue Portland, OR; Region 8, Southern Region, 1720 Peachtree Road NW., Atlanta, GA; Region 9, Eastern Region, 310 W. Wisconsin Avenue, Room 500, Milwaukee, WI; and Region 10, Alaska Region, Federal Office Building, 709 W. 9th Street, Juneau, AK. The Alaska Region office will be open early for the teleconference.

Telconference call 2 (June 24) will be held at the USDA Forest Service Headquarters, 201 14th Street, S.W., Washington, D.C. in the McArdle Conference Room and at all Regional Offices listed previsouly in this notice.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: June 5, 1998.

Gloria Manning,

Associate Deputy Chief National Forest Systems.

[FR Doc. 98–15427 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of State Foresters

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Washington, D.C., on August 4, 1998, from 1 p.m. to 3 p.m. The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee to consult with the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978. The Chief of the Forest Service will chair this meeting, which is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held August 4, 1998.

ADDRESSES: The meeting will be held in the Williamsburg Room (104–A) of the Jamie L. Whitten Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW, Washington, D.C. 20250.

Send written comments to Phil Janik, Executive Secretary, Committee of State Foresters, c/o Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jerilyn Levi, Office of the Deputy Chief for State and Private Forestry, (202) 205–1041.

Dated: June 4, 1998.

Janice H. McDougle,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 98–15426 Filed 6–9–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: June 17, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 98–15567 Filed 6–8–98; 11:52 am]

BILLING CODE 6118–01–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 17, 1998; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey at (202) 401–3736.

Dated: June 8, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–15599 Filed 6–8–98; 2:07 p.m.]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Export Administration Bureau

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 provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Technology Letter of Explanation (formerly entitled Technical Data Letter of Explanation).

Agency Form Number: BXA–748P.

OMB Approval Number: 0694–0047.

Type of Request: Extension of a currently approved collection of information.

Burden: 722 hours.

Average Time Per Response: 1 to 2 hours.

Number of Respondents: 461 respondents.

Needs and Uses: The information contained in these letters will assure BXA that no unauthorized technical data will be exported for unauthorized end-uses or to unauthorized destinations and thus provide assurance that U.S. national security and foreign policy programs are followed. In addition, shipments to Poland, Hungary, and Czechoslovakia, need an Import Certificate issued by the appropriate national government.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Victoria Baecher-Wassmer (202) 395–5871.

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, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: June 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15377 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–98]

Foreign-Trade Zone 23—Buffalo, NY; Application for Subzone Status, Buffalo China, Inc. (Dinnerware/Table Top Products) Buffalo, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Erie, New York, grantee of FTZ 23, requesting subzone status for the finishing and distribution (non-manufacturing) facilities of Buffalo China, Inc. (Buffalo China), located in Buffalo, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 22, 1998.

Buffalo China's three facilities (on approximately 10 acres) are located at 500 Bailey Avenue, 658 Bailey Avenue, and 51 Hayes Place in Buffalo, New York. These facilities (400 employees) will be used to store, decorate and repackage dinnerware/table top products. The Buffalo facilities will be used to distribute products both in the U.S. and abroad.

Zone procedures would exempt Buffalo China from duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer duty on foreign-sourced materials (duty rates ranging from 0.8 to 31.0%). The company is also seeking an exemption from duty payments on foreign merchandise that becomes scrap (3%). The application indicates that the savings from zone procedures will help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 10, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 24, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

U.S. Department of Commerce Export Assistance Center, 111 West Huron St., Room 1304, Buffalo, New York 14202.

Dated: May 22, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–15470 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of June 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in JUNE for the following periods:

	Period
Antidumping duty proceedings	
Belgium: Sugar, A–423–077	6/1/97–7/31/98

	Period
Canada:	
Oil Country Tubular Goods, A–122–506	6/1/97–5/31/98
Red Raspberries, A–122–401	6/1/97–5/31/98
France:	
Large Power Transformers, A–427–030	6/1/97–5/31/98
Sugar, A–427–078	6/1/97–5/31/98
Germany:	
Industrial Belts, Except Synchronous & V belts, A–428–802	6/1/97–5/31/98
Precipitated Barium Carbonate, A–428–061	6/1/97–5/31/98
Sugar A–428–082	6/1/97–5/31/98
Hungary: Tapered Roller Bearings, A–437–601	6/1/97–5/31/98
Italy:	
Large Power Transformers, A–475–031	6/1/97–5/31/98
Synchronous and V-Belts, A–475–802	6/1/97–5/31/98
Japan:	
Engineered Process Gas Turbo-Compressor Systems, A–588–840	12/10/96–5/31/98
Fishnetting of Man-Made Fibers, A–588–029	6/1/97–5/31/98
Forklift Trucks, A–588–703	6/1/97–5/31/98
Grain-Oriented Electrical Steel, A–588–831	6/1/97–5/31/98
Industrial Belts, A–588–807	6/1/97–5/31/98
Large Power Transformers, A–588–032	6/1/97–5/31/98
Nitrile Rubber, A–588–706	6/1/97–5/31/98
New Zealand: Kiwifruit, A–614–801	6/1/97–5/31/98
Republic of Korea: PET Film, A–580–807	6/1/97–5/31/98
Romania: Tapered Roller Bearings, A–485–602	6/1/97–5/31/98
Russia: Ferrosilicon, A–821–804	6/1/97–5/31/98
Singapore: V-Belts, A–559–803	6/1/97–5/31/98
South Africa: Furfuryl Alcohol, A–791–802	6/1/97–5/31/98
Sweden: Stainless Steel Plate, A–401–040	6/1/97–5/31/98
Taiwan:	
Carbon Steel Plate, A–583–080	6/1/97–5/31/98
Oil Country Tubular Goods, A–583–505	6/1/97–5/31/98
Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/97–5/31/98
Certain Helical Spring Lock Washers, A–583–820	6/1/97–5/31/98
The Netherlands: Aramid Fiber, A–421–805	6/1/97–5/31/98
The People's Republic of China:	
Furfuryl Alcohol, A–570–835	6/1/97–5/31/98
Silicon Metal, A–570–806	6/1/97–5/31/98
Sparklers, A–570–804	6/1/97–5/31/98
Tapered Roller Bearings, A–570–601	6/1/97–5/31/98
Venezuela: Ferrosilicon, A–307–807	6/1/97–5/31/98
Countervailing Duty Proceedings	
Italy: Grain-Oriented Electrical Steel, C–475–812	1/1/97–12/31/97

Suspension Agreements

None.

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of June 1998. If the Department does not receive, by the last day of June 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or

countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 3, 1998.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–15468 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate from France; Notice of Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recission of antidumping duty administrative review.

SUMMARY: On February 27, 1998, the Department of Commerce published in the **Federal Register** (63 FR 10002) a notice announcing the initiation of an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covered the period from January 1, 1997 through December 31, 1997. The Department of Commerce has now rescinded this review as a result of the absence of shipments and entries into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Ross or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published in the **Federal Register** on January 12, 1998 (63 FR 1820) a ''Notice of Opportunity to Request Administrative Review'' of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France (46 FR 1667, January 7, 1981). On January 22, 1998, the PQ Corporation, the petitioner, requested an administrative review of Rhone-Poulenc, a manufacturer/exporter of ASM. The Department initiated the review on February 27, 1998 (63 FR 10002). On March 16, 1998, Rhodia Chimie, a wholly-owned subsidiary of Rhone-Poulenc that is responsible for Rhone-Poulenc's speciality chemical, fiber, and polymer businesses, submitted a letter explaining that the company did not export the subject merchandise to the United States during the period of review (POR). On April 3, 1998, the Department sent a no-shipment inquiry regarding Rhone-Poulenc to the Customs Service. The purpose of this inquiry was to determine whether the Customs Service suspended liquidation of entry summaries of this merchandise during the POR. The Customs Service did not identify any suspended entry summaries of ASM manufactured and/or exported by Rhone-Poulenc during the POR. Therefore, we have determined that there were no entries of subject merchandise into the customs territory of the United States during the POR and we are rescinding this review in accordance with 19 CFR 351.213(d)(3). The cash-deposit rate for Rhone-Poulenc will remain at 60 percent, the rate established in the most recently completed segment of this proceeding (61 FR 44038, August 27, 1996). This notice is being published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: June 4, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–15475 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808]

Chrome-Plated Lug Nuts From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of chrome-plated lug nuts from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC) in response to a request by petitioner, Consolidated International Automotive, Inc. (Consolidated). This review covers shipments of this merchandise to the United States during the period of September 1, 1996 through August 31, 1997.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Eric Scheier or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 351 (62 FR 27379, May 19, 1997).

Background

The Department published in the **Federal Register** an antidumping duty order on lug nuts from the PRC on April 24, 1992 (57 FR 15052). On August 29, 1997, the Department published in the **Federal Register** (62 FR 45794) a notice of opportunity to request an administrative review of the antidumping order on lug nuts from the PRC covering the period September 1, 1996 through August 31, 1997.

On September 29, 1997, in accordance with 19 CFR 351.213(b)(1), Consolidated requested that we conduct an administrative review of the following PRC firms:

China National Automotive Industry I/E Corp.

China National Machinery & Equipment I/E Corp., Jiangsu Branch

Shanghai Automobile Import & Export Corp.
Tianjin Automobile Import & Export Co.
Ningbo Knives & Scissors Factory
China National Automobile Import & Export Corp., Yangzhou Branch
Jiangsu Rudong Grease Gun Factory
China National Automotive Industry I/E Corp., Nantong Branch

We published a notice of initiation of this antidumping duty administrative review on November 26, 1997 (62 FR 63069). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by the order and this review are one-piece and two-piece chrome-plated and nickel-plated lug nuts from the PRC. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term ''unfinished'' refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the order are zinc-plated lug nuts, finished or unfinished, stainless-steel capped lug nuts, and chrome-plated lock nuts.

The merchandise under review is currently classifiable under item 7318.16.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period September 1, 1996 through August 31, 1997.

Facts Available

We preliminarily determine that, in accordance with section 776(a) of the Act, the use of facts available is appropriate for the following firms:

China National Automotive Industry I/E Corp.
China National Machinery & Equipment I/E Corp., Jiangsu Branch
Tianjin Automobile Import & Export Co.
Ningbo Knives & Scissors Factory
China National Automobile Import & Export Corp., Yangzhou Branch
China National Automotive Industry I/E Corp. Nantong Branch

Two of the above firms, the Tianjin Automobile Import & Export Co. and the Ningbo Knives & Scissors Factory, had mailing addresses that were undeliverable. *See* memorandum to the file dated December 9, 1997, ''Chrome-Plated Lug Nuts from the People's Republic of China.''

Neither the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) nor the Embassy of the PRC in Washington, DC gave us any indication that any of the addresses for the eight firms listed above was incorrect. See Letter to MOFTEC dated November 11, 1997 and Letter to the Embassy of the PRC dated November 11, 1997. In the letter to the Embassy of the PRC we requested that the Embassy of the PRC provide the names, addresses, phone numbers, and appropriate contact persons for each company in the PRC that produced and/or exported the subject merchandise during the POR, and that they include the names of any foreign corporations engaged in joint ventures and/or partnerships with each company. We included in the letter to the Embassy of the PRC a copy of the letters and questionnaire sent to each of the firms. We included all of the above in the letter to MOFTEC, including the letter to the Embassy of the PRC, and requested, if MOFTEC believed that the Embassy of the PRC was not the proper party to respond to this questionnaire, or wished to have another person or organization act as the Department's contact for this review, that MOFTEC provide the name and address of that person or organization. Neither MOFTEC nor the Embassy of the PRC responded to these letters.

Furthermore, the addresses to which we sent the questionnaires were identical to the addresses to which the questionnaires were sent in the most recent review, with the exception of the China National Automotive Industry I/E Corp. Nantong Branch (Nantong). In the 1994–95 administrative review of lug nuts, we addressed the questionnaire to Nantong's counsel. Because Nantong does not have counsel in this current review, we mailed the questionnaire to Nantong's business address as reported in the public version of their February 13, 1995 questionnaire response for the 1994–95 review. We were unable to find any more recent information regarding the two undeliverable addresses. See Memoranda to the File dated November 25, 1997 and June 1, 1998. Because necessary information is not available on the record with regard to sales by six firms during the period of review, the use of facts available for these six firms is warranted.

Where a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) notes that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. H.#Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as surrogate values, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. (*See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest margin as best information available because that margin was based on an uncharacteristic business expense, which resulted in the high margin.) In this case, we have used the highest rate from this or any prior segment of the proceeding, 44.99 percent, which was the rate calculated for Nantong in the 1992–93 review, and which is the PRC-wide rate currently in effect. *See Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 61 FR 58519 (November 15, 1996). There is no information on the record that indicates that this rate is not appropriate. Because these firms are part of the PRC entity, this rate remains the PRC rate.

The Shanghai Automobile Import & Export Co. (Shanghai), which was not assigned a separate rate in any previous review, reported in its letter of December 3, 1997 that it did not export subject merchandise to the United States during the period of review. Because Shanghai has not been given a separate rate in any previous segment of this proceeding, and because there is no information on the record by which we might determine whether Shanghai should be considered for a separate rate in this review, we are considering Shanghai part of the PRC entity, and assigning it the PRC-wide rate of 44.99 percent.

Separate Rates

Of the firms named in the initiation of the administrative review, the only one to respond to the separate rate section of the Department's antidumping questionnaire was the Jiangsu Rudong Grease Gun Factory (Rudong). Therefore, only Rudong was considered for a separate rate.

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

With respect to the absence of *de jure* government control over export activities, evidence on the record indicates that Rudong is a collectively-owned enterprise, does not coordinate with other exporters and has no relationship with the national, provincial or local levels of the PRC government. As a collectively-owned enterprise, Rudong has the legal right to set prices independent of all government oversight, as codified by *Chinese Law for Foreign Businesses*, Ch. 3 Art. 26. *Chinese Law for Foreign Businesses* and ''Excerpts from Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' published in the December, 1992 edition of *The Bulletin of the Ministry of Foreign Economic Relations and Trade of the People's Republic of China*, both of which regulate the operation of PRC collectively-owned industrial enterprises, are attached to *Memorandum to the File* dated June 2, 1998, ''Chrome-Plated Lug Nuts from the People's Republic of China: Laws and Regulations Governing Business Practices in the PRC.''

With respect to the absence of *de facto* control over export activities, Rudong's management is responsible for all decisions such as the determination of its export prices, profit distribution, marketing strategy, and contract negotiations. For more information, *see Separate Rate Analysis in the Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China* dated June 2, 1998 (*Separate Rates Memorandum*), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Because evidence on the record demonstrates an absence of government control, both in law and in fact, over Rudong's export activities, the Department preliminarily grants Rudong a separate rate. For further discussion of the Department's preliminary determination that Rudong is entitled to a separate rate, *see Separate Rates Memorandum*.

United States Price

For sales made by Rudong, we based United States price on export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States, and because constructed export price is not indicated by other facts of record.

We calculated export price based on the price to unaffiliated purchasers. We deducted an amount for foreign inland freight, insurance, and, for sales made on a CIF basis, international (ocean) freight. We selected India for all surrogate values with the exception of international freight, for the reasons explained in the ''Normal Value'' section of this notice.

We valued movement expenses as follows:

- To value truck freight, we used the rates reported in an April 20, 1994 newspaper article in the ''Times of India'' and submitted for the *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China*, 60 FR 52647 (October 10, 1995). We adjusted the rates to reflect inflation through the POR using WPI published by the IMF.
- Where ocean freight was sourced from a market economy and paid for in a market-economy currency, we used the actual prices paid to the market-economy carriers; where ocean freight was provided by a nonmarket-economy carrier, we used a weighted average of the prices paid to the market-economy carriers. *See Final Determination of Sales at Less Than Fair Value: Manganese Sulphate from the People's Republic of China*, 60 FR 52155 (October 5, 1995).
- We valued marine insurance using the average rate in effect during the period November 1991 through April 1992. This rate was reported in public information placed on the record for the *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From India*, 58 FR 11835 (March 1, 1993). We adjusted this rate to reflect inflation through the POR using WPI published by the IMF.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the

parties to this proceeding has contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. We determined that India 1) is comparable to the PRC in terms of level of economic development, and 2) is a significant producer of comparable merchandise. *See Memorandum to the File* dated January 29, 1998, ''Chrome-Plated Lug Nuts from the People's Republic of China—Significant Production in India of Comparable Merchandise.'' Therefore, for this review, we used publicly available information relating to India to value the various factors of production. *See Memorandum to the File from Eric Scheier*, dated June 2, 1998, ''Factor Values Used for the Preliminary Results of the 1996–1997 Administrative Review of Chrome Plated Lug Nuts from the People's Republic of China.''

We valued the factors of production as follows:

- For steel wire rods, we used a per kilogram value obtained from the *Monthly Statistics of Foreign Trade of India* (*Indian Import Statistics*). Using wholesale price indices (WPI) obtained from the *International Financial Statistics*, published by the International Monetary Fund (IMF), we adjusted these values to reflect inflation through the period of review (POR). We made further adjustments to include freight costs incurred between the supplier and Rudong. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from India a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).
- For chemicals used in the production and plating of lug nuts, we used per kilogram values obtained from the Indian publication *Chemical Weekly* and the *Indian Import Statistics*. We adjusted the Indian Import Statistics rates to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the suppliers and Rudong, and to deduct sales and excise taxes from the prices listed in the *Chemical Weekly*. We obtained excise tax figures from the *Central Excise Tariff of India 1995–1996* and sales tax figures from the *All India Sales Tax Ready Reckoner: 1996 Edition*.
- For hydrochloric acid, we relied on the price used in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China (Lock Washers)* (62 FR 61794, November 19, 1997) because the *Indian Import Statistics* rely on an Indian tariff category that also encompasses hydrogen chloride in gaseous form. This price is derived from prices listed in the *Chemical Weekly* for the period of October 1995 through September 1996, and excludes prices that were found to be aberrational in *Lock Washers*. We adjusted this value to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the supplier and Rudong.
- For labor, we used the PRC regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised on June 2, 1997. *See* http://www.ita.doc.gov/import__admin/records/wages. Because of the variability of wage rates in countries with similar per capita GDPs, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's homepage is found in the *1996 Year Book of Labour Statistics*, International Labour Office (''ILO'') (Geneva: 1996), Chapter 5B: Wages in Manufacturing.
- For factory overhead, we used information reported in the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. From this information, we were able to determine factory overhead as a percentage of the total cost of manufacture.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.
- To calculate a profit rate, we used information obtained from the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated a profit rate by dividing the before-tax profit by the cost of manufacturing plus SG&A.
- For packing materials, we used per kilogram values obtained from the *Indian Import Statistics*. We adjusted these values to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the suppliers and Rudong.
- To value electricity, we used the average price of electricity as of July 1995 published in *India's Energy Sector* by the Center for Monitoring the Indian Economy. We adjusted the value of electricity to reflect inflation through the POR using the WPI published by the IMF.
- Although Rudong did report banking charges, which it explains are incurred in connection with the collection of receivables, we are not allowing this adjustment. It is the Department's current practice not to make circumstance-of-sale adjustments in NME cases. The Department does not adjust for differences in selling expenses because there is insufficient detail about the selling expenses included in the surrogate SG&A to make an adjustment. *See Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China* 60 FR 56045, 50–51 (November 6, 1995).

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
Jiangsu Rudong Grease Gun Factory	09/01/96–08/31/97	5.44
PRC rate	09/01/96–08/31/97	44.99

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 39 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(b)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of

its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. We have calculated importer-specific duty assessment rates for lug nuts by dividing the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of the importer's/customer's entries during the review period.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Rudong, which has a separate rate, the cash deposit rate will be 5.44 percent; (2) for all other PRC exporters, the rate will be the PRC country-wide rate; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15471 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Rescission of Antidumping Duty Administrative Review and Clarification of Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of rescission of antidumping duty administrative review and clarification of final results of antidumping duty changed circumstances review.

SUMMARY: In response to timely withdrawals of request for review by Hyundai Pipe Co. Ltd., Korea Iron and Steel Co., Ltd., SeAH Steel Corporation and Shinho Steel Co., Ltd., the Department of Commerce is rescinding the 1996/1997 antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea. Also, we are clarifying the cash deposit rate for SeAH Steel Corporation which was incorrectly stated in the final results of antidumping duty changed circumstances review published April 27, 1998.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Cynthia Thirumalai, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–6309 and 482–4087 respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations, codified at 19 CFR part 351 published in 62 FR 27295 (May 19, 1997).

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Recession of 1996/97Antidumping Duty Administrative Review

On December 23, 1997, we published our *Notice of Initiation of Antidumping and Countervailing Administrative Reviews* (62 FR 246). Subsequently, we received timely withdrawals of request for review from Hyundai Pipe Co. Ltd., Korea Iron and Steel Co., Ltd., SeAH Steel Corporation (''SeAH'') and Shinho Steel Co., Ltd. Because there was no other request for review for these

companies from any other interested party and because no other request for review was received with respect to other companies, we are rescinding this review in its entirety in accordance with 19 CFR 351.213(d)(1).

Clarification of Final Results of Changed Circumstances Review

On April 27, 1998, we published our *Notice of Final Results of Antidumping Duty Changed Circumstances Review; Circular Welded Non-Alloy Steel Pipe From Korea* (63 FR 20572). In these final results, the cash deposit rate listed for SeAH was incorrect. The correct cash deposit rate is 5.31 percent *ad valorem*, as found in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Amendment of Final Results of Antidumping Duty Administrative Review* (63 FR 2200, 2202, January 14, 1998). This cash deposit rate will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 27, 1998. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review.

This notice is published in accordance with 19 CFR 353.22(f).

Dated: June 14, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–15469 Filed 6–9–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 2, 1998, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. This review covers a total of 424 producers and/or exporters of fresh cut flowers to the United States during the period March 1, 1996 through February 28, 1997.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Hong-Anh Tran or Todd Hansen, Office 1, Group 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1278, (202) 482–0176 or (202) 482–1276, respectively.

APPLICABLE STATUTE AND REGULATIONS: The Department of Commerce (the Department) is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1998, we published a notice of *Preliminary Results and Partial Termination of Antidumping Duty Administrative Review (Preliminary Results),* wherein we invited interested parties to comment. *See* 63 FR 5354. At the request of the interested parties, we held a public hearing on April 14, 1998.

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item numbers are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

Fair Value Comparisons

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in section 772(a) and 772(b) of the Act. We calculated EP and CEP based on the same methodology used in the *Preliminary Results* with the following exceptions: (1) we recalculated Tuchany's credit expenses net of commission and international freight expenses (*see infra* Comment 14); (2) we accounted for the returns for Clavecol and Caicedo for the months reported rather than allocating them over the period of review (POR) (*see infra* Comment 16).

Normal Value

As discussed in the *Preliminary Results,* we determined that home market and third-country sales are not an appropriate basis for normal value (NV) and, therefore, used constructed value (CV) as defined in section 773(e) of the Act as the basis for determining NV. We used the same methodology to calculate NV as that described in the *Preliminary Results.*

Analysis of Comments Received

We received case and rebuttal briefs from the Floral Trade Council (FTC), the domestic interested party, and the Asociacion Colombiana de Exportadores de Flores (Asocolflores), an association of Colombian flower producers representing many of the respondents in this case.

General Issues

Comment 1: Asocolflores argues that zero and *de minimis* margins should be included in the calculation of the rate for non-selected respondents since it is reasonable to assume that some of the non-selected respondents would have received the same had they been individually reviewed. Citing to *Serampore Indus. Pvt. Ltd.* v. *United States,* 696 F. Supp. 665, 668–69 (CIT 1988), Asocolflores argues that excluding zero and *de minimis* margins amounts to a presumption of dumping on behalf of non-selected firms.

Asocolflores further argues that if the rates of selected companies are not, in some way, ''representative,'' then there is no legal basis for using such rates for non-selected respondents. Referring to *National Knitwear & Sportswear Association* v. *United States,* 779 F. Supp. 1364, 1372 (CIT 1991), Asocolflores elaborates that the benefits of zero or *de minimis* margins made available to selected respondents should be extended to non-selected respondents. Acknowledging that the Act provides for the exclusion of zero and *de minimis* margins in calculating the cash deposit rate for non-examined producers in an investigation, Asocolflores differentiates this situation

from the final results of an administrative review which give rise to actual duty payments. Asocolflores emphasizes that because of the Department's decision to limit the number of respondents, all exporters and importers do not have the ability to obtain their own assessment rates as they normally would in an administrative review.

Asocolflores claims that the Department's decision to exclude zero and *de minimis* margins is arbitrary and denies non-selected respondents their substantive and procedural due process rights. Moreover, Asocolflores asserts that because no adverse facts available (AFA) rates were applied in this review, the Department's approach of excluding zero and *de minimis* rates alone would in effect result in an ''unbalanced'' approach, defeating the rationale for a ''balanced'' approach (*i.e.*, excluding both AFA and zero and *de minimis* margins), taken by the Department in *Certain Fresh Cut Flowers from Colombia: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287 (October 14, 1997) (*Ninth Review Final Results*).

In the event the Department continues to exclude zero, *de minimis* and AFA margins, Asocolflores claims that Tuchany's rate should be excluded because it is mostly derived from information based on facts available (FA). By excluding Tuchany's rate, Asocolflores asserts that a more ''balanced'' result will be maintained.

The FTC contends that there is no valid basis for excluding margins based on AFA on the one hand while including *de minimis* margins on the other. The FTC argues that Asocolflores' argument ignores the fact that the Department's methodology, one of selecting only the largest producers in this case, is not intended to be a statistically representative sampling of the whole population. The FTC asserts that over the past twelve years, all respondents have had many opportunities to request partial revocation, by demonstrating that they were not dumping. Those respondents who have succeeded in obtaining revocation, the FTC states, are properly excluded from the universe from which a sample would be drawn in future administrative reviews. Consequently, the FTC asserts that the remaining universe is fairly presumed to consist of those producers that continue to dump. Therefore, the FTC argues that the Department's practice of excluding zero and *de minimis* margins in calculating the rate for non-selected respondents is appropriate. The FTC states that margins such as Tuchany's that are not based entirely on AFA should be included in the non-selected respondent rate.

Department's Position: Consistent with our practice in *Ninth Review Final Results,* we are not including zero or *de minimis* rates or rates based entirely on AFA in the calculation of the rate for non-selected respondents. As stated in that segment of this proceeding, there is no over-arching rule as to the inclusion or exclusion of zero and *de minimis* rates in calculating the rate to be applied to non-selected respondents. The approach we have adopted parallels the statutorily mandated formula for calculating the all-others rate, *i.e.*, the weighted-average rate of uninvestigated companies not including AFA and zero and *de minimis* rates. *See* section 735(c)(5) of the Act. This approach is both reasonable and one that yields a balanced result.

We disagree with Asocolflores that due process is being denied to non-selected respondents because we have not included zero and *de minimis* margins. Asocolflores misread the relevant case law. The cases cited by Asocolflores stand for the proposition that the parties' procedural and substantice rights are limited to those set forth in the antidumping statute and regulations. *Arjay Associates, Inc.* v. *Bush*, 891 F. 2d 894, 896 (Fed. Cir. 1989); *Gulf States Tube Division of Quanex Corp.* v. *United States*, 981 F. Supp. 630, 652 (CIT 1997); *see also Kemira Fibres Oy* v. *United States*, 858 F.Supp. 229, 235 (CIT 1994). In the instant case, our methodology of excluding zero and *de minimis* margins in the calculation of rates applicable to non-respondents in no way prevents non-selected respondents from obtaining revocation of the antidumping duty order in this case. Rather, they have the opportunity for revocation as set forth in *Ninth Review Final Results* at 53290 (Comment 4). Specifically, companies that requested reviews in prior reviews but were not selected for examination may request revocation by certifying and demonstrating that they have not sold subject merchandise at not less than normal value during the current and two prior periods of review (POR).

We also disagree with Asocolflores that because there is no AFA-based rate applicable in this review, zero and *de minimis* margins must be included in the non-selected respondents' rate calculation in order to maintain a ''balanced'' result. The fact that there is no AFA-based rate in the present review does not affect the validity of our methodology of excluding zero and *de minimis* rates and rates based on AFA from the calculation of the non-selected respondent rate. For instance, if there had been a rate based on AFA but no zero or *de minimis* rate in the present review, we would have followed the same approach by excluding the AFA rate from the calculation of the non-selected respondent rate.

As we stated in the *Ninth Review Final Results* at 53290, we do not find that the selected respondents, who represent the largest producers/exporters of the subject merchandise, are necessarily representative of the whole population. Therefore, we do not treat the selected companies as a statistical sample and compute a margin that is based on the results of all the selected companies.

Finally, we have included Tuchany's rate in the calculation of the rate for non-selected respondents. Because its rate is not entirely based on AFA, it would be included in calculating an all-others rate, the same approach that we are adopting here.

Comment 2: The FTC argues that the Department's reasons for rejecting third-country prices as the basis for determining NV in past reviews are insufficient to support a finding that third-country prices should not be used for any of the respondents in this review. The FTC notes that the Department has rejected the use of prices from sales to European markets in past reviews because of evidence indicating that prices in European markets are more stable than those in the U.S. market, and that the demand pattern in European markets differs significantly from the U.S. market due to differences in the flower-giving holidays. In the present review, however, the FTC claims that the Department has no reason to reject non-European third-country prices as the basis for determining NV. The FTC notes that Canada and Japan have become increasingly important markets for Colombian flower exporters, and that in this review the Department found that several exporters had viable markets in Japan and/or Canada. The FTC claims that there is no evidence on the record indicating that either the Japanese or the Canadian market differs significantly from the U.S. market. Moreover, the FTC argues that the Department has consistently determined the proper basis for NV on a company-specific basis. Therefore, the Department should use sales to Japan or Canada as the basis for determining NV whenever these markets are found to be viable for individual respondents.

Asocolflores argues that the non-European third-country markets are not

representative markets for the majority of Colombian growers and that sales to these markets should not be used as the basis of NV for any of the responding companies. Asocolflores notes that all of the major third-country markets for Colombian flower growers are European, and that the Canadian and Japanese are not significant third-country markets for the Colombian industry as a whole. Asocolflores argues that the Department was correct not to use third-country prices to Japan or Canada to calculate NV for certain respondents in the *Preliminary Results* because reliance on such data would not produce representative results for the non-selected respondents.

Department's Position: We disagree with the FTC. Because Japan and Canada are not significant export markets for Colombia, we determined that, under the facts of this case, prices to Canada or Japan are not representative within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. As discussed in the *Preliminary Results* at 5355, we limited our analysis to a subset of the Colombian companies exporting to the United States and are basing the antidumping duty assessments for the non-selected companies on the margins calculated for the selected companies. Given this, it is important that our analysis be as representative as possible of the companies that were not selected to respond to our questionnaire.

It is clear that neither Japan nor Canada is an important export market for Colombian flower growers. Evidence on the record indicates that Canada represents less than three percent of flower exports from Colombia and Japan represents less than one percent. Thus, to use sales to Japan or Canada as the basis of our margin calculations for the few exporters that have viable markets in Japan and Canada and then include those results in calculating the rate used for assessing duties on the non-selected respondents would be inappropriate for the vast majority of growers. Consequently, in accordance with section 773(a)(4) of the Act, we based NV on CV.

As an alternative method of ensuring that NV was representative, we considered using third-country sales for those companies with viable third-country markets, but excluding those companies from the calculation of the assessment rate for non-selected exporters. However, such a methodology would substantially reduce the percentage of exports during the POR that would form the basis of the assessment calculation for non-selected exporters. Therefore, we determine that the use of CV is a more reasonable means of establishing a representative NV for purposes of calculating the assessment rates for all exporters under review.

Export Price or Constructed Export Price

Comment 3: The FTC claims that section 772(d)(1) of the Act explicitly requires the Department to reduce CEP first by deducting commissions and then by deducting any indirect selling expenses for both affiliated and unaffiliated parties. The FTC contends that the Act recognizes that a CEP reseller, whether or not affiliated, should be treated as a separate entity. Consequently, because all CEP transactions are made at the same level of trade (LOT), the FTC argues that commissions should be treated the same whether the CEP sale is made through an affiliated reseller or through an unaffiliated reseller. The FTC further argues that, because of changes which resulted from the URAA, no double-counting would result if the Department deducts commissions paid by the exporter to an affiliated importer and then deducts any additional indirect expenses.

Asocolflores counters that the FTC's commission argument has been repeatedly rejected by the Department in earlier reviews of this same case, as well as in *Fresh Cut Roses from Ecuador: Final Determination of Sales at Less Than Fair Value,* 60 FR 7019, 7028 (Feb. 6, 1995) *(Roses from Ecuador),* and in *Fresh Cut Roses from Colombia: Final Determination of Sales at Less Than Fair Value,* 60 FR 6980, 6992 (Feb. 6, 1995) *(Roses from Colombia).* Asocolflores also points out that the Department's rejection of the FTC's argument that related party commissions should be deducted from U.S. price was recently affirmed by the U.S. Court of International Trade (CIT). *See Asociacion Colombiana de Exportadores de Flores* v. *United States,* Slip Op. 98–33 at 74–81 (March 25, 1998) (*Asociacion Colombiana*).

Department's Position: We disagree with the FTC. Consistent with *Asociacion Colombiana* and the Department's practice in prior reviews of this case, the Department will make adjustments for commissions paid to unaffiliated U.S. consignees, while adjusting for actual U.S. selling expenses of affiliated consignees of the exporter. *See Ninth Review Final Results* at 53294; *see also Asociacion Colombiana* at 78–81. Notwithstanding the fact that the decision in *Asociacion Colombiana* is based on pre-URAA practice, the principle remains the same: to avoid double-counting, we deduct commissions paid to unaffiliated resellers in the United States, but for affiliated resellers, we deduct the actual selling expenses of the affiliated importer and allocate profit.

Comment 4: Asocolflores contends that the Department should calculate the CEP profit rate on a monthly rather than an annual basis. Asocolflores points to the holiday-driven demand patterns for flowers in the United States, noting that the price for flowers can vary by more than 100 percent between peak and off-peak months. Asocolflores states that this variability in demand for flowers results in highly variable profit rates when comparing peak to off-peak months.

Asocolflores argues that calculating the CEP profit rate on a monthly basis is necessary to avoid the distortion inherent in deducting a constant profit percentage from monthly sales when actual profit margins are demonstrably and radically different. Asocolflores notes that nothing in the Act or the Department's regulations requires the CEP profit deduction be calculated on an annual basis. Asocolflores points to the preamble to the Department's 1997 regulations where the Department states that paragraph (d) of section 351.402 affords the Department the flexibility to calculate the CEP profit deduction on the basis of something less than all sales of the subject merchandise and the foreign like product throughout the period of investigation or review. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27354 (May 19, 1997). Because both CEP and EP prices reflect huge swings in monthly prices, a monthly calculation of the CEP profit rate would, according to Asocolflores, be more consistent with the contemplated purpose of the CEP profit adjustment as described in the *Statement of Administrative Action,* H. Doc. 316, 103d Cong., 2nd Session 870 (SAA) at page 153, *i.e.,* calculating CEP price to be, as closely as possible, a price corresponding to EP.

The FTC argues that an arm's length price to an unrelated importer would incorporate some element of profit, whereas a methodology that isolates holiday sales from other transactions, as proposed by Asocolflores, may result in a zero profit rate for several months of the POR because CEP profit is calculated based on the total profit for both the grower and the reseller. The FTC contends that while importers may realize different monthly profits based on seasonal price swings, growers' profit expectations are annual. Use of an annual rate, the FTC argues, ensures that some profit is assigned to all months, reflecting the reasonable

expectations of arm's length importers. The FTC notes that the use of an annual rate still results in a variation in the amount of CEP profit when prices vary.

The FTC further cites to *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081, 2125 (January 15, 1997) (*AFBs from France, et al*), where the Department indicated a preference for a single rate for CEP profit. The FTC argues that Asocolflores' logic that the use of monthly prices requires the use of monthly profit rates leads to the conclusion that sale-by-sale comparisons require the use of sale-by-sale CEP profit rates, a proposition that would undermine the very purpose of the CEP profit deduction.

Department's Position: Consistent with our practice in *Ninth Review Final Results* and the *Preliminary Results,* we have used an annual CEP profit rate for purposes of these final results. As the FTC has noted, the Department's practice has been to apply a single rate for CEP profit. Although Asocolflores has argued that profit rates may vary due to changes in demand conditions, this is true, to some extent, for many products. Moreover, the CEP profit calculation is normally based on the overall profit of home market and U.S. sales rather than on the profit of a particular U.S. sale. Although a respondent may have few or no home market sales, we nonetheless use an average profit rate for those U.S. and home market sales that were made. We determine that the circumstances surrounding this case do not compel a departure from our usual practice of using a single rate for CEP profit.

Comment 5: Asocolflores argues that the Department erred in calculating CEP profit, because the calculation of the ratio of total profit to total selling expenses did not include imputed selling expenses, while this ratio was applied to a U.S. selling expense figure that included imputed selling expenses. According to Asocolflores, this treatment is inconsistent and overstates profit on U.S. selling activities. Asocolflores argues that the Department's past rationales for this practice do not withstand analysis. Asocolflores contends that the Department's statement that '' 'actual' profit is calculated on the basis of 'actual' rather than imputed expenses'' in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18404, 18440 (April 15, 1997) is unfounded, because the Act makes no distinction between ''actual'' and ''imputed'' expenses. According to Asocolflores, imputed credit represents a real expense to the company because payment today is worth more than payment in the future. Additionally, Asocolflores notes that the Department ''imputes'' inflation in calculating the growers' CV and includes this imputed inflation adjustment when calculating ''actual'' profit and the CEP profit ratio.

Asocolflores also disagrees with the Department's explanation that, ''if [the Department] were to account for imputed expenses in the denominator of the CEP allocation ratio, we would double-count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.'' *Id.* Asocolflores notes that in calculating CEP, the Department makes an adjustment for both imputed credit expense and indirect selling expenses, which already include actual interest expense. Asocolflores contends that to the extent the Department believes that imputed credit expenses and interest expense overlap, the Department should be consistent and eliminate all double-counting by either reducing U.S. indirect selling expenses by the amount of imputed credit expense or according the same treatment to both actual and imputed credit as expenses for purposes of calculating and allocating CEP profit.

Department's Position: We disagree with Asocolflores. Consistent with our practice in the *Ninth Review Final Results* and the *Preliminary Results,* we excluded imputed selling expenses in deriving total actual profit for these final results. As described in a recent policy bulletin, we included these expenses in the pool of U.S. selling expenses used to allocate a portion of total actual profit to each sale. *See* Import Administration Policy Bulletin number 97/1, issued on September 4, 1997, concerning the Calculation of Profit for Constructed Export Price Transactions, at 3 and note 5; *see also Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7395–96 (February 13, 1998).

Asocolflores' argument confuses actual interest expenses with adjustments for imputed credit. While interest expense components included in the calculation of indirect selling expenses and CV are actual expenses, imputed credit is an opportunity cost, and not an actual, recorded expense. Contrary to Asocolflores' claims, the inflation adjustment to depreciation expense does not represent an opportunity cost, but rather, reflects a restatement of the value of fixed assets to account for the effects of inflation.

When allocating a portion of the actual profit to each CEP sale, we include imputed credit as part of the total U.S. expenses allocation factor, consistent with section 772(f)(2) of the Act which defines the term ''total U.S. expenses'' as those described under sections 772(d)(1) and (2) of the Act. We note that credit expense is specifically enumerated in section 772(d)(1)(B) of the Act.

Normal Value

Comment 6: While acknowledging that the Department's practice was recently upheld in Asociacion Colombiana at 27–34, Asocolflores maintains that the Department must allocate production costs equally to national and export quality flowers when calculating CV. Asocolflores relies on *IPSCO, Inc.* v. *United States,* 965 F.2d 1056 (Fed. Cir. 1992) (*IPSCO*) in which, according to Asocolflores, the court held that lower quality grades of the same primary product which are used for the same purpose and produced by the same process may not be treated as a by-product to which no production costs are allocated. Asocolflores also notes that the court in *Thai Pineapple Public Co.* v. *United States,* 946 F. Supp. 11 (CIT 1996) (*Thai Pineapple*) had rejected the Department's attempt to allocate production costs on the basis of relative sales value. Asocolflores argues that the Department must follow its post-IPSCO practice of allocating the same production costs to different grades of product that are produced in the same manner, citing to such cases as *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part,* 61 FR 35177, 35182–83 (July 5, 1996); *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 25908, 25911–912 (May 12, 1997); and *Canned Pineapple Fruit From Thailand; Final Determination of Sales at Less Than Fair Value,* 60 FR 29553, 29561 (June 5, 1995). In accordance with these precedents and the above-cited court decisions, Asocolflores argues that the Department should allocate production costs to all flowers sold regardless of grade.

Noting that Asocolflores' argument has been raised and rejected in *Roses from Colombia* and that the Department's practice has been upheld by the court in *Asociacion Colombiana,*

the FTC argues that the Department should continue to reject Asocolflores' argument that production costs should be allocated to national quality flowers or culls.

Department's Position: We disagree with Asocolflores. Our general practice in cases involving agricultural goods has been to treat ''reject'' products as by-products and to offset the total cost of production with revenues earned from the sale of any such ''reject'' products. This approach has been upheld by the CIT in *Asociacion Colombiana.* Specifically, the CIT found that our approach ''represents a permissible construction of the Act and a longstanding agency practice.'' *Asociacion Colombiana* at 31. Furthermore, the CIT held that Asocolflores' reliance on *IPSCO* and *Thai Pineapple* was misguided (*Id.* at 29), noting that those two cases involved the accounting treatment of co-products, not by-products. In light of the fact that our treatment of national quality flowers as by-products for cost allocation purposes has been upheld by the CIT, we see no reason to depart from our methodology.

Comment 7: Asocolflores maintains that the Department's failure to make an adjustment to financial expenses for ''net monetary correction,'' while including an adjustment for the effects of inflation in respondents' depreciation and amortization costs, leads to significant distortions in the calculation of CV. Asocolflores argues that in addition to requiring an inflation adjustment to asset values, Colombian law and generally accepted accounting principles (GAAP) also require the adjustment for ''monetary correction,'' which represents the net gain or loss to the company caused by inflation on its net exposed monetary assets and liabilities.

Asocolflores explains that under Colombian GAAP, financial costs, along with depreciation and amortization expense, must be adjusted from nominal pesos to current value pesos because the costs incurred by a company in the current period but not payable until later periods, such as accounts payable and peso loan balances, will be paid in the future when the pesos will be cheaper in current value terms. According to Asocolflores, the Department's methodology results in a distorted cost calculation that mixes nominal pesos for some costs with inflation adjusted, current value pesos for other costs. Asocolflores contends that the Department must either disregard all inflation adjustments or include the net monetary correction.

Asocolflores asserts that under section 773(f)(1)(A) of the Act, the Department must calculate costs based on the records of the exporter, unless such costs are distortive or do not reasonably reflect costs. According to Asocolflores, the Department violates the Act by disregarding the net monetary correction without making a finding that the inclusion of the adjustment distorts costs or otherwise does not reasonably reflect the cost associated with the production and sale of the merchandise. Asocolflores also cites past cases involving inflation accounting where the Department recognized that the monetary correction must be included. *See Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 25803 (April 28, 1993) (*Cement from Mexico* (1993)); *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 17148 (April 9, 1997) (*Cement from Mexico* (1997)); *Aimcor, Ala. Silicon, Inc.* v. *United States,* slip op. No. 95–130, 1995 WL 431186 (CIT July 20, 1995). Asocolflores further argues that the Department's rationale for excluding monetary correction in the *Ninth Review Final Results,* that inflation effects to financial expenses are ''largely confined within the POR,'' is unreasonable because the significance of inflation upon costs is based not only on the age of the asset or loan but also on its amount.

The FTC asserts that the Department's rejection of the monetary correction adjustment is supported by past cases such as *Roses from Colombia,* where the Department specifically declined to include inflation adjustments resulting from the annual revaluation of non-monetary assets because the adjustment ''merely reflects an increase to respondent's financial statement equity due to the restatement of non-monetary assets to account for inflation.'' 60 FR at 6993. The FTC distinguishes *Cement from Mexico* (1993) in that the Mexican inflation adjustment was determined to pertain solely to monetary assets and liabilities whereas the Colombian monetary correction is an adjustment to non-monetary assets. The FTC also points out that the court in *Asociation Colombiana* has upheld the Department's rejection of the adjustment.

Department's Position: We disagree with Asocolflores. Consistent with our practice in *Ninth Review Final Results,* we have continued to adjust only fixed asset costs for the effects of inflation and have not revised CV to include the monetary correction suggested by Asocolflores. With the exception of cases involving countries with ''hyperinflationary'' economies, the Department typically ignores the effects of inflation on costs incurred during the period of investigation or review. However, as in this review, the Department has recognized the effect that high levels of inflation may have on the historical cost of certain production assets when compounded over periods prior to the period of investigation or review. In these instances, the Department adjusts the historical cost of these assets such that they reflect the currency value during the period for which costs are calculated.

In *Asociacion Colombiana,* the CIT upheld the Department's method of accounting for the longer-term effects of significant inflation on assets that were purchased or placed into service before the POR, but that were not recognized as production costs until some time during the POR. The CIT also rejected Asocolflores' argument that, where the Department adjusts fixed asset costs for inflation, it must also recognize the monetary correction for inflationary effects arising within the POR. *See Budd Co.* v. *United States,* 773 F. Supp. 1549 (CIT 1991) (holding that full accounting for inflation is neither necessary nor possible).

Comment 8: Asocolflores argues that the Department should adjust the CV in the final results by either excluding an amount allocable to the actual cost of financing trade accounts receivable or by reducing the CV by an amount for imputed credit expense. Citing *Amended Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 62 FR 54087, 54091 (October 17, 1997) (*Silicon Metal from Brazil*), Asocolflores states that the Department recently acknowledged that an inaccurate result arises when comparing the CV inclusive of all actual financing costs to a U.S. price exclusive of imputed credit costs. Asocolflores charges that the Department's failure to make such an adjustment in the instant case results in an unfair comparison of U.S. price to CV.

Asocolflores contends that it was the Department's practice prior to the *Ninth Review Final Results* to include in the CV interest expense only the portion of respondents' borrowing costs associated with production. Asocolflores states that the Department either should reduce the CV interest expense by the ratio of accounts receivable to total assets or it should make a circumstance-of-sale (COS) adjustment to CV. Asocolflores argues that by including all actual financing expenses in the CV, the Department included the cost of

financing sales to all markets. Because a majority of respondents' sales are made to the United States, Asocolflores suggests that the Department use the imputed credit expenses on U.S. sales as a COS adjustment. Specifically, Asocolflores recommends that the Department use the percentage of U.S. price attributable to credit expense on a customer-specific basis as the adjustment to the CV.

The FTC asserts that the cases cited by Asocolflores show that it is the Department's practice to use only *home market* imputed credit expenses as a COS adjustment. In the instant case, however, the FTC states that the Department should not make a COS adjustment to CV because there are no home market credit costs associated with Colombia's non-viable market. Additionally, the FTC argues that on CEP sales, the U.S. importer incurs the U.S. credit expenses rather than the producer. Because the reported CV interest expense does not include these costs, the FTC argues, it would be inappropriate to deduct them from CV.

Department's Position: Since the adoption of the URAA, we no longer make a reduction to interest expense to account for the percentage of total assets accounted for by accounts receivable because we no longer include an amount for imputed credit in the CV. However, we agree with the parties that it is our practice to make a COS adjustment for differences in credit costs between the home and U.S. markets in the calculation of CV. *See, e.g., Silicon Metal from Brazil; Certain Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review*, 63 FR 13622, 13624 (Comment 5) (March 20, 1998). Addressing this same issue in *Ninth Review Final Results* at Comment 24, we explained that:

> It is no longer appropriate to do as Asocolflores suggests and reduce actual interest expense * * *. Any differences in credit expense between the U.S. and foreign market are taken into account as a circumstance of sale adjustment, but not as part of the actual calculation of net interest expense incurred for the product.

The Department's practice is to reduce CV by home market imputed credit expenses. *See, e.g., Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review*, 62 FR 7206, 7209 (February 18, 1997). However, respondents reported no home market credit expenses. Thus, as in the *Preliminary Results* and in the *Ninth Review Final Results*, we have reduced CV by home market credit expenses of zero as a COS adjustment for these final results.

Comment 9: Asocolflores argues that the Department's use of the profit rate of Compania Nacional de Chocolates S.A. (CNC), a Colombian producer of chocolate and other processed agricultural products, as FA in the calculation of CV is inconsistent with the Act. Asocolflores contends that for those selected respondents whose home market sales of export quality flowers were made below cost (i.e., zero profit), the Department should use the profit rate of zero pursuant to section 773(e)(2)(B)(i) of the Act. With respect to the remaining respondents, Asocolflores argues that the application of the ''profit cap'' described in section 773(e)(2)(B)(iii) of the Act is mandatory. Therefore, Asocolflores claims that because none of the responding companies had profits on sales of flowers in the home market, the profit cap applicable to all selected respondents must be zero.

Asocolflores states that basic principles of statutory construction preclude the Department from construing the Act as requiring profit to be a positive amount. Asocolflores points out that the methodologies of calculating profit set forth in sections 773(e)(2)(A) and 773(e)(2)(B)(ii) of the Act specifically include an ordinary course of trade test, which by its terms excludes certain below cost sales and ensures that the profit margins using these methodologies are above zero. Asocolflores argues that by omitting the ordinary course of trade test in sections 773(e)(2)(B)(i) and (iii) of the Act, while including it in the methodologies under other sections as above, Congress must have intended that the profit rate is not required to be above zero. Asocolflores also contends that in other sections of the Act where the Department is required to calculate an amount for profit, such as sections 772(d) and (f), which relate to an adjustment to CEP for profit allocable to certain expenses incurred in the United States, the Department has not construed the Act as requiring a positive profit figure.

Asocolflores argues the Department's reasoning, as explained in the *Ninth Review Final Results*, that the profit figure used cannot be zero and must be positive is flawed and contrary to the Act and the SAA. Asocolflores states that by noting that for ''below-cost sales * * * the profit is zero,'' the SAA (on page 169) makes clear that while profit cannot be a negative number, it is zero when all sales are below cost. Citing to the same page of the SAA, Asocolflores contends that the statement that CV ''must include an amount * * * for profit'' in no way precludes the ''amount'' from being zero. Asocolflores argues that in *Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review*, 61 FR 55957 (October 30, 1996) (*Shop Towels from Bangladesh*), and *Bicycles from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 19026 (April 30, 1996) (*Bicycles from the PRC*), the Department included zero profit for the companies that had shown losses in deriving the average of the profit rates to be used in calculating CV. Asocolflores also cites to three initiations of antidumping duty investigations where the Department used zero as the profit in the calculation of CV: *Initiation of Antidumping Duty Investigation: Clad Steel Plate from Japan*, 60 FR 54666 (October 25, 1995); *Initiation of Antidumping Duty Investigation: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, 60 FR 38546 (July 27, 1995); and *Initiation of Antidumping Duty Investigation: Light-Walled Rectangular Pipe and Tube from Mexico*, 60 FR 20963 (April 28, 1995). Asocolflores argues that the exception allowed in the SAA to the profit cap applies only when, ''due to the absence of data,'' the Department cannot calculate the profit cap. Here, Asocolflores contends, there is no absence of data; the data merely indicate that the profit rate is zero.

Asocolflores further argues that the use of CNC's profit rate is inconsistent with the purpose of the Act and violates due process. According to Asocolflores, the profit rate used is arbitrary, unpredictable and random, thereby providing the Colombian producers of flowers no basis on which to price their products to avoid dumping. Asocolflores contends that although there is no evidence of any similarity between the Colombian market for chocolate and the Colombian market for fresh cut flowers, dumping is arbitrarily found by the Department in any month in which the Colombian flower grower does not earn a profit margin equal to the annual profit margin earned by CNC.

The FTC counters that the Department correctly interpreted the Act and SAA in determining that the profit must be a positive amount. The FTC argues that because respondents' home market sales consist of culls, not export quality flowers, such sales are neither a ''foreign like product'' nor ''in the ordinary course of trade'' as described in the Act. As such, the FTC contends that such sales cannot be used as the basis for profit pursuant to section 773(e)(2)(A) or

773(e)(2)(B) of the Act. The FTC further claims that the ''fair sales price'' described at page 171 of the SAA cannot be at price levels which lack profit thereby not providing any return on investment.

Where home market sales of the ''same general category of products'' include sales of culls, the FTC argues there is insufficient basis for calculating the profit cap. Because culls are treated as by-products in the Department's calculations and are assigned a cost basis of zero, the FTC argues that the profit rate on such sales would be equal to the full revenue received. Although section 773(e)(2)(B)(iii) of the Act does not impose the ''ordinary course'' constraint on sales within the ''same general category,'' the FTC contends that Congress could not have intended for cull sales to be rejected under 773(b) or 773(e)(2)(A) of the Act but then to be accepted under 773(e)(2)(B)(iii) as the basis for calculating profits or the profit cap. *Department's Position:* We disagree with Asocolflores. Although the URAA eliminated the use of a minimum profit rate, the presumption of a profit element in the calculation of CV was not eliminated. The SAA (at page 169) states: ''Because CV serves as a proxy for a sales price, and because a fair sales price would recover [selling, general and administrative (SG&A)] expenses and would include an element of profit, CV must include an amount for SG&A expenses and for profit.'' We find that ''a fair sales price,'' as intended by the SAA, is a price that necessarily includes a positive amount for profit, therefore providing a return on investment.

Asocolflores' argument that the Department has used a zero profit figure in the calculation of profit pursuant to other sections of the Act such as 772(d) and (f) which refer to CEP profit is inapplicable. This adjustment to CEP represents a portion of the company's total actual profit allocable to economic activities incurred in the United States, which may be zero.

We also disagree with Asocolflores' argument that a zero rate of profit would be consistent with *Shop Towels from Bangladesh* and *Bicycles* from the PRC. An average that includes some zeroes but still yields a positive number, as was the case in *Shop Towels from Bangladesh* and *Bicycles from the PRC*, is different from using a profit rate of zero. We also find that Asocolflores' reliance on the three initiations is misplaced. Given the general constraints in the availability of data in the initiation stage of an investigation, the Department's use of a zero profit figure was reasonable in that it was the most conservative approach.

By providing three alternative methodologies for calculating CV profit in section 773(e)(2)(B), the Act enables the Department to use an overall positive profit rate whenever the calculation of CV profit under section 773(e)(2)(A) is not appropriate. The inclusion of a positive profit rate is consistent with the Department's past practice. *See, e.g., Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review*, 62 FR 37869, 37877 (July 15, 1997) (''[I]f a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit.'').

Consistent with our practice in the *Ninth Review Final Results*, we have continued to use CNC's profit rate since there is no information on the record that would enable us to calculate a home market profit rate on the same general category of merchandise as flowers or a profit cap. As discussed above, a profit rate of zero is not appropriate for use in calculating CV; therefore, we do not have appropriate information to use as the basis for a profit cap. Accordingly, we have applied the alternative of section 773(e)(2)(B)(iii) of the Act on the basis of ''the facts available,'' as instructed by the SAA at 171.

Comment 11: The FTC maintains that the Department's use of CNC's profit rate is inappropriate. The FTC asserts that because CNC's products are primarily processed agricultural products, they do not entail the same risks of perishability and, therefore, investors would expect a different (lower) rate of return on equity. Instead, the FTC urges the Department to base profit upon the projected return on equity of Banco Ganadero, a Colombian bank that, in 1994, made approximately 23.06 percent of its loans to the agricultural sector. The FTC contends that this bank, whose profitability is based on the experience of its borrowers, is a better gauge of the return that would need to be earned by producers in the Colombian agricultural sector than a chocolate manufacturer.

In the alternative, the FTC argues that the Department should base the profit rate on the third-country sales of Colombian flower growers. While noting that the court in *Asociacion Colombiana* has affirmed the Department's rejection of third-country sales as the basis for profit in prior reviews, the FTC asserts that section 773(e)(2)(B)(iii) of the Act, as amended by the URAA, explicitly provides the Department the authority to use ''any reasonable method'' to calculate profit where other alternative bases are not available. As such, the FTC draws a distinction with the court decision, which arose under the pre-URAA law. The FTC further argues that because profit is determined on an annual basis, the Department's reasoning in rejecting third-country sales as basis of determining NV, *i.e.*, differences in price patterns due to different demand, does not apply in the context of calculating profit. The FTC asserts that third-country profits realized by respondents are more closely related to the foreign like product or general category of merchandise and better reflect the profit of the specific respondents. According to the FTC, the use of third-country profits is appropriate since dumping in the United States is made possible by profits earned from higher prices charged in third-country markets such as Europe.

Asocolflores disagrees with the suggestion of basing the profit rate on the Colombian bank's rate of equity. According to Asocolflores, a return on equity, which is equal to a company's total profits divided by its total equity, is fundamentally different from a profit rate, which is a rate applicable to the sale of goods. Asocolflores also argues that there is no evidence that the profitability of Banco Ganadero, whose product is a service rather than goods, is in any way representative of the profitability of the agricultural sector in Colombia.

With respect to the use of third-country profit, Asocolflores asserts that the third-country profit margin presented by the FTC should be rejected because the FTC's calculation ignores expenses such as movement charges and selling expenses. Referring to section 351.405(b)(1) of the Department's final regulations as well as the proposed regulations, Asocolflores contends that the Department, having rejected third-country prices as the basis for NV, is not permitted to use third-country profit as the basis for CV profit. Asocolflores maintains that no respondents are using home market profits or third-country profits to subsidize U.S. sales, which are profitable on their own.

Department's Position: We disagree with the FTC. As stated by Asocolflores, we find that the rate of return on equity of a financial institution is not appropriate for this case. While we were unable to locate a profit rate on home-market sales for a Colombian producer of merchandise in the same general category of flowers, we determine that using the profit rate of CNC, a

Colombian producer of processed agricultural goods, is more appropriate than the rate of return on equity of a Colombian bank.

We also reject the FTC's suggestion that we base profit on third-country sales. As we have found third-country sales to be an inappropriate basis for calculating NV, it would likewise be inappropriate to base CV profit on third-country sales. Accordingly, consistent with our practice in *Ninth Review Final Results,* we have used CNC's profit rate as FA in calculating CV profit.

Comment 12: The FTC argues that if the Department continues using CNC data to calculate CV profit in the final results, the Department should either adjust the calculation of CNC's profit rate by excluding SG&A expenses or add CNC's SG&A expenses to CV. The FTC contends that section 773(e)(2)(B)(iii) of the Act does not distinguish SG&A from profit or contemplate that these values will come from different sources. The FTC states that the reason respondents lack home market selling expenses is the same reason that they lack profits: sales in the home market are not in the ordinary course of trade. The FTC notes that while respondents had neither profit nor selling expenses in the home market, CNC has both profits and selling expenses. If profits are determined using CNC's profit rate, according to the FTC, it follows that selling expenses should be determined likewise in order to reflect the selling expenses that would have been incurred if respondents had home market sales in the ordinary course of trade.

The FTC further argues that to the extent selling expenses incurred with respect to export sales are incurred in the home market and are not deducted from CV, then the CEP sales will reflect selling activities that are not reflected in CV. The FTC argues that some proxy for selling expenses must be identified or there is an inconsistency between the LOT for actual sales and CV.

Asocolflores argues that it would be inappropriate to recalculate CNC's profitability by assuming it did not incur costs which, in fact, it did incur. Asocolflores notes that profitability is dependent on costs being incurred to generate revenues, and that the FTC is incorrect in its assertion that if a company reduces expenditures the result will be a higher level of profitability.

Asocolflores also contends that there is no legal basis for adding hypothetical selling expenses to CV when respondents incurred no actual selling expenses on their home market sales. Asocolflores asserts that, contrary to the FTC's argument, there is no statutory preference for using the same source of data for SG&A and profits.

Asocolflores asserts that the FTC's argument that growers incur no selling expenses in the home market because home market sales are outside the ordinary course of trade is not relevant because sections 773(e)(2)(B)(i) and (iii) of the Act contain no ordinary course of trade test. Asocolflores contends that the Department is correct to use the actual amount of selling expenses in the home market in calculating CV.

Department's Position: We disagree with the FTC that we should adjust CV profit or CV selling expenses to account for selling expenses incurred by CNC. As noted by Asocolflores, there is no requirement or preference that profit and SG&A expenses be drawn from the same source. The Department has used different sources for selling expenses and for profit in other cases where respondents had no profitable home market sales. *See, e.g., Shop Towels From Bangladesh,* 61 FR at 55959. Moreover, we are not persuaded by the FTC's argument that a potential difference in LOT compels the inclusion of the selling expenses of CNC or another proxy. Section 773(e)(2)(B) of the Act, which describes the sources on which the Department may base selling expenses for determining CV, does not require us to reject the use of the respondent's actual selling expenses due to a potential difference in LOT. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 2557, 2578 (January 15, 1998) (''We base home market LOTs on a respondent's actual experience in selling in the home market. * * * [T]here is no statutory basis for us to ''construct'' levels in the home market or elsewhere.''). Accordingly, we based selling expenses on the actual amounts incurred and realized by the respondents in selling in the home market (*i.e.,* zero) for purposes of calculating CV.

Comment 13: Asocolflores claims that the Department should compare the annual average CV with annual average U.S. prices, in light of the extreme seasonality of U.S. demand and prices. The FTC argues that the Department has consistently rejected Asocolflores' position that annual averages should be used when comparing CV with U.S. price. The FTC further maintains that use of annual averages as the basis for CV and U.S. price would eliminate the seasonality issue and allow the Department to use viable third-country market prices as the basis of determining NV.

Department's Position: In accordance with our past practice and as affirmed by the CIT, we have continued to use monthly weighted averages in calculating CV and U.S. price. *See Floral Trade Council* v. *United States,* 775 F. Supp. 1492, 1499–1501 (CIT 1991). By relying on monthly averages, we are able to use the exporters' actual price information, which is often available only on a monthly basis. As in prior reviews, we have not adopted Asocolflores' suggestion that we move to annual averages. In our view, use of an annual average would allow respondents to dump during periods of low demand, a result that is not consistent with the Act.

Company Specific Comments

Comment 14: Asocolflores argues that because Tuchany's U.S. sales were mainly made through unaffiliated U.S. importers, the Department should deduct freight and commissions before computing Tuchany's imputed credit expense on sales to unaffiliated customers. Asocolflores explains that when an exporter sells through an unaffiliated consignment importer, or, as with Tuchany, makes EP sales with a commission payable, it finances a receivable equal to the sales value less the commission and less any international freight. Asocolflores argues that because the exporter does not finance the international freight or commission, no credit expense should be imputed on these amounts.

The FTC contends that because Asocolflores does not cite any authority in support of its position, the Department should reject its argument.

Department's Position: We agree with Asocolflores. For these final results, we calculated credit expenses net of commission and international freight. While Asocolflores has not cited to any statutory authority in support of its credit calculation formula, we find that it has nonetheless articulated reasonable grounds that are consistent with the Department's practice of calculating imputed credit on the basis of net accounts receivable.

Comment 15: The FTC contends that the Department should use AFA to determine Tuchany's cost for the review period because Tuchany failed to supply complete cost data. The FTC asserts that Tuchany is among the top ten groups of exporters in this review and is well versed in antidumping procedures. As such, the FTC argues that Tuchany should have been aware of

its obligation to collect and maintain the necessary cost data.

Asocolflores claims that at the time the questionnaires were issued in the current review, three of the Tuchany Group companies had already gone out of business and had fired all employees. Asocolfores further explains that because the cost data were kept individually by each of the companies, the cost data for the defunct companies were no longer available. Despite the best efforts of two remaining companies, Xue and Tikiya, Asocolflores claims that they were unable to recover the cost data for the defunct companies. Given the circumstances and the effort made by Xue and Tikiya to obtain the cost data of the other three companies, Asocolflores argues that the Tuchany Group as a whole should not be penalized by the application of AFA.

Department's Position: We agree with Asocolflores. We believe that it is inappropriate to draw adverse inferences from Xue's and Tikiya's failure to provide cost data for the three defunct companies of the Tuchany Group under these circumstances. The descriptions provided by Tuchany with respect to the efforts to locate the missing information and the difficulties that arose from the dissolution of the group demonstrate these two companies have acted to the best of their ability to respond to our request for cost information. Therefore, we believe that it is appropriate to use the standard carnation CV data for the two farms for which we have cost data to calculate a margin for standard carnations and also apply this same margin to the sales of other flower types.

Comment 16: Asocolflores claims that while it may be reasonable to allocate returns for companies that do not match returns to the month of the initial sale, the Department should not have disregarded the monthly reported returns for Clavecol and the Caicedo groups because both groups report their returns in the month that the flowers subject to the claim were sold, not in the month the claim was made. Given these circumstances, Asocolflores argues that the reported data relating to returns more accurately reflect the relevant month for the returns than the Department's methodology. Asocolflores further states that the Department's reallocation introduces an unnecessary distortion, since the monthly average price for flowers is highly variable over the POR.

The FTC argues that there is no legal authority or agency precedent to support a change in the Department's return methodology here. According to the FTC, Caicedo's and Clavecol's U.S. prices and adjustment for returns through numerous past reviews have been calculated in the same manner as all other respondents. Moreover, the FTC contends that the verification reports do not show that the reporting methodology for returns is accurate or complete and some returns may represent a credit to customers when the market is slow, rather than by reason of the quality of the flowers.

Department's Position: We agree with Asocolflores and have made appropriate changes to our calculation of these final results for Caicedo and Clavecol. Since the *Ninth Review Final Results,* the Department's practice has been to allocate returns over the POR because most companies report returns in the month the claim was made, not in the month the flowers were initially sold. However, because Caicedo and Clavecol report their returns in the month the flowers were initially sold, their reporting of returns is more accurate than an allocation. Therefore, it is inappropriate to allocate their returns over the POR.

Although not specifically detailed in the verification report, the accuracy of Caicedo's return methodology was fully verified in the present review. In general, verification reports tend to place greater emphasis on describing any inconsistencies found at verification, rather than restating the information from the responses that are verified to be accurate. Clavecol was not verified in the present review, and because we have no reason to believe that its return methodology is inaccurate, we have accepted Clavecol's return values as reported.

Comment 17: Asocolflores asserts that the additional interest expenses associated with the freeze of Floraterra's U.S. bank accounts during the POR qualify as an excludable extraordinary expense that are unrelated to the production or sale of flowers. According to Asocolflores, the additional costs are ''unusual in nature'' and ''infrequent in occurrence,'' and, thereby meet the Department's requirements of extraordinary expenses that are to be excluded from COP or CV. Asocolflores refers to *Roses from Ecuador,* where the Department excluded expenses incurred due to wind damage from the CV calculation.

Asocolflores further argues that the Department routinely excludes costs associated with defending against U.S. Government investigations unrelated to a company's normal business operations. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut to Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 12725, 12731 (March 16, 1998). Because Floraterra's increased costs are analogous to the costs of defending against an antidumping case, Asocolflores contends that such costs must be deducted.

The FTC rebuts that although the seizure of assets may have been unusual, it is not unusual in the industry to have unexpected needs for additional funds. Furthermore, the FTC argues that Floraterra has not shown that the allegedly extraordinary expenses were treated as such in its financial statements or other accounting records. In light of the fact that Floraterra did not separate such costs in its financial statements, the FTC contends that there is no basis to construct a calculation that would separate the financing costs Floraterra would have incurred from those it claims to be extraordinary.

Department's Position: We disagree with Asocolflores's contention that the amounts incurred as described above are extraordinary expenses and, as a result, must be excluded from the company's reported costs. As the FTC noted, Floraterra did not treat these expenses as ''extraordinary'' items in its own financial statements. Furthermore, it is the Department's practice to include all interest expenses incurred during the POR as part of operating capital. As such, the additional interest expenses incurred by the company are properly included as a part of the cost of the subject merchandise.

Final Results of Review

As a result of our review, we determine the following percentage weighted-average margins to exist for the period March 1, 1996 through February 28, 1997:

Selected Respondents

The following 10 groups of firms (composed of 86 companies) were selected as respondents and received individual rates, as indicated below.

	Percent
Agrodex Group	0.88
Agricola de las Mercedes S.A.	
Agricola el Retiro Ltda.	
Agrodex Ltda.	
Degaflores Ltda.	
Flores Camino Real Ltda.	
Flores Cuatro Esquinas Ltda.	
Flores de la Comuna Ltda.	
Flores de Los Amigos Ltda.	
Flores de los Arrayanes Ltda.	
Flores de Mayo Ltda.	

	Percent
Flores del Gallinero Ltda.	
Flores del Potrero Ltda.	
Flores dos Hectareas Ltda.	
Flores de Pueblo Viejo Ltda.	
Flores el Trentino Ltda.	
Flores la Conejera Ltda.	
Flores Manare Ltda.	
Florlinda Ltda.	
Horticola el Triunfo Ltda.	
Horticola Montecarlo Ltda.	
Caicedo Group	3.66
Agrobosque S.A.	
Andalucia S.A.	
Aranjuez S.A.	
Consorcio Agroindustrial Colombiano S.A. (CAICO)	
Exportaciones Bochica S.A.	
Floral Ltda.	
Flores del Cauca S.A.	
Productos el Rosal S.A.	
Productos el Zorro S.A.	
Claveles Colombianos Group	0.86
Claveles Colombianos Ltda.	
Elegant Flowers Ltda.	
Fantasia Flowers Ltda.	
Splendid Flowers Ltda.	
Sun Flowers Ltda.	
Cultivos Miramonte Group	0.61
C.I. Colombiana de Bouquets S.A.	
Cultivos Miramonte S.A.	
Flores Mocari S.A.	
Floraterra Group	6.10
Floraterra S.A.	
Flores Casablanca S.A.	
Flores Novaterra Ltda.	
Flores San Mateo S.A.	
Siete Flores S.A.	
Florex Group	1.17
Agricola Guacari S.A.	
Agricola el Castillo	
Flores San Joaquin	
Flores Altamira S.A.	
Flores de Exportacion S.A.	
Flores Primavera S.A.	
Guacatay Group	2.49
Agricola Cunday S.A.	
Agricola Guacatay S.A.	
Agricola Ventura	
Jardines Bacata Ltda.	
Multiflora Comercializadora Internacional S.A.	
Queens Flowers Group	0.11
Agroindustrial del Rio Frio	
Cultivos General Ltda.	
Flora Nova	
Flora Atlas Ltda.	
Flores Calima S.A.	
Flores Canelon Ltda.	
Flores de Bojaca	
Flores del Cacique	
Flores del Hato	
Flores el Aljibe Ltda.	
Flores el Cipres	
Flores El Pino Ltda.	
Flores el Tandil	
Flores la Mana	
Flores las Acacias Ltda.	
Flores la Valvanera Ltda.	
Flores Jayvana	
Flores Ubate Ltda.	
Jardines de Chia Ltda.	
Jardines Fredonia Ltda.	
M.G. Consultores Ltda.	
Mountain Roses	
Queens Flowers de Colombia Ltda.	
Quality Flowers S.A.	
Florval S.A. (Floval)	
Jardines del Rosal	
Tinzuque Group	1.23
Tinzuque Ltda.	
Catu S.A.	
Tuchany Group	9.06
Tuchany S.A.	
Flores Sibate	
Flores Tikaya	
Flores Munya	
Flores Xue S.A.	

Non-Selected Respondents

The following 338 companies were not selected as respondents and will receive a rate of 2.52 percent:

Abaco Tulipanex de Colombia
Achalay
Aga Group
  Agricola la Celestina
  Agricola la Maria
  Agricola Benilda Ltda.
Agrex de Oriente
Agricola Acevedo Ltda.
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil
Agricola Guali S.A.
Agricola la Corsaria Ltda.
Agricola la Siberia
Agricola Las Cuadras Group
  Agricola las Cuadras Ltda.
  Flores de Hacaritama
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agroindustrial Don Eusebio Ltda. Group
  Agroindustrial Don Eusebio Ltda.
  Celia Flowers
  Passion Flowers
  Primo Flowers
  Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andalucia
Andes Group
  Cultivos Buenavista Ltda.
  Flores de los Andes Ltda.
  Flores Horizonte Ltda.
  Inversiones Penas Blancas Ltda.
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
  Agricola Bojaca
  Universal Flowers
  Flores y Plantas Tropicales
  Flores del Neusa Nove Ltda.
  Tropiflora
Cantarrana Group
  Cantarrana Ltda.
  Agricola los Venados Ltda.
Carcol Ltda.
Cienfuegos Group
  Cienfuegos Ltda.
  Flores la Conchita
Cigarral Group
  Flores Cigarral
  Flores Tayrona
Classic
Claveles de los Alpes Ltda.
Clavelez
Coexflor
Colibri Flowers Ltda.
Color Explosion
Combiflor
Consorcio Agroindustrial
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.
Degaflor
De La Pava Guevara E. Hijos Ltda.
Del Monte
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
Elite Flowers (The Elite Flower/Rosen Tantau)
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exportadora
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Bellisima
Flora Intercontinental
Floralex Ltda.

Floralex Ltda.
Flores el Puente Ltda.
Agricola Los Gaques Ltda.
Florandia Herrera Camacho & Cia.
Floreales Group
Floreales Ltda.
Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Colon Ltda.
Flores de la Sabana S.A.
Flores de Serrezuela S.A.
Flores de Suesca S.A.
Flores del Rio Group
Agricola Cardenal S.A.
Flores del Rio S.A.
Indigo S.A.
Flores El Molino S.A.
Flores El Zorro Ltda.
Flores la Cabanuela
Flores la Fragrancia
Flores la Gioconda
Flores la Lucerna
Flores la Macarena
Flores la Pampa
Flores la Union/Gomez Arango & Cia. Group
Santana
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Silvestres
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
Flores Tropicales Ltda.
Happy Candy Ltda.
Mercedes Ltda.
Rosas Colombianos Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Floricola la Gaitana S.A.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Funza Group
Flores Alborada
Flores de Funza S.A.
Flores del Bosque Ltda.
Garden and Flowers Ltda.
German Ocampo
Granja
Green Flowers
Grupo el Jardin
Agricola el Jardin Ltda.
La Marotte S.A.
Orquideas Acatayma Ltda.
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
Flores Hana Ichi de Colombia Ltda.
Flores Tokai Hisa
Hernando Monroy
Horticultra Montecarlo
Horticultura de la Sasan
Horticultura El Molino
Hosa Group
Horticultura de la Sabana S.A.
HOSA Ltda.
Innovacion Andina S.A.
Minispray S.A.
Prohosa Ltda.
Illusion Flowers
Industria Santa Clara
Industrial Agricola
Industrial Terwengel Ltda.
Ingro Ltda.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya, Ltda.
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones & Producciones Tecnica
Inversiones Santa Rita Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
Jardines de America
Jardines de Timana
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
Las Amalias S.A.
Pompones Ltda.
La Fleurette de Colombia Ltda.
Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
Luisiana Farms
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Maxima Farms Group
Agricola los Arboles S.A.
Colombian D.C. Flowers
Polo Flowers
Rainbow Flowers
Maxima Farms Inc.
Merastec
Monteverde Ltda.
Morcoto
Nasino
Natuflora Ltda./San Martin Bloque B
Olga Rincon
Oro Verde Group
Inversiones Miraflores S.A.
Inversiones Oro Verde S.A.
Otono (Agroindustrial Otono)
Papagayo Group
Agricola Papagayo Ltda.
Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas S.A.
Prismaflor
Propagar Plantas S.A.
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
Flores la Colmena Ltda.
Rosas Sabanilla Ltda.
Inversiones la Serena
Agricola la Capilla
Rosas y Jardines
Rose
Rosex Ltda.
Roselandia
San Ernesto
San Valentine
Sansa Flowers
Santa Rosa Group
Flores Santa Rosa Ltda.
Floricola La Ramada Ltda.
Santana Flowers Group
Santana Flowers Ltda.
Hacienda Curibital Ltda.
Inversiones Istra Ltda.
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
Agricola el Mortino Ltda.
Flores Aguaclara Ltda.
Flores del Monte Ltda.
Flores la Estancia
Jaramillo y Daza
Solor Flores Ltda.
Starlight
Superflora Ltda.
Susca
Sweet Farms
Flores Santa Rosa Ltda.
Floricola la Ramada Ltda.
Tag Ltda.

The Beall Company
The Rose
Tomino
Toto Flowers Group
  Flores de Suesca S.A.
  Toto Flowers
Tropical Garden
Uniflor Ltda.
Velez de Monchaux Group
  Velez De Monchaux e Hijos y Cia S. en C.
  Agroteusa
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total quantity of subject merchandise entered during the POR. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these final results of review: (1) The cash deposit rate for the individually examined companies will be the most recent rates as listed above, except that for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) the cash deposit rate for non-selected companies will be the weighted-average of the cash deposit rates for the individually examined companies; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (5) the cash deposit rate for all other producers or exporters will be the ''all other'' rate of 3.10 percent. This is the rate established during the Less-Than-Fair-Value (LTFV) investigation, as amended in litigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f)(2) to file a certificate regarding the reimbursement of AD duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of AD duties occurred and the subsequent assessment of doubled AD duties.

This notice also 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 353.34(d). Failure to comply is a violation of the APO.

This administrative review is issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15349 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Notice of Extension of Time Limits for Antidumping Duty; First Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Edward Easton or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1777 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Results of the First Administrative Reviews

On August 28, 1997, the Department of Commerce (the Department) initiated the first administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period January 19, 1996, through June 30, 1997 (62 FR 45621). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. The original deadline for the preliminary results of these reviews was April 2, 1998. However, when it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period up to 365 days. Accordingly, on January 28, 1998, the Department extended the time limit for completion of the preliminary results of the administrative review by 90 days (63 FR 4218). The current extended deadline for the preliminary results of these reviews is July 1, 1998. We have now concluded, however, that the full 120-day extension is necessary. Accordingly, the Department is extending the time limit for completion of the preliminary results of these administrative reviews by 30 additional days, or until July 31, 1998. We plan to issue the final results of these administrative reviews within 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: June 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15473 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–814]

Amended Order and Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment to final determination of antidumping duty investigation in accordance with decision upon remand.

SUMMARY: On August 29, 1997, the United States Court of International Trade (the CIT) remanded to the Department of Commerce (the Department) the final determination in the antidumping duty investigation of

small diameter circular seamless carbon and alloy steel, standard, line and pressure pipe from Italy. *See Gulf States Tube* v. *United States,* Court No. 95–09–01125, Slip Op. 97–124 (August 29, 1997). In its remand instructions, the CIT ordered that the Department recalculate the cost of production and constructed value for the galvanized pipe produced by Dalmine S.p.A. (Dalmine). On November 28, 1997, the Department filed its results of redetermination pursuant to the CIT's order, and on March 10, 1998, the CIT affirmed the Department's results of the remand. That decision was not appealed. As there is now a final and conclusive court decision in this action, we will instruct the Customs Service to continue to suspend liquidation of shipments of seamless pipe from Italy and require a cash deposit of 1.27 percent for Dalmine and all other manufacturers, producers or exporters for subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4929 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 353 (1995).

Background

On June 19, 1995, the Department published in the **Federal Register** the *Final Determination of Sales at Less-Than-Fair-Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy* (60 FR 31981). On August 3, 1995, the Department published the *Notice of Antidumping Duty Order: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy* 60 FR 39705 *(Final Determination*). Subsequently, Dalmine, the sole Italian respondent in this case, filed a lawsuit with the CIT, challenging the Department's final determination.

On August 29, 1997, the United States Court of International Trade (the CIT) remanded to the Department the *Final Determination. See Gulf States Tube* v. *United States,* Court No. 95–09–01125, Slip Op. 97–124 (August 29, 1997). In its remand instructions, the CIT granted the Department's request to recalculate the cost of production (COP) and constructed value (CV) for the galvanized pipe produced by Dalmine. The CIT agreed that the final adjustments made to Dalmine's factory overhead costs resulted in the overstatement of the costs attributable to galvanized pipe, which consequently overstated Dalmine's COP and CV computed for purposes of the *Final Determination.* On November 28, 1997, the Department filed its results of redetermination pursuant to the CIT's remand. As a result of the redetermination upon remand, the antidumping margin for Dalmine changed from 1.84 percent to 1.27 percent. On March 10, 1998, the CIT affirmed the Department's results of the remand redetermination. *See* CIT's Judgment Order, Slip Op. 98–25, Consol. Court No. 95–09–01125. That decision was not appealed. As there is now a final and conclusive court decision in this action, we are amending our final determination in this matter.

Amended Final Determination

Pursuant to section 516 (A)(e) of the Act, we are now amending the final determination on the antidumping duty order on seamless pipe from Italy. As a result of the remand redetermination, the recalculated final weighted-average margin is as follows:

Manufacturer/producer/exporter	Customers ID Number	Margin percentage
Dalmine S.p.A. ..	A–475–814–001	1.27
All Others	A–475–814–000	1.27

Suspension of Liquidation

For imports of seamless pipe from Italy, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of seamless pipe from Italy. These antidumping duties will be assessed on all entries of seamless pipe from Italy entered, or withdrawn from warehouse, for consumption on or after June 19, 1995, the date on which the Department published its final determination notice in the **Federal Register** (60 FR 31981). The Department will instruct the Customs Service to collect cash deposits of 1.27 percent on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this amended final determination.

This determination is issued and published in accordance with section 736(a)(1) of the Act and 19 CFR 353.20(a)(4)(1994).

Dated: June 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15474 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

National Institute of Standards and Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–009. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Neutron Velocity Selector. *Manufacturer:* Mirrotron Ltd., Hungary. *Intended Use:* See notice at 63 FR 11870, March 11, 1998. *Reasons:* The foreign instrument provides a monochromatic low-energy neutron beam using a time-of-flight method (''chopper'') for study of the microstructure of materials. *Advice received from:* Argonne National Laboratory, May 6, 1998.

Docket Number: 98–013. *Applicant:* North Carolina State University, Raleigh, NC 27695–7212. *Instrument:* Automatic Pure Bending Tester, Model NESFB2–A. *Manufacturer:* Kato Tech

Co., Ltd., Japan. *Intended Use:* See notice at 63 FR 12452, March 13, 1998. *Reasons:* The foreign instrument provides simulation of fabric wear conditions using a cantilever method which calculates the bending movement over a variable arc of constant curvature. *Advice received from:* A domestic manufacturer of similar equipment and a university laboratory textile laboratory, May 8, 1998.

Argonne National Laboratory, a domestic manufacturer of similar equipment and a university textile laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–15347 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–026. *Applicant:* University of California, Davis, Center for Neuroscience, 1544 Newton Court, Davis, CA 95616. *Instrument:* Optical Imaging System, Model ORA 2001. *Manufacturer:* Optical Imaging, United Kingdom. *Intended Use:* The instrument will be used to study the activity patterns of neurons in the primary visual cortex of laboratory animals to determine how the environment and patterns of neural activity influence the development of the brain. In addition, the instrument will be used for educational purposes in the research courses Neurobiology, Physiology and Behavior 199 and Neuroscience 299. *Application accepted by Commissioner of Customs:* May 8, 1998.

Docket Number: 98–027. *Applicant:* Rutgers, The State University of New Jersey, University Procurement & Contracting, 56 Bevier Road, Piscataway, NJ 08854–8010. *Instrument:* (10 ea.) Specimen Micromanipulator, Model A–3–S. *Manufacturer:* Narishige Scientific, Japan. *Intended Use:* The instrument is intended to be used in spinal cord injury research assessing a variety of neuroprotective, regenerative and remyelinative therapies. *Application accepted by Commissioner of Customs:* May 15, 1998.

Docket Number: 98–028. *Applicant:* Cornell University, Cornell Center for Materials Research, SB56 Bard Hall, Ithaca, NY 14853–1501. *Instrument:* Electron Microprobe, Model JXA–8900R. *Manufacturer:* Narishige Scientific, Japan. *Intended Use:* The instrument is intended to be used in experiments consisting of focusing a high voltage electron beam on a solid sample, generating characteristic x-rays and measuring these x-rays quantitatively with wavelength and energy dispersive spectrometers. The objectives of these investigations are the quantitative microchemical analysis of geological, chemical and materials science samples and qualitative identification and mapping of elemental distributions. In addition, the instrument will be used for training postdoctoral fellows, graduate and undergraduate students in the operation of the instrument through demonstration and hands-on instruction. *Application accepted by Commissioner of Customs:* May 15, 1998.

Docket Number: 98–029. *Applicant:* University of California, San Diego, Scripps Institute of Oceanography, 7835 Trade Street, San Diego, CA 92121. *Instrument:* Wave Measurement Equipment. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* The instrument is intended to be used in support of ongoing and proposed research on the evolution of directional wave spectra across the continental shelf and near complex bathymetric features. The instrument will significantly expand Department of Defense wave data measurement capabilities on the shelf and will be used over the next 5 years by a consortium of Office of Naval Research principal investigators studying wave propagation processes in a wide range of geographic settings. *Application accepted by Commissioner of Customs:* May 20, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–15472 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–804]

Notice of Postponement of Time Limit for Countervailing Duty Investigation: Extruded Rubber Thread From Indonesia

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay at (202) 482–2876, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Postponement

On April 28, 1998, the Department of Commerce (the Department) initiated a countervailing duty investigation of extruded rubber thread from Indonesia. On May 29, 1998, in accordance with section 351.205(e) of the Department's regulations (19 CFR 351.205(e), published at 62 FR 27295, May 19, 1997), the petitioner made a timely request that the Department postpone its preliminary determination. As we find no compelling reasons to deny this request, we are postponing the preliminary determination in this investigation to no later than August 28, 1998, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated June 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15348 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, Application No. 97–A0003.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The Association for the Administration of Rice Quotas, Inc. (''AARQ'') on January 21, 1998. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

EFFECTIVE DATE: April 14, 1998.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–A0003, was originally issued to The Association for the Administration of Rice Quotas, Inc. on January 21, 1998 (63 FR 4220, January 28, 1998).

AARQ's Export Trade Certificate of Review has been amended to:

1. Delete Brinkley Rice Milling Company and El Campo Rice Milling Company as Members of the Certificate.

2. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas; Cargill Americas, Inc., Wayzata, MN; Cargill Rice, Inc., Wayzata, MN; ConAgra, Inc. for the activities of KBC Trading and Processing Company, Stockton, CA; Kennedy Rice Dryers, Inc., Mer Rouge, LA; and Pacific International Rice Mills, Inc., Woodland, CA; and

3. Change the current Member listing of ''Connell Rice & Sugar Co.'' to read ''The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co.''

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: June 4, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–15385 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, Application No. 87–12A004.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The Association For Manufacturing Technology (''AMT'')on May 6, 1998. The Notice of issuance of the original Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00004, was originally issued to AMT on May 19, 1987 (52 FR 19371, May 22, 1987) and subsequently amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 19427, May 5, 1989), May 31 1989 (54 24931, June 12, 1989), May 29, 1990 (55 FR 23576, June 11, 1990), June 7, 1991 (56 FR 28140, June 19, 1991), November 27, 1991 (56 FR 63932, December 6, 1991), July 20, 1992 (57 FR 33319, July 28, 1992), May 10, 1994 (59 FR 25614, May 17, 1994), December 1, 1995 (61 FR 13152, March 26, 1996), and October 11, 1996 (61 FR 55616, October 28, 1996).

AMT's Export Trade Certificate of Review has been amended to:

1. Add as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Aldridge Grinding Machine Co., Huntsville, Alabama; Alliance Automation Systems, Rochester, New York; Alliance Manufacturing, Inc., Fond Du Lac, Wisconsin; Apex Broaching Systems, Inc., Warren, Michigan; Azon USA, Inc., Kalamazoo, Michigan; Defiance Machine & Tool Co., Maryland Heights, Missouri; Durant Tool Company, Warwick, Rhode Island; Grob Systems, Inc., Bluffton, Ohio; J&S Tool Company, Inc., Livingston, New Jersey; Jewett Automation, Inc., Richmond, Virginia; Liberty Precision Industries, Rochester, New York; Manufacturing Technology, Inc., Ventura, California; Mayfran International, Cleveland, Ohio; Mitts & Merrill L.P., Harvard, Illinois; Process Control Automation, Inc., Montague, Missouri.

2. Delete as ''Members'' the following companies: Hobart Laser Products; ISI Robotics; Mattison Technologies; Milman Engineering Inc.; Modern Machine Works, Inc.; Niagara Falls Grinders; Tenco Industries, Inc.

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parenthesis as follows: Command Corporation International (Command Tooling Systems LLC); Cone Blanchard Machine Systems (Cone-Blanchard Machine Co.); Eaton Leonard Inc. (Eagle Eaton Leonard, Inc.); Gleason Corp. (The Gleason Works); Grinding Technology Inc. (GTI Technologies, Inc.); Hardinge Brothers, Inc. (Hardinge Inc.); PH Hydraulics & Automation, Inc. (PH Group, Inc.); Reynolds Machine & Tool

Corp. (RMT Technologies); Western Atlas (Unova Inc.).

Dated: June 4, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–15386 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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 Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Billfish Angler Survey.

Agency Form Number: NOAA Form 88–10.

OMB Approval Number: 0648–0020.

Type of Request: Extension of a currently approved collection.

Burden: 175 hours.

Needs and Uses: The ''Migratory Game Fish Study Act'' directs the Secretary to undertake a comprehensive continuing study of migratory marine fish of interest to recreational fisherpersons. This is a voluntary survey of recreational angler fishing catch and effort for billfish throughout the Pacific area. The data is used for fishery management.

Affected Public: Individuals.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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, 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 4, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15376 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060498A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research permit (1151) and for modifications to scientific research permits (899, 901, 902, 903, 908, 1057, 1116).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from the Oregon Department of Fish and Wildlife at Portland, OR (ODFW) (1151); and NMFS has received applications for modifications to existing permits from: ODFW (899), Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (901, 902), Idaho Department of Fish and Game at Boise, ID (IDFG) (903, 908), Umpqua National Forest of the U.S. Forest Service at Tiller, OR (UNF-USFS) (1057), and the Public Utility District No. 1 of Douglas County at East Wenatchee, WA (PUD DC) (1116).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before July 10, 1998.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: For permits 899, 901, 902, 903, and 908: Robert Koch, Portland, OR (503–230–5424).

For permits 1057 and 1116: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Permits and modifications are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Cutthroat trout (*Oncorhynchus clarki clarki*), Sockeye salmon (*Oncorhynchus nerka*), and Steelhead trout (*Oncorhynchus mykiss*).

To date, protective regulations for threatened Snake River steelhead and threatened lower Columbia River (LCR) steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead and LCR steelhead. The initiation of a 30 day public comment period on the applications, including their proposed takes of Snake River steelhead and LCR, does not presuppose the contents of the eventual protective regulations.

New Application Received

ODFW requests a 5 year permit (1151) that would authorize an annual incidental take of adult and juvenile, endangered, Umpqua River cutthroat trout associated with non-listed fish hatchery operations in the Umpqua River Basin. ODFW hatchery operations in the basin include: one state-operated coho and chinook salmon hatchery (Rock Creek); one state-supervised Salmon Trout Enhancement Program hatchery (Gardiner); nineteen state-supervised volunteer projects operating 55 to 65 hatch boxes; salmon and steelhead broodstock collection at Winchester Dam, Galesville Dam, and Smith River fishway; and the volitional release or transfer of non-listed hatchery produced fish. Impacts on ESA-listed fish may include competition for food and habitat, disease transmission, predation by non-listed hatchery fish, and an increased vulnerability to predation by other predators. ODFW included a conservation plan in the

permit application that provides measures to monitor, minimize, and mitigate impacts to ESA-listed fish.

Modification Requests Received

ODFW requests modification 1 to incidental take permit 899. Permit 899 authorizes ODFW annual incidental takes of endangered Snake River sockeye salmon; threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and threatened Snake River fall chinook salmon associated with six non-listed fish hatchery programs. The ODFW propagation programs (Wallowa, Round Butte, Roaring River, Oak Springs, Clatsop Economic Development Council Fisheries Project, and the Salmon Trout Enhancement Program) rear and release rainbow trout and anadromous salmonids that could potentially interact with ESA-listed fish. Impacts on ESA-listed fish may include competition for food and habitat, disease transmission, predation by non-listed hatchery fish, and an increased vulnerability to predation by other predators. Non-listed, hatchery-produced fish may also impact the ESA-listed species through interbreeding, which could result in a loss of genetic variability in the ESA-listed fish populations. For modification 1, ODFW requests annual incidental takes of endangered, naturally produced and artificially propagated, upper Columbia River (UCR) steelhead; threatened Snake River steelhead; and threatened LCR steelhead associated with hatchery operations and non-listed fish releases. ODFW has submitted a revised conservation plan in the permit modification request that provides measures to monitor, minimize, and mitigate impacts to ESA-listed steelhead. Modification 1 is requested to be valid for the duration of the permit. Permit 899 expires on December 31, 1998.

On October 15, 1997 (62 FR 53596), NMFS announced the receipt of an application from WDFW for modification 1 to incidental take permits 901 and 902 for authorization for incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead and threatened Snake River steelhead. Permits 901 and 902 authorize WDFW annual incidental takes of endangered Snake River sockeye salmon; threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and threatened Snake River fall chinook salmon associated with numerous non-listed fish hatchery complexes and educational projects throughout the state of WA. For modification 1 to both permits, WDFW also requests annual incidental takes of LCR steelhead, which was listed as threatened by NMFS on March 18, 1998. For modification 1 to permit 902, NMFS received a supplemental application from WDFW requesting an annual incidental take of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with non-listed summer/fall chinook salmon spawning ground surveys in tributaries upstream of Wells Dam on the Columbia River. Activities that may result in an incidental take of ESA-listed fish include foot and/or float surveys. ESA-listed fish are proposed to be observed and/or harassed. The modifications to permits 901 and 902 are requested to be valid for the duration of the permits. Permits 901 and 902 expire on December 31, 1998.

IDFG requests modification 1 to incidental take permit 903. Permit 903 authorizes IDFG annual incidental takes of endangered Snake River sockeye salmon; threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon; and threatened Snake River fall chinook salmon associated with four non-listed fish hatcheries that are part of the Idaho Power Company hatchery mitigation program. The IDFG propagation facilities (Rapid River, Niagra, Pahsimeroi, and Oxbow Fish Hatchery/Hells Canyon trap) rear and release chinook salmon and steelhead that could potentially interact with ESA-listed fish. Impacts on ESA-listed fish may include competition for food and habitat, disease transmission, predation by non-listed hatchery fish, and an increased vulnerability to predation by other predators. Non-listed, hatchery produced fish may also impact the ESA-listed species through interbreeding, which could result in a loss of genetic variability in the ESA-listed fish populations. For modification 1, IDFG requests annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead; threatened Snake River steelhead; and threatened LCR steelhead associated with hatchery operations and non-listed fish releases. Also for modification 1, IDFG requests an annual incidental take of adult, threatened, Snake River steelhead associated with the trapping and release of adult steelhead at Pahsimeroi and Hells Canyon traps. IDFG has submitted a revised conservation plan in the permit modification request that provides measures to monitor, minimize, and mitigate impacts to ESA-listed steelhead. Modification 1 is requested to be valid for the duration of the permit. Permit 903 expires on December 31, 1998.

IDFG requests modification 2 to incidental take permit 908. Permit 908 authorizes IDFG annual incidental takes of endangered Snake River sockeye salmon and threatened, naturally produced and artificially propagated, Snake River spring/summer chinook salmon associated with IDFG's resident fish-stocking program, designed to increase the supply of fish in the Salmon River and its tributary streams and lakes for sport-angling. For modification 2, IDFG requests: (1) An annual incidental take of threatened Snake River steelhead, (2) an increase in the number of catchable-sized hatchery rainbow trout to be stocked annually into the Salmon River and tributaries, (3) an increase in the number of sub-catchable hatchery rainbow trout to be stocked annually into the lower Salmon and Clearwater Rivers, and (4) an annual incidental take of ESA-listed species associated with the stocking of westslope cutthroat trout into native areas of the Salmon River and tributaries for population restoration purposes. Modification 2 is requested to be valid for the duration of the permit. Permit 908 expires on December 31, 1998.

UNF-USFS requests modification 1 to scientific research permit 1057. Permit 1057 authorizes takes of adult and juvenile, endangered, Umpqua River cutthroat trout associated with presence/absence surveys in the Umpqua River Basin. Data from the surveys is used to clarify the impact of projected timber harvests in the Fish Creek watershed. For modification 1, UNF-USFS requests authorization for takes of endangered Umpqua River cutthroat trout associated with presence/absence surveys in the headwaters of the South Umpqua River. UNF-USFS proposes to start electrofishing in upstream headwaters and proceed downstream, stopping when the first cutthroat trout is encountered. The information gathered will be used to establish fish distribution maps to clarify impacts of projected timber harvest in the South Umpqua River. Modification 1 is requested to be valid for the duration of the permit. Permit 1057 expires on December 31, 1998.

PUD GC requests modification 1 to scientific research permit 1116. Permit 1116 authorizes takes of juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a study designed to determine the survival and migration

differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam. For modification 1, PUD GC requests an increase in the take of juvenile, endangered, UCR steelhead associated with a study designed to inventory fish species in Wells reservoir on the Columbia River. ESA-listed fish are proposed to be observed by SCUBA divers or collected in beach seines, anesthetized, examined, allowed to recover, and released. Modification 1 is requested to be valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

Dated: June 4, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–15439 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 980212036–8146–02]

Management of Internet Names and Addresses

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Statement of policy.

SUMMARY: On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce*,[1] the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration, the creation of new top-level domains, policies for domain name registrars, and trademark issues. During the comment period, more than 430 comments were received, amounting to some 1500 pages.[2]

On January 30, 1998, the National Telecommunications and Information Administration (NTIA), an agency of the Department of Commerce, issued for comment, *A Proposal to Improve the Technical Management of Internet Names and Addresses.* The proposed rulemaking, or ''Green Paper,'' was published in the **Federal Register** on February 20, 1998, providing opportunity for public comment. NTIA received more than 650 comments, as of March 23, 1998, when the comment period closed.[3]

The Green Paper proposed certain actions designed to privatize the management of Internet names and addresses in a manner that allows for the development of robust competition and facilitates global participation in Internet management. The Green Paper proposed for discussion a variety of issues relating to DNS management including private sector creation of a new not-for-profit corporation (the ''new corporation'') managed by a globally and functionally representative Board of Directors.

EFFECTIVE DATE: This general statement of policy is not subject to the delay in effective date required of substantive rules under 5 U.S.C. § 553(d). It does not contain mandatory provisions and does not itself have the force and effect of law.[4] Therefore, the effective date of this policy statement is June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Rose, Office of International Affairs (OIA), Rm 4701, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC., 20230. Telephone: (202) 482–0365. E-mail: *dnspolicy@ntia.doc.gov*

Authority: 15 U.S.C. 1512; 15 U.S.C. 1525; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902(b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

SUPPLEMENTARY INFORMATION:

Background

Domain names are the familiar and easy-to-remember names for Internet computers (e.g., ''www.ecommerce.gov''). They map to unique Internet Protocol (IP) numbers (e.g., 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network.

U.S. Role in DNS Development

More than 25 years ago, the U.S. Government began funding research necessary to develop packet-switching technology and communications networks, starting with the ''ARPANET'' network established by the Department of Defense's Advanced Research Projects Agency (DARPA) in the 1960s. ARPANET was later linked to other networks established by other government agencies, universities and research facilities. During the 1970s, DARPA also funded the development of a ''network of networks;'' this became known as the Internet, and the protocols that allowed the networks to intercommunicate became known as Internet protocols (IP).

As part of the ARPANET development work contracted to the University of California at Los Angeles (UCLA), Dr. Jon Postel, then a graduate student at the university, undertook the maintenance of a list of host names and addresses and also a list of documents prepared by ARPANET researchers, called Requests for Comments (RFCs). The lists and the RFCs were made available to the network community through the auspices of SRI International, under contract to DARPA and later the Defense Communication Agency (DCA) (now the Defense Information Systems Agency (DISA)) for performing the functions of the Network Information Center (the NIC).

After Dr. Postel moved from UCLA to the Information Sciences Institute (ISI) at the University of Southern California (USC), he continued to maintain the list of assigned Internet numbers and names under contracts with DARPA. SRI International continued to publish the lists. As the lists grew, DARPA permitted Dr. Postel to delegate additional administrative aspects of the list maintenance to SRI, under continuing technical oversight. Dr. Postel, under the DARPA contracts, also published a list of technical parameters that had been assigned for use by protocol developers. Eventually these functions collectively became known as the Internet Assigned Numbers Authority (IANA).

Until the early 1980s, the Internet was managed by DARPA, and used primarily for research purposes. Nonetheless, the task of maintaining the name list became onerous, and the Domain Name System (DNS) was developed to improve the process. Dr. Postel and SRI participated in DARPA's development and establishment of the technology and practices used by the DNS. By 1990, ARPANET was completely phased out.

[1] Available at <*http://www.ecommerce.gov*>.

[2] July 2, 1997 RFC and public comments are located at: <*http://www.ntia.doc.gov/ntiahome/domainname/index.html*>.

[3] The RFC, the Green Paper, and comments received in response to both documents are available on the Internet at the following address: <*http://www.ntia.doc.gov*>. Additional comments were submitted after March 23, 1998. These comments have been considered and treated as part of the official record and have been separately posted at the same site, although the comments were not received by the deadline established in the February 20, 1998 **Federal Register** Notice.

[4] See Administrative Law Requirements at p. 19.

The National Science Foundation (NSF) has statutory authority for supporting and strengthening basic scientific research, engineering, and educational activities in the United States, including the maintenance of computer networks to connect research and educational institutions. Beginning in 1987, IBM, MCI and Merit developed NSFNET, a national high-speed network based on Internet protocols, under an award from NSF. NSFNET, the largest of the governmental networks, provided a ''backbone'' to connect other networks serving more than 4,000 research and educational institutions throughout the country. The National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy also contributed backbone facilities.

In 1991–92, NSF assumed responsibility for coordinating and funding the management of the non-military portion of the Internet infrastructure. NSF solicited competitive proposals to provide a variety of infrastructure services, including domain name registration services. On December 31, 1992, NSF entered into a cooperative agreement with Network Solutions, Inc. (NSI) for some of these services, including the domain name registration services. Since that time, NSI has managed key registration, coordination, and maintenance functions of the Internet domain name system. NSI registers domain names in the generic top level domains (gTLDs) on a first come, first served basis and also maintains a directory linking domain names with the IP numbers of domain name servers. NSI also currently maintains the authoritative database of Internet registrations.

In 1992, the U.S. Congress gave NSF statutory authority to allow commercial activity on the NSFNET.[5] This facilitated connections between NSFNET and newly forming commercial network service providers, paving the way for today's Internet. Thus, the U.S. Government has played a pivotal role in creating the Internet as we know it today. The U.S. Government consistently encouraged bottom-up development of networking technologies, and throughout the course of its development, computer scientists from around the world have enriched the Internet and facilitated exploitation of its true potential. For example, scientists at CERN, in Switzerland, developed software, protocols and conventions that formed the basis of today's vibrant World Wide Web. This type of pioneering Internet research and development continues in cooperative organizations and consortia throughout the world.

DNS Management Today

In recent years, commercial use of the Internet has expanded rapidly. As a legacy, however, major components of the domain name system are still performed by, or subject to, agreements with agencies of the U.S. Government.

(1) Assignment of numerical addresses to Internet users.

Every Internet computer has a unique IP number. IANA, headed by Dr. Jon Postel, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

(2) Management of the system of registering names for Internet users.

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of gTLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by NSI, under a five-year cooperative agreement with NSF. This agreement expires on September 30, 1998.

(3) Operation of the root server system.

The root server system is a set of thirteen file servers, which together contain authoritative databases listing all TLDs. Currently, NSI operates the ''A'' root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis.

Different organizations, including NSI, operate the other 12 root servers.[6] The U.S. Government plays a role in the operation of about half of the Internet's root servers. Universal name consistency on the Internet cannot be guaranteed without a set of authoritative and consistent roots. Without such consistency messages could not be routed with any certainty to the intended addresses.

(4) Protocol Assignment.

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

The Need for Change

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

—There is widespread dissatisfaction about the absence of competition in domain name registration.

—Conflicts between trademark holders and domain name holders are becoming more common. Mechanisms for resolving these conflicts are expensive and cumbersome.

—Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.

—An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want to participate in Internet coordination.

—As Internet names increasingly have commercial value, the decision to add new top-level domains cannot be made on an *ad hoc* basis by entities or individuals that are not formally accountable to the Internet community.

—As the Internet becomes commercial, it becomes less appropriate for U.S. research agencies to direct and fund these functions.

The Internet technical community has been actively debating DNS

[5] See Scientific and Advanced-Technology Act of 1992; Pub. L. 102–476 section 4(9), 106 Stat. 2297, 2300 (codified at 42 U.S.C. 1862 (a)).

[6] An unofficial diagram of the general geographic location and institutional affiliations of the 13 Internet root servers, prepared by Anthony Rutkowski, is available at <*http://www.wia.org/pub/rootserv.html*>.

management policy for several years. Experimental registry systems offering name registration services in an alternative set of exclusive domains developed as early as January 1996. Although visible to only a fraction of Internet users, alternative systems such as the name.space, AlterNIC, and eDNS affiliated registries [7] contributed to the community's dialogue on the evolution of DNS administration.

In May of 1996, Dr. Postel proposed the creation of multiple, exclusive, competing top-level domain name registries. This proposal called for the introduction of up to 50 new competing domain name registries, each with the exclusive right to register names in up to three new top-level domains, for a total of 150 new TLDs. While some supported the proposal, the plan drew much criticism from the Internet technical community.[8] The paper was revised and reissued.[9] The Internet Society's (ISOC) board of trustees endorsed, in principle, the slightly revised but substantively similar version of the draft in June of 1996.

After considerable debate and redrafting failed to produce a consensus on DNS change, IANA and the Internet Society (ISOC) organized the International Ad Hoc Committee [10] (IAHC or the Ad Hoc Committee) in September 1996, to resolve DNS management issues. The World Intellectual Property Organization (WIPO) and the International Telecommunications Union (ITU) participated in the IAHC. The Federal Networking Council (FNC) participated in the early deliberations of the Ad Hoc Committee.

The IAHC issued a draft plan in December 1996 that introduced unique and thoughtful concepts for the evolution of DNS administration.[11] The final report proposed a memorandum of understanding (MoU) that would have established, initially, seven new gTLDs to be operated on a nonexclusive basis by a consortium of new private domain name registrars called the Council of Registrars (CORE).[12] Policy oversight would have been undertaken in a separate council called the Policy Oversight Committee (POC) with seats allocated to specified stakeholder groups. Further, the plan formally introduced mechanisms for resolving trademark/domain name disputes. Under the MoU, registrants for second-level domains would have been required to submit to mediation and arbitration, facilitated by WIPO, in the event of conflict with trademark holders.

Although the IAHC proposal gained support in many quarters of the Internet community, the IAHC process was criticized for its aggressive technology development and implementation schedule, for being dominated by the Internet engineering community, and for lacking participation by and input from business interests and others in the Internet community.[13] Others criticized the plan for failing to solve the competitive problems that were such a source of dissatisfaction among Internet users and for imposing unnecessary burdens on trademark holders. Although the POC responded by revising the original plan, demonstrating a commendable degree of flexibility, the proposal was not able to overcome initial criticism of both the plan and the process by which the plan was developed.[14] Important segments of the Internet community remained outside the IAHC process, criticizing it as insufficiently representative.[15]

As a result of the pressure to change DNS management, and in order to facilitate its withdrawal from DNS management, the U.S. Government, through the Department of Commerce and NTIA, sought public comment on the direction of U.S. policy with respect to DNS, issuing the Green Paper on January 30, 1998.[16] The approach outlined in the Green Paper adopted elements of other proposals, such as the early Postel drafts and the IAHC gTLD–MoU.

Comments and Response: The following are summaries of and responses to the major comments that were received in response to NTIA's issuance of *A Proposal to Improve the Technical Management of Internet Names and Addresses.* As used herein, quantitative terms such as ''some,'' ''many,'' and ''the majority of,'' reflect, roughly speaking, the proportion of comments addressing a particular issue but are not intended to summarize all comments received or the complete substance of all such comments.

1. Principles for a New System

The Green Paper set out four principles to guide the evolution of the domain name system: stability, competition, private bottom-up coordination, and representation.

Comments: In general, commenters supported these principles, in some cases highlighting the importance of one or more of the principles. For example, a number of commenters emphasized the importance of establishing a body that fully reflects the broad diversity of the Internet community. Others stressed the need to preserve the bottom-up tradition of Internet governance. A limited number of commenters proposed additional principles for the new system, including principles related to the protection of human rights, free speech, open communication, and the preservation of the Internet as a public trust. Finally, some commenters who agreed that Internet stability is an important principle, nonetheless objected to the U.S. Government's assertion of any participatory role in ensuring such stability.

Response: The U.S. Government policy applies only to management of Internet names and addresses and does not set out a system of Internet ''governance.'' Existing human rights and free speech protections will not be disturbed and, therefore, need not be specifically included in the core principles for DNS management. In addition, this policy is not intended to displace other legal regimes (international law, competition law, tax law and principles of international taxation, intellectual property law, etc.) that may already apply. The continued applicability of these systems as well as the principle of representation should ensure that DNS management proceeds in the interest of the Internet community as a whole. Finally, the U.S. Government believes that it would be irresponsible to withdraw from its existing management role without

[7] For further information about these systems see: name.space: <*http://namespace.pgmedia.net*>; AlterNIC: <*http://www.alternic.net*>; eDNS: <*http://www.edns.net*>. Reference to these organizations does not constitute an endorsement of their commercial activities.

[8] Lengthy discussions by the Internet technical community on DNS issues generally and on the Postel DNS proposal took place on the *newdom, com-priv, ietf* and *domain-policy* Internet mailing lists.

[9] See *draft-Postel-iana-itld-admin-01.txt;* available at <*http://www.newdom.com/archive*>.

[10] For further information about the IAHC see: <*http://www.iahc.org*> and related links. Reference to this organization does not constitute an endorsement of the commercial activities of its related organizations.

[11] December 1996 draft: *draft-iahc-gtldspec-00.txt;* available at <*http://info.internet.isi.edu:80/in-drafts/files*>.

[12] The IAHC final report is available at <*http://www.iahc.org/draft-iahc-recommend-00.html*>.

[13] See generally public comments received in response to July 2, 1997 RFC located at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[14] For a discussion, see Congressional testimony of Assistant Secretary of Commerce Larry Irving, Before the House Committee on Science, Subcommittee on Basic Research, September 25, 1997 available at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[15] See generally public comments received in response to July 2, 1997 RFC located at <*http://www.ntia.doc.gov/ntiahome/domainname/email*>.

[16] The document was published in the **Federal Register** on February 20, 1998, (63 FR 8826 (Feb. 20, 1998)).

taking steps to ensure the stability of the Internet during its transition to private sector management. On balance, the comments did not present any consensus for amending the principles outlined in the Green Paper.

2. The Coordinated Functions

The Green Paper identified four DNS functions to be performed on a coordinated, centralized basis in order to ensure that the Internet runs smoothly:

1. To set policy for and direct the allocation of IP number blocks;

2. To oversee the operation of the Internet root server system;

3. To oversee policy for determining the circumstances under which new top level domains would be added to the root system; and

4. To coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

Comments: Most commenters agreed that these functions should be coordinated centrally, although a few argued that a system of authoritative roots is not technically necessary to ensure DNS stability. A number of commenters, however, noted that the fourth function, as delineated in the Green Paper, overstated the functions currently performed by IANA, attributing to it central management over an expanded set of functions, some of which are now carried out by the IETF.

Response: In order to preserve universal connectivity and the smooth operation of the Internet, the U.S. Government continues to believe, along with most commenters, that these four functions should be coordinated. In the absence of an authoritative root system, the potential for name collisions among competing sources for the same domain name could undermine the smooth functioning and stability of the Internet.

The Green Paper was not, however, intended to expand the responsibilities associated with Internet protocols beyond those currently performed by IANA. Specifically, management of DNS by the new corporation does not encompass the development of Internet technical parameters for other purposes by other organizations such as IETF. The fourth function should be restated accordingly:

- To coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

3. Separation of Name and Number Authority

Comments: A number of commenters suggested that management of the domain name system should be separated from management of the IP number system. These commenters expressed the view that the numbering system is relatively technical and straightforward. They feared that tight linkage of domain name and IP number policy development would embroil the IP numbering system in the kind of controversy that has surrounded domain name issuance in recent months. These commenters also expressed concern that the development of alternative name and number systems could be inhibited by this controversy or delayed by those with vested interests in the existing system.

Response: The concerns expressed by the commenters are legitimate, but domain names and IP numbers must ultimately be coordinated to preserve universal connectivity on the Internet. Also, there are significant costs associated with establishing and operating two separate management entities.

However, there are organizational structures that could minimize the risks identified by commenters. For example, separate name and number councils could be formed within a single organization. Policy could be determined within the appropriate council that would submit its recommendations to the new corporation's Board of Directors for ratification.

4. Creation of the New Corporation and Management of the DNS

The Green Paper called for the creation of a new private, not-for-profit corporation [17] responsible for coordinating specific DNS functions for the benefit of the Internet as a whole. Under the Green Paper proposal, the U.S. Government [18] would gradually transfer these functions to the new corporation beginning as soon as possible, with the goal of having the new corporation carry out operational responsibility by October 1998. Under the Green Paper proposal, the U.S. Government would continue to participate in policy oversight until such time as the new corporation was established and stable, phasing out as soon as possible, but in no event later than September 30, 2000. The Green Paper suggested that the new corporation be incorporated in the United States in order to promote stability and facilitate the continued reliance on technical expertise residing in the United States, including IANA staff at USC/ISI.

Comments: Almost all commenters supported the creation of a new, private not-for-profit corporation to manage DNS. Many suggested that IANA should evolve into the new corporation. A small number of commenters asserted that the U.S. Government should continue to manage Internet names and addresses. Another small number of commenters suggested that DNS should be managed by international governmental institutions such as the United Nations or the International Telecommunications Union. Many commenters urged the U.S. Government to commit to a more aggressive timeline for the new corporation's assumption of management responsibility. Some commenters also suggested that the proposal to headquarter the new corporation in the United States represented an inappropriate attempt to impose U.S. law on the Internet as a whole.

Response: The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management. Most commenters shared this goal. While international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses. Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.

The U.S. Government would prefer that this transition be complete before the year 2000. To the extent that the new corporation is established and operationally stable, September 30, 2000 is intended to be, and remains, an ''outside'' date.

IANA has functioned as a government contractor, albeit with considerable latitude, for some time now. Moreover, IANA is not formally organized or constituted. It describes a function more than an entity, and as such does not currently provide a legal foundation for the new corporation. This is not to say,

[17] As used herein, the term ''new corporation'' is intended to refer to an entity formally organized under well recognized and established business law standards.

[18] As noted in the Summary, the President directed the Secretary of Commerce to privatize DNS in a manner that increases competition and facilitates international participation in its management. Accordingly, the Department of Commerce will lead the coordination of the U.S. government's role in this transition.

however, that IANA could not be reconstituted by a broad-based, representative group of Internet stakeholders or that individuals associated with IANA should not themselves play important foundation roles in the formation of the new corporation. We believe, and many commenters also suggested, that the private sector organizers will want Dr. Postel and other IANA staff to be involved in the creation of the new corporation.

Because of the significant U.S.-based DNS expertise and in order to preserve stability, it makes sense to headquarter the new corporation in the United States. Further, the mere fact that the new corporation would be incorporated in the United States would not remove it from the jurisdiction of other nations. Finally, we note that the new corporation must be headquartered somewhere, and similar objections would inevitably arise if it were incorporated in another location.

5. Structure of the New Corporation

The Green Paper proposed a 15-member Board, consisting of three representatives of regional number registries, two members designated by the Internet Architecture Board (IAB), two members representing domain name registries and domain name registrars, seven members representing Internet users, and the Chief Executive Officer of the new corporation.

Comments: Commenters expressed a variety of positions on the composition of the Board of Directors for the new corporation. In general, however, most commenters supported the establishment of a Board of Directors that would be representative of the functional and geographic diversity of the Internet. For the most part, commenters agreed that the groups listed in the Green Paper included individuals and entities likely to be materially affected by changes in DNS. Most of those who criticized the proposed allocation of Board seats called for increased representation of their particular interest group on the Board of Directors. Specifically, a number of commenters suggested that the allocation set forth in the Green Paper did not adequately reflect the special interests of (1) trademark holders, (2) Internet service providers, or (3) the not-for-profit community. Others commented that the Green Paper did not adequately ensure that the Board would be globally representative.

Response: The Green Paper attempted to describe a manageably sized Board of Directors that reflected the diversity of the Internet. It is probably impossible to allocate Board seats in a way that satisfies all parties concerned. On balance, we believe the concerns raised about the representation of specific groups are best addressed by a thoughtful allocation of the ''user'' seats as determined by the organizers of the new corporation and its Board of Directors, as discussed below.

The Green Paper identified several international membership associations and organizations to designate Board members such as APNIC, ARIN, RIPE, and the Internet Architecture Board. We continue to believe that as use of the Internet expands outside the United States, it is increasingly likely that a properly open and transparent DNS management entity will have board members from around the world. Although we do not set any mandatory minimums for global representation, this policy statement is designed to identify global representativeness as an important priority.

6. Registrars and Registries

The Green Paper proposed moving the system for registering second level domains and the management of generic top-level domains into a competitive environment by creating two market-driven businesses, registration of second level domain names and the management of gTLD registries.

a. Competitive Registrars

Comments: Commenters strongly supported establishment of a competitive registrar system whereby registrars would obtain domain names for customers in any gTLD. Few disagreed with this position. The Green Paper proposed a set of requirements to be imposed by the new corporation on all would-be registrars. Commenters for the most part did not take exception to the proposed criteria, but a number of commenters suggested that it was inappropriate for the United States government to establish them.

Response: In response to the comments received, the U.S. Government believes that the new corporation, rather than the U.S. Government, should establish minimum criteria for registrars that are pro-competitive and provide some measure of stability for Internet users without being so onerous as to prevent entry by would-be domain name registrars from around the world. Accordingly, the proposed criteria are not part of this policy statement.

b. Competitive Registries

Comments: Many commenters voiced strong opposition to the idea of competitive and/or for-profit domain name registries, citing one of several concerns. Some suggested that top level domain names are not, by nature, ever truly generic. As such, they will tend to function as ''natural monopolies'' and should be regulated as a public trust and operated for the benefit of the Internet community as a whole. Others suggested that even if competition initially exists among various domain name registries, lack of portability in the naming systems would create lock-in and switching costs, making competition unsustainable in the long run. Finally, other commenters suggested that no new registry could compete meaningfully with NSI unless all domain name registries were not-for-profit and/or noncompeting.

Some commenters asserted that an experiment involving the creation of additional for-profit registries would be too risky, and irreversible once undertaken. A related concern raised by commenters addressed the rights that for-profit operators might assert with respect to the information contained in registries they operate. These commenters argued that registries would have inadequate incentives to abide by DNS policies and procedures unless the new corporation could terminate a particular entity's license to operate a registry. For-profit operators, under this line of reasoning, would be more likely to disrupt the Internet by resisting license terminations.

Commenters who supported competitive registries conceded that, in the absence of domain name portability, domain name registries could impose switching costs on users who change domain name registries. They cautioned, however, that it would be premature to conclude that switching costs provide a sufficient basis for precluding the proposed move to competitive domain name registries and cited a number of factors that could protect against registry opportunism. These commenters concluded that the potential benefits to customers from enhanced competition outweighed the risk of such opportunism. The responses to the Green Paper also included public comments on the proposed criteria for registries.

Response: Both sides of this argument have considerable merit. It is possible that additional discussion and information will shed light on this issue, and therefore, as discussed below, the U.S. Government has concluded that the issue should be left for further consideration and final action by the new corporation. The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice,

and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically. Further, in response to the comments received, the U.S. government believes that new corporation should establish and implement appropriate criteria for gTLD registries. Accordingly, the proposed criteria are not part of this policy statement.

7. The Creation of New gTLDs

The Green Paper suggested that during the period of transition to the new corporation, the U.S. Government, in cooperation with IANA, would undertake a process to add up to five new gTLDs to the authoritative root. Noting that formation of the new corporation would involve some delay, the Green Paper contemplated new gTLDs in the short term to enhance competition and provide information to the technical community and to policy makers, while offering entities that wished to enter into the registry business an opportunity to begin offering service to customers. The Green Paper, however, noted that ideally the addition of new TLDs would be left to the new corporation.

Comments: The comments evidenced very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running. Few believed that speed should outweigh process considerations in this matter. Others warned, however, that relegating this contentious decision to a new and untested entity early in its development could fracture the organization. Others argued that the market for a large or unlimited number of new gTLDs should be opened immediately. They asserted that there are no technical impediments to the addition of a host of gTLDs, and the market will decide which TLDs succeed and which do not. Further, they pointed out that there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.

Response: The challenge of deciding policy for the addition of new domains will be formidable. We agree with the many commenters who said that the new corporation would be the most appropriate body to make these decisions based on global input. Accordingly, as supported by the preponderance of comments, the U.S. Government will not implement new gTLDs at this time.

At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration.

8. The Trademark Dilemma

When a trademark is used as a domain name without the trademark owner's consent, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation. For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The Green Paper proposed a number of steps to balance the needs of domain name holders with the legitimate concerns of trademark owners in the interest of the Internet community as a whole. The proposals were designed to provide trademark holders with the same rights they have in the physical world, to ensure transparency, and to guarantee a dispute resolution mechanism with resort to a court system.

The Green Paper also noted that trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could enforce a judgment protecting those rights. The Green Paper solicited comments on an arrangement whereby, at the time of registration, registrants would agree to submit a contested domain name to the jurisdiction of the courts where the registry is domiciled, where the registry database is maintained, or where the ''A'' root server is maintained.

Comments: Commenters largely agreed that domain name registries should maintain up-to-date, readily searchable domain name databases that contain the information necessary to locate a domain name holder. In general commenters did not take specific issue with the database specifications proposed in Appendix 2 of the Green Paper, although some commenters proposed additional requirements. A few commenters noted, however, that privacy issues should be considered in this context.

A number of commenters objected to NSI's current business practice of allowing registrants to use domain names before they have actually paid any registration fees. These commenters pointed out that this practice has encouraged cybersquatters and increased the number of conflicts between domain name holders and trademark holders. They suggested that domain name applicants should be required to pay before a desired domain name becomes available for use.

Most commenters also favored creation of an on-line dispute resolution mechanism to provide inexpensive and efficient alternatives to litigation for resolving disputes between trademark owners and domain name registrants. The Green Paper contemplated that each registry would establish specified minimum dispute resolution procedures, but remain free to establish additional trademark protection and dispute resolution mechanisms. Most commenters did not agree with this approach, favoring instead a uniform approach to resolving trademark/domain name disputes.

Some commenters noted that temporary suspension of a domain name in the event of an objection by a trademark holder within a specified period of time after registration would significantly extend trademark holders' rights beyond what is accorded in the real world. They argued that such a provision would create a *de facto* waiting period for name use, as holders would need to suspend the use of their name until after the objection window had passed to forestall an interruption in service. Further, they argue that such a system could be used anti-competitively to stall a competitor's entry into the marketplace.

The suggestion that domain name registrants be required to agree at the time of registration to submit disputed domain names to the jurisdiction of specified courts was supported by U.S. trademark holders but drew strong protest from trademark holders and domain name registrants outside the United States. A number of commenters characterized this as an inappropriate attempt to establish U.S. trademark law as the law of the Internet. Others suggested that existing jurisdictional arrangements are satisfactory. They argue that establishing a mechanism whereby the judgment of a court can be enforced absent personal jurisdiction

over the infringer would upset the balance between the interests of trademark holders and those of other members of the Internet community.

Response: The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cyberpiracy (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders. These findings and recommendations could be submitted to the board of the new corporation for its consideration in conjunction with its development of registry and registrar policy and the creation and introduction of new gTLDs.

In trademark/domain name conflicts, there are issues of jurisdiction over the domain name in controversy and jurisdiction over the legal persons (the trademark holder and the domain name holder). This document does not attempt to resolve questions of personal jurisdiction in trademark/domain name conflicts. The legal issues are numerous, involving contract, conflict of laws, trademark, and other questions. In addition, determining how these various legal principles will be applied to the borderless Internet with an unlimited possibility of factual scenarios will require a great deal of thought and deliberation. Obtaining agreement by the parties that jurisdiction over the domain name will be exercised by an alternative dispute resolution body is likely to be at least somewhat less controversial than agreement that the parties will subject themselves to the personal jurisdiction of a particular national court. Thus, the references to jurisdiction in this policy statement are limited to jurisdiction over the domain name in dispute, and not to the domain name holder.

In order to strike a balance between those commenters who thought that registrars and registries should not themselves be engaged in disputes between trademark owners and domain name holders and those commenters who thought that trademark owners should have access to a reliable and up-to-date database, we believe that a database should be maintained that permits trademark owners to obtain the contact information necessary to protect their trademarks.

Further, it should be clear that whatever dispute resolution mechanism is put in place by the new corporation, that mechanism should be directed toward disputes about cybersquatting and cyberpiracy and not to settling the disputes between two parties with legitimate competing interests in a particular mark. Where legitimate competing rights are concerned, disputes are rightly settled in an appropriate court.

Under the revised plan, we recommend that domain name holders agree to submit infringing domain names to the jurisdiction of a court where the ''A'' root server is maintained, where the registry is domiciled, where the registry database is maintained, or where the registrar is domiciled. We believe that allowing trademark infringement suits to be brought wherever registrars and registries are located will help ensure that all trademark holders '' both U.S. and non-U.S. '' have the opportunity to bring suits in a convenient jurisdiction and enforce the judgments of those courts.

Under the revised plan, we also recommend that, whatever options are chosen by the new corporation, each registrar should insist that payment be made for the domain name before it becomes available to the applicant. The failure to make a domain name applicant pay for its use of a domain name has encouraged cyberpirates and is a practice that should end as soon as possible.

9. Competition Concerns

Comments: Several commenters suggested that the U.S. Government should provide full antitrust immunity or indemnification for the new corporation. Others noted that potential antitrust liability would provide an important safeguard against institutional inflexibility and abuses of power.

Response: Applicable antitrust law will provide accountability to and protection for the international Internet community. Legal challenges and lawsuits can be expected within the normal course of business for any enterprise and the new corporation should anticipate this reality.

The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents. For example, the new corporation's activities would need to be open to all persons who are directly affected by the entity, with no undue financial barriers to participation or unreasonable restrictions on participation based on technical or other such requirements. Entities and individuals would need to be able to participate by expressing a position and its basis, having that position considered, and appealing if adversely affected. Further, the decision making process would need to reflect a balance of interests and should not be dominated by any single interest category. If the new corporation behaves this way, it should be less vulnerable to antitrust challenges.

10. The NSI Agreement

Comments: Many commenters expressed concern about continued administration of key gTLDs by NSI. They argued that this would give NSI an unfair advantage in the marketplace and allow NSI to leverage economies of scale across their gTLD operations. Some commenters also believe the Green Paper approach would have entrenched and institutionalized NSI's dominant market position over the key domain name going forward. Further, many commenters expressed doubt that a level playing field between NSI and the new registry market entrants could emerge if NSI retained control over .com, .net, and .org.

Response: The cooperative agreement between NSI and the U.S. Government is currently in its ramp down period. The U.S. Government and NSI will shortly commence discussions about the terms and conditions governing the ramp-down of the cooperative agreement. Through these discussions, the U.S. Government expects NSI to agree to take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition. The U.S. Government expects NSI to agree to act in a manner consistent with this policy statement, including recognizing the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLD registries under which registries, registrars and gTLDs are permitted to

operate. Further, the U.S. Government expects NSI to agree to make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual property for DNS management and shared registration of domain names.

11. A Global Perspective

Comments: A number of commenters expressed concern that the Green Paper did not go far enough in globalizing the administration of the domain name system. Some believed that international organizations should have a role in administering the DNS. Others complained that incorporating the new corporation in the United States would entrench control over the Internet with the U.S. Government. Still others believed that the awarding by the U.S. Government of up to five new gTLDs would enforce the existing dominance of U.S. entities over the gTLD system.

Response: The U.S. Government believes that the Internet is a global medium and that its technical management should fully reflect the global diversity of Internet users. We recognize the need for and fully support mechanisms that would ensure international input into the management of the domain name system. In withdrawing the U.S. Government from DNS management and promoting the establishment of a new, non-governmental entity to manage Internet names and addresses, a key U.S. Government objective has been to ensure that the increasingly global Internet user community has a voice in decisions affecting the Internet's technical management.

We believe this process has reflected our commitment. Many of the comments on the Green Paper were filed by foreign entities, including governments. Our dialogue has been open to all Internet users—foreign and domestic, government and private—during this process, and we will continue to consult with the international community as we begin to implement the transition plan outlined in this paper.

12. The Intellectual Infrastructure Fund

In 1995, NSF authorized NSI to assess domain name registrants a $50 fee per year for the first two years, 30 percent of which was to be deposited in the Intellectual Infrastructure Fund (IIF), a fund to be used for the preservation and enhancement of the intellectual infrastructure of the Internet.

Comments: Very few comments referenced the IIF. In general, the comments received on the issue supported either refunding the IIF portion of the domain name registration fee to domain registrants from whom it had been collected or applying the funds toward Internet infrastructure development projects generally, including funding the establishment of the new corporation.

Response: As proposed in the Green Paper, allocation of a portion of domain name registration fees to this fund terminated as of March 31, 1998. NSI has reduced its registration fees accordingly. The IIF remains the subject of litigation. The U.S. Government takes the position that its collection has recently been ratified by the U.S. Congress,[19] and has moved to dismiss the claim that it was unlawfully collected. This matter has not been finally resolved, however.

13. The .us Domain

At present, the IANA administers .us as a locality-based hierarchy in which second-level domain space is allocated to states and U.S. territories.[20] This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

Comments: Many commenters suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. They called for expanded use of the .us TLD to alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name. Most commenters support an evolution of the .us domain designed to make this name space more attractive to commercial users.

Response: Clearly, there is much opportunity for enhancing the .us domain space, and .us could be expanded in many ways without displacing the current structure. Over the next few months, the U.S. Government will work with the private sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. Accordingly, the Department of Commerce will seek public input on this important issue.

Administrative Law Requirements

On February 20, 1998, NTIA published for public comment a proposed rule regarding the domain name registration system. That proposed rule sought comment on substantive regulatory provisions, including but not limited to a variety of specific requirements for the membership of the new corporation, the creation during a transition period of a specified number of new generic top level domains and minimum dispute resolution and other procedures related to trademarks. As discussed elsewhere in this document, in response to public comment these aspects of the original proposal have been eliminated. In light of the public comment and the changes to the proposal made as a result, as well as the continued rapid technological development of the Internet, the Department of Commerce has determined that it should issue a general statement of policy, rather than define or impose a substantive regulatory regime for the domain name system. As such, this policy statement is not a substantive rule, does not contain mandatory provisions and does not itself have the force and effect of law.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the proposed rule on this matter, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published along with the proposed rule. No comments were received regarding this certification. As such, and because this final rule is a general statement of policy, no final regulatory flexibility analysis has been prepared.

This general statement of policy does not contain any reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35 (PRA). However, at the time the U.S. Government might seek to enter into agreements as described in this policy statement, a determination will be made as to whether any reporting or record keeping requirements subject to the PRA are being implemented. If so, the NTIA will, at that time, seek approval under the PRA for such requirement(s) from the Office of Management and Budget.

[19] 1998 Supplemental Appropriations and Rescissions Act; Pub. L. 105–174; 112 Stat. 58.

[20] Management principles for the .us domain space are set forth in Internet RFC 1480, (http://www.isi.edu/in-notes/rfc1480.txt).

This statement has been determined to be not significant for purposes of Office of Management and Budget review under Executive Order 12866, entitled Regulatory Planning and Review.

Revised Policy Statement

This document provides the U.S. Government's policy regarding the privatization of the domain name system in a manner that allows for the development of robust competition and that facilitates global participation in the management of Internet names and addresses.

The policy that follows does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek a stable process to address the narrow issues of management and administration of Internet names and numbers on an ongoing basis.

As set out below, the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system. Under such agreement(s) or understanding(s), the new corporation would undertake various responsibilities for the administration of the domain name system now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government. The U.S. Government would also ensure that the new corporation has appropriate access to needed databases and software developed under those agreements.

The Coordinated Functions

Management of number addresses is best done on a coordinated basis. Internet numbers are a unique, and at least currently, a limited resource. As technology evolves, changes may be needed in the number allocation system. These changes should also be coordinated.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of the Internet root servers, can be dispersed, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users around the globe.

Further, changes made in the administration or the number of gTLDs contained in the authoritative root system will have considerable impact on Internet users throughout the world. In order to promote continuity and reasonable predictability in functions related to the root zone, the development of policies for the addition, allocation, and management of gTLDs and the establishment of domain name registries and domain name registrars to host gTLDs should be coordinated.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet. We are not, however, proposing to expand the functional responsibilities of the new corporation beyond those exercised by IANA currently.

In order to facilitate the needed coordination, Internet stakeholders are invited to work together to form a new, private, not-for-profit corporation to manage DNS functions. The following discussion reflects current U.S. Government views of the characteristics of an appropriate management entity. What follows is designed to describe the characteristics of an appropriate entity generally.

Principles for a New System

In making a decision to enter into an agreement to establish a process to transfer current U.S. Government management of DNS to such a new entity, the U.S. will be guided by, and consider the proposed entity's commitment to, the following principles:

1. Stability. The U.S. Government should end its role in the Internet number and name address system in a manner that ensures the stability of the Internet. The introduction of a new management system should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed.

2. Competition. The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote innovation, encourage diversity, and enhance user choice and satisfaction.

3. Private, Bottom-Up Coordination. Certain management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

4. Representation. The new corporation should operate as a private entity for the benefit of the Internet community as a whole. The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making.

Purpose. The new corporation ultimately should have the authority to manage and perform a specific set of functions related to coordination of the domain name system, including the authority necessary to:

(1) Set policy for and direct allocation of IP number blocks to regional Internet number registries;

(2) Oversee operation of the authoritative Internet root server system;

(3) Oversee policy for determining the circumstances under which new TLDs are added to the root system; and

(4) Coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

Funding. Once established, the new corporation could be funded by domain name registries, regional IP registries, or other entities identified by the Board.

Staff. We anticipate that the new corporation would want to make arrangements with current IANA staff to provide continuity and expertise over the course of transition. The new corporation should secure necessary expertise to bring rigorous management to the organization.

Incorporation. We anticipate that the new corporation's organizers will include representatives of regional Internet number registries, Internet engineers and computer scientists, domain name registries, domain name registrars, commercial and noncommercial users, Internet service providers, international trademark

holders and Internet experts highly respected throughout the international Internet community. These incorporators should include substantial representation from around the world.

As these functions are now performed in the United States, by U.S. residents, and to ensure stability, the new corporation should be headquartered in the United States, and incorporated in the U.S. as a not-for-profit corporation. It should, however, have a board of directors from around the world. Moreover, incorporation in the United States is not intended to supplant or displace the laws of other countries where applicable.

Structure. The Internet community is already global and diverse and likely to become more so over time. The organization and its board should derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The Board of Directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world. Since these constituencies are international, we would expect the board of directors to be broadly representative of the global Internet community.

As outlined in appropriate organizational documents, (Charter, Bylaws, etc.) the new corporation should:

(1) Appoint, on an interim basis, an initial Board of Directors (an Interim Board) consisting of individuals representing the functional and geographic diversity of the Internet community. The Interim Board would likely need access to legal counsel with expertise in corporate law, competition law, intellectual property law, and emerging Internet law. The Interim Board could serve for a fixed period, until the Board of Directors is elected and installed, and we anticipate that members of the Interim Board would not themselves serve on the Board of Directors of the new corporation for a fixed period thereafter.

(2) Direct the Interim Board to establish a system for electing a Board of Directors for the new corporation that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet, and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders. Nominations to the Board of Directors should preserve, as much as possible, the tradition of bottom-up governance of the Internet, and Board Members should be elected from membership or other associations open to all or through other mechanisms that ensure broad representation and participation in the election process.

(3) Direct the Interim Board to develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system.

(4) Restrict official government representation on the Board of Directors without precluding governments and intergovernmental organizations from participating as Internet users or in a non-voting advisory capacity.

Governance. The organizing documents (Charter, Bylaws, etc.) should provide that the new corporation is governed on the basis of a sound and transparent decision-making process, which protects against capture by a self-interested faction, and which provides for robust, professional management of the new corporation. The new corporation could rely on separate, diverse, and robust name and number councils responsible for developing, reviewing, and recommending for the board's approval policy related to matters within each council's competence. Such councils, if developed, should also abide by rules and decision-making processes that are sound, transparent, protect against capture by a self-interested party and provide an open process for the presentation of petitions for consideration. The elected Board of Directors, however, should have final authority to approve or reject policies recommended by the councils.

Operations. The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Typically this means that decision-making processes should be sound and transparent; the basis for corporate decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation does not need any special grant of immunity from the antitrust laws so long as its policies and practices are reasonably based on, and no broader than necessary to promote the legitimate coordinating objectives of the new corporation. Finally, the commercial importance of the Internet necessitates that the operation of the DNS system, and the operation of the authoritative root server system should be secure, stable, and robust.

The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation could, for example, establish an open process for the presentation of petitions to expand board representation.

Trademark Issues. Trademark holders and domain name registrants and others should have access to searchable databases of registered domain names that provide information necessary to contact a domain name registrant when a conflict arises between a trademark holder and a domain name holder.[21] To this end, we anticipate that the policies established by the new corporation would provide that following information would be included in all registry databases and available to anyone with access to the Internet:

—Up-to-date registration and contact information;
—Up-to-date and historical chain of registration information for the domain name;
—A mail address for service of process;
—The date of domain name registration;
—The date that any objection to the registration of the domain name is filed; and
—Any other information determined by the new corporation to be reasonably necessary to resolve disputes between domain name registrants and trademark holders expeditiously.

Further, the U.S. Government recommends that the new corporation adopt policies whereby:

(1) Domain registrants pay registration fees at the time of registration or renewal and agree to submit infringing domain names to the authority of a court of law in the jurisdiction in which the registry, registry database, registrar, or the ''A'' root servers are located.

(2) Domain name registrants would agree, at the time of registration or renewal, that in cases involving cyberpiracy or cybersquatting (as opposed to conflicts between legitimate competing rights holders), they would submit to and be bound by alternative dispute resolution systems identified by the new corporation for the purpose of resolving those conflicts. Registries and Registrars should be required to abide by decisions of the ADR system.

[21] These databases would also benefit domain name holders by making it less expensive for new registrars and registries to identify potential customers, enhancing competition and lowering prices.

(3) Domain name registrants would agree, at the time of registration or renewal, to abide by processes adopted by the new corporation that exclude, either pro-actively or retroactively, certain famous trademarks from being used as domain names (in one or more TLDs) except by the designated trademark holder.

(4) Nothing in the domain name registration agreement or in the operation of the new corporation should limit the rights that can be asserted by a domain name registrant or trademark owner under national laws.

The Transition

Based on the processes described above, the U.S. Government believes that certain actions should be taken to accomplish the objectives set forth above. Some of these steps must be taken by the government itself, while others will need to be taken by the private sector. For example, a new not-for-profit organization must be established by the private sector and its Interim Board chosen. Agreement must be reached between the U.S. Government and the new corporation relating to transfer of the functions currently performed by IANA. NSI and the U.S. Government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A process must be laid out for making the management of the root server system more robust and secure. A relationship between the U.S. Government and the new corporation must be developed to transition DNS management to the private sector and to transfer management functions.

During the transition the U.S. Government expects to:

(1) Ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space. Under the ramp down agreement NSI will agree to (a) take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition, (b) recognize the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs are permitted to operate, (c) make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual property for DNS management and shared registration of domain names;

(2) Enter into agreement with the new corporation under which it assumes responsibility for management of the domain name space;

(3) Ask WIPO to convene an international process including individuals from the private sector and government to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible;

(4) Consult with the international community, including other interested governments as it makes decisions on the transfer; and

(5) Undertake, in cooperation with IANA, NSI, the IAB, and other relevant organizations from the public and private sector, a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process; and the new corporation should develop a comprehensive security strategy for DNS management and operations.

Dated: June 4, 1998.

William M. Daley,

Secretary of Commerce.

[FR Doc. 98–15392 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–60–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for June 18, 1998 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., June 2, 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–15372 Filed 6–9–98; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

June 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift and carryover.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-

month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on June 10, 1998, 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]
Levels in Group I	
237	1,817,489 dozen.
333/334	263,650 dozen of which not more than 40,002 dozen shall be in Category 333.
335	149,539 dozen.
336	732,608 dozen.
338/339	2,697,955 dozen.
340/640	1,065,809 dozen.
341/641	980,968 dozen.
342/642	631,710 dozen.
347/348	2,549,633 dozen.
350	167,054 dozen.
351/651	691,142 dozen.
352/652	2,714,293 dozen.
431	189,349 dozen pairs.
447	7,821 dozen.
633	40,830 dozen.
634	522,477 dozen.
635	336,350 dozen.
636	1,909,220 dozen.
638/639	1,806,331 dozen.
643	975,264 numbers.
645/646	837,678 dozen.
647/648	940,180 dozen.
649	8,453,784 dozen.
650	119,566 dozen.
659–H [2]	1,573,173 kilograms.
847	843,455 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

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. 98–15467 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

June 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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 or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, and carryforward used.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67837, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, 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 Taiwan and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on June 10, 1998, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	601,702,676 square meters equivalent.
Sublevels in Group I	
300/301/607	1,808,022 kilograms of which not more than 1,506,684 kilograms shall be in Category 300; not more than 1,506,684 kilograms shall be in Category 301; and not more than 1,506,684 kilograms shall be in Category 607.
611	3,259,229 square meters.
619/620	14,857,169 square meters.
Within Group I Subgroup	
604	239,017 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/378, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [10], 359–H/659–H [11], 359–O [12], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [13], 659–O [14], 831–844, and 846–859, as a group.	726,347,492 square meters equivalent.
Sublevels in Group II	
336	136,277 dozen.
338/339	986,860 dozen.
340	1,286,748 dozen.
345	116,445 dozen.

Category	Adjusted twelve-month limit [1]
347/348	1,514,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15].
433	14,488 dozen.
435	26,372 dozen.
436	5,201 dozen.
438	29,358 dozen.
443	51,570 numbers.
444	63,175 numbers.
445/446	142,192 dozen.
633/634/635	1,634,440 dozen of which not more than 957,173 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,501,701 dozen.
640	947,018 dozen of which not more than 281,710 dozen shall be in Category 640–Y [16].
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [17].
Within Group II Subgroup	
342	226,084 dozen.
447/448	21,048 dozen.
636	391,637 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 ; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659–O: all HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[17] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

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. 98–15466 Filed 6–9–98; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*VISTA Supervision and Transportation Support Guidelines

AGENCY: Corporation for National and Community Service.

ACTION: Final Notice for AmeriCorps*VISTA Supervision and Transportation Support Guidelines.

SUMMARY: The Corporation for National and Community Service will replace the VISTA Supervision and Transportation Support Guidelines published in the **Federal Register** on May 5, 1987 (52 FR 16422). These revised guidelines will enable AmeriCorps*VISTA to make a grant agreement, or other arrangements with a sponsoring organization to pay for on-the-job transportation and/or supervisory support for AmeriCorps*VISTA members.

DATES: These guidelines become effective on July 9, 1998.

FOR FURTHER INFORMATION CONTACT: Diana B. London, Acting Director of AmeriCorps*VISTA, (202) 606–5000 ext. 228.

SUPPLEMENTARY INFORMATION: A request for comments on the revised AmeriCorps*VISTA Supervision and Transportation Support Guidelines was published in the **Federal Register** on March 2, 1998, (63 FR 10200), and no comments were received. Thus, these are the final guidelines for all AmeriCorps*VISTA member supervision and/or transportation support grant applications/agreements submitted to the Corporation for National and Community Service. The text of the guidelines follows:

AmeriCorps*VISTA Supervision and Transportation Support Guidelines Implementation

These Guidelines apply to all AmeriCorps*VISTA member supervision and/or on-the-job transportation support grant applications/agreements submitted to the Corporation for National Service on or after the effective date of the final notice.

1. Purpose

Section 105(b) of the Domestic Volunteer Service Act of 1973, Pub. L. 93–113, as amended, requires the AmeriCorps*VISTA program to ensure that each member serving under Title I, Part A of the Act has available such allowances and support as will enable them to carry out the purpose and provisions of the Act and to perform their assignments effectively. In accordance with Section 105(b) and these guidelines, AmeriCorps*VISTA may make a commitment through a grant agreement, or other arrangement with a sponsor, to pay for on-the-job transportation and/or supervisory support of such members.

This order establishes the policy and guidelines for determining:

a. The circumstances under which grants or other arrangements for AmeriCorps*VISTA contributions to on-the-job transportation expenses of AmeriCorps*VISTA members may be negotiated between AmeriCorps*VISTA and the sponsor; and

b. The circumstances under which grants or other arrangements for AmeriCorps*VISTA contributions to the cost of providing supervision for AmeriCorps*VISTA members may be negotiated between AmeriCorps*VISTA and the sponsor.

2. Scope

Provisions of this policy and guidelines apply to AmeriCorps*VISTA sponsors and members serving under Title I, Part A of Pub.L. 93–113, as amended.

3. Background

While AmeriCorps*VISTA must ensure that members have available such allowances and support as will enable them to perform their project assignments effectively, the provision of adequate on-the-job transportation and supervision for AmeriCorps*VISTA members is primarily the responsibility of the sponsoring organization.

AmeriCorps*VISTA recognizes, however, that in some instances sponsoring organizations requesting members for projects that conform to AmeriCorps*VISTA's programming criteria may need assistance in providing this support. Corporation State Program Directors are provided with limited financial resources for the purpose of entering into transportation and/or supervision arrangements with AmeriCorps*VISTA project sponsors.

When such arrangements are established with a sponsoring organization, they are to provide for the direct support of member transportation and supervision, as well as travel needed to supervise AmeriCorps*VISTA members. They are not intended to provide for other support needed to accomplish the goals of the project. All other overhead expenses such as supplies, materials, and equipment are the sole responsibility of the sponsoring organization.

4. Policy

AmeriCorps*VISTA will provide full or partial funding for on-the-job transportation of AmeriCorps*VISTA members and/or for hiring of persons responsible for supervision of the members, but only in those cases where such support is deemed by the Corporation State Program Director to be:

a. Necessary to the effective functioning of the AmeriCorps*VISTA members on the project, and

b. Within these guidelines.

(1) Gradual assumption of transportation and/or supervision support by the sponsoring organization over the life of the project is encouraged.

(2) When a supervision and/or transportation arrangement is approved, the nature of the agreement between the Corporation State Program Director and the sponsor will be reflected in the relevant Memorandum of Agreement. Any agreement whereby AmeriCorp*VISTA provides funds for these purposes will include provisions to ensure that:

(i) Services are furnished at a reasonable rate;

(ii) The rate conforms to sponsor's hiring policies and/or local prevailing salary levels;

(iii) Any expenses incurred by the sponsoring organization over the agreed amount will be at its own expenses.

(3) In developing/renewing projects, the Corporation State Program Director shall take into account the travel and supervisory requirements of the proposed project. AmeriCorps*VISTA project support funds will be provided only when needs of the project and the assigned members cannot be met by the sponsor's own structure and resources.

(4) Renewal of supervision and/or transportation grants arrangements will be based on need, availability of resources, and project performance.

5. Guidelines for Transportation Arrangements

The Corporation State Program Director will establish the following facts before approving AmeriCorps*VISTA funds to support on-the-job transportation for AmeriCorps*VISTA members:

a. Necessity of transportation for AmeriCorps*VISTA members to achieve the goals/objectives of the project as contained in the project application;

b. Inability of the sponsoring organization to provide adequate transportation.

c. Travel expenses incurred by AmeriCorps*VISTA members from their residence to and from their project site shall not be eligible for reimbursement with transportation grant funds.

d. AmeriCorps*VISTA funds shall not be used to provide on-the-job transportation funds to transport members to and from their regularly assigned post, or to transport or provide delivery services to the population being served.

e. Expenses incurred by AmeriCorps*VISTA members who utilize public transportation for project-related purposes shall be eligible for reimbursement consistent with actual costs, including public transportation passes.

The Corporation State Program Director will consider budget constraints, available resources, and program and geographic priorities in distributing AmeriCorps*VISTA on-the-job transportation funds.

6. Guidelines for Supervision Arrangements

The Corporation State Program Director shall establish the following facts before approving AmeriCorps*VISTA funds to support on-the-job supervision of AmeriCorps*VISTA members:

a. Necessity of full or part-time supervision for members to achieve the goals/objectives of the project as outlined in the project application;

b. Inability of the sponsoring organization to provide adequate supervision;

c. Number of AmeriCorps*VISTA members assigned to the project during the period covered by the Memorandum of Agreement:

(1) Projects averaging three (3) or fewer AmeriCorps*VISTA members over the course of the Memorandum of Agreement will not be eligible for any AmeriCorps*VISTA supervisory funding.

(2) Projects averaging at least four (4) AmeriCorps*VISTA members during the term of the Memorandum of Agreement are eligible for part-time supervisory funding in the same ratio as the individual would spend in actual supervision, e.g., if the supervisor spends at least 30% time directly supervising the members, AmeriCorps*VISTA would fund up to 30% of salary.

(3) AmeriCorps*VISTA projects are eligible for funding of a full-time supervisory position if the project averages at least eight (8) AmeriCorps*VISTA members over the course of the Memorandum of Agreement.

d. Necessity of supervisor job-related travel based on number of AmeriCorps*VISTA members assigned and the geographic dispersion of the project.

The Corporation State Program Director will consider budget constraints, available resources, and program and geographic priorities in distributing AmeriCorps*VISTA supervision funds.

7. Elimination or Reduction of Transportation and/or Supervision Funding

a. As a general rule, the level of funding, determined by the Project Manager and contained in an AmeriCorps*VISTA project support grant/agreement, will be maintained throughout the term of the annual Memorandum of Agreement between the Corporation for National Service and the sponsoring organization. However, types of conditions which may cause the reduction or elimination of project support during the term of the annual Memorandum of Agreement are:

(1) Amendment by mutual agreement between the Corporation for National Service and the sponsor;

(2) Termination by the sponsor for any reason;

(3) Reassignment, resignation, or termination of AmeriCorps*VISTA members from the project before their term of service has ended with no replacements during that budget year;

(4) Substantial changes in member assignments; or

(5) Suspension or termination in accordance with 45 CFR Part 1206, Subpart A.

b. All grant awards or agreements documenting supervisory or on-the-job transportation arrangements will contain language indicating that the AmeriCorps*VISTA funding may be reduced or eliminated in accordance with the provisions of this Guideline and the Memorandum of Agreement.

Dated: June 4, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–15380 Filed 6–9–98; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA ''Welfare to Work'' Grants Nationwide

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Availability of Funds.

SUMMARY: The Corporation for National and Community Service (hereinafter ''the Corporation'') announces the availability of funds for fiscal year 1999, subject to the availability of appropriations, for new AmeriCorps*VISTA (Volunteers in Service to America) program grants focusing on ''Welfare to Work'' strategies throughout the United States, the District of Columbia, Puerto Rico, and the Virgin Islands. Project applications will be written to cover a 12-month period and grants will be awarded for a 12-month period with a renewal option. As part of this effort, the Corporation is soliciting applications from public or private non-profit organizations, including current AmeriCorps*VISTA project sponsors, which will operate programs on a multi-state basis. Approximately five to seven grants are expected to be awarded in October 1998, subject to the availability of FY 1999 funding.

DATES: Applications must be received by 5:00 p.m., Eastern time, July 24, 1998.

ADDRESSES: Application instructions and kits are available from the Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Ave., N.W., Washington, DC 20525, (202) 606–5000, ext. 134, TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. One signed original and four copies of the application should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, N.W., Mailstop 9207, Attn: Kathleen Dennis, Washington, DC 20525. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are postmarked at least two days prior to the closing date. Otherwise, late applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, contact Kathleen Dennis at (202) 606–5000, ext. 134.

SUPPLEMENTARY INFORMATION:

A. Background

AmeriCorps*VISTA is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is ''to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups . . . (to) assist in the solution of poverty and poverty-related problems, and . . . to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program).'' (42 U.S.C. § 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining when the Corporation no longer provides resources.

B. Purpose of This Announcement

The Welfare to Work initiative is a nationwide effort to create and expand opportunities for low-income individuals who have significant barriers making it difficult for them to move into jobs providing long-term employment potential. The initiative will focus on developing efforts in job training, employment and self-employment to enable low-income individuals to achieve economic self-sufficiency. The Corporation is interested in promoting comprehensive, coordinated approaches to increasing low-income individuals' economic opportunities. All grant projects will be expected to be an integral part of a

comprehensive strategy for developing and implementing innovative approaches that enhance a community's ability to move eligible individuals into self-sustaining employment, to create upward mobility paths and higher earnings, and to achieve sustainable improvements in the community's service infrastructure for assisting low-income residents.

AmeriCorps*VISTA's participation in the Welfare to Work initiative will focus on:

1. National or multi-state organizations working in conjunction with local affiliates that share a vision of promoting economic self-sufficiency among low-income individuals;

2. Initiation and/or expansion of community-based economic and community development programs such as: microenterprise or small business development; community development credit unions; micro-lending; individual development accounts; neighborhood revitalization; job readiness/training/counseling/placement activities; and, job-related supportive services in areas with a substantial percentage of low-income residents;

3. Promotion of partnerships and collaboration between the public and private sectors including businesses, community-based organizations; faith-based organizations and other service programs;

4. Employment strategies which may include:

- creation of job opportunities (including self-employment) that allow for flexibility to address work and family needs while providing income levels that are adequate for self-sufficiency;
- proactive strategies to involve employers in design of service strategies and implementation of the project;
- activities to help individuals access nontraditional occupations;
- use of integrated work and learning strategies to develop skills; and,
- development of responsive transportation and child care service systems.

Job creation should include livable wages, benefits, and long-term economic progress for the individual and community;

5. Recruitment, training, and coordination of local volunteers;

6. Mobilization of resources needed to support the project; and

7. Development of a sustainable capacity in local communities to effectively move low-income residents and welfare recipients into permanent jobs to foster the long-term self-sufficiency of the target population.

C. Eligible Applicants

Eligible applicants for AmeriCorps*VISTA program grants supporting the Welfare to Work initiative must be public or private non-profit organizations with a regional or national constituency who operate on a multi-state or national basis. Such entities may include: regional or national non-profit organizations, tribal or territorial governments, or organizations representing tribal populations. Current AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their existing projects.

D. Scope of Grant

Each grant budget will support 20 to 50 AmeriCorps*VISTA members on a full-time basis for one year of service. The average Federal cost of an AmeriCorps*VISTA service year i.e., total Federal cost divided by total number of members, will range from approximately $11,000 to $13,000 in the continental United States depending upon the location of the assignment(s). (Higher rates apply in Alaska and Hawaii.) Specific budget guidance is available in the project application kit; average allowance costs contained in the instructions should be used to prepare the budget submission.

Each grant will include funds for the grantee to pay: a monthly subsistence allowance for AmeriCorps*VISTA members that is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award; and relocation expenses for those AmeriCorps*VISTA members who must relocate in order to serve. The grant will also include funds for member in-service training, member supervision, and member/supervisor job-related transportation.

The following costs will be covered by the Corporation: an AmeriCorps education award in the amount of $4725 for AmeriCorps*VISTA members who complete their year of service and do not elect the stipend, health support for all AmeriCorps*VISTA members; a child care allowance for eligible AmeriCorps*VISTA members; pre-service orientation; and, travel from home of record to training to assignment for all AmeriCorps*VISTA members as well as travel home at the end of service.

Grant applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA Welfare to Work program grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the program itself (e.g., space, telephone, etc.). This support can be achieved through cash or in-kind contributions.

Grants will be awarded on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program.

E. Responsibilities of National Grantee

Applicant organizations must have: national or multi-state networks, the existing capacity needed to monitor and support a national or multi-state project; and experience in operating other national or multi-state programs. The applicant organization must demonstrate a strong institutional commitment of personnel, resources, training and technical expertise. Applicant organizations must develop a strong and well-coordinated multi-site project rather than loosely tying together several unrelated local programs.

The applicant organization will have several crucial roles and responsibilities in operating a high quality multi-site AmeriCorps*VISTA project. All applicant organizations must:

- identify local sites and assist them with preparation of Part A of the Project Application (Form 1421),
- provide on-going monitoring, training, technical assistance, and support to local sites,
- assist in member recruitment, and
- work with sites to develop long-term sustainability plans.

After selection, the national grantees will be advised by the Corporation of specific requirements related to the AmeriCorps*VISTA project, including the submission of Project Progress Reports to the Americorps*VISTA Headquarters project manager and assistance in the design and delivery of training. The Corporation State Office works with the local project affiliates to develop Part B of the project application and to provide in-service training and technical assistance for the members. The Corporation State Office also provides training to AmeriCorps*VISTA supervisors through periodic site visits

and meetings with supervisors. A Project Progress Report is submitted by each local affiliate to the Corporation State Office on a quarterly basis.

F. Submission Requirements

To be considered for funding, applicants must submit **five copies, with original signatures** on items 2 and 3, of the following:

(1) A one-page narrative summary description, single-spaced, single-sided in 10–12 point, of the proposed AmeriCorps*VISTA Welfare to Work project including the name, address, telephone number, and contact person for the applicant organization as shown on the SF 424. The summary should include the major objectives and expected outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.

(2) Application for Federal Assistance, SF 424, with a detailed narrative budget justification.

(3) AmeriCorps*VISTA Project Application, Form 1421, Parts A and B. All project information must be contained in the space provided on the application form except where additional sheets may be submitted for the Project Work Plan and/or Member Assignment Description(s).

(4) Current resume of potential AmeriCorps*VISTA supervisor(s), if available, or resume of the director of the applicant organization.

(5) List of members of the Board of Directors including their professional affiliations and/or program-related activities.

(6) Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

(7) Letters of support must be provided from outside organizations that will be collaborating in the overall project effort. Letters should reflect knowledge and endorsement of the specific objectives of the project, as well as any commitment of resources to the project if applicable.

(8) For each local site that will be hosting AmeriCorps*VISTA member(s), Part A of the application must be included. No other documents pertaining to the local sites should be attached.

National applicant organizations must also submit one copy of the following:

(1) Current Articles of Incorporation.

(2) Proof of non-profit status, or an application for non-profit status and related documentation.

(3) CPA certification of accounting capability.

(4) A copy of most recent annual report, if available.

No additional attachments are to be included. Such attachments will not be read or given to reviewers.

G. Criteria for AmeriCorps*VISTA Welfare to Work Project Selection

All of the following elements must be incorporated in the applicant's submission:

I. Program Design

a. Getting Things Done

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Be internally consistent, i.e. the problem statement that demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.

3. Contain clear and measurable objectives/outcomes in the project application for a 12-month period that address the overall objectives of the Welfare to Work initiative. Proposed projects must show how the activities of the AmeriCorps*VISTA members contribute to specific outcomes related to increased economic opportunity for low-income people. It is expected that outcome objectives will reflect the evolution of the project over the 12-month period.

4. Include activities and mechanisms that provide for the involvement of beneficiaries of the project.

5. Indicate how the proposed project complements and/or enhances welfare to work activities already underway in, or planned for, the community(ies) which will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, as well as with other community partners, including the business sector.

6. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

b. Strengthening Communities

The proposed project must:

1. Describe how the project will develop a sustainable capacity in the local community to effectively create permanent employment and to foster the long-term self-sufficiency of the community. Project services should provide assistance oriented towards long-term solutions.

2. Demonstrate collaboration with organizations which provide supportive services to enhance job creation and community development.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the community level.

4. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

c. Member Development

The proposed project must:

1. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of program goals and objectives as stated in the project work plan.

2. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA member's time to the maximum extent.

II. Organizational Capacity

The proposed project must:

1. Ensure that resources needed to achieve project goals and objectives are available.

2. Have the management and technical capability to implement the project successfully.

3. Have a track record or experience in dealing with the issues addressed by the proposed project.

4. Have systems for the evaluation and monitoring of project activities. Applicants must describe the methods that will be used to track progress toward the stated objectives, and the procedures that will provide the feedback needed to make adjustments and improve program quality. Projects must also be prepared to cooperate with the Corporation for National Service and its evaluation partners in all Corporation monitoring and evaluation efforts.

III. Budget/Cost-Effectiveness

The proposed project must:

1. Include a budget that adequately supports the program design.

2. Include a budget that adheres to budget guidance provided with the application.

3. Describe how the applicant organization is committing resources necessary for program implementation.

H. Application Review

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that a proposal fails to comply with any requirements specified in this Notice.

1. Program Design (60% as described below):

The project application allows the Corporation to assess the capacity of the applicant organization to implement the project and accomplish the purpose of the Welfare to Work initiative. The overall quality of the application will be evaluated as follows:

a. Responsiveness to Getting Things Done Criteria (25%).

b. Responsiveness to Strengthening Communities Criteria (30%).

c. Responsiveness to Member Development Criteria (5%).

2. Organizational Capacity (25%):

The applicant organization's capacity to direct, manage, support, provide technical assistance, assess the project, and promote long-term implementation of the project's efforts, must be reflected in the Project Application.

3. Budget (15%):

Applicants must prepare the budget according to information contained in Item D, Scope of Grant, above, and instructions about costs and allowance levels contained in the application kit. A detailed Budget Narrative must identify and justify each line item and cost. The Corporation will assess the cost-effectiveness of the proposed project and the project's ability to leverage significant resources from private and/or public sources.

I. Geographic Diversity

After evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will take into consideration whether funded projects are: (1) geographically diverse, including projects in both urban and rural areas; and (2) in areas of high concentration of low-income residents, including those in empowerment zones, enterprise communities and homeownership zones.

J. Bidders' Conferences

An informal, technical assistance meeting and telephone conference call is being planned for June 24, 1998, at 2:00 p.m. Eastern time for potential applicants. The term ''technical assistance,'' however, does not include advising the applicant how to make substantive improvements in its application that will affect ratings.

All applicants must pre-register by faxing the names, organization and phone number of up to two members planning to participate, and an indication of whether participation will be in person or via conference call. This information should be faxed to Kathleen Dennis at 202–565–2789. All reservations must be submitted by June 22, 1998.

Questions may be submitted in advance of the meeting via fax to the above number. If you are unable to attend the Bidders' Conference but would like the conference materials and a conference transcript, submit your request via fax to the fax number above.

K. Program Authority

Corporation Authority to make these grants is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Dated: June 4, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–15379 Filed 6–9–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0022]

Proposed Collection; Comment Request Entitled Customs and Duties; Correction and Republication

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0022).

SUMMARY: The notice document concerning OMB clearance 9000–0022 published on June 2, 1998 (63 FR 29977) contained incomplete information. Therefore, the entire document is reprinted for the convenience of the reader. The document as corrected reads as follows:

Correction and Republication

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
[OMB Control No. 9000–0022]
Proposed Collection; Comment Request Entitled Customs and Duties

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0022).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Customs and Duties. The clearance currently expires on September 30, 1998.

DATES: Comments may be submitted on or before August 3, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,330;* responses per respondent, *10;* total annual responses, *13,300;* preparation hours per response, *.5;* and total response burden hours, *6,650.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Customs and Duties, in all correspondence.

Dated: June 4, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–15375 Filed 6–9–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Proposed Collection; Comment Request Entitled Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comment regarding an extension to an existing OMB clearance (9000–0097).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number). The clearance currently expires on September 30, 1998.

DATES: Comments may be submitted August 10, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *6* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *250,000;* responses per respondent, *12;* total annual responses, *3,000,000;* preparation hours per response, *.10;* and total response burden hours, *300,000.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: June 4, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–15415 Filed 6–9–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement for Approval of Land Use and Real Estate Investment Strategies in Support of Real Property Master Planning, Fort Huachuca, Arizona

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability (NOA).

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the approval of updates to three components of the Fort Huachuca Real Property Master Plan, and the authorization of the steps leading to project implementation. The proposed action includes approval of updates to the Long-Range Component, the Short-Range Component, and the Capital Investment Strategy of the installation Real Property Master Plan, which will be used to guide real property and facilities management at Fort Huachuca.

The alternatives to the proposed action considered in this DEIS are No-Action (continuation of current management conditions) and the Long-Range alternative to the proposed action which consists of approving the Long-Range Component update but not the Short-Range Component and Capital Investment Strategy updates. Overall, under the proposed action, no significant environmental impacts to cultural resources, air quality, noise, geology and soils, hydrology and water resources, biological resources (including federally listed threatened and endangered species and critical habitat), energy, waste management, or transportation are anticipated.

DATES: The public comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

PUBLIC MEETING: A public meeting on this DEIS will be held on June 30, 1998, at 6:30 p.m. in the auditorium of Greely Hall at Fort Huachuca, AZ. Additional details will follow in the media, or contact the Fort Huachuca Public Affairs Office at (520) 533–2922. Public comments received on the DEIS will be considered and addressed in the final EIS and considered by the Army in its Record of Decision.

ADDRESSES: To obtain copies of the DEIS, contact Ms. Carmen Chastain, U.S. Army Garrison at (520) 533–3120 or write to: U.S. Army Garrison, ATTN: ATZS–ISB (DEIS), Fort Huachuca, Arizona 85613–6000.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office, U.S. Army Garrison ATTN: ATZS–PA, Fort Huachuca, Arizona 85613–6000; telephone: (520) 533–2922 or 533–1985.

SUPPLEMENTARY INFORMATION: Components of the Fort Huachuca Real Property Master Plan are available for review at the Sierra Vista Public Library, 2950 E. Tacoma Street, Sierra Vista, AZ 85635.

Dated: June 3, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (OASA (I, L&E).

[FR Doc. 98–15346 Filed 6–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Environmental Impact Statement for Pilot Testing of Neutralization/ Supercritical Water Oxidation at Newport Chemical Depot, Indiana

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability (NOA).

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the construction and operation of a facility to pilot test the chemical neutralization process followed by supercritical water oxidation (SCWO) as a potential disposal technology for the bulk agent VX stored at Newport Chemical Depot (NECD). The proposed facility will be used to demonstrate, as part of a research and development program, the neutralization process followed by SCWO, to destroy VX agent currently stored in ton containers at NECD.

The two alternatives considered in this DEIS are the proposed action and no action (i.e., continued storage of VX in ton containers). Although the no action alternative is not viable under Pub. L. 99–145, it was analyzed to provide a comparison with the proposed action. In addition, the no action alternative would not comply with Public Law 102–484, which specifies that the Army must consider using a technological alternative to incineration.

DATES: The public comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency. All public comments received on the DEIS will be considered and addressed in the final EIS and also considered by the Army in its Record of Decision.

ADDRESSES: To obtain copies of the DEIS, contact Ms. Mona Harney, NECD Public Affairs Office, at (765) 245–4597 or write to: Department of the Army, Newport Chemical Activity, P.O. Box 121, Newport, Indiana 47966–0121.

FOR FURTHER INFORMATION CONTACT: Office of the Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–P (Ms. Catherine Herlinger), Building E4585, Aberdeen Proving Ground, Maryland, 21010–5401; telephone: (800) 488–0648 or (410) 671–1479; e-mail: cherling@cdra.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The DEIS concludes that VX stored in bulk containers can be pilot tested at NECD using the neutralization process, followed by SCWO, in a safe and environmentally acceptable manner. At one time, the option of sending the neutralization hydrolysate to an off-site biotreatment facility was under consideration by the Army. However, technical and programmatic evaluations have concluded that off-site biotreatment is not suitable at this time. Therefore, off-site biotreatment is not addressed further in this EIS.

Dated: June 2, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–15457 Filed 6–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Land Exchange Between Fort Benning and the City of Columbus, Georgia

AGENCY: U.S. Army Infantry Center and Fort Benning, Fort Benning, Georgia; Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The United States Army will prepare an environmental impact statement (EIS) to assess the potential environmental impacts of the exchange of tracts of land between Fort Benning and the City of Columbus (hereafter referred to as the City). Section 2829 of Public Law 101–510, enacted November 5, 1990, authorized a land exchange between the City and Fort Benning. Fort Benning would convey approximately 3,000 acres of land to the City; and in exchange, the City would convey to Fort Benning approximately 3,300 acres located on the southern boundary of the military reservation. Those land tracts were refined by survey to 3,106 and 3,228 acres, respectively. The City intended to use the land for economic development, passive recreation and a sanitary landfill. Fort Benning would use the land it receives for dismounted light infantry training. A Notice of Intent (NOI) was published in the **Federal Register**, June 27, 1994 (59 FR 32957), and a scooping meeting was held in Columbus, GA, on July 20, 1994. Due to changes in the proposed project and the length of time since prior scoping, this NOI provides an opportunity for more current public involvement based on newer information.

ALTERNATIVES: The proposed North-South tract land exchange will be evaluated for the following alternatives:

No-Action Alternative: No land would be exchanged under this alternative. Impacts associated with the Fort Benning mission and land use will be evaluated for the North tract. Impacts associated with the City's projected use of the South tract will also be analyzed.

Maximum Development: This alternative would provide approximately 2,110 acres of the North tract for economic/light industrial development. Also, approximately 650 acres of the North tract would become a Parks and Recreation Area near Bull Creek for the purpose of wetland mitigation. The Army would use the South tract for dismounted light infantry training.

Partial Development (preferred alternative): This alternative would also include an approximately 650 acre and Parks and Recreation Area near Bull Creek for wetlands mitigation on the North tract. A Habitat Conservation Area would be established and managed for protected species on approximately 710 acres. The remaining North tract property (approximately 1,400 acres) would be developable. The Army would use the South tract for dismounted light infantry training.

Minimum Development: This alternative would preserve all existing protected species and habitat on approximately 1,375 acres on the North tract. Also the approximately 650 acre Parks and Recreation Area would be established for wetlands protection, leaving only approximately 735 acres of developable land. The Army would use the South tract for dismounted light infantry training.

SCOPING: Comments received as a result of this notice will be used to assist Fort Benning in identifying additional alternatives for study, significant resources to be evaluated, as well as potential impacts to the quality of the human and natural environments. Individuals or organizations wishing to participate in the scoping process may forward their written comments to: U.S. Army Infantry Center, Directorate of Public Works, Environmental Management Division (ATTN: Mr. John Brent), Fort Benning, Georgia 31905–

5122, or send e-mail to BrentJ%EMD%BNG__DPW@benning-emh2.army.mil. Comments and suggestions should be received no later than 30 days following the publication of this notice to be considered in the preparation of the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. John Brent at (706) 545–4766.

SUPPLEMENTARY INFORMATION: Since the 1994 scoping effort, the land exchange was separated into two distinct exchanges: (1) A landfill land exchange, and (2) a North-South tract land exchange. On June 26, 1996, Fort Benning conveyed 346 acres from the 3,106 acres to the City for landfill development in exchange for 380 acres of the City's 3,228 acres. An Environmental Assessment was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, and a Finding of No Significant Impact was published in the ''Columbus Ledger-Enquirer'' on October 25, 1995, for the landfill land exchange.

This NOI pertains only to the proposed North-South tract land exchange, involving the remaining 2,760 acres of Fort Benning land (the North tract) and 2,848 acres of the City land (the South tract). An EIS will be prepared and will include an analysis of the Cumulative environmental impacts from both the North-South tract exchange and the landfill land exchange.

The general study areas for environmental concerns will be the North and South-tracts plus any additional surrounding areas necessary to satisfy the requirements of NEPA, as well as any relevant environmental laws and regulations to include (as a minimum but not necessarily limited to) the following: Endangered Species Act, Migratory Birds Treaty Act, National Historic Preservation Act, Clean Air Act, Clean Water Act, Resource Conservation Recovery Act, Environmental Justice Executive Order, etc. The information developed will identify, evaluate, analyze and compare the potential individual and cumulative impacts of the North-South tract land exchange alternatives. The cumulative impact analysis will include an environmental assessment of other recent or reasonably anticipated similar actions in the area of concern, including the landfill land exchange.

Dated: June 3, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 98–15352 Filed 6–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Implementation of the Defense Table of Official Distances (DTOD) in the DoD Personal Property Program

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice (Request for Comments).

SUMMARY: The Military Traffic Management Command (MTMC), as Program Director for the Department of Defense (DoD) Personal Property Program, intends to utilize a new automated distance calculation product known as the Defense Table of Official Distances (DTOD) in the DoD personal property program. The DTOD will replace existing distance calculation products used within the DoD such as the Rand McNally TDM Milemaker System, and Household Goods Carriers' Mileage Guide. The DTOD will become the DoD standard source for distance information worldwide. Commercially, DTOD is known as PC*MILER by ALK Associates, Inc. The DTOD/PC*MILER will be used by the DoD for all distance calculations, analysis, and for transportation payments/audits. Carriers and third party providers may continue to use other mileage sources for their own business purposes. However, carriers and third party providers participating in the DoD personal property program must agree to be bound by the DTOD/PC*MILER distance calculations for payment and audit purposes.

DATES: Comments must be submitted on or before August 10, 1998.

ADDRESSES: Comments may be mailed to: Headquarters, Military Traffic Management Command, ATTN: MTOP–T, Room 617, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the DTOD for MTMC Personal Property Program can be provided by contacting Mr. Alex Moreno (Domestic solicitation) (703) 681–6190 or Ms. Shelia R. Woodson (International solicitation) (703) 681–9383. Information regarding DTOD Compliant Commercial Software and Other Technical Information can be provided by contacting ALK Associates, Inc. at 1 (800) 377–MILE or on the Internet at www.pcmiler.com.

SUPPLEMENTARY INFORMATION:

1. The proposed effective dates for use of the DTOD in the DoD personal property program will be: (A) 1 April 1999 for the international thru government bill of lading (ITGBL) rate solicitation; and (B) 1 May 1999 for the domestic rate solicitation. All shipments picked up on or after the effective dates will be governed by the DTOD.

2. In accordance with this implementation process, the ITGBL Rate Solicitation, Item 405 (Governing Regulations), paragraph a, will be revised as follows: a. ITGBL shipments made under this solicitation are subject to the terms and conditions of the PPGBL, the rules and regulations contained herein, and the carrier Tender of Service on file with HQMTMC. Where rates or other services are based on mileage, the distance or mileage computations shall be those provided in the Defense Table of Official Distances (DTOD).

3. The Domestic Rate Solicitation, Item 10, (Governing mileage guide), paragraph 1 and 4, will be revised as follows: paragraph 1. Where rates or other services are based on mileage, the distance or mileage computations shall be those provided in the Defense Table of Official Distances (DTOD); paragraph 4 will be deleted.

4. DTOD and PC*MILER will produce identical distance calculations. Carriers and other parties who seek more information about PC*MILER may contact ALK Associates Inc. at telephone 1–800–377–MILE, or via Internet at www.pcmiler.com.

5. Proposed Implementation Dates. The schedule for use of the DTOD/PC*MILER in distance calculations, payment, and post payment audits for shipments under the DoD International Government Bill of Lading Rate Solicitation is 1 April 1999 and for the DoD Domestic Rate Solicitation is 1 May 1999.

6. Background. Currently, several sources for highway distance information are being used to support various DoD transportation programs, such as travel, travel entitlement reimbursement, freight and personal property movements. Moreover, separate products are used to calculate overseas distances. The result is a variance in distance computations produced by different products and a high cost to DoD of licensing and maintaining multiple mileage sources.

a. Until 1996, DoD was required by law to maintain an official mileage table

for payment of travel and transportation allowances, known as the Official Table of Distances. The FY96 Defense Authorization Act deleted this requirement, thus providing the opportunity to use a commercial mileage product. MTMC announced a plan to convert to a new automated mileage standard calculation product in the previous **Federal Register** notice (Vol. 62, No. 218, page 60692) Wednesday, November 12, 1997. In seeking a single integrated source of automated highway distance calculations, the MTMC contracted with Science Applications International Corporation (SAIC) to perform a market survey of available products (Phase I) and to provide a product that would support DoD transportation programs (Phase II). SAIC in turn conducted a commercial competition to identify and acquire a commercial-off-the-shelf, point-to-point distance calculation source that would meet all the DoD requirements. PC*MILER was chosen by SAIC to be that source. PC*MILER, developed specifically to serve the trucking industry, will contain Standard Point Location Codes, military locations and other worldwide locations required by DoD. Updates and version control of DTOD and PC*MILER will be consistent with industry practices.

b. In surveying and evaluating vendors and products, SAIC's criteria focused on compatibility with existing and planned automated systems, consistency in calculation, and adaptability to various DoD network applications and transportation program uses. SAIC also compared commercially available distance calculation products to identify viable candidates for the competitive selection process. That comparison resulted in finding a variance of 2.0%+/− amongst the vendors of evaluated products. A copy of this comparison will be provided, upon written request, sent to the point of contract identified above.

c. The DTOD/PC*MILER product will calculate both ''shortest'' and ''practical'' mileage. Currently, the DoD and the household goods carrier industry use ''shortest'' mileage to calculate the distances used for payment purposes. ''Shortest'' routes represent distances and routes that a driver would take to minimize total distance traveled while still following a truck-navigable route. DoD will continue to use the ''shortest'' routes. Carriers and/or other parties who choose to use PC*MILER will have opportunities to provide feedback to ALK Associates, Inc., the provider of DTOD software, regarding routings, database suggestions such as distance differences, road preference suggestions, road reclassifications, new locations, etc. ALK Associates, Inc., will provide all interested parties the capability to license PC*MILER, to ensure the ability to consistently determine the exact mileage that the DoD uses for payments and auditing.

d. It is anticipated that transition to DTOD will have no significant impact on small businesses since those businesses currently use one or more similar distance calculation products. All offerors will be free to establish their rates based on applicable distance information.

e. Interested parties are invited to provide comments concerning the use of the DTOD in the DoD Personal Property Program and the proposed implementation dates to the address provided above. Comments will be accepted for a period of 60 days from the publication date of this notice.

7. Regulatory Flexibility Act. This change is related to public contracts and is designed to standardize distance calculations for line-haul transportation. This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

8. Paperwork Reduction Act. The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply because no information collection requirements or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Gregory D. Showalter,

Army Federal Register, Liaison Officer.

[FR Doc. 98–15465 Filed 6–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Protective Exclusive License Announcement

AGENCY: U.S. Army Communications-Electronics Command.

AGENCY: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective exclusive license for U.S. Patent Number 5,665,970.

DATES: Written objections must be filed not later than August 10, 1998.

ADDRESSES: Written objections should be directed to Mr. George B. Tereschuk, Intellectual Property Law Division, U.S. Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010,

FOR FURTHER INFORMATION CONTACT: Mr. Gorge B. Tereschuk, U.S. Army, Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010, Telephone (732) 523–9795, or E-mail: terschu@doim6.monmouth.army.mil.

SUPPLEMENTARY INFORMATION: U.S. Patent Number 5,665,970, filed on July 3, 1996, entitled, ''Directional Radiation Detector and Imager,'' was issued to Kronenberg et al on September 9, 1997. This U.S. Patent was assigned to the United States of America, as represented by the Secretary of the Army. Accordingly, under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub L. 99–502) and Title 35, United States Code, section 207, the Department of the Army, as represented by the Communications-Electronics Command, intends to grant an exclusive license for the above identified U.S. Patent to Canberra Industries, A Division of Packard BioScience.

Pursuant to 37 CFR 404.7(a)(1)(i) any interested party may file written objections to this prospective exclusive license agreement at the above address. Written objections must be filed on or before August 10, 1998.

Gregory D. Showalter

Army Federal Register, Liaison Officer.

[FR Doc. 98–15464 Filed 6–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–572–000]

NorAm Gas Transmission Company; Notice of Application for Abandonment

June 4, 1998.

Take notice that on May 29, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon exchange services with Arkansas Oklahoma Gas Company (AOG). The application is on file with the Commission and open to public inspection.

NGT states that Arkla Energy Resources Company, now NGT, entered into exchange transactions in 1973 and 1979 with AOG. NGT states that the 1973 and 1979 exchange agreements were certificated in Docket No. CP87–458 by Order Issuing Certificate and Authorizing Abandonment issued June 8, 1989 (47 FERC ¶ 61,342). As of July 1, 1990 the 1973 and 1979 exchanges

were combined into one agreement for administrative convenience. NGT states that there is no longer a need for these transactions which have been terminated by the written consent of both parties. No facilities are proposed to be abandoned in connection with the authorization requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 25, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. And person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGT to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15367 Filed 6–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–851–003, et al.]

Maine Public Service Company, et al.; Electric Rate and Corporate Regulation Filings

June 1, 1998.

Take notice that the following filings have been made with the Commission:

1. Maine Public Service Company

[Docket No. ER95–851–003]

Take notice that on May 28, 1998, Maine Public Service Company (MPS), filed an updated market analysis as required by the Commission's May 31, 1995, order in Docket No. ER95–851–000 granting MPS market-based rate authority.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–003]

Take notice that on May 28, 1998, Denver City Energy Associates, L.P. (DCE), tendered for filing a revised Code of Conduct in compliance with the Federal Energy Regulatory Commission (the Commission), Order issued March 23, 1998 in Docket No ER97–4084–001.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. West Texas Utilities Company

[Docket No. ER98–2501–001]

Take notice that on May 28, 1998, West Texas Utilities Company (WTU), submitted for filing a revised Exhibit A to the Service Agreement between WTU and Midwest Electric Cooperative, Inc. (Midwest), filed in this docket. Pursuant to the Service Agreement, WTU will provide full-requirements service under its WPC Tariff to Midwest load at four additional points of delivery.

WTU has served copies of the filing on Midwest and the Public Utility Commission of Texas.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Company

[Docket No. ER98–3024–000]

Take notice that on May 28, 1998, Long Island Lighting Company (LILCO), filed an Electric Power Service Agreement between LILCO and SCANA Energy Marketing, Inc., entered into on May 12, 1998. However, due to LILCO's inadvertence, the Notice of Filing issued on May 20, 1998 in Docket No. ER98–3024–000 listed NGE Generation, Inc., instead of SCANA Energy Marketing, Inc., as the party with which LILCO had entered into the Electric Power Service Agreement on May 12, 1998. On May 27, 1998, LILCO filed this corrected Notice of Filing in Docket No. ER98–3024–000 to identify SCANA Energy Marketing, Inc., as the party with which LILCO had entered into the Electric Service Agreement on May 12, 1998.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff as reflected in LILCO's amended filing on February 6, 1998, with the Commission in Docket No. OA98–5–000. The February 6, 1998, filing essentially brings LILCO's Power Sales Umbrella Tariff in compliance with the unbundling requirements of the Commission's Order No. 888.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 12, 1998, for the Electric Power Service Agreement listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶ 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service.

LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER98–3124–000]

Take notice that on May 28, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with PacifiCorp Power Marketing, Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER98–3125–000]

Take notice that on May 28, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with PacifiCorp Power Marketing, Inc., for service under

its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ER98–3126–000]

Take notice that on May 28, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Northern/AES Energy, L.L.C., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER98–3127–000]

Take notice that on May 28, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Northern/AES Energy, L.L.C., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER98–3128–000]

Take notice that on May 28, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Northern States Power Company for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy-Kansas.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Company

[Docket No. ER98–3129–000]

Take notice that on May 28, 1998, Delmarva Power & Light Company tendered for filing an executed Facilities Agreement with The Easton Utilities Commission on behalf of itself and the Town of Easton, Maryland. The agreement provides consensual arrangements for continued interconnection of the parties' respective electric systems. Delmarva requests that the agreement take effect as of June 1, 1998, in accordance with its terms.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER98–3130–000]

Take notice that on May 28, 1998, Southwestern Public Service Company (Southwestern), tendered for filing a proposed amendment to its delivery point listing with Lyntegar Electric Cooperative, Inc., (Lyntegar).

The proposed amendment reflects a new delivery point for service to Lyntegar.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER98–3131–000]

Take notice that on May 28, 1998, Wisconsin Electric Power Company tendered for filing a Notice of cancellation of Service Agreement No. 77 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff Original Volume 2, effective May 2, 1998, pursuant to Section 4.3 of the Tariff, due to default by Wheeled Electric Power Company.

Copies of the filing have been served on Wheeled Electric Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER98–3132–000]

Take notice that on June 1, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPCO), and Savannah Electric and Power Company (collectively referred to as Southern Company) filed a service agreement for network integration transmission service between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for MPCO; three (3) umbrella service agreements for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) PP&L, Inc.; (ii) Electric Clearinghouse, Inc., and (iii) Koch Energy Trading; and two (2) service agreements for non-firm point-to-point transmission service executed between SCS, as agent for Southern Company, and (i) Tractebel Energy Marketing, Inc., and (ii) Amoco Energy Trading Corporation under the Open Access Transmission Tariff of Southern Company.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Mississippi Power Company

[Docket No. ER98–3133–000]

Take notice that on May 28, 1998, Mississippi Power Company and Southern Company Services, Inc., its agent, tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Monaco Lake Delivery Point to Singing River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–3134–000]

Take notice that on May 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Wisconsin Public Power Inc.

NSP requests that the Commission accept the agreement effective May 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER98–3135–000]

Take notice that on May 28, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Short-Term Firm Transmission Service Agreement between NSP and CMMPA/Utilities Plus.

NSP requests that the Commission accept the agreement effective May 1,

1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota)

[Docket No. ER98–3136–000]

Take notice that on May 28, 1998, Northern States Power Company (Minnesota), tendered for filing a letter requesting that the filing filed in the above-referenced docket on April 30,1998, be withdrawn.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southern California Edison Company

[Docket No. ER98–3137–000]

Take notice that on May 28, 1998, Southern California Edison Company (Edison), tendered for filing executed Service Agreements for Wholesale Distribution Service with AES Alamitos, L.L.C. and AES Huntington Beach, L.L.C., under Edison's Wholesale Distribution Access Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER98–3138–000]

Take notice that on May 28, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, an amendment to its Service Agreement No. 3 under FERC Electric Tariff Original Volume No. 9, under which Unitil Power Corp. (UNITIL), takes Network Integration Transmission Service under the NU System Companies' Open Access Transmission Service Tariff as designated agent for its retail customers participating in the New Hampshire Retail Open Access Pilot program (the Pilot).

NUSCO states that the amendment is being filed in light of a May 20, 1988, order of the New Hampshire Public Utilities Commission extending the Pilot, which was scheduled to expire on May 28, 1998. The amendment would allow UNITIL to continue taking service on behalf of its retail customers participating in the Pilot beyond May 28, 1998, the original termination date of the Service Agreement.

NUSCO requests waiver of the Commission's Regulations to allow the amendment to become effective as of May 26, 1998, the date of execution of the amendment, but in no event later than May 28, 1998.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Northeast Utilities Service Company

[Docket No. ER98–3139–000]

Take notice that on May 28, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, an amendment to its Service Agreement No. 1 under FERC Electric Tariff Original Volume No. 9, under which Public Service Company of New Hampshire (PSNH), takes Network Integration Transmission Service under the NU System Companies' Open Access Transmission Service Tariff as designated agent for its retail customers participating in the New Hampshire Retail Open Access Pilot program (the Pilot).

NUSCO states that the amendment is being filed in light of a May 20, 1988, order of the New Hampshire Public Utilities Commission extending the Pilot, which was scheduled to expire on May 28, 1998. The amendment would allow PSNH to continue taking service on behalf of its retail customers participating in the Pilot beyond May 28, 1998, the original termination date of the Service Agreement.

NUSCO requests waiver of the Commission's Regulations to allow the amendment to become effective as of May 26, 1998, the date of execution of the amendment, but in no event later than May 28, 1998.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER98–3140–000]

Take notice that on May 28, 1998, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively, ComEd), submitted a Dynamic Scheduling Agreement with Interstate Energy Corporation (IEC), dba Alliant, under ComEd's Open Access Transmission Tariff. The Agreement provides for dynamic scheduling of firm point-to-point transmission service.

ComEd requests an effective date of April 28, 1998, and, accordingly, seeks waiver of the Commission's requirements.

Copies of this filing were served upon IEC and the Illinois Commerce Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Duke Energy Corporation

[Docket No. ER98–3141–000]

Take notice that on May 28, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Market Rate Service Agreement (the MRSA) between Duke and Amoco Energy Trading Corporation, dated as of May 11, 1998. The parties have not engaged in any transactions under the MRSA as of the date of filing. Duke requests that the MRSA be made effective as of May 11, 1998.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. West Texas Utilities Company

[Docket No. ER98–3142–000]

Take notice that on May 28, 1998, West Texas Utilities Company (WTU), tendered for filing two Letter Agreements between WTU and the City of Coleman, Texas (Coleman). Under the agreements, WTU will make additional energy available to Coleman during the on-peak hours of the summer months of 1998, pursuant to a Supplemental Sales Agreement between WTU and Coleman, previously filed with the Commission.

WTU requests an effective date of June 1, 1998 and, accordingly, seeks waiver of the Commission's notice requirements. WTU served copies of the filing on Coleman and the Public Utility Commission of Texas.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Co.

[Docket No. ER98–3143–000]

Take notice that on May 28, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements establishing Grand River Dam Authority (GRDA), Entergy Services, Inc. (Entergy), Texas-New Mexico Power Company (TNP), and South Texas Electric Cooperative (STEC), as customers under the CSW Operating Companies' market based rate power sales tariff. The CSW Operating Companies request an effective date of May 1, 1998, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on GRDA, Entergy, TNP, and STEC.

Comment date: june 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ER98–3144–000]

Take notice that on May 28, 1998, Consumers Energy Company (Consumers), tendered for filing a revision to the annual charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Electric Rate Schedule FERC No. 44).

The revised charges are provided for in Subsection 1.043 of the Agreement, which provides that the annual charges may be redetermined effective May 1, 1998 using year-end 1997 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were decreased from $15,700 to $15,525. Consumers requests an effective date of May 1, 1998, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Northern, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Long Island Lighting Company

[Docket No. ER98–3145–000]

Take notice that on May 28, 1998, Long Island Lighting Company (LILCO), filed an Electric Power Service Agreement between LILCO and Cinergy Capital & Trading, Inc., entered into on May 8, 1998.

The Electric Power Service Agreement listed above was entered into under LILCO's Power Sales Umbrella Tariff as reflected in LILCO's amended filing on February 6, 1998, with the Commission in Docket No. OA98–5–000. The February 6, 1998, filing essentially brings LILCO's Power Sales Umbrella Tariff in compliance with the unbundling requirements of the Commission's Order No. 888.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 8, 1998, for the Electric Power Service Agreement listed above because in accordance with the policy announced in Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, clarified and reh'g granted in part and denied in part, 65 FERC ¶ 61,081 (1993), service will be provided under an umbrella tariff and the Electric Power Service Agreement is being filed either prior to or within thirty (30) days of the commencement of service.

LILCO has served copies of this filing on the customer which is a party to the Electric Power Service Agreement and on the New York State Public Service Commission.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Great Bay Power Corporation

[Docket No. ER98–3146–000]

Take notice that on May 28, 1998, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Vermont Public Power Supply Authority (VPPSA) and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective May 7, 1998.

Comment date: June 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15369 Filed 6–9–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

June 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 3428–080.

c. Date Filed: May 15, 1998.

d. Applicant: Miller Hydro Group, Inc.

e. Name of Project: Worumbo Project.

f. Location: On the Androscoggin River, in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) -825(r).

h. Applicant Contact: Mark Isaacson, Miller Hydro Group, Inc., P.O. Box 97, Lisbon Falls, ME 04252–0097, (207) 846–3991.

i. FERC Contact: Paul Shannon (202) 219–2866.

j. Comment Date: July 22, 1998.

k. Description of Filings: Miller Hydro Group, Inc., filed an application for amendment of license for the Worumbo Project. The licensee proposes to increase the normal reservoir surface elevation from 97.0 feet mean sea level (msl) to 98.5 ft. msl. The licensee would install (msl) to 98.5 ft. msl. The licensee would install pneumatically-operated hinged crest gates over the Durham-side dam and hinged conventionally-operated flashboards over the remainder of the dam. The licensee also proposes to operate the project with allowable reservoir fluctuations between elevations 97 ft. msl and 98.5 ft. msl. The licensee indicates it has adequate property interests for operating the project at the higher reservoir levels.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a project, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15368 Filed 6–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Project Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Proposed Extension.

SUMMARY: The Current Sam Rayburn Dam Project rate was approved by the Federal Energy Regulatory Commission (FERC) on December 7, 1994, Docket No. EF94–4021–000. These rates are effective October 1, 1994, through September 30, 1998. The Administrator, Southwestern, has prepared Current and Revised 1998 Power Repayment Studies for the Sam Rayburn Dam Project which show the need for a minor rate adjustment of $3,732 (0.2 percent decrease) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR Sections 903.22(h) and 902.23(a)(3). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1999.

DATES: Written comments are due on or before July 10, 1998.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which two customers purchase the entire power output of each of the projects at the dams. Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1998 Current Power Repayment Study (PRS) using the existing Sam Rayburn Dam Project rate schedule. The PRS shows the cumulative amortization through FY 1997 at $12,156,954 on a total investment of $25,676,015. The FY 1998 Revised PRS indicates the need for a decrease in annual revenues of $3,732, or 0.2 percent, lower than the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Sam Rayburn Dam Project's FY 1997 (last year's) PRS concluded that the annual revenues needed to be decreased by 0.1 percent. At that time, it was determined prudent to defer the decrease in accordance with the established threshold and the current rate schedule was continued for one year. It once again seems prudent to defer this rate adjustment of 0.2 percent, or $3,732 per year in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1999 (next year's) PRS.

On December 7, 1994, the current rate schedule for the Sam Rayburn Dam Project was confirmed and approved by the FERC on a final basis for a period that will end on September 30, 1998. In accordance with 10 CFR Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC. As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend the current Sam Rayburn Dam Project rate schedule. The schedule is to be effective for the one-year period beginning October 1, 1998, and extending through September 30, 1999.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Sam Rayburn Dam Project. If you desire a copy of the Repayment Study Data Package for the Sam Rayburn Dam Project, please submit your request to: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, P.O. Box 1619, Tulsa, OK 74101, or call (918) 595–6696.

Following review of the written comments (absent any substantive reasons to do otherwise), the Administrator will submit the rate extension proposal for the Sam Rayburn Dam Project to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 22nd day of May, 1998.

Michael A. Deihl,

Administrator.

[FR Doc. 98–15455 Filed 6–9–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6109–9]

Board of Scientific Counselors; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: The Charter for the Environmental Protection Agency's (EPA) Board of Scientific Counselors (BOSC) will be renewed for an additional two-year period. The BOSC is deemed a necessary committee which is in the public interest, and is in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. appl. 2 section 9(c). The purpose of BOSC is to counsel the Assistant Administrator for Research and Development (AA/ORD), on the operation of ORD's research program. It is determined that BOSC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Ms. Shirley Hamilton, Designated Federal Officer, BOSC, U.S. EPA, Office of Research and Development (mail code 8701R), 401 M Street, S.W., Washington, DC 20460.

Dated: June 3, 1998.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–15445 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00541; FRL–5796–7]

EPA-USDA Tolerance Reassessment Advisory Committee; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA-USDA Tolerance Reassessment Advisory Committee (TRAC) has been established as a subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT). The TRAC is in response to Vice President Gore's request for EPA and the U.S. Department of Agriculture (USDA) to work together to ensure the smooth implementation of the Food Quality Protection Act (FQPA).

DATES: The second set of TRAC meetings will be held on Monday, June 22, 1998, from 1 p.m. to 5 p.m. and Tuesday, June 23, 1998, from 9 a.m. to 5 p.m. The third set of TRAC meetings will be held on Monday, July 13, 1998, from 1 p.m. to 5 p.m. and Tuesday, July 14, 1998, from 9 a.m. to 5 p.m. The dates of the final set of TRAC meetings are July 27 and 28, 1998.

ADDRESSES: The second and third TRAC meetings will be held at the International Trade Center—Conference Center, 1300 Pennsylvania Ave., NW., Washington, DC; telephone: (202) 312–1300 and fax: (202) 312–1310. Specific times and location of the final meeting will be announced in the **Federal Register** prior to that meeting. The permanent record is available for inspection during normal business hours, Monday through Friday, excluding legal holidays at the Environmental Protection Agency, Crystal Mall 2, Rm. 101, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall 2, Rm. 1119, 1921 Jefferson Davis Hwy., Arlington, VA; telephone: (703) 305–7090; e-mail: fehrenbach.margie@epamail.epa.gov or murray.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: FQPA, Pub. L.104–170, was passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. The TRAC will be asked to provide policy guidance on sound science, ways to increase transparency in decisionmaking, strategies for a reasonable transition for agriculture, and ways to enhance consultations with stakeholders, as pesticide tolerances are reassessed, including those for organophosphates.

The TRAC is co-chaired by EPA Deputy Administrator Fred Hansen and USDA Deputy Secretary Richard Rominger. The TRAC is composed of experts that include farmers, environmentalists, public health officials, pediatric experts, pesticide companies, food processors and distributors, public interest groups, academicians, and tribal, State, and local governments.

The TRAC meetings are open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463. Outside statements by observers are welcome. Oral statements will be limited to 2–3 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after a TRAC meeting. These statements will become part of the permanent record and will be provided to the TRAC members. The permanent record will be available for public inspection at the address in ''Addresses'' at the beginning of this document.

Agendas and other background information specific to these meetings, as well as information from the first meeting, will be available on the EPA TRAC World Wide Web site (http://www.epa.gov/pesticides/trac) 1 week before each meeting or can be obtained by calling (703) 305–7090.

List of Subjects

Environmental protection, Agriculture, Chemicals, Foods, Pesticides and pests.

Dated: June 4, 1998.

Marcia E. Mulkey,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–15444 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50––F

ENVIRONMENTAL PROTECTION AGENCY

[PF–810; FRL–5793–1]

FMC Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–810, must be received on or before July 10, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any

part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Support Branch, 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. 237, Crystal Mall CM #2, 1900 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–810] (including comments and data submitted electronically as described below). 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 official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number FRL-5793-1 and appropriate petition number. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. FMC Corporation

PP 6G4615

EPA has received a pesticide petition (PP 6G4615) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by extending a temporary tolerance for the combined residue of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and its major wheat metabolites: carfentrazone-ethyl chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid), 3-hydroxymethyl-F8426-chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-l-yl]-4-fluorobenzenepropanoic acid), and 3-desmethyl-F8426 chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-l-yl]-4-fluorobenzenepropanoic acid) in or on wheat raw agricultural commodities: 0.2 ppm in or on wheat hay, 0.2 ppm in or on wheat straw, 0.2 ppm in or on wheat grain; and extending tolerance for combined residue of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzene-propanoate) and its major corn metabolites: carfentrazone-ethyl chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-l-yl]-4-fluorobenzenepropanoic acid),and 3-desmethyl-F8426 chloropropionic acid (alpha, 2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on corn raw agricultural commodities: 0.15 ppm in or on corn forage, 0.15 ppm in or on corn fodder, 0.15 ppm in or on corn grain.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of carfentrazone-ethyl in plants is adequately understood. Corn and wheat metabolism studies with carfentrazone-ethyl have shown uptake of material into plant tissue with no significant movement into grain or seeds. All three plants extensively metabolized carfentrazone-ethyl and exhibited a similar metabolic pathway. The residues of concern are the combined residues of carfentrazone-ethyl and carfentrazone-ethyl- chloropropionic acid.

2. *Analytical method* There is a practical analytical method for detecting and measuring levels of carfentrazone and its metabolites in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set in the tolerances. The analytical method for carfentrazone-ethyl involves separate analyses for parent and its metabolites. The parent is analyzed by GC/ECD. The metabolites are derivatized with boron trifluoride and acetic anhydride for analysis by GC/MSD using selective ion monitoring.

3. *Magnitude of residues*. Carfentrazone-ethyl 50DF was applied postemergent to 28 wheat trials, and 24 corn trials in the appropriate EPA regions. The RAC's were harvested at

the appropriate growth stages and subsequent analyses determined that the residues of carfentrazone-ethyl and its metabolites will not exceed the proposed tolerances of 1.0, 0.3, 0.2 and 0.1 ppm for wheat forage, hay, straw and grain, respectively; 0.1 ppm each for corn forage, fodder, and grain. Residue data from a cow feeding study demonstrated that no accumulation of carfentrazone-ethyl or its metabolites occurred in milk or tissues.

B. Toxicological Profile

1. *Acute toxicity*. Carfentrazone-ethyl demonstrates low oral, dermal and inhalation toxicity. The acute oral LD_{50} value in the rat was greater than 5,000 milligram/Kilograms (mg/kg), the acute dermal LD_{50} value in the rat was greater than 4,000 mg/kg and the acute inhalation LC_{50} value in the rat was greater than 5.09 mg/L/4h. Carfentrazone-ethyl is non-irritating to rabbit skin and minimally irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs. An acute neurotoxicity study in the rat had a systemic no-observed-adverse-effect level (NOAEL) of 500 mg/kg based on clinical signs and decreased motor activity levels; the NOAEL for neurotoxicity was greater than 2,000 mg/kg highest dose tested (HDT) based on the lack of neurotoxic clinical signs or effects on neuropathology.

2. *Genotoxicty*. Carfentrazone-ethyl did not cause mutations in the Ames assay with or without metabolic activation. There was a positive response in the Chromosome Aberration assay without activation but a negative response with activation. The Mouse Micronucleus assay (an *in vivo* test which also measures chromosome damage), the CHO/HGPRT forward mutation assay and the Unscheduled DNA Synthesis assay were negative. The overwhelming weight of the evidence supports the conclusion that Carfentrazone-ethyl is not genotoxic.

3. *Reproductive and developmental toxicity*. Carfentrazone-ethyl is not considered to be a reproductive or a developmental toxin. In the 2-generation reproduction study, the NOEL for reproductive toxicity was greater than 4,000 ppm (greater than 323 to greater than 409 mg/kg/day). In the developmental toxicity studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day which was the HDT and for the rat the NOEL was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs at 1,250 mg/kg/day. These two findings (thickened and wavy ribs) are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

4. *Subchronic toxicity* 90-day feeding studies were conducted in mice, rats and dogs with carfentrazone-ethyl. The NOEL for the mouse study was 4,000 ppm (571 mg/kg/day), for the rat study was 1,000 ppm (57.9 mg/kg/day for males; 72.4 mg/kg/day for females) and for dogs was 150 mg/kg/day. A 90-day subchronic neurotoxicity study in the rat had a systemic NOEL of 1,000 ppm (59.0 mg/kg/day for males; 70.7 mg/kg/day for females) based on decreases in body weights, body weight gains and food consumption at 10,000 ppm; the neurotoxicity NOEL was greater than 20,000 ppm (1178.3 mg/kg/day for males; 1433.5 mg/kg/day for females) which was the HDT.

5. *Chronic toxicity*. Carfentrazone-ethyl is not carcinogenic to rats or mice. A 2-year combined chronic toxicity/oncogenicity study in the rat was negative for carcinogenicity and had a chronic toxicity NOEL of 200 ppm (9 mg/kg/day) for males and 50 ppm (3 mg/kg/day) for females based on red fluorescent granules consistent with porphyrin deposits in the liver at the 500 and 200 ppm levels, respectively. An 18-month oncogenicity study in the mouse had a carcinogenic NOEL that was greater than 7,000 ppm (>1090 mg/kg/day for males; >1296 mg/kg/day for females) based on no evidence of carcinogenicity at the HDT. A 1-year oral toxicity study in the dog had a NOEL of 50 mg/kg/day based on isolated increases in urine porphyrins in the 150 mg/kg/day group (this finding was not considered adverse).

Using the Guidelines for Carcinogen Risk Assessment, carfentrazone-ethyl should be classified as Group ''E'' for carcinogenicity -- no evidence of carcinogenicity -- based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 2-year feeding study in rats at the dosage levels tested (DLT). The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment is not necessary.

6. *Animal metabolism*. The metabolism of carfentrazone-ethyl in animals is adequately understood. Carfentrazone-ethyl was extensively metabolized and readily eliminated following oral administration to rats, goats, and poultry via excreta. All three animals exhibited a similar metabolic pathway. As in plants, the parent chemical was metabolized by hydrolytic mechanisms to predominantly form carfentrazone-ethyl-chloropropionic acid which was readily excreted.

7. *Endocrine disruption*. An evaluation of the potential effects on the endocrine systems of mammals has not been determined; however, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that carfentrazone-ethyl causes endocrine effects.

C. Aggregate Exposure

Dietary exposure—i. *Acute dietary*. The Agency has determine that there is no concern for an acute dietary risk assessment since the available data do not indicate any evidence of significant toxicity from a 1-day or single event exposure by the oral route **Federal Register** of September 30, 1997 (62, FR 189). Thus an acute dietary risk assessment is not necessary.

ii. *Food*. Dietary exposure from the proposed uses would account for 1.3% or less of the RfD in subpopulations (including infants and children).

iii. *Drinking water*. Studies have indicated that carfentrazone-ethyl will not move into groundwater, therefore water has not been included in the dietary risk assessment.

iv. *Non-dietary exposure*. No specific worker exposure tests have been conducted with carfentrazone-ethyl. The potential for non-occupational exposure to the general population has not been fully assessed. No specific worker exposure tests have been conducted with carfentrazone-ethyl.

D. Cumulative Effects

EPA is also required to consider the potential for cumulative effects of carfentrazone-ethyl and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by carfentrazone-ethyl would be cumulative with those of any other chemical compounds; thus only the potential risks of carfentrazone-ethyl are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to carfentrazone-ethyl will utilize 0.61% of the RfD for the US population. EPA generally has no concern for exposures below 100% of the RfD. Therefore,

based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of carfentrazone-ethyl, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considers data from developmental toxicity studies in the rat and rabbit and the 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in developmental toxicity studies using rats and rabbits. In these studies, the rat and rabbit maternal NOELs were 100 mg/kg/day and 150 mg/kg/day, respectively. The developmental NOEL for the rabbit was greater than 300 mg/kg/day which was the HDT and for the rat was 600 mg/kg/day based on increased litter incidences of thickened and wavy ribs. These two findings are not considered adverse effects of treatment but related delays in rib development which are generally believed to be reversible.

In a 2-generation reproduction study in rats, no reproductive toxicity was observed under the conditions of the study at 4,000 ppm which was the HDT.

Section 408 of the FFDCA provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete and an additional uncertainty factor is not warranted. Therefore at this time, the provisional RfD of 0.06 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

F. Reference Dose

Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of carfentrazone-ethyl for non-nursing infants (<1-year old) would be 0.28% and for children 1-6 years of age would be 1.37% (the most highly exposed group). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of carfentrazone-ethyl including all anticipated dietary exposure.

G. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for carfentrazone-ethyl on any crops at this time. However, MRLs for small grains in Europe have been proposed which consist of carfentrazone-ethyl and carfentrazone-ethyl-chloropropionic acid.

[FR Doc. 98–15177 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–812; FRL–5793–4]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP 5F4483), proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–812, must be received on or before July 10, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8097; e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–812] (including comments and data submitted electronically as described below). 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 official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–812] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 29, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of the Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Troy Biosciences, Inc.

PP 5F4483

EPA has received an amended pesticide petition (PP 5F4483) from Troy Biosciences, Inc., 2620 North 37th Dr., Phoenix, Arizona 85009, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Beauvaria bassiana* ATCC 74040 in or on all raw agricultural commodities. The initial notice of filing was published in the **Federal Register** of June 15, 1995 (60 FR 31465) (FRL–4955–4). This amended petition was submitted to comply with the provisions of the 1996 Food Quality Protection Act (FQPA).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Troy Biosciences, Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Troy Biosciences, Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Product Name and Proposed Use Practices

Beauvaria bassiana ATCC 74040 is the active ingredient in the technical product Naturalis. End-use products are to be used to treat all food commodities using standard ground and aerial application equipment.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient, *Beauveria bassiana* ATCC # 74040 (TBI#1), is a naturally occurring, soil-borne fungal entomopathogen that is found in soil environments worldwide. This particular strain was isolated for TBI from an infected boll weevil collected from the Rio Grande Valley in Texas. *Beauveria bassiana* organisms, and particularly the spores, do not display good viability outside soil environments. They are extremely sensitive to high ambient temperatures, low humidity and intense light. Following foliar application to RACs, it is unlikely spores will survive beyond 3 to 5 days. Data generated under experimental use permits and data obtained from use of *Beauveria bassiana* ATCC # 74040 (TBI#1) on ornamentals and turf demonstrate that there are no detectable organisms.

2. *Magnitude of residue at the time of harvest and method used to determine the residue— Plant metabolism.* *Beauveria bassiana* is a well-known, soil-inhabiting fungal organism. It is not pathogenic to plants, and will not invade plant tissue. Results of research conducted under the Experimental Use Permit (EUP) also document that the conidia of *Beauveria bassiana* are not viable 96 hours following foliar applications.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An acceptable analytical method exists to determine the viability of spores on the foliar surface. Troy Biosciences also has developed a method to enumerate viable spores per unit volume. Additionally, Troy Biosciences has developed methods and provided data required by EPA on screens for bacterial contaminants, including human pathogens, and on beauvericin and aflatoxins, potential metabolites of concern for the active ingredient. Further, the inert ingredients used in the formulated product are food grade or meet all other applicable FDA standards. Finally, all lots of the active ingredient and the formulated product are monitored as part of Troy Biosciences' rigorous quality control program.

C. Mammalian Toxicological Profile

Acute toxicity. The acute oral toxicity/pathogenicity of the technical grade active ingredient (TGAI) in the rat was determined following a single exposure to 10^8 colony forming units (CFU). The organism was not infectious to the rat and total clearance from the animal was projected to occur in 23 days. In a single 24 hour dermal exposure of two grams of the technical powder, erythema and edema were observed in 30% of the animals. These symptoms cleared in 1-7 days and indicated that the material was a moderate dermal irritant. These results were classified as Toxicity Category IV. A bovine corneal opacity and permeability assay was conducted to project the potential irritancy of the technical powder. The results indicated that the technical powder might be a slight irritant. The results of a primary eye irritation study confirmed that the technical powder was a slight irritant to the eye (Toxicity Category III). A study was conducted in the rat in which the animals were exposed by intraperitoneal injection to 10^7 CFU of the material (MRID 43294201). The animals were unaffected by the test material during the 29 day observation period. In a rat intratracheal toxicity study, rats were exposed to 10^7 CFU per animal. There were small tan nodules in the lungs of the test animals following exposure. These lesions reversed as the study progressed and the author opined that they would be totally reversible if more time were allowed. Total clearance of *Beauveria bassiana* occurred within 15 days. There were no effects on survival and the test material was not found in any tissue outside the lungs. The organism was not considered toxic or pathogenic in this test animal.

D. Aggregate Exposure

1. *Dietary exposure— Food.* Troy Biosciences has requested an exemption from the requirement for a tolerance, based on the well-documented instability of the conidia of *Beauveria bassiana* outside its natural environment, the soil. Residues should not be present because Troy Biosciences has requested a waiver of the requirement for a tolerance, based on the well-documented instability of the conidia of *Beauveria bassiana* outside its natural environment, the soil. Residues should not be present because spores are not viable 96 hours following application.

2. *Drinking water.* Use of Naturalis L in agriculture could result in the entry of the active ingredient into surface waters via drift from the agricultural application or run-off from treated

foliage during rainfall events. It is unlikely that the organism, because of its short half-life, would survive more than 1-2 days in this environment and would be unlikely to contaminate drinking water. Further, the organism is not a known human pathogen.

3. *Non-dietary exposure*. The only non-dietary exposures are expected to be to applicators and other pesticide handlers working with the product, including those workers involved at the manufacturing facility. Use of the product according to the directions for use on the label is not expected to result in any risk of adverse health effects. Exposure to the active ingredient in the manufacturing process is minimized by engineering controls. There may also be limited dermal exposure as a result of the turf use of the product (homes, schools, other public areas). Adults and children could contact treated foliage; however, these residues are not pathogenic in humans and the residues degrade rapidly over time after application.

E. Cumulative Exposure

Beauveria bassiana is a naturally occuring, soil-borne microorganism which is found throughout the World. Over 400 different strains have been identified, with concentrations varying from region to region depending on soil type and climatic conditions. Factors such as sunlight, temperature and humidity affect the persistence of this organism in the environment. Data from the past experimental use program indicate residues of this organism are not present on treated crops 96 hours after application.

Optimum growth for *Beauveria bassiana* occurs between 28-32°C, with no growth occurring at temperatures above 35°C. From a biological viewpoint the human body does not have the specific surface factors nor proper temperature to stimulate spore germination and infection hindering the organism's ability to cause systemic disease. This is corroborated by additional biological data from animal testing via oral, intraperitoneal, intratracheal, and dermal exposure. These studies indicate both a lack of systemic toxicity and non-pathogenicity. In addition, clearance of the test animals occurs within a relatively short time (<21 days).

Beauveria bassiana is effective by infecting target insects. In this respect, it shares a common mode of action with many other registered biological pesticides, including another strain of *Beauveria bassiana*. The lack of infectivity in humans and other non-insect species, combined with low toxicity indicates that there is likely to be no appreciable cumulative effect from application of several pesticides with this mode of action. Moreover, because both products have similar target pests (whiteflies, aphids and thrips) and the product labels state that 7 to 9 days at a minimum are needed to observe control, it is unlikely that both products would be used within the 96-hour effective period on the foliage. Consequently, there would be no accumulation of residues.

F. Safety Determination

1. *U.S. population*. *Beauveria bassiana* is a ubiquitous soil microorganism which is susceptible to sunlight, temperature and humidity. Data generated during the experimental use program (1992-1994) indicate that, once applied to raw agricultural commodities, *Beauveria bassiana* does not persist. Exposure to the general public from treated foods will be negligible. Biological data previously cited indicate the organism does not persist in the mammalian body, is not pathogenic and clearance from the body occurs within 21 days.

Troy Biosciences' *Beauveria bassiana* and its formulated product, Naturalis L, are carefully monitored under a rigorous quality control program. The active ingredient is screened for bacterial contaminants, including human pathogens, and for the presence of beauvericin and aflatoxins, metabolites of potential concern. Raw materials used for the formulated product also are subject to quality control screens and meet all applicable EPA and FDA quality standards. To further assure the safety of the formulated product, each batch is monitored and must meet rigorous quality control standards.

2. *Infants and children*. Based upon the lack of persistence, favorable biological data and quality control procedures no adverse effects would be expected for infants and children. Residues of *Beauveria bassiana* would not be present on commodities used for the production of foods or formulae for infants and children.

G. Effects on the Immune and Endocrine Systems

Beauveria bassiana ATCC # 74040 (TBI#1) is a naturally-occurring, living, fungal organism that is not pathogenic to humans. It is unlikely that exposure to this organism would result in an effect on the human endocrine or immune systems. There are no reports of any estrogenic or other adverse effects to human population as a result of the use of *Beauveria bassiana* in the field. Based on this information, combined with its low mammalian toxicity, it is concluded that there is a reasonable certainty that no adverse endocrine effects nor immune system effects will result from the use of *Beauveria bassiana* as an insecticide.

H. Existing Tolerances

No maximum residue level has been established for this organism by the Codex Alimentarius Commission.

[FR Doc. 98–15325 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6109–8]

Public Notice of Draft NPDES General Permits for Wastewater Lagoon Systems Located On Indian Reservations in Montana, North Dakota, South Dakota, Utah, and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to issue NPDES general permits.

SUMMARY: Region VIII of EPA is hereby giving notice of its tentative determination to issue National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems located on Indian Reservations in the States of MT, ND, SD, UT, and WY and treating primarily domestic wastewater. The use of wastewater lagoon systems is the most common method of treating municipal wastewater and domestic wastewater from isolated housing developments, schools, etc., on the Indian Reservations in those states. Region VIII is proposing to use general permits instead of individual permits for permitting the discharges from such facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits, but it will be much quicker to obtain permit coverage with general permits than with individual permits. The discharge requirements would be essentially the same with an individual permit or under the general permit. A separate general permit is proposed to cover the aforementioned facilities within the exterior boundaries of a single reservation.

DATES: Public comments on this proposal must be received, in writing, on or before August 10, 1998.

ADDRESSES: Public comments should be sent to: State Assistance Program (8P2–SA); Attention: NPDES Permits; U.S. EPA, Region VIII; 999 18th Street, Suite 500; Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: For a copy of the draft permit and Fact Sheet, please write William Kennedy at the above address or telephone (303) 312–6285. Copies of the draft permit and Fact Sheet may also be downloaded from the EPA Region VIII web page at http://www.epa.gov/region08/html/npdes/lagoons.html. Questions regarding the specific permit requirements may be directed to Bruce Kent, telephone (303) 312–6133.

SUPPLEMENTARY INFORMATION: It is proposed that general permits be issued for discharges from wastewater lagoon systems located on the following Indian Reservations:

Permit No.	Indian Reservation
Montana:	
MTG581### ..	Blackfeet Indian Reservation;
MTG582### ..	Crow Indian Reservation;
MTG583### ..	Flathead Indian Reservation;
MTG584### ..	Fort Belknap Indian Reservation;
MTG585### ..	Fort Peck Indian Reservation;
MTG586### ..	Northern Cheyenne Indian Reservation; and,
MTG587### ..	Rocky Boy's Indian Reservation.
North Dakota:	
NDG581### ..	Fort Berthold Indian Reservation;
NDG582### ..	Fort Totten Indian Reservation—Also known as Devils Lake Indian Reservation;
NDG583### ..	Standing Rock Indian Reservation—Includes the entire Reservation, which is located in both North Dakota and South Dakota; and,
NDG584### ..	Turtle Mountain Indian Reservation.
South Dakota:	
SDG581### ..	Cheyenne River Indian Reservation;
SDG582### ..	Crow Creek Indian Reservation;
SDG583### ..	Flandreau Indian Reservation;
SDG584### ..	Lower Brule Indian Reservation;
SDG585### ..	Pine Ridge Indian Reservation—Includes the entire Reservation, which is located in both South Dakota and Nebraska; and,
SDG586### ..	Rosebud Indian Reservation.
Utah:	
UTG581### ..	Northern Shoshoni Indian Reservation;
UTG582### ..	Paiute Indian Reservations—several very small reservations, including Cedar City, Indian Peaks, Kanosh, Koosharem, and Shivwits, located in the southwest quarter of Utah;
UTG583### ..	Skull Valley Indian Reservation; and,
UTG584### ..	Uintah and Ouray Indian Reservation.
Wyoming:	
WYG581###	Wind River Indian Reservation.

General permits are not being issued for the portions of the Navajo Indian Reservation and the Goshutes Indian Reservation in Utah since the permitting activities for these reservations are done by Region IX of EPA. Also, general permits are not being issued for the Southern Ute Indian Reservation located in the State of Colorado and the Ute Mountain Indian Reservation located in the States of Colorado, New Mexico, and Utah because of water quality concerns in the San Juan River Basin portion of the Colorado River Basin.

Coverage under the general permits will be limited to lagoon systems treating primarily domestic wastewater and will include the following three categories: (1) lagoons where no permission is required before starting to discharge; (2) permission is required before starting to discharge; and (3) the lagoon system is required to have no discharge. The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR part 133) and best professional judgement (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are considered necessary to comply with applicable water quality standards, etc., those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits.

With the exception of the Flathead Indian Reservation and the Fort Peck Indian Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA intends to certify that the permit complies with the applicable provisions of the Clean Water Act so long as the permittees comply with all permit conditions. The permits will be issued for a period of five years, with the permit effective date and expiration date determined at the time of issuance.

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): After review of the facts present in the notice printed above, I hereby certify pursuant to the provisions of 5 U.S.C. 605(b) that these general permits will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: June 3, 1998.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance.

[FR Doc. 98–15446 Filed 6–9–98; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Thursday, June 18, 1998 at 2 p.m. (Eastern Time).

PLACE: EEOC's Baltimore District Office, Conference Room on the fourth floor of the City Crescent Building, 10 South Howard Street, Baltimore, MD 21201.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes,
2. Panel discussion on Charge Processing and Mediation, and
3. Panel discussion on Outreach, Education and Technical Assistance.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings. Contact Person for More Information: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: June 4, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–15365 Filed 6–8–98; 2:32 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 96–45, 97–160; DA 98–1055; APD No. 98–1]

Forward-Looking Cost Studies for Universal Service Support; Request for Comments

Released: June 4, 1998.

1. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission determined that federal universal service high cost support should be based on forward-looking economic cost.[1] In this Public Notice, we seek comment on whether the cost studies submitted by individual states meet the Commission's specified criteria. In addition, we seek comment on Ameritech Michigan's request for waiver of the Commission's authorized ranges of economic lives and future net salvage percentages used to calculate depreciation expenses. Comments from interested parties are due on or before June 25, 1998, and reply comments are due on or before July 9, 1998.

Background

2. In the *Universal Service Order,* the Commission adopted a plan for universal service support for rural, insular, and high cost areas that will replace existing implicit federal subsidies with explicit, competitively neutral federal universal service support mechanisms.[2] The Commission determined that, beginning January 1, 1999, non-rural carriers will receive support based on the forward-looking economic cost of providing the supported services. The Commission concluded that states could submit forward-looking economic cost studies as the basis for calculating federal universal service high cost support for non-rural carriers in lieu of using the federal mechanism selected by the Commission.[3] The Commission adopted specific criteria to guide the states as they conducted those studies.[4] In a Public Notice released February 27, 1998, the Commission stated its intent to review each cost study submitted by a state, along with all applicable comments, in determining whether the state cost study complies with the criteria established in the *Universal Service Order.*[5]

Issues for Comment

3. On May 26, 1998, the following states submitted forward-looking cost studies to be used in lieu of the federal mechanism for determining federal universal service high cost support: Hawaii, Illinois, Indiana, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, North Carolina, Puerto Rico, and South Carolina. We seek comment on whether these cost studies meet the criteria specified in the *Universal Service Order* and, therefore, should be approved by the Commission for use in calculating federal support for non-rural carriers in rural, insular, and high cost areas in those states. To the extent that information and data relating to the state cost studies has been provided electronically to the Commission, it will be available for review via the Internet, beginning June 8, 1998, at http://www.fcc.gov/e-file/cost_studies.

4. We also seek comment on the request for waiver filed by Ameritech Michigan relating to the cost study submitted for use in Michigan. Specifically, Ameritech Michigan requests that the Commission waive the requirement established in criterion 5 of the *Universal Service Order* that economic lives and future net salvage percentages used to calculate depreciation expenses must be within Commission authorized ranges.[6] Ameritech notes that ''11 of the 15 plant categories used in the [Michigan] universal service cost study fall outside the FCC life ranges.''[7]

Procedure for Filing

5. Comments should reference CC Docket Nos. 96–45, 97–160 and must include the DA number and APD number shown on this Public Notice. Interested parties must file an original and five copies of their comments with the Office of Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW, Washington, DC 20554. Parties should send three copies of their comments to Sheryl Todd, Common Carrier Bureau, Federal Communications Commission, 2100 M. St, NW, 8th Floor, Washington, DC 20554. Parties should send one copy of their comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

6. Commenters may also file informal comments or an exact copy of formal comments electronically via the Internet at <bclopton@fcc.gov>. Only one copy of electronically-filed comments must be submitted. A commenter must note whether an electronic submission is an exact copy of formal comments on the subject line. A commenter also must include its full name and Postal Service mailing address in its submission.

7. Parties are also asked to submit their comments and reply comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Bryan Clopton of the Accounting Policy Division, Common Carrier Bureau, 2100 M Street, NW, 8th floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette should be accompanied by a cover letter.

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[1] Federal State Joint Board on Universal Service, *Report & Order,* CC Docket No. 96–45, 12 FCC Rcd 8776, 8899 paras. 224–25, (1997) (*Universal Service Order*) 62 FR 32862 (June 17, 1997).

[2] *Universal Service Order,* 12 FCC Rcd at 8888–8951.

[3] *Universal Service Order,* 12 FCC Rcd at 8912 para. 248.

[4] *Universal Service Order,* 12 FCC Rcd at 8913–8916 para. 250.

[5] State Forward-Looking Cost Studies for Federal Universal Service Support, CC Docket Nos. 96–45, 97–160, DA 98–217, *Public Notice* (rel. Feb. 27, 1998) at 1.

[6] *Universal Service Order,* 12 FCC Rcd at 8914 para. 250.

[7] Ameritech Request for Waiver filed May 26, 1998 at 1–2. The Michigan Public Service Commission noted that by approving the Ameritech Michigan study, it was neither explicitly or implicitly seeking a waiver of the criterion 5 requirement on behalf of Ameritech. *In the matter of application of Ameritech Michigan, Before the Michigan Public Service Commission,* Case No. U–11635 at 5 (May 11, 1998).

8. Pursuant to § 1.1206 of the Commission's Rules, 47 CFR. 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

9. For further information, please contact: Katie King, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

Federal Communications Commission.

Lisa Gelb,

Chief, Accounting Policy Division.

[FR Doc. 98–15495 Filed 6–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Additional Item to be Considered at Open Meeting Thursday, June 11, 1998

June 5, 1998.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, June 11, 1998, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Cable services.	Title: Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices (CS Docket No. 97–80). Summary: The Commission will consider action concerning implementation of Section 629 of the Communications Act.

The prompt and orderly conduct of the Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission June 4, 1998, Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell and Tristani voting to consider these items.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15553 Filed 6–8–98; 1:19 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2280]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

June 2, 1998.

Petitions for reconsideration and clarification has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed June 25, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(2)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information (CC Docket No. 96–115).

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended (CC Docket 98–149).

Number of Petitions filed: 27.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15357 Filed 6–9–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Am-Trans Forwarding, 10264 Briar Forest Drive, Houston, TX 77042

Officers: Sylvia Reyes, Sole Proprietor.

Cargo Brokers International Midwest, Inc., 4915 S. Howell Avenue, Milwaukee, WI 53207

Officers: Goetz W. Steinmetz, President, Armin A. Ruddies, Vice President.

Lufran International Corp., 7852 N. W. 72 Avenue, Medley, FL 33166

Officer: Luis J. Francisco, President.

CSL Group Inc., 13310 E. Firestone Blvd., #C2, Santa Fe Springs, CA 90670

Officers: Amy Cook, President, William Sun, Vice President.

Export Container Line Inc., 601 Dune Drive, Avalon, NJ 08202

Officer: Belinda E. Richardson, Branch Manager.

Round The World Exports, 213 Lynnhaven Drive, North Syracuse, NY 13212, Cynthia A. Keefe, Sole Proprietor.

Dated: June 5, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–15412 Filed 6–9–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket R–1014]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on whether the last fifteen minutes of the Fedwire funds transfer operating day, from 6:15 p.m. to 6:30 p.m. Eastern Time, should be restricted to funds transfers sent and received by banks for their own account in order to facilitate banks' end-of-day management of their Federal Reserve accounts.

DATES: Comments must be submitted on or before August 12, 1998.

ADDRESSES: Comments, which should refer to Docket No. R–1014, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in Section 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director (202/425–2789), Jeff Stehm, Manager (202/452–2217), or Gina Sellitto, Financial Services Analyst (202/728–5848), Division of Reserve Bank Operations and Payment Systems. For the hearing impaired *only:* Telecommunications Device for the Deaf, Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION: The Fedwire funds transfer system operates from 12:30 a.m. to 6:30 p.m. Eastern Time (all times stated are Eastern Time), with the last half hour of the operating day reserved for settlement transfers.[1] Settlement transfers are typically used by banks to adjust their Federal Reserve account positions, as well as their account positions at correspondent banks. Settlement transfers may be two-party transfers sent and received by banks for their own account, or they may contain third-party respondent bank information when a respondent bank is the originator and/or beneficiary of the payment order.[2] To the extent that Fedwire settlement transfers are received or requested unexpectedly just before the final close of Fedwire, a bank's ability to manage its reserve position and end-of-day Federal Reserve account position may be complicated. In particular, last minute transfers received during the settlement period for credit to a respondent bank customer may not be anticipated and cannot be controlled by the receiving correspondent bank.

In response to the Board's request for comment on a return to a system of lagged reserve requirements (62 FR 60671, November 12, 1997), the New York Clearing House Association (NYCHA) requested that the Board reconsider a two-part settlement period at the end of the Fedwire operating day, in which the last fifteen minutes of the Fedwire funds transfer operating day are reserved exclusively for transfers sent by and received for a bank's own account. Under this proposed restriction, funds transfers sent by banks on behalf of a respondent bank or funds transfers received by banks for credit to a respondent bank would be prohibited during the last fifteen minutes of the Fedwire day. NYCHA believes such a restriction would facilitate reserve management by allowing banks to anticipate more fully last minute payment flows from and into their account at a Reserve Bank. In particular, NYCHA believes that because respondent banks are able to use the entire Fedwire settlement period (6:00 p.m. to 6:30 p.m.) to move funds into and out of accounts at their correspondents, the correspondents cannot know their reserve positions with certainty until Fedwire has closed.[3] This uncertainty in late-day funds movements adds to the difficulty of reserve management for large money center correspondents.

In October 1989, the Board requested comment on a similar proposal to segment the settlement period for the Fedwire funds transfer service (54 FR 41681, October 11, 1989). Overall, commenters were divided as to the benefits of this earlier proposal. Several commenters indicated that there were no significant benefits to a segmented settlement period and that restricting receipt of transfers by affiliates and respondent banks during the last fifteen minutes would further impede their ability to manage their accounts. Other commenters believed that a segmented settlement period would unnecessarily complicate the processing of funds transfers because new edit criteria and type codes might be needed to monitor and restrict respondent transfers, requiring changes to programs and operating procedures for both banks and Reserve Banks. Commenters supporting this proposal noted that, in contrast to transfers sent or received on its own behalf, a correspondent bank may not be able to predict accurately transfers involving its respondent accounts, thereby complicating management of its reserve position.

At that time, the Board did not adopt a segmented settlement period given the concerns expressed by commenters and the lack of strong industry support (55 FR 18755, May 4, 1990). The Board, however, indicated that it would monitor developments with regard to reserve account management and determine whether segmenting the settlement period should be reconsidered at a later date.

NYCHA, in its February 5, 1998, letter to the Board, argues that several developments have occurred since 1990 that make it more difficult for banks to manage their reserve positions. These developments include: (1) a significant reduction in reserve balances resulting from reductions in reserve requirements in 1990 and 1992 and the use of sweep accounts starting in 1994; and (2) a reduction in the pool of available buyers of federal funds due to consolidation in the banking industry. The unexpected receipt of funds for a respondent bank very late in the day could result in the correspondent bank having more reserves than planned, which may be difficult to invest late in the day. Likewise, a late-in-the-day request to pay out funds on behalf of a respondent bank may result in a reserve deficiency at the correspondent bank that may be costly and difficult for the correspondent to fund. NYCHA argues that unanticipated excess or deficit reserve positions create uncertainty and volatility in the federal funds market. NYCHA believes that a segmented

[1] A settlement transfer is a payment order in which the originator and the beneficiary are each either: (i) a bank subject to Federal Reserve reserve requirements (whether or not it actually maintains reserve balances), or (ii) a participant in a net settlement arrangement approved by a Reserve Bank as an eligible originator or beneficiary of a settlement payment order sent during the settlement period. A settlement transfer sent during the settlement period must be designated by type code 16. For purposes of this notice, the term ''bank'' is used to refer to any depository institution.

[2] For purposes of this notice, respondent transfers are defined as Fedwire transfers in which there is an intermediary bank between the originating bank and the Federal Reserve or between the beneficiary's bank and the Federal Reserve.

[3] NYCHA members have indicated that their concerns relate primarily to late-in-the-day transfers on behalf of foreign respondent banks, and that transfers on behalf of domestic respondent banks are generally not performed after 6:15 p.m.

Fedwire funds transfer settlement period would allow each bank to calculate its reserve position with greater precision and facilitate a more efficient interbank funding market.

If a segmented settlement period were adopted, it might be implemented through one of several approaches. Under one approach, if a bank received an unanticipated respondent transfer after 6:15 p.m., it could return the funds the same day. If this was not possible prior to the final close of Fedwire, it could return the funds the next day and request compensation from the sender (if the sender and receiver had a compensation agreement) and/or request that the Federal Reserve function an as-of adjustment to its reserve position and the reserve position of the sending bank.[4] [5] As-of adjustments may not have value for some receiving banks or provide a disincentive to some sending banks. In particular, a receiving bank with low reserve requirements that maintains balances at a Reserve Bank primarily for payment clearing purposes would likely receive little economic value from an as-of adjustment. Likewise, a sending bank with a low reserve requirement may not consider an as-of adjustment to be a sufficient incentive to stop sending respondent transfers after 6:15 p.m. Alternatively, compensation for respondent transfers processed after a 6:15 p.m. deadline might be handled by private agreement between the sending and receiving banks. For example, NYCHA has rules governing the settlement of claims for compensation between NYCHA member banks that arise from interbank funds payments.

Under another approach, the Fedwire funds transfer system might be modified to incorporate new edit criteria to detect and reject type code 16 funds transfers received after 6:15 p.m. that contain respondent information in the beneficiary or originator message field tags. Alternatively, a new funds transfer message type code to identify two-party bank-to-bank transfers could be established by modifying the Fedwire funds transfer system. If a transfer received after the respondent transfer cut-off time (6:15 p.m.) did not bear the appropriate type code, it would be rejected by the Fedwire funds transfer system. This approach would likely require changes to banks' internal systems in order to process a new message type code and may require significant modifications to the Fedwire funds transfer system.

If a segmented settlement period is desirable, Fedwire restrictions on respondent transfers sent after 6:15 p.m. may only need to be applied to transfers sent by the Federal Reserve to a bank for credit to its respondent bank's account. Correspondent banks could set their own cutoff times for originating transfers on behalf of a respondent bank customer, but they are unable to set similar controls over the receipt of transfers for the benefit of their respondent customers. The receipt of transfers for the benefit of a respondent bank customer, therefore, may require Fedwire restrictions to assist the receiving correspondent bank in managing its reserve position toward the end of the day.

If a segmented settlement period were adopted, the Board proposes that the Reserve Banks' procedures for granting an extension of Fedwire deadlines be modified in order to preserve a thirty-minute settlement period at the end of the Fedwire day, divided into two fifteen-minute intervals—the first period for all types of settlement transfers and the second period exclusively for settlement transfers sent and received for banks' own accounts. Today, extensions of the third-party customer transfer deadline past 6:00 p.m. generally result in a fifteen-minute, rather than thirty-minute, settlement period. For example, of the fifty-six extensions of the 6:00 p.m. third-party customer deadline in 1997, fifty resulted in a compressed fifteen-minute settlement period. If a segmented settlement period were adopted, any extension of the third-party deadline may require an extension of the final closing time in order to preserve a thirty minute settlement period at the end of the day—fifteen minutes for all settlement transfers and fifteen minutes exclusively for settlement transfers for banks' own accounts.

Finally, if a segmented settlement period were adopted, operational changes to banks' internal systems, and possibly to the Fedwire funds transfer system, may be required in order to preclude respondent transfers after 6:15 p.m. These potential system changes raise a question of the appropriate timing for implementation given the Reserve Banks' and banks' ongoing year 2000 readiness efforts and their desire to limit the number of system changes prior to the millennium cutover.

The Board requests comment on whether the establishment of a segmented settlement period at the end of the Fedwire operating day in which respondent transfers would not be permitted during the last fifteen minutes would enhance banks' ability to manage their reserve positions late in the day. The Board requests comment on the following questions:

1. What are the benefits of a 15-minute period from 6:15 p.m. to 6:30 p.m. during which respondent transfers would be prohibited? To whom would these benefits likely accrue? Are there any significant costs or other drawbacks to a segmented settlement period?

2. Because correspondent banks could manage unexpected outflows of funds over Fedwire by setting their own internal cut-off time for originating transfers on behalf of respondent bank customers, should the Federal Reserve impose restrictions only on settlement transfers where a respondent bank is the beneficiary bank?

3. How liquid is the fed funds market after 6:15 p.m.? Is the liquidity in the fed funds market at that time of day sufficient to allow the correspondent bank to invest any large inflows or cover any outflows of funds received over Fedwire late in the day?

4. How would restrictions on respondent banks' ability to request or receive Fedwire funds transfers late in the day affect their ability to manage their reserve position?

5. If the Board were to adopt a segmented settlement period, what responsibilities and/or penalties, if any, should be placed on the sending bank if it does not comply with the 6:15 p.m. deadline? Should the receiving bank have the ability to request an as-of adjustment with a corresponding adjustment to the sending bank if a respondent transfer is received after the 6:15 p.m. deadline? Will as-of adjustments provide sufficient incentive for the sending bank to police its release of respondent transfers after 6:15 p.m? Would there be a significant cost or drawback to the receiving bank if as-of adjustments were not functioned for these types of transactions?

6. Would it be preferable for the Federal Reserve to modify the Fedwire funds transfer system by implementing a new message type code or edit criteria to reject automatically transfers sent after the 6:15 p.m. that contain respondent bank information in the originator and/or beneficiary fields? What costs or other burdens would such

[4] As-of adjustments are adjustments made at the discretion of the Reserve Bank to the amount of calculated required reserves that sending and receiving banks must maintain during a two-week reserve maintenance period. As-of adjustments do not affect the actual level of balances held by a bank at its Reserve Bank, but rather the level of required reserves a bank must hold during a maintenance period.

[5] This is similar to the process used to compensate banks for third-party customer transfers sent after 6:00 p.m. as type code 16 messages. In this case, the Reserve Banks will function as-of adjustments to the sending and receiving banks when the receiving bank notifies the Reserve Bank of such a transfer. The use of as-of adjustments for this purpose, however, occurs infrequently.

operational modifications impose on Fedwire participants?

7. If the Fedwire 6:00 p.m. deadline for third-party customer transfers is extended on a particular day, should a thirty-minute settlement period be maintained at the end of the day, with the last fifteen minutes of the settlement period reserved for settlement transfers between banks for their own accounts?

8. If a segmented settlement period is approved, what is the appropriate timeframe for its implementation, given banks' ongoing year 2000 readiness efforts?

9. Are there any other alternatives that could be implemented to address this issue? For example, instead of Fedwire changes, could the originating bank and/or receiving bank implement internal controls, customer agreements, or other changes (e.g., industry agreements regarding a deadline for respondent transfers) to restrict respondent transfers toward the end of the Fedwire operating day?

By order of the Board of Governors of the Federal Reserve System, June 5, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–15407 Filed 6–9–98; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of the Chief Information Officer; Public Notice of Waiver of Federal Information Processing Standards

SUMMARY: Under the waiver authority granted by the Secretary of Commerce, The General Services Administration must make public all actions taken on waivers of Federal Information Processing Standards. The Administrator of the General Services Administration has granted the Agency a waiver to acquire and use any commercial-off-the-shelf product(s) which meet the Agency's requirement for information technology security. This notice serves to make this information public.

FOR FURTHER INFORMATION CONTACT: For further information on this notice, contact L. Diane Savoy, Acting Assistant Chief Information Officer, General Services Administration, Room 3024, 18th & F Street, NW, Washington, DC 20405; telephone (202) 219–3062.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) requires secure electronic communication with private sector vendors to perform its day-to-day functions. The limited availability of products employing FIPS compliant security techniques produced many incompatibilities with the vendor community. To eliminate or reduce this problem, the GSA Chief Information Officer requested and was granted Agency-wide authority to use commercial-off-the-shelf products that employ techniques for assuring identity, authenticity, integrity, or confidentiality in addition to those employing techniques specified in the FIPS. The waiver granted by the GSA Administrator became effective on September 29, 1997 and remains in effect until July 31, 2002.

Dated: June 5, 1998.

Donald P. Heffernan,

Deputy Chief Information Officer.

[FR Doc. 98–15414 Filed 6–9–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Management and Budget Office, Office of Information and Resources Management; Statement of Organization, Functions and Delegation of Authority

Part A, of the Office of the Secretary, Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services is being amended at, Chapter AM, HHS Management and Budget Office, Chapter AMM, Office of Information Resources Management (OIRM), as last amended at 61 FR 37902 July 22, 1996. The changes are to reflect a realignment of functions within the Office of Information and Resources Management. The changes are as follows:

Delete in its entirety Chapter AMM, Office of Information and Resources Management and replace with the following.

Chapter AMM, Office of Information and Resources Management

AMM.00 Mission. The Office of Information Resources Management (OIRM) advises the Secretary and the Assistant Secretary for Management and Budget (ASMB)/Chief Information Officer (CIO) on information and information technologies to accomplish Departmental goals and program objectives; exercises delegated authorities and any other applicable rules; promotes improved management of Departmental information resources and technology; provides efficient and effective information and information technology service to clients and employees; and provides assistance and guidance for technology-supported business process reengineering, investment analysis, performance measurement, assurance of the information and system integrity, and strategic development and application of information systems, infrastructure, and policies to the Department and its components.

The Office is responsible for the overall quality of information resources and technology management throughout the Department; represents the Department to central management agencies (e.g., the Office of Management and Budget); supports the development of a robust information infrastructure (including a departmental information technology architecture and information technology-based services for the Office of the Secretary); and advocates rigorous methods for analyzing, selecting, developing, operating, and maintaining information systems.

The Office collaborates with the Operating and Staff Divisions of the Department to resolve policy and management issues, manages risks associated with major information systems, evaluates and approves major investments in information technology based on return on investment, and measures and evaluates system performance.

The Office exercises authorities delegated by the Secretary to the Assistant Secretary for Management and Budget, as the CIO for the Department. These authorities derive from the Information Technology Management Reform Act of 1996, the Paperwork Reduction Act of 1995, the Computer Matching and Privacy Act of 1988, the Computer Security Act of 1987, the National Archives and Records Administration Act of 1984, the Competition in Contracting Act of 1984, the Federal Records Act of 1950, OMB Circular A–130: Management of Federal Information Resources, and Government Printing and Binding Regulations issued by the Joint Committee on Printing.

Section AMM.10 Organization. The Office of Information Resources Management (OIRM), under the supervision of the Deputy Assistant Secretary for Information Resources Management/Deputy CIO, who reports to the Assistant Secretary for Management and Budget/CIO, consists of the following component.

- Immediate Office (AMMA)
- Office of Information Technology Policy (AMMJ)
- Office of Information Technology Services (AMML)

• Office of Information Technology Development (AMMM)

Section AMM.20 Functions

A. The Immediate Office of Information Resources Management is responsible for:

1. Providing advice and counsel to the Secretary and the Assistant Secretary for Management and Budget/Chief Information Officer under the direction of the Deputy Assistant Secretary for Information Resources Management serving as the Department's Deputy CIO.

2. Providing executive direction to align Departmental strategic planning for information resources and technology with the Department's strategic business planning.

3. Promoting business process reengineering, investment analysis, and performance measurement throughout the Department, to capitalize on evolving information technology (IT), treating IT as an investment rather than as an expense.

4. Representing the Department in Federal government-wide CIO efforts to develop and implement policy and infrastructure initiatives.

5. Chairing the Department's Information Technology Investment Review Board (ITIRB) and the Department's Chief Information Officer's Advisory Council (by the Deputy Assistant Secretary for Information Resources Management/ Deputy CIO), and chairing the Office of the Secretary Information Resources Management Policy and Planning Board (by the Deputy Office Director).

6. Managing funds, personnel, information, property, and projects of the Office of Information Resources Management.

B. The Office of Information Technology Policy (OITP) is composed of two Divisions, the Division of Information Technology Analysis and Investment (DITAI) and the Division of Information Management (DIM).

1. The Division of Information Technology Analysis and Investment is responsible for:

a. Working with Operating Division Chief Information Officers to support the government wide initiatives of the Federal Chief Information Officers Council e.g., Year 2000, capital planning and investment, interoperability, security, IT training and education, and information technology architecture.

b. Utilizing a Departmental Information Technology Investment Review Board (ITIRB) to assess the Department's major information systems to analyze and evaluate IT investment decisions based on risk-adjusted rate of return and support of agency mission. Review of OPDIV ITIRB implementations, IT capital funding decisions, and use of performance metrics to evaluate program success or failure.

c. Coordinating the Department's strategic planning and budgeting processes for information technology, providing direct planning support to assure that IRM plans support agency business planning and mission accomplishment.

d. Developing policies and guidance on information resources and technology management as required by law or regulation, and in consultation with OPDIV/STAFFDIV CIOs and program managers on issues of Departmental scope.

e. Supporting the Departmental Chief Information Officers Advisory Council, whose membership consists of the Chief Information Officers from each Operating Division.

f. Establishing guidance and training requirements for managers of information systems designated as sensitive under the Department's automated information systems security program.

g. Providing leadership for special priority initiatives of Department-wide scope (e.g., Year 2000 Date Remediation)

h. Representing the Department through participation on interagency and Departmental work groups and task forces.

2. The Division of Information Management is responsible for the following:

a. Working with Operating Division Chief Information Officers to jointly identify opportunities for facilitating the development and implementation of highly visible Departmental programs, including other agencies under OMB or GAO scrutiny, or of Congressional interest, e.g., Medicare Information Technology, Health Integrity Protection DataBank.

b. Managing the Department's information collection program, including development of Departmental policies, coordinating the development of the Department's information collection budget, reviewing and certifying requests to collect information from the public.

c. Approving and reporting on computer matching activities as required by law through the Departmental Data Integrity Board.

d. Managing the Department printing management and records management programs.

e. Providing support for special priority initiatives (e.g., the Government Information Locator System)

f. Representing the Department through participation on interagency and Departmental work group and task forces.

g. Managing the Department's telecommunications program, including the development of Departmental telecommunications policies and support of Governmentwide telecommunications management projects and processes (e.g., the Interagency Management Council (IMC) and FTS2000 and successor contracts.

C. The Office of Information Technology Services is responsible for:

1. Operating, maintaining, and enhancing the Office of the Secretary computer network (LANs and WANs and its standard office automation applications, such as electronic mail scheduling, and bulletin board services. Developing policies and guidance on information technology within the Office of the Secretary on acquisition and use of information technology, development of architectural standards for interoperability, and coordination of implementation procedures.

2. Operating an information technology support service (Help Desk) for the Office of the Assistant Secretary for Management and Budget, the Immediate Office of the Secretary and subscribing Staff Divisions, for managing standard hardware and software configurations, providing hardware repair services, and software support.

3. Coordinating the OS strategic planning and budgeting processes for information technology, providing direct planning support to assure that IRM plans support agency business planning and mission accomplishment, including establishing and monitoring network policies and procedures, and developing plans and budgets for network support services.

4. Ensuring reliable, high-performance network services, including implementation of automated tools and procedures for network management, utilizing network performance measures, enhancing network security, providing priority response services for network-related problems, and providing remote access to the network for field use and for telecommuting.

5. Coordinating with the Program Support Center or other external providers, the delivery of voice, voice messaging, and video conferencing services for the Office of the Secretary, including system design, implementation, and cost sharing.

6. Representing the Department through participation on interagency and Departmental work groups and task forces.

D. The Office of Information Technology Development is responsible for:

1. Leading Departmental efforts to develop and utilize electronic methods for conducting business among all components of the Department, all agencies of the Federal government, and all parties involved in accomplishing Departmental program objectives (including State Governments, contractors, grantees, other service providers, and the general public). This includes provision of existing documents in electronic format on the Internet in support of electronic dissemination to the public.

2. Manage and support the HHS Internet Information Management Council, as the focal point for Internet information management and dissemination issues and Departmental policies to guide HHS's expanding Internet presence.

3. Identify key emerging, enabling technologies, especially Internet and database innovations, and coordinate, manage, or direct pilot projects in these areas to establish proof of concept, confirm return on investment, or implement initial production implementations in support of agency IT business requirement.

4. Supporting implementation of a general purpose, standards-based IT architecture, promoting and coordinating implementation of data standards for information integration across application systems, utilizing distributed computing environments consisting of data communications networks, data base management systems, and information processing platforms.

5. Assisting ASMB/OS managers to implement and maintain database applications to increase the value and quality of their services and to control risks associated with systems integration, technological obsolescence, software development, and migration to standards-based technologies, especially for systems automating common administrative and management service.

6. Representing the Department through participation on interagency and Departmental work groups and task forces.

Dated: May 26, 1998.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 98–15387 Filed 6–9–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98058]

National Institute for Occupational Safety and Health: Cooperative Agreement To Identify the Incidence of Occupational Asthma; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC), the Nation's prevention agency, announces the availability of funds for fiscal year (FY) 1998 for a cooperative agreement program to identify incident cases of occupational asthma in a defined population, in order to calculate the incidence of occupational asthma for the defined population and by specific industries and occupations within that population.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a) and 671(e)(7)].

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority and/or woman-owned businesses are eligible to apply.

Note: Pub. L. 104–65, dated December 19, 1995, prohibits an organization described in section 501(c)(4) of the IRS Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form of funding.

Availability of Funds

Approximately $200,000 is available in FY 1998 to fund one or two awards. If one award is made, the award will be funded up to $200,000. If two awards are funded, the average award will be $100,000. The amount of funding available may vary and is subject to change. This award is expected to begin on or about September 30, 1998. The award will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before state legislatures. Section 503 of the law provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Pub. L. No. 104–208 (September 30, 1996).

Background

A useful operational definition of occupational asthma (OA) was developed as part of the NIOSH-sponsored Sentinel Event Notification System for Occupational Risks (SENSOR). CDC Occupational disease surveillance: occupational asthma. MMWR 1990; 39:119–123). For the purposes of this announcement, OA is considered to encompass many different types of cases in which asthma is associated with occupational exposures. OA is intended to include asthma cases whose onset is attributed to workplace exposures/conditions, preexisting asthma cases whose symptoms have been quiescent but are initiated anew by workplace exposures/conditions, and ongoing cases of preexisting asthma whose illness is made significantly worse by workplace exposures/conditions or for whom an increase in treatment to maintain clinical stability is due to workplace exposures/conditions. Also, there are a variety of workplace exposures/conditions that can initiate or exacerbate asthma: (a) sensitizing agents (e.g., small or large molecular weight compounds); (b) brief, high-level irritant exposures (e.g., as with reactive airways dysfunction syndrome, or RADS); (c) repeated low-level irritant exposures; (d) broncho-constricting pharmacologic agents (e.g., as with byssinosis or polymer fume fever); (e) physical stimuli (e.g., exercise or exposure to cold).

Occupational asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Accurate estimates of incidence are needed to evaluate the medical, social, and economic impact of this disease. Unfortunately, incidence estimates are few and vary widely, ranging from 5 to 710 cases/10^6/year. NIOSH has funded surveillance for OA since 1987 through the SENSOR program. Estimates of incidence based on SENSOR activities range from a low of 5 cases/10^6/year in Massachusetts during 1988–1992 to a high of 44 cases/10^6/year in Michigan during 1993. However, SENSOR activities have the primary goal of identifying and improving dangerous worksites rather than providing a complete count of cases. Consequently, incidence figures based on SENSOR data underestimate the actual number of diagnosed cases.

The episodic nature of asthma symptoms makes it difficult to obtain objective evidence of work-relatedness. The difficulty of this task and limits on patient-contact time discourage the routine investigation of work-relatedness by many health care providers. In fact, two recent studies report that over 80% of providers fail to explore work-relatedness of adult asthma. This observation has at least two implications for measuring the frequency of OA. First, enhancement of existing surveillance activities to identify all diagnosed OA would still exclude the cases who have gone unnoticed because their health care providers did not explore the work-relatedness of asthma. Second, studies that attempt to count incident OA cases must include evaluation of work-relatedness of symptoms for all cases of asthma in adults, and not rely on health care providers to explore this possible association.

The fact that OA can be initiated by over 200 agents used in hundreds of different processes argues for a population-based rather than industry-specific approach to measuring incidence. In the absence of nationalized health care in the United States, health maintenance organizations (HMOs) provide unique opportunities for population-based studies of asthma. The feasibility of using HMO data to measure OA incidence was demonstrated in a recent study. The investigators estimated the incidence of asthma attributable to occupation was 710 cases/10^6/year, a figure over 16 times greater than the highest SENSOR estimate.

An indirect estimate of OA incidence is derived by knowing both the incidence of adult-onset asthma and the proportion of cases that are work-related. The incidence of new onset asthma among adults during the years from 1971–1974 to 1982–1984 was estimated at 2100 cases/10^6/year by the NHANES–1 Epidemiologic Follow-up Survey. The proportion of incident cases due to occupation can be estimated by using the same proportion estimated for prevalent asthma cases, which ranges from 0.03 to 0.20 based on studies in the United States. The product of this range of proportions and the asthma incidence from the NHANES study yields estimates of OA incidence 63 to 420 cases/10^6/year. Even the low estimate of 63 cases/10^6/year exceeds the highest estimate of 44 cases/10^6/year reported by the SENSOR program. These indirect estimates and the estimate of 710 cases/10^6/year from the HMO study suggest that OA is a more common condition in the United States than previously thought.

Additional research is needed to elaborate the incidence of occupational asthma and the industries and occupations at highest risk. By having accurate estimates of incidence, it will be possible to make appropriate allocation of resources to address this problem. Knowledge of the industries and occupations at highest risk will assist future planning for focused studies or preventive interventions.

Purpose

The purpose of this program is to: 1. evaluate the work-relatedness of incident asthma cases in a defined population (e.g., an HMO) during a minimum 12-month period (in order to account for seasonal variation of incidence), and calculate (a) the incidence of occupational asthma for the defined population; (b) the incidence of occupational asthma for specific industries and/or occupations in the defined population; and (c) the proportion of all incident asthma cases that are associated with workplace exposures; and 2. encourage the use of population-based data to investigate the impact of occupational diseases.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and implement a research protocol.

2. Develop, field test, and revise data collection instruments.

3. Analyze data and interpret findings.

4. Disseminate research results to the scientific community.

5. Collaborate with CDC/NIOSH on these activities, and the activities listed below.

6. Meet annually at CDC/NIOSH to coordinate planned efforts and review progress.

B. CDC/NIOSH Activities

1. Provide scientific, epidemiologic, engineering, environmental, industrial hygiene, and clinical technical assistance.
2. Collaborate on the development of the research protocol(s).
3. Provide technical assistance on the development and evaluation of the data collection instruments.
4. Collaborate with awardee(s) on data analysis, and interpretation of findings.
5. Provide technical assistance to awardees (if more than one award is made) to ensure that the methods used are similar enough so that data can be meaningfully combined.
6. Provide assistance for the dissemination of information resulting from this project.
7. Facilitate an annual meeting between awardee(s) and CDC/NIOSH to coordinate planned efforts and review progress.

Technical Reporting Requirements

An original and two copies of a progress report are required semi-annually. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

The semi-annual progress report should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

D. Other pertinent information, including the status of completeness, timeliness and quality of data.

Application Content

The entire application, including appendices, should not exceed 40 pages and the Proposal Narrative section contained therein should not exceed 25 pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½″ by 11″ paper, with at least 1″ margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets.

A. Title Page

The heading should include the title of grant program, project title, organization, name and address, project director's name address and telephone number.

B. Abstract

A one page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

C. Proposal Narrative

The narrative of each application must:

1. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the 3 year period of the cooperative agreement.
2. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.
3. Provide the name, qualifications, and proposed time allocation of the Project Director who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.
4. Document the applicant's expertise, and extent of experience in the areas of asthma, occupational lung diseases, and population-based studies.
5. Provide letters of support or other documentation demonstrating collaboration where collaboration is necessary for the conduct of the investigation.
6. Human Subjects: State whether or not Humans are subjects in this proposal. (See *Human Subjects* in the Evaluation Criteria and Other Requirements sections.)
7. Inclusion of women, ethnic, and racial groups:

Describe how the CDC policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See *Women, Racial and Ethnic Minorities* in the Evaluation Criteria and Other Requirements sections.)

D. Budget

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Place the budget narrative pages showing, in detail, how funds in each object class will be spent, directly behind form 424A. Do not put these pages in the body of the application. CDC may not approve or fund all proposed activities.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Understanding of the Problem (10%)

Responsiveness to the objectives of the cooperative agreement including (1) the applicant's understanding of the general objectives of the proposed cooperative agreement, and (2) relevance of the proposal to the objectives.

B. Program Personnel (20%)

1. Applicant's technical experience and understanding (e.g., in the areas of asthma, occupational lung diseases, and population-based studies).
2. Qualifications and time allocation of the professional staff to be assigned to this project.
3. Extent to which the management staff and their working partners are clearly described.

C. Goals, Objectives, and Study Design (Total 60%)

1. The extent to which the proposed goals and objectives are clearly stated and measurable. Adequacy of the study design and methodology for accomplishing the stated goals and objectives. A description of the study methodology, data to be collected, and the respective responsibilities of the applicant for carrying out these steps. The degree to which efficient and innovative approaches are proposed to address the problems. Issues of specific concern to this project include the adequacy of the applicant's (a) evidence of access to an appropriate study population; (b) description of the study population, including the occupation/industry mix; (c) operational definitions for asthma and occupational asthma; (d) methods for identifying incident asthma cases and assessing work-relatedness of asthma. The extent to which the applicant's plans and schedule proposed for accomplishing the activities to be carried out in this project are clearly stated, are realistic given the length of the funding period, and can be achieved within the proposed budget.

2. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plan for recruitment and outreach for study participants includes the process of establishing partnerships with community(ies) and recognition of mutual benefits.

D. Facilities and Resources (10%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

E. Human Subjects (Not scored)

Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

F. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

The applicant is not subject to review under Executive Order 12372 Review.

Public Health System Reporting Requirements

The applicant is not subject to review under the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.957.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Confidentiality

All personal identifying information obtained in connection with the delivery of services provided to any person in any program carried out under this cooperative agreement cannot be disclosed unless required by a law of a State or political subdivision or unless such a person provides written, voluntary informed consent.

A. Nonpersonal identifying, unlinked information, which preserves the individual's anonymity, derived from any such program may be disclosed without consent:

1. In summary, statistical, or other similar form, or

2. For clinical or research purposes.

B. Personal identifying information: Recipients of CDC funds who must obtain and retain personally identifying information as part of their CDC-approved work plan must:

1. Maintain the physical security of such records and information at all times;

2. Have procedures in place and staff trained to prevent unauthorized disclosure of client-identifying information;

3. Obtain informed client consent by explaining the risks of disclosure and the recipient's policies and procedures for preventing unauthorized disclosure;

4. Provide written assurance to this effect including copies of relevant policies; and

5. Obtain assurances of confidentiality by agencies to which referrals are made.

Assurance of compliance with these and other processes to protect the confidentiality of information will be required of all recipients. A DHHS certificate of confidentiality may be required for some projects.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationales exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research

studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to Victoria F. Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, CDC at the address listed in this section. It should be postmarked no later than July 2, 1998. The letter should identify program announcement number 98058, and name of the principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 321, Atlanta, GA 30305, on or before July 31, 1998.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98058. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. PLEASE REFER TO NIOSH ANNOUNCEMENT NUMBER 98058 WHEN REQUESTING INFORMATION AND SUBMITTING AN APPLICATION.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic technical assistance may be obtained from Paul K. Henneberger, MPH, ScD, Research Epidemiologist, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Center for Disease Control and Prevention (CDC), Mailstop 234, 1095 Willowdale Road, Morgantown, WV 26505, telephone 304–285–6161, or Internet: pkh0@.cdc.gov.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

The National Occupational Research Agenda

Copies of this publication may be obtained from The National Institute of Occupational Safety and Health, Publications Office, 4676 Columbia Parkway, Cincinnati, OH 45226–1998 or phone 1–800–356–4674, and is available through the NIOSH Home Page; ''http:/ www.cdc.gov/niosh/nora.html''.

Dated: June 2, 1998.

Diane D. Porter,

Acting Director, National Institute For Occupational Safety and Health Centers For Disease Control and Prevention (CDC).

[FR Doc. 98–15359 Filed 6–9–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 63 FR 2256, dated January 14, 1998) is amended to reflect the restructuring of the Office of the Director, National Center for Infectious Disease, Centers for Disease Control and Prevention. The functional statement for the Office of the Director is being revised accordingly.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Office of the Director (CR1)* and insert the following:

(1) Directs and manages the programs and activities of the National Center for Infectious Diseases (NCID); (2) provides leadership for the implementation of the Emerging Infections Plan to enhance the prevention and control of infectious diseases nationally and internationally; (3) provides leadership and guidance on policy, program planning and development, program management, and operations; (4) provides NCID-wide administrative and program services, and coordinates or assures coordination with the appropriate CDC staff offices on administrative and program matters; (5) provides liaison with other Governmental agencies, international organizations, including the World Health Organization, and other outside groups; (6) coordinates, in collaboration with the appropriate NCID and CDC components, international health activities relating to the prevention and control of infectious diseases; (7) advises the Director, CDC, on policy matters concerning NCID programs and activities; (8) coordinates development and review of regulatory documents and congressional reports; (9) analyzes health programs and proposed legislation with respect to NCID's programs, goals and objectives; (10) provides leadership and support for NCID Programs in the areas of statistics, information technology, and database management.

Delete the title and functional statement for the *Office of Planning and*

Health Communications (CR14) and insert the following:

Office of Health Communication (CR14). (1) Provides national leadership, in consultation with the NCID divisions and programs and the CDC Office of Communication, on the implementation of a comprehensive and integrated program of public health communications for the prevention an control of new and reemerging infectious diseases; (2) plans, develops, coordinates, and evaluates NCID-wide networks, partnerships, systems, and standards for public and professional health communications; (3) advises the Director and other NCID leadership staff on health communication strategies; (4) provides expert technical assistance, consultation, and training to NCID staff on theory-based health education, behavioral science, distance education, community organization, and electronic, print, and oral communications; (5) develops infectious disease prevention and control messages and promotes their dissemination to lay and professional audiences through various marketing techniques; (6) investigates, plans, develops, evaluates, and promotes the use of electronic technology to expand NCID's health communications capacity and impact in collaboration with CDC communication and information offices, state and local health departments, and other prevention partners; (7) provides services, coordination, identification, guidance, and training for, and promotes usage of, state-of-the-art electronic communication technologies; (8) provides editorial and clearance assistance in the preparation of scientific articles and other documents and products for electronic and hard copy publication or presentation; (9) produces NCID-wide publications, including a newsletter, anthologies and compilations, and cross-cutting background documents; and manages NCID's technical information resources, including document databases.

Office of Surveillance (CR16). (1) Provides leadership, guidance, and coordination on NCID surveillance activities and systems; (2) provides NCID leadership on issues related to internal and external integration of CDC surveillance; (3) advises the Director on surveillance priorities for determining the burden of infectious diseases; (4) provides direction and oversight for the Emerging Infections Programs (EIPs) and sentinel surveillance networks through cooperative agreements with state/local health departments and other organizations; (5) provides technical assistance and direction for surveillance activities in the Epidemiology and Laboratory capacity cooperative agreements and other emerging infections activities/programs with a surveillance emphasis; (6) provides leadership for enhancing surveillance of infectious diseases through collaboration with managed care organizations; (7) provides technical leadership for and consultation on international infectious diseases surveillance activities; (8) provides NCID leadership on economic analysis and prevention effectiveness evaluation of infectious disease control and prevention activities; (9) in carrying out the above functions, collaborates, as appropriate, with other Centers, Institute, and Offices (CIOs) of the CDC.

Dated: June 1, 1998.

Clarie V. Broome,

Acting Director.

[FR Doc. 98–15442 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Publication of Biennial Report to the Congress on the Status of Children in Head Start Programs; Fiscal Year 1997

AGENCY: Head Start Bureau, Administration on Children Youth and Families, ACF, DHHS.

ACTION: Notice of publication and availability of FY 1997 Biennial Report to Congress on the Status of Children in Head Start Programs.

SUMMARY: The Head Start Bureau announces publication of the Biennial Report to Congress on the Status of Children in Head Start Programs. This report is mandated under Section 650 of the Head Start Act, as amended, which requires the Secretary of Health and Human Services to submit a report to the Congress, at least once during every two-year period, on the status of children in Head Start programs. The sources of data for this report were the Program Information Report (PIR), the Head Start Cost System (HSCOST), the Head Start Monitoring Tracking System (HSMTS) and the 1990 Census.

Head Start is a comprehensive child development program for low-income preschool children and their families. Head Start provides high quality early childhood education which emphasizes cognitive and language development, social and emotional development, physical and mental health, nutrition, social services and parent involvement. The goal of Head Start is to bring about a greater degree of social competence in the children of low-income families by enhancing their effectiveness in dealing with their present environment, and with later responsibilities in school and life.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Section 650 of the Head Start Act, as amended, requires that the Secretary of the Department of Health and Human Services submit a report to the Congress concerning the status of children in Head Start programs.

This notice is submitted to the **Federal Register** in compliance with Section 650 of the Head Start Act, as amended, which states that upon submitting the Biennial Report on the Status of Children in Head Start Programs to Congress, a notification must be placed in the **Federal Register** announcing the report has been submitted to Congress, and noting that the report is available to the general public.

FOR FURTHER INFORMATION CONTACT: A copy of the Head Start Biennial Report may be obtained by contacting: Head Start Publications Management Center, P.O. Box 26417, Alexandria, VA 22313. The fax number is (703) 683–5769. The e-mail address is HSPMC6@idt.net.

Dated: June 3, 1998.

Helen H. Taylor,

Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families.

[FR Doc. 98–15388 Filed 6–9–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0335]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of

information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Good Laboratory Practice (GLP) for Nonclinical Laboratory Studies regulations.

DATES: Submit written comments on the collection of information by August 10, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below. With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

GLP Regulations for Nonclinical Studies (21 CFR Part 58) (OMB Control Number 0910–0119—Extension)

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits (21 U.S.C. 348, 355, 360b, and 360e). Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOP's), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOP's; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts on-site audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	400	60.25	24,100	1	24,100
58.185	400	60.25	24,100	27.65	666,400
Total					690,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	400	20	8,000	.21	1,700
58.35(b)(1) through (b)(6) and (c)	400	270.76	108,400	3.36	363,900
58.63(b) and (c)	400	60	24,000	.09	2,200
58.81(a) through (c)	400	301.8	120,000	.14	16,800
58.90(c) and (g)	400	62.7	25,000	.13	3,200
58.105(a) and (b)	400	5	2,000	11.8	23,600
58.107(d)	400	1	400	4.25	1,700
58.113(a)	400	15.33	6,132	6.8	41,700
58.120	400	15.38	6,160	32.7	201,200
58.195	400	251.5	100,000	3.9	392,400
Total					1,048,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15409 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0308]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements obligating holders of approved new animal drug applications (NADA's) and abbreviated new animal drug applications to submit information on adverse drug reactions, lack of effectiveness and product defects.

DATES: Submit written comments on the collection of information by August 10, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report—21 CFR Part 510—(OMB Control Number 0910–0012—Reinstatement)

Section 512(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)), 21 CFR 510.300, 510.301, and 510.302 require that applicants of approved NADA's submit within 15 working days of receipt, complete records of reports of certain adverse drug reactions and unusual failure of new animal drugs. Other reporting requirements of adverse reactions to these drugs must be reported annually or semiannually in a specific format.

This continuous monitoring of approved new animal drugs, affords the primary means by which FDA obtains information regarding potential problems in safety and effectiveness of marketed animal drugs and potential manufacturing problems. Data already on file with FDA is not adequate because animal drug effects can change over time and less apparent effects may take years to manifest themselves. Reports are reviewed along with those previously submitted for a particular drug to determine if any change is needed in the product or labeling, such as package insert changes, dosage changes, additional warnings or contraindications, or product reformulation.

Adverse reaction reports are required to be submitted by the drug manufacturer on FDA Forms 1932 or 1932a (voluntary reporting form), following complaints from animal owners or veterinarians. Also, product defects and lack of effectiveness complaints are submitted to FDA by the drug manufacturer following their own

detection of a problem or complaints from product users or their veterinarians using forms FDA Forms 1932 and 1932a. Form FDA 2301 is available for the required transmittal of periodic reports and promotional material for new animal drugs. Respondents to this collection of information are applicants of approved NADA's.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 2301	510.302(a)	190	19.74	3,750	0.5	1875
FDA 1932	510.302(b)	190	15.26	2,900	1.0	290
FDA 1932a (voluntary)	510.302(b)	100	1.0	100	1.0	100
Total Burden Hours						4,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
510.300(a) and 510.301(a)	190	15.26	3,750	10.35	38,812
510.300(b) and 510.301(b)	190	19.74	2,900	0.50	1,450
Total Burden Hours					40,262

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours (i.e., adverse drug reaction, lack of effectiveness, and product defect reports) are derived from agency records and experience.

Dated: June 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15485 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0131]

Scott Feuer; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Scott Feuer, 25 Glenwood Rd., Tenafly, NJ 07670, for a period of 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on finding that Mr. Feuer was convicted of conspiracy to commit an offense against the United States and that Mr. Feuer's conduct undermined the process for the regulation of drugs. Mr. Feuer has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: June 2, 1998.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On March 24, 1993, the United States District Court for the District of Maryland accepted Mr. Feuer's plea of guilty to one count of conspiracy to commit an offense against the United States under 18 U.S.C. 371 and 18 U.S.C. 2. This conspiracy conviction was based on Mr. Feuer's directing others to change manufacturing procedures for the generic drug Fenoprophen, falsifying records in order to conceal from the FDA the manufacturing changes, and distributing the Fenoprophen without FDA approval of the formula actually distributed.

As a result of this conviction, FDA served Mr. Feuer by certified mail on March 2, 1998, a notice proposing to debar him for a period of 5 years from providing services in any capacity to a person that has an approved or pending drug product application, and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Feuer was convicted of a conspiracy to commit a felony under Federal law for conduct relating to the regulation of a drug product and that Mr. Feuer's conduct undermined the process for the regulation of drugs. Mr. Feuer did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director of the Center for Drug Evaluation and Research, under section 306(b) of the act, and under authority delegated to her (21 CFR 5.99(b)), finds that Scott Feuer has been convicted of conspiracy to commit a felony under Federal law for conduct relating to the regulation of a drug product and that Mr. Feur's conduct undermined the process for the regulation of drugs.

As a result of the foregoing finding, Scott Feuer is debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective June 2, 1998 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))), for a

period of 5 years. Any person with an approved or pending drug product application who knowingly uses the services of Mr. Feuer in any in any capacity during his period of debarment will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Feuer, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications or abbreviated antibiotic drug applications submitted by or with the assistance of Mr. Feuer during his period of debarment.

Any application by Mr. Feuer for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 98N–0131 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 18, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–15482 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0299]

International Conference on Harmonisation; Guidance on Ethnic Factors in the Acceptability of Foreign Clinical Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''E5 Ethnic Factors in the Acceptability of Foreign Clinical Data.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance recommends regulatory and development strategies to permit clinical data collected in one region to be used for the support of drug and biologic registrations in another region while allowing for the influence of ethnic factors.

DATES: Effective June 10, 1998. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Barbara G. Matthews, Center for Biologics Evaluation and Research (HFM–570), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5094.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of July 31, 1997 (62 FR 41054), FDA published a draft tripartite guideline entitled ''Ethnic Factors in the Acceptability of Foreign Clinical Data'' (E5). The notice gave interested persons an opportunity to submit comments by October 29, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on February 5, 1998.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance is intended to facilitate the registration of drugs and biologics among ICH regions by recommending a framework for evaluating the impact of ethnic factors on a drug's effect, i.e., its efficacy and safety at a particular dosage and dose regimen. The guidance recommends regulatory and development strategies that will permit adequate evaluation of the influence of ethnic factors, minimize duplication of clinical studies, and expedite the drug approval process.

This guidance represents the agency's current thinking on ethnic factors in the acceptability of foreign clinical data for approval of both drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be

periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or at CBER's World Wide Webb site at ''http://www.fda.gov/cber/publications.htm''.

The text of the guidance follows:

E5 Ethic Factors in the Acceptability of Foreign Clinical Data[1]

1.0 Introduction
1.1 Objectives
1.2 Background
1.3 Scope
2.0 Assessment of the Clinical Data Package Including Foreign Clinical Data for Its Fulfillment of Regulatory Requirements in the New Region
2.1 Additional Studies to Meet the New Region's Regulatory Requirements
3.0 Assessment of the Foreign Clinical Data for Extrapolation to the New Region
3.1 Characterization of the Medicine's Sensitivity to Ethnic Factors
3.2 Bridging Data Package
3.2.1 Definition of Bridging Data Package and Bridging Study
3.2.2 Nature and Extent of the Bridging Study
3.2.3 Bridging Studies for Efficacy
3.2.4 Bridging Studies for Safety
4.0 Developmental Strategies for Global Development
5.0 Summary
Glossary (Italicized words and terms in the text of the guidance are defined or explained in the glossary.)
Appendix A: Classification of intrinsic and extrinsic ethnic factors
Appendix B: Assessment of the clinical data package (CDP) for acceptability
Appendix C: Pharmacokinetic, pharmacodynamic, and dose-response considerations
Appendix D: A medicine's sensitivity to ethnic factors

[1] This guidance represents the agency's current thinking on ethnic factors in the acceptability of foreign clinical data for approval of both drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

1.0 Introduction

The purpose of this guidance is to facilitate the registration of medicines among *ICH regions* (see Glossary) by recommending a framework for evaluating the impact of *ethnic factors* upon a medicine's effect, i.e., its efficacy and safety at a particular *dosage* and *dose regimen*. It provides guidance with respect to regulatory and development strategies that will permit adequate evaluation of the influence of ethnic factors while minimizing duplication of clinical studies and supplying medicines expeditiously to patients for their benefit. This guidance should be implemented in context with other ICH guidances. For the purposes of this document, ethnic factors are defined as those factors relating to the genetic and physiologic (*intrinsic*) and the cultural and environmental (*extrinsic*) characteristics of a population (Appendix A).

1.1 Objectives

To describe the characteristics of foreign clinical data that will facilitate their extrapolation to different populations and support their acceptance as a basis for registration of a medicine in a *new region*.

- To describe regulatory strategies that minimize duplication of clinical data and facilitate acceptance of foreign clinical data in the new region.
- To describe the use of *bridging studies*, when necessary, to allow extrapolation of foreign clinical data to a new region.
- To describe development strategies capable of characterizing ethnic factor influences on safety, efficacy, dosage, and dose regimen.

1.2 Background

All of the ICH regions acknowledge the desirability of utilizing foreign clinical data that meet the regulatory standards and clinical trial practices acceptable to the region considering the application for registration.

However, concern that ethnic differences may affect the medication's safety, efficacy, dosage, and dose regimen in the new region has limited the willingness to rely on foreign clinical data. Historically, this has been one of the reasons, therefore, the regulatory authority in the new region has often requested that all, or much of, the foreign clinical data in support of registration be duplicated in the new region. Although ethnic differences among populations may cause differences in a medicine's safety, efficacy, dosage, or dose regimen, many medicines have comparable characteristics and effects across regions. Requirements for extensive duplication of clinical evaluation for every compound can delay the availability of new therapies and unnecessarily waste drug development resources.

1.3 Scope

This guidance is based on the premise that it is not necessary to repeat the entire clinical drug development program in the new region and is intended to recommend strategies for accepting foreign clinical data as full or partial support for approval of an application in a new region. It is critical to appreciate that this guidance is not intended to alter the data requirements for registration in the new region; it seeks to recommend when these data requirements may be satisfied with foreign clinical data. All data in the clinical data package, including foreign data, should meet the standards of the new region with respect to study design and conduct, and the available data should satisfy the regulatory requirements in the new region. Additional studies conducted in any region may be required by the new region to complete the clinical data package.

Once a clinical data package fulfills the regulatory requirements of the new region, the only remaining issue with respect to the acceptance of the foreign clinical data is its ability to be extrapolated to the population of the new region. When the regulatory authority or the sponsor is concerned that differences in ethnic factors could alter the efficacy or safety of the medicine in the population in the new region, the sponsor may need to generate a limited amount of clinical data in the new region in order to extrapolate or ''bridge'' the clinical data between the two regions. If a sponsor needs to obtain additional clinical data to fulfill the regulatory requirements of the new region, it is possible that these clinical trials can be designed to also serve as the bridging studies.

Thus, the sponsor and the regional regulatory authority of the new region would assess an application for registration for:

(1) Its completeness with respect to the regulatory requirements of the new region, and

(2) The ability to extrapolate to the new region those parts of the application (which could be most or all of the application) based on studies from the foreign region (Appendix B).

2.0 Assessment of the Clinical Data Package Including Foreign Clinical Data for Its Fulfillment of Regulatory Requirements in the New Region

The regional regulatory authority would assess the clinical data package, including the foreign data, as to whether or not it meets all of the regulatory standards regarding the nature and quality of the data, irrespective of its geographic origin, i.e., data generated either totally in a foreign region (or regions) or data from studies conducted both in a foreign and the new region to which the application is being made. A clinical data package that meets all of these regional regulatory requirements is defined as a *''complete'' clinical data package* for submission and potential approval. The acceptability of the foreign clinical data component of the complete data package depends then upon whether it can be extrapolated to the population of the new region.

Before extrapolation can be considered, the complete clinical data package, including foreign clinical data, submitted to the new region should contain:

- Adequate characterization of *pharmacokinetics*, *pharmacodynamics*, dose response, efficacy, and safety in the population of the foreign region(s).
- Clinical trials establishing dose response, efficacy and safety. These trials should:

—Be designed and conducted according to regulatory standards in the new region, e.g., choice of controls, and should be conducted according to good clinical practice (GCP),

—Be *adequate and well-controlled*,

—Utilize endpoints that are considered appropriate for assessment of treatment,

—Evaluate clinical disorders using medical and diagnostic definitions that are acceptable to the new region.

• Characterization in a population relevant to the new region of the pharmacokinetics, and where possible, pharmacodynamics and dose response for pharmacodynamic endpoints. This characterization could be performed in the foreign region in a population representative of the new region or in the new region.

Several ICH guidances that address aspects of design, conduct, analysis, and reporting of clinical trials will help implement the concepts of the complete clinical data package. These guidances include GCP's (E6), evaluation of dose response (E4), adequacy of safety data (E1 and E2), conduct of studies in the elderly (E7), reporting of study results (E3), general considerations for clinical trials (E8), and statistical considerations (E9). A guidance on the choice of control group in clinical study design (E10) is under development.

2.1 Additional Studies to Meet the New Region's Regulatory Requirements

When the foreign clinical data do not meet the regional regulatory requirements, the regulatory authority may require additional clinical trials such as:

• Clinical trials in different subsets of the population, such as patients with renal insufficiency, patients with hepatic dysfunction, etc.,

• Clinical trials using different comparators at the new region's approved dosage and dose regimen,

• Drug-drug interaction studies.

3.0 Assessment of the Foreign Clinical Data for Extrapolation to the New Region

3.1 Characterization of the Medicine's Sensitivity to Ethnic Factors

To assess a medicine's sensitivity to ethnic factors, it is important that there be knowledge of its pharmacokinetic and pharmacodynamic properties and the translation of those properties to clinical effectiveness and safety. A reasonable evaluation is described in Appendix C. Some properties of a medicine (chemical class, metabolic pathway, pharmacologic class) make it more or less likely to be affected by ethnic factors (Appendix D). Characterization of a medicine as ''ethnically insensitive,'' i.e., unlikely to behave differently in different populations, would usually make it easier to extrapolate data from one region to another and need less bridging data.

Factors that make a medicine ethnically sensitive or insensitive will become better understood and documented as effects in different regions are compared. It is clear at present, however, that such characteristics as clearance by an enzyme showing genetic polymorphism and a steep dose-response curve will make ethnic differences more likely. Conversely, a lack of metabolism or active excretion, a wide *therapeutic dose range*, and a flat dose-response curve will make ethnic differences less likely. The clinical experience with other members of the drug class in the new region will also contribute to the assessment of the medicine's sensitivity to ethnic factors. It may be easier to conclude that the pharmacodynamic and clinical behavior of a medicine will be similar in the foreign and new regions if other members of the pharmacologic class have been studied and approved in the new region with dosing regimens similar to those used in the original region.

3.2 Bridging Data Package

3.2.1 Definition of Bridging Data Package and Bridging Study

A *bridging data package* consists of: (1) Selected information from the complete clinical data package that is relevant to the population of the new region, including pharmacokinetic data, and any preliminary pharmacodynamic and dose-response data and, if needed, (2) a bridging study to extrapolate the foreign efficacy data and/or safety data to the new region.

A *bridging study* is defined as a study performed in the *new* region to provide pharmacodynamic or clinical data on efficacy, safety, dosage, and dose regimen in the new region that will allow extrapolation of the foreign clinical data to the population in the new region. A bridging study for efficacy could provide additional pharmacokinetic information in the population of the new region. When no bridging study is needed to provide clinical data for efficacy, a pharmacokinetic study in the new region may be considered as a bridging study.

3.2.2 Nature and Extent of the Bridging Study

This guidance proposes that when the regulatory authority of the new region is presented with a clinical data package that fulfills its regulatory requirements, the authority should request only those additional data necessary to assess the ability to extrapolate foreign data from the complete clinical data package to the new region. The sensitivity of the medicine to ethnic factors will help determine the amount of such data. In most cases, a single trial that successfully provides these data in the new region and confirms the ability to extrapolate data from the original region should suffice and should not need further replication. Note that even though a single study should be sufficient to ''bridge'' efficacy data, a sponsor may find it practical to obtain the necessary data by conducting more than one study. For example, where it is intended that a fixed dose, dose-response study using a clinical endpoint is needed as the bridging study, a short-term pharmacologic endpoint study may be used to choose the dose(s) for the larger (clinical endpoint) study.

When the regulatory authority requests, or the sponsor decides to conduct, a bridging study, discussion between the regional regulatory authority and sponsor is encouraged, when possible, to determine what kind of bridging study will be needed. The relative ethnic sensitivity will help determine the need for and the nature of the bridging study. For regions with little experience with registration based on foreign clinical data, the regulatory authorities may still request a bridging study for approval even for compounds insensitive to ethnic factors. As experience with interregional acceptance increases, there will be a better understanding of situations in which bridging studies are needed. It is hoped that with experience, the need for bridging data will lessen.

The following is general guidance about the ability to extrapolate data generated from a bridging study:

• If the bridging study shows that dose response, safety, and efficacy in the new region are similar, then the study is readily interpreted as capable of ''bridging'' the foreign data.

• If a bridging study, properly executed, indicates that a different dose in the new region results in a safety and efficacy profile that is not substantially different from that derived in the original region, it will often be possible to extrapolate the foreign data to the new region, with appropriate dose adjustment, if this can be adequately justified (e.g., by pharmacokinetic and/or pharmacodynamic data).

• If the bridging study designed to extrapolate the foreign data is not of sufficient size to confirm adequately the extrapolation of the adverse event profile to the new population, additional safety data may be necessary (section 3.2.4).

• If the bridging study fails to verify safety and efficacy, additional clinical data (e.g., confirmatory clinical trials) would be necessary.

3.2.3 Bridging Studies for Efficacy

Generally, for medicines characterized as insensitive to ethnic factors, the type of bridging study needed (if needed) will depend upon experience with the drug class and upon the likelihood that extrinsic ethnic factors (including design and conduct of clinical trials) could affect the medicine's safety, efficacy, and dose-response. For medicines that are ethnically sensitive, a bridging study may often be needed if the populations in the two regions are different. The following examples illustrate types of bridging studies for consideration in different situations:

• No bridging study

In some situations, extrapolation of clinical data may be feasible without a bridging study:

(1) If the medicine is ethnically insensitive and extrinsic factors such as medical practice and conduct of clinical trials in the two regions are generally similar.

(2) If the medicine is ethnically sensitive but the two regions are ethnically similar and there is sufficient clinical experience with pharmacologically related compounds to provide reassurance that the class behaves similarly in patients in the two regions with respect to efficacy, safety, dosage, and dose regimen. This might be the case for well-established classes of drugs known to be administered similarly, but not necessarily identically, in the two regions.

• Bridging studies using pharmacologic endpoints

If the regions are ethnically dissimilar and the medicine is ethnically sensitive but extrinsic factors are generally similar (e.g., medical practice, design and conduct of clinical trials) and the drug class is a familiar one in the new region, a controlled pharmacodynamic study in the new region, using a pharmacologic endpoint that is thought to reflect relevant drug activity (which could be a well-established surrogate endpoint), could provide assurance that the efficacy, safety, dose and dose regimen data developed in the first region are applicable to the new region. Simultaneous pharmacokinetic (i.e., blood concentration) measurements may make such studies more interpretable.

• Controlled clinical trials

It will usually be necessary to carry out a controlled clinical trial, often a randomized, fixed dose, dose-response study, in the new region when:

(1) There are doubts about the choice of dose,

(2) There is little or no experience with acceptance of controlled clinical trials carried out in the foreign region,

(3) Medical practice (e.g., use of concomitant medications and design and/or conduct of clinical trials) is different, or

(4) The drug class is not a familiar one in the new region.

Depending on the situation, the trial could replicate the foreign study or could utilize a standard clinical endpoint in a study of shorter duration than the foreign studies or utilize a validated surrogate endpoint, e.g., blood pressure or cholesterol (longer studies and other endpoints may have been used in the foreign phase III clinical trials).

If pharmacodynamic data suggest that there are interregional differences in response, it will generally be necessary to carry out a controlled trial with clinical endpoints in the new region. Pharmacokinetic differences may not always create that necessity, as dosage adjustments in some cases might be made without new trials. However, any substantial difference in metabolic pattern may often indicate a need for a controlled clinical trial.

When the practice of medicine differs significantly in the use of concomitant medications, or adjunct therapy could alter the medicine's efficacy or safety, the bridging study should be a controlled clinical trial.

3.2.4 Bridging Studies for Safety

Even though the foreign clinical data demonstrate efficacy and safety in the foreign region, there may occasionally remain a safety concern in the new region. Safety concerns could include the accurate determination of the rates of relatively common adverse events in the new region and the detection of serious adverse events (in the 1 percent range and generally needing about 300 patients to assess). Depending upon the nature of the safety concern, safety data could be obtained in the following situations:

• A bridging study to assess efficacy, such as a dose-response study, could be powered to address the rates of common adverse events and could also allow identification of serious adverse events that occur more commonly in the new region. Close monitoring of such a trial would allow recognition of such serious events before an unnecessarily large number of patients in the new region are exposed. Alternatively, a small safety study could precede the bridging study to provide assurance that serious adverse effects were not occurring at a high rate.

• If there is no efficacy bridging study needed or if the efficacy bridging study is too small or of insufficient duration to provide adequate safety information, a separate safety study may be needed. This could occur where there is:

—An index case of a serious adverse event in the foreign clinical data,

—A concern about differences in reporting adverse events in the foreign region,

—Only limited safety data in the new region arising from an efficacy bridging study, inadequate to extrapolate important aspects of the safety profile, such as rates of common adverse events or of more serious adverse events.

4.0 Developmental Strategies for Global Development

Definition of not only pharmacokinetics but also pharmacodynamics and dose response early in the development program may facilitate the determination of the need for, and nature of, any requisite bridging data. Any candidate medicine for global development should be characterized as ethnically sensitive or insensitive (Appendix D). Ideally, this characterization should be conducted during the early clinical phases of drug development, i.e., human pharmacology and therapeutic exploratory studies. In some cases, it may be useful to discuss bridging study designs with regulatory agencies prior to completion of the clinical data package. However, analysis of the data within the complete clinical data package will determine the need for, and type of bridging study. For global development, studies should include populations representative of the regions where the medicine is to be registered and should be conducted according to ICH guidelines.

A sponsor may wish to leave the assessment of pharmacokinetics, pharmacodynamics, dosage, and dose regimens in populations relevant to the new region until later in the drug development program. Pharmacokinetic assessment could be accomplished by formal pharmacokinetic studies or by applying population pharmacokinetic methods to clinical trials conducted either in a population relevant to the new region or in the new region.

5.0 Summary

This guidance describes how a sponsor developing a medicine for a new region can deal with the possibility that ethnic factors could influence the effects (safety and efficacy) of medicines and the risk/benefit assessment in different populations. Results from the foreign clinical trials could comprise most, or in some cases, all of the clinical data package for approval in the new region, so long as they are carried out according to the requirements of the new region. Acceptance in the new region of such foreign clinical data may be achieved by generating ''bridging'' data in order to extrapolate the safety and efficacy data from the population in the foreign region(s) to the population in the new region.

Glossary

Adequate and well-controlled trial: An adequate and well controlled trial has the following characteristics:

• A design that permits a valid comparison with a control to provide a quantitative assessment of treatment effect;

• The use of methods to minimize bias in the allocation of patients to treatment groups and in the measurement and assessment of response to treatment; and

• An analysis of the study results appropriate to the design to assess the effects of the treatment.

Bridging data package: Selected information from the complete clinical data package that is relevant to the population of the new region, including pharmacokinetic data, and any preliminary pharmacodynamic and dose-response data and, if needed, supplemental data obtained from a bridging study in the new region that will allow extrapolation of the foreign safety and efficacy data to the population of the new region.

Bridging study: A bridging study is defined as a supplemental study performed in the new region to provide pharmacodynamic or clinical data on efficacy, safety, dosage, and dose regimen in the new region that will allow extrapolation of the foreign clinical data to the new region. Such studies could include additional pharmacokinetic information.

Complete clinical data package: A clinical data package intended for registration containing clinical data that fulfill the regulatory requirements of the new region and containing pharmacokinetic data relevant to the population in the new region.

Compound insensitive to ethnic factors: A compound whose characteristics suggest minimal potential for clinically significant impact by ethnic factors on safety, efficacy, or dose response.

Compound sensitive to ethnic factors: A compound whose pharmacokinetic, pharmacodynamic, or other characteristics suggest the potential for clinically significant impact by intrinsic and/or extrinsic ethnic factors on safety, efficacy, or dose response.

Dosage: The quantity of a medicine given per administration, or per day.

Dose regimen: The route, frequency and duration of administration of the dose of a medicine over a period of time.

Ethnic factors: The word ethnicity is derived from the Greek word ''ethnos,'' meaning nation or people. Ethnic factors are factors relating to races or large populations grouped according to common traits and customs. Note that this definition gives ethnicity, by virtue of its cultural as well as genetic implications, a broader meaning than racial. Ethnic factors may be classified as either intrinsic or extrinsic. (Appendix A)

• *Extrinsic ethnic factors*: Extrinsic ethnic factors are factors associated with the environment and culture in which a person resides. Extrinsic factors tend to be less genetically and more culturally and

behaviorally determined. Examples of extrinsic factors include the social and cultural aspects of a region such as medical practice, diet, use of tobacco, use of alcohol, exposure to pollution and sunshine, socioeconomic status, compliance with prescribed medications, and, particularly important to the reliance on studies from a different region, practices in clinical trial design and conduct.

• *Intrinsic ethnic factors*: Intrinsic ethnic factors are factors that help to define and identify a subpopulation and may influence the ability to extrapolate clinical data between regions. Examples of intrinsic factors include genetic polymorphism, age, gender, height, weight, lean body mass, body composition, and organ dysfunction.

Extrapolation of foreign clinical data: The generalization and application of the safety, efficacy, and dose-response data generated in a population of a foreign region to the population of the new region.

Foreign clinical data: Foreign clinical data is defined as clinical data generated outside of the new region (i.e., in the foreign region).

ICH regions: European Union, Japan, the United States of America.

New region: The region where product registration is sought.

• Population representative of the new region: A population that includes the major racial groups within the new region.

Pharmacokinetic study: A study of how a medicine is handled by the body, usually involving measurement of blood concentrations of drug and its metabolite(s) (sometimes concentrations in urine or tissues) as a function of time. Pharmacokinetic studies are used to characterize absorption, distribution, metabolism, and excretion of a drug, either in blood or in other pertinent locations. When combined with pharmacodynamic measures (a PK/PD study) it can characterize the relation of blood concentrations to the extent and timing of pharmacodynamic effects.

Pharmacodynamic study: A study of a pharmacological or clinical effect of the medicine in individuals to describe the relation of the effect to dose or drug concentration. A pharmacodynamic effect can be a potentially adverse effect (anticholinergic effect with a tricyclic), a measure of activity thought related to clinical benefit (various measures of beta-blockade, effect on ECG (electrocardiogram) intervals, inhibition of ACE (angiotensin converting enzyme) or of angiotensin I or II response), a short-term desired effect, often a surrogate endpoint (blood pressure, cholesterol), or the ultimate intended clinical benefit (effects on pain, depression, sudden death).

Population pharmacokinetic methods: Population pharmacokinetic methods are a population-based evaluation of measurements of systemic drug concentrations, usually two or more per patient under steady state conditions, from all, or a defined subset of, patients who participate in clinical trials.

Therapeutic dose range: The difference between the lowest effective dose and the highest dose that gives further benefit.

Appendix A: Classification of intrinsic and extrinsic ethnic factors

Appendix A: Classification of intrinsic and extrinsic ethnic factors

INTRINSIC		EXTRINSIC
Genetic	Physiological and pathological conditions	Environmental
Gender	Age (children-elderly)	Climate Sunlight Pollution
Height Bodyweight		
	Liver Kidney Cardiovascular functions	**Culture** Socioeconomic factors Educational status Language
ADME Receptor sensitivity		
Race		Medical practice Disease definition/Diagnostic Therapeutic approach Drug compliance
Genetic polymorphism of the drug metabolism		
	Smoking Alcohol	
	Food habits Stress	
Genetic diseases	Diseases	
		Regulatory practice/GCP Methodology/Endpoints

Appendix B: Assessment of the clinical data package (CDP) for acceptability

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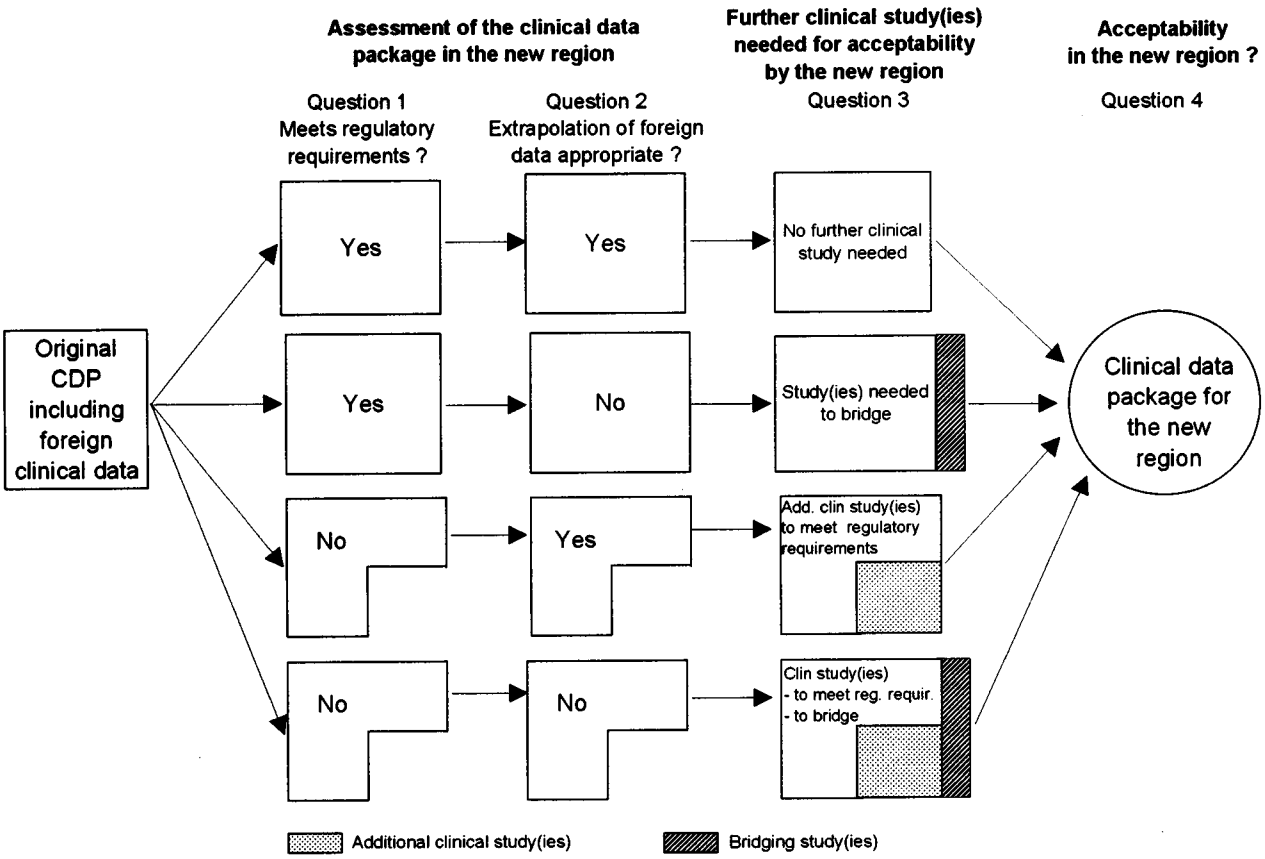

Appendix C: Pharmacokinetic, pharmacodynamic, and dose-response considerations

Evaluation of the pharmacokinetics and pharmacodynamics, and their comparability, in the three major racial groups in the ICH regions (Asian, Black, and Caucasian) is critical to the registration of medicines in the ICH regions. Basic pharmacokinetic evaluation should characterize absorption, distribution, metabolism, excretion (ADME), and where appropriate, food-drug and drug-drug interactions.

Adequate pharmacokinetic comparison between populations of the two regions allows rational consideration of what kinds of further pharmacodynamic and clinical studies (bridging studies) are needed in the new region. In contrast to the pharmacokinetics of a medication, where differences between populations may be attributed primarily to intrinsic ethnic factors and are readily identified, the pharmacodynamic response (clinical effectiveness, safety, and dose response) may be influenced by both intrinsic and extrinsic ethnic factors and this may be difficult to identify except by conducting clinical studies in the new region.

The ICH E4 document describes various approaches to dose-response evaluation. In general, dose response (or concentration response) should be evaluated for both pharmacologic effect (where one is considered pertinent) and clinical endpoints in the foreign region. The pharmacologic effect, including dose response, may also be evaluated in the foreign region in a population representative of the new region. Depending on the situation, data on clinical efficacy and dose response in the new region may or may not be needed, e.g., if the drug class is familiar and the pharmacologic effect is closely linked to clinical effectiveness and dose response, these foreign pharmacodynamic data may be a sufficient basis for approval and clinical endpoint and dose-response data may not be needed in the new region. The pharmacodynamic evaluation, and possible clinical evaluation (including dose response) is important because of the possibility that the response curve may be shifted in a new population. Examples of this are well-documented, e.g., the decreased response in blood pressure of blacks to angiotensin converting enzyme inhibitors.

Appendix D: A medicine's sensitivity to ethnic factors

Characterization of a medicine according to the potential impact of ethnic factors upon its pharmacokinetics, pharmacodynamics, and therapeutic effects may be useful in determining what sort of bridging study is needed in the new region. The impact of ethnic factors upon a medicine's effect will vary depending upon the drug's pharmacologic class and indication and the age and gender of the patient. No one property of the medicine is predictive of the compound's relative sensitivity to ethnic factors. The type of bridging study needed is ultimately a matter of judgment, but assessment of sensitivity to ethnic factors may help in that judgment.

The following properties of a compound make it less likely to be sensitive to ethnic factors:

- Linear pharmacokinetics (PK).
- A flat pharmacodynamic (PD) (effect-concentration) curve for both efficacy and safety in the range of the recommended dosage and dose regimen (this may mean that the medicine is well-tolerated).
- A *wide therapeutic dose range* (again, possibly an indicator of good tolerability).

• Minimal metabolism or metabolism distributed among multiple pathways.
• High bioavailability, thus less susceptibility to dietary absorption effects.
• Low potential for protein binding.
• Little potential for drug-drug, drug-diet, and drug-disease interactions.
• Nonsystemic mode of action.
• Little potential for inappropriate use.

The following properties of a compound make it more likely to be sensitive to ethnic factors:

• Nonlinear pharmacokinetics.
• A steep pharmacodynamic curve for both efficacy and safety (a small change in dose results in a large change in effect) in the range of the recommended dosage and dose regimen.
• A narrow therapeutic dose range.
• Highly metabolized, especially through a single pathway, thereby increasing the potential for drug-drug interaction.
• Metabolism by enzymes known to show genetic polymorphism.
• Administration as a prodrug, with the potential for ethnically variable enzymatic conversion.
• High intersubject variation in bioavailability.
• Low bioavailability, thus more susceptible to dietary absorption effects.
• High likelihood of use in a setting of multiple co-medications.
• High likelihood for inappropriate use , e.g., analgesics and tranquilizers.

Dated: May 25, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15408 Filed 6–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–23]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: July 10, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 4, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Public and Indian Housing: Demolition/Disposition/Conversion/Taking of Units or Property.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0075.

Description of The Need For The Information and Its Proposed Use: The purpose of the Housing Authorities request is to seek HUD approval of a change in a public housing development application from what was originally authorized under the Annual Contributions Contract.

Form Number: 52860.

Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	120		1		16		1920
Recordkeeping	120		1		1		120

Total Estimated Burden Hours: 2,040.

Status: Reinstatement, with no changes.

Contact: Virginia Mathis, HUD, (202) 708–1640; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 4, 1998.

[FR Doc. 98–15478 Filed 6–9–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4181–N–06]

Public and Indian Housing Drug Elimination Program Announcement of Funding Awards for FY 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the department in competition for funding under the Notice of Funding Availability (NOFA) for the Public and Indian Housing Drug Elimination

Program. This announcement contains the names, cities and states of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Community Safety and Conservation Division, Public and Indian Housing, Department of Housing and Urban Development, Room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 (this is not a toll free number). Hearing or speech impaired persons may use the Telecommunications Device for the Deaf (TTY) by contacting the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Drug Elimination Program is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990, (Pub. L. 101–625, approved November 28, 1990), and section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

The Fiscal Year 1997 competition was announced in the **Federal Register** on May 23, 1997 (62 FR 28538). The NOFA announced the availability of funds for use in eliminating drug-related crime and other criminal activities associated with drug-related problems. Applications were scored and selected for funding based on criteria contained in the Notice.

The Catalog of Federal Domestic Assistance number is 14.854.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) the Department is publishing the names, cities, and states of the housing authorities which received funding under the 1997 NOFA, and the amount of funds awarded to each. This information is provided in Appendix A of this document.

In the notice published on May 23, 1997 (62 FR 28541), a typographical error appears in the amount of funds awarded to the Philadelphia Housing Authority. The corrected amount should read $401,000.

Dated: June 4, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A—Awardees for the Drug Elimination Program Fiscal Year 1997

Acoma Pueblo
P.O. Box 620
Pueblo of Acoma, NM 87034
Award: $50,000.00

Akron Metropolitan Housing Authority
100 West Cedar St.
Akron, OH 44307–2546
Award: $1,263,860.00

Alachua County Housing Authority
240 SW 1st Street
Gainesville, FL 32601–6569
Award: $82,500.00

Alexander County Housing Authority
100 The Riverview
Cairo, IL 62914
Award: $159,900.00

Alexandria Redevelopment & Housing Authority
600 North Fairfax Street
Alexandria, VA 22314–2094
Award: $266,700.00

Amsterdam Housing Authority
52 Division Street
Amsterdam, NY 12010–4002
Award: $79,200.00

Ann Arbor Housing Commission
727 Miller Avenue
Ann Arbor, MI 48103
Award: $103,200.00

Anniston Housing Authority
P.O. Box 2225
Anniston, AL 36202–2225
Award: $223,500.00

Area Housing Authority of Ventura County
99 South Glenn Drive
Camarillo, CA 93010–0000
Award: $105,300.00

Area Housing Commission
P.O. Box 18370
Pensacola, FL 32523–8370
Award: $180,900.00

Asbury Park Housing Authority
1000 1/2 Third Ave
Asbury Park, NJ 07712–3847
Award: $176,100.00

Ashtabula Metropolitan Housing Authority
3526 Lake Avenue
Ashtabula, OH 44004–5780
Award: $174,300.00

Atlantic City Housing Authority
P.O. Box 1258
Atlantic City, NJ 08404–7549
Award: $434,460.00

Aurora Land Clearance Commission
1630 West Plum Street
Aurora, IL 60506
Award: $197,100.00

Austin Housing Authority
P.O. Box 6159
Austin, TX 78762–6159
Award: $501,280.00

Bad River Housing Authority
P.O. Box 57
Odanah, WI 54861
Award: $63,000.00

Bayonne Housing Authority
50 East 21 Street
Bayonne, NJ 07002–3761
Award: $338,000.00

Beaver County Housing Authority
300 State Street
Beaver, PA 15009–0000
Award: $499,200.00

Benson Housing Authority
P.O. Box 26
Benson, NC 27504
Award: $53,700.00

Bethlehem Housing Authority
645 Main Street
Bethlehem, PA 18018–3845
Award: $319,500.00

Binghamton Housing Authority
P.O. Box 190
Binghamton, NY 13902–1906
Award: $192,300.00

BLACKFEET INDIAN
P.O. Box 790
Browning, MT 59417
Award: $347,100.00

Boston Housing Authority
52 Chauncy Street
Boston, MA 02111–0000
Award: $3,014,440.00

Bridgeton Housing Authority
110 East Commerce St
Bridgeton, NJ 08302–2606
Award: $135,000.00

Bristol Redevelopment & Housing Authority
650 Quarry Street
Bristol, VA 24201–4390
Award: $144,300.00

Broward County Housing Authority
1773 North State Road 7
Lauderhill, FL 33313–0000
Award: $232,800.00

Brownsville HA
P.O. Box 194
Brownsville, TN 38012–0194
Award: $50,000.00

Bucks County Housing Authority
P.O. Box 1329
Doylestown, PA 18901–0967
Award: $193,510.00

Buffalo Municipal Housing Authority
300 Perry Street
Buffalo, NY 14204–2299
Award: $1,216,800.00

Burlington Housing Authority
P.O. Box 2380
Burlington, NC 27216
Award: $110,400.00

Butler Metropolitan Housing Authority
P.O. Box 357
Hamilton, OH 45012–0357
Award: $338,520.00

Cambridge Housing Authority
675 Massachusetts Ave.
Cambridge, MA 02139–0000
Award: $476,580.00

Carteret Housing Authority
96 Roosevelt Avenue
Carteret, NJ 07008–2490
Award: $75,600.00

Centre County Housing Authority
602 East Howard Street
Belle Fonte, PA 16823–
Award: $47,800.00

Champaign Housing Authority
P.O. Box 183
Champaign, IL 61820
Award: $182,100.00

Chandler Housing And Redevelopment Division
99 North Delaware Street
Chandler, AZ 85225–5577
Award: $97,500.00

Chapel Hill Department of Housing And Comm. Dev.
317 Caldwell Street
Chapel Hill, NC 27516

Award: $99,992.00

Chattanooga Housing Authority
P.O. Box 1486
Chattanooga, TN 37401–1148
Award: $945,880.00

Chelsea Housing Authority
54 Locke Street
Chelsea, MA 02150–0000
Award: $105,000.00

CHEROKEE NATION HSG AUTH
P.O. Box 1007
Tahlequah, OK 74465–1007
Award: $756,340.00

Chesapeake Redev. & Housing Authority
P.O. Box 1304
Chesapeake, VA 23327–1304
Award: $140,100.00

Chester Housing Authority
1010 Madison Street
Chester, PA 19016–4210
Award: $330,300.00

Cheyenne River
P.O. Box 480
Eagle Butte, SD 57625
Award: $258,000.00

Chicago Housing Authority
626 W. Jackson Blvd
Chicago, IL 60606–0000
Award: $9,050,270.00

Chickasaw Nation Hsg Auth
P.O. Box 668
Ada, OK 74820–0668
Award: $468,520.00

Chicopee Housing Authority
128 Meetinghouse Road
Chicopee, MA 01013–1896
Award: $100,279.00

Chillicothe Metropolitan Housing Authority
178 West Fourth Stre
Chillicothe, OH 45601
Award: $110,100.00

Choctaw Housing Authority
P.O. Box 6088 Choctaw Bra
Philadelphia, MS 39350
Award: $244,800.00

Choctaw Nation Hsg Author
P.O. Box G
Hugo, OK 74743
Award: $499,720.00

Cincinnati Metropolitan Housing Authority
16 W. Central Pkwy
Cincinnati, OH 45210–1991
Award: $1,913,340.00

City of Alameda Housing Authority
701 Atlantic Avenue
Alameda, CA 94501–
Award: $50,000.00

City of Los Angeles Housing Authority
2600 Wilshire Blvd.
Los Angeles, CA 90057–
Award: $2,199,600.00

City of Reno Hsg Authority
1525 East Ninth St
Reno, NV 89512–3012
Award: $225,300.00

City of Richmond Hsg Auth
330 24th St
Richmond, CA 94808–0000
Award: $251,400.00

City of Tucson Community Services Department
P.O. Box 27210
Tucson, AZ 85726–7210
Award: $384,540.00

Clarksville Housing Authority
P.O. Box 603
Clarksville, TN 37041–0603
Award: $147,916.00

Cleveland Housing Authority
P.O. Box 2846
Cleveland, TN 37320–
Award: $129,900.00

Cohoes Housing Authority
Administrative Bldg.
Cohoes, NY 12047–2603
Award: $89,640.00

Columbiana Metropolitan Housing Authority
325 Moore Street
East Liverpool, OH 43920
Award: $144,600.00

Concord Housing Authority
15 Pitman Street
Concord, NH 03301–4349
Award: $79,800.00

County of Contra Costa Hsg Auth
3133 Estudillo St
Martinez, CA 94553–0000
Award: $336,900.00

County of Marin Housing Authority
P.O. Box 4282
San Rafael, CA 94913–4282
Award: $149,900.00

County of Stanislaus Housing Auth
P.O. Box 3958
Modesto, CA 95352–0000
Award: $194,100.00

Crestview Housing Authority
371 West Hickory Ave
Crestview, FL 32536–3305
Award: $81,900.00

Crow Tribal
P.O. Box 99
Crow Agency, MT 59022
Award: $173,397.00

Cuyahoga Metropolitan Housing Authority
1441 W. 25th Street
Cleveland, OH 44113–3101
Award: $2,777,840.00

Danville Redev. & Housing Authority
P.O. Box 2669
Danville, VA 24541–0669
Award: $185,700.00

Decatur Ha
P.O. Box A–1409
Decatur, IL 62521–1409
Award: $262,500.00

Delaware County Housing Authority
1855 Constitution Avenue
Woodlyn, PA 19094–1409
Award: $229,200.00

Delaware State Housing Authority
820 Silver Lake Blvd
Dover, DE 19903
Award: $134,100.00

Detroit Housing Commission
2211 Orleans
Detroit, MI 48207–2780
Award: $1,652,300.00

District of Columbia Housing Authority
1133 N Capitol Street, NE
Washington, DC 20002–7599
Award: $2,812,680.00

Dover Housing Authority
62 Whittier Street
Dover, NH 03820–2994
Award: $137,400.00

Dunn Housing Authority
P.O. Box 1028
Dunn, NC 28334
Award: $50,000.00

East Chicago Housing Authority
4920 Larkspu
East Chicago, IN 46312–0498
Award: $242,400.00

East Orange Housing Authority
160 Halsted Street
East Orange, NJ 07018–4228
Award: $135,900.00

East St Louis Ha
700 N 20th Street
East St Louis, IL 62205–0000
Award: $581,100.00

Edison Housing Authority
Willard Dunham Drive
Edison, NJ 08837–3570
Award: $50,000.00

Elkhart Housing Authority
1396 Benham Ave.
Elkhart, IN 46516–3370
Award: $201,600.00

Erie City Housing Authority
606 Holland Street
Erie, PA 16501–0000
Award: $483,080.00

Evansville Housing Authority
500 Court Street
Evansville, IN 47708
Award: $369,000.00

Fairfax County, Redevelopment & Housing Authority
3700 Pender Drive #300
Fairfax, VA 22030–7444
Award: $315,300.00

Fairfield Alabama Housing Authority
P.O. Box 352
Fairfield, AL 35064–0352
Award: $90,300.00

Fall River Hsg Authority
85 Morgan St
Fall River, MA 02722–0989
Award: $443,820.00

Farmville Housing Authority
P.O. Box 282
Farmville, NC 27828
Award: $52,200.00

Fayette County Housing Authority
P.O. Box 1007
Uniontown, PA 15401–0000
Award: $440,440.00

Fayetteville Housing Authority
P.O. Box 999
Fayetteville, TN 37334–0999
Award: $91,500.00

Fayetteville Metropolitan H/A
P.O. Drawer 2349
Fayetteville, NC 28302
Award: $313,500.00

Florence Housing Authority
303 N. Pine St.
Florence, AL 35630
Award: $198,000.00

Fond du Lac Reservation Housing Authority
932 Trettel Lane
Cloquet, MN 55720
Award: $99,000.00

Forest City Housing Authority

A204 Spruce St.,
Forest City, NC 28043
Award: $52,800.00

Fort Walton Beach Housing Authority
27 Robinwood Dr. Sw
Fort Walton Beach, FL 32548–0000
Award: $52,200.00

Framingham Housing Authority
1 John J. Brady Dr
Framingham, MA 01701–0000
Award: $70,500.00

Gainesville Housing Authority
P.O. Box 1468
Gainesville, FL 32602
Award: $190,500.00

Galveston Housing Authority
4700 Broadway
Galveston, TX 77551–0000
Award: $362,440.00

Garfield Housing Authority
71 Daniel Conte Ct.
Garfield, NJ 07026–2499
Award: $135,713.00

Gary Housing Authority
578 Broadway
Gary, IN 46402–1986
Award: $663,780.00

Geneva Housing Authority
P.O. Box 153
Geneva, NY 14456–2319
Award: $75,300.00

GILA RIVER
P.O. Box 528
Sacaton, AZ 85247
Award: $316,500.00

Glassboro Housing Authority
737 Lincoln Blvd
Glassboro, NJ 08028–0563
Award: $54,000.00

Gloucester Housing Authority
P.O. Box 1599
Gloucester, MA 01931–1599
Award: $50,000.00

Greater Gadsden Housing Authority
P.O. Box 1219
Gadsden, AL 35902–1219
Award: $311,100.00

Greenburgh Housing Authority
9 Maple Street
White Plains, NY 10603–2623
Award: $50,000.00

H A Graham
P.O. Box 88
Graham, NC 27253
Award: $50,000.00

HA and Community Services Agency of Lane County
177 Day Island Rd
Eugene, OR 97401–0000
Award: $211,200.00

HA Bloomington 104 East Wood
Bloomington, IL 61701–6768
Award: $189,900.00

HA City Of Greenville
P.O. Box 1426
Greenville, NC 27835–1426
Award: $214,200.00

HA Durham
P.O. Box 1726
Durham, NC 27702
Award: $553,280.00

HA Goldsboro
P.O. Box 1403
Goldsboro, NC 27533
Award: $367,500.00

HA Greensboro
P.O. Box 21287
Greensboro, NC 27420
Award: $646,100.00

HA Hickory
P.O. Drawer 2927
Hickory, NC 28603
Award: $93,300.00

HA High Point
P.O. Box 1779
High Point, NC 27261
Award: $344,240.00

HA Laurinburg
P.O. Box 1437
Laurinburg, NC 28353
Award: $147,600.00

HA Lincolnton
P.O. Box 753
Lincolnton, NC 28093
Award: $75,000.00

HA Lumberton
P.O. Drawer 709
Lumberton, NC 28359
Award: $219,300.00

HA Monroe
P.O. Box 805
Monroe, NC 28111–0805
Award: $61,800.00

HA of the City of Pasco And Franklin County
820 North First Avenue
Pasco, WA 99301–5362
Award: $84,000.00

HA Rockingham
P.O. Box 160
Rockingham, NC 28379
Award: $67,500.00

HA Rocky Mount
P.O. Box 4717
Rocky Mount, NC 27803
Award: $209,800.00

HA Rowan County 121 West Council
Salisbury, NC 28144–4347
Award: $60,000.00

HA Sanford
P.O. Box 636
Sanford, NC 27331
Award: $139,500.00

HA Thomasville
201 James Avenue
Thomasville, NC 27360–2426
Award: $78,000.00

HA Washington
P.O. Box 1046
Washington, NC 27889
Award: $114,595.00

HA Williamston
P.O. Box 709
Williamston, NC 27892
Award: $50,000.00

HA Wilmington
P.O. Box 899
Wilmington, NC 28402
Award: $437,060.00

HA Wilson
P.O. Box 3876
Wilson, NC 27895
Award: $234,000.00

Haleyville Housing Authority
P.O. Box 786
Haleyville, AL 35565
Award: $82,500.00

Hamlet Housing Authority
P.O. Box 1188
Hamlet, NC 28345
Award: $69,000.00

Hammond Housing Authority
7329 Columbia Circle West
Hammond, IN 46324–2819
Award: $179,700.00

Hampton Redevelopment & Housing Authority
P.O. Box 280
Hampton, VA 23669–0280
Award: $308,275.00

Harrisburg Housing Authority
P.O. Box 3461
Harrisburg, PA 17105–9713
Award: $451,100.00

Hendersonville Housing Authority
P.O. Box 1106
Hendersonville, NC 28793
Award: $116,400.00

Hialeah Housing Authority
70 East 7th Street
Hialeah, FL 33010–4465
Award: $480,220.00

Highlands Housing Authority
25215 Shore Drive
Highlands, NJ 07732–2122
Award: $50,000.00

Ho-Chunk Housing Authority
P.0. Box 730
Tomah, WI 54660
Award: $44,000.00

Hoboken Housing Authority
400 Harrison Street
Hoboken, NJ 07030–6299
Award: $349,700.00

Holyoke Housing Authority
475 Maple Street
Holyoke, MA 01040–0000
Award: $242,700.00

Housing and Redevelopment Authority of Duluth
222 East 2nd St
Duluth, MN 55816–0900
Award: $325,520.00

Housing Auth City Of Pittsburgh
200 Ross Street, 9th
Pittsburgh, PA 15219–0000
Award: $2,346,760.00

Housing Auth Of Jackson County
P.O. Box 1209
Murphysboro, IL 62966
Award: $255,900.00

Housing Authorites of the City and County Fresno
P.O. BOX 11985
FRESNO, CA 93776–0000
Award: $552,240.00

Housing Authority of Abilene
P.O. Box 60
Abilene, TX 79604–0060
Award: $63,900.00

Housing Authority of Aiken
P.O. Box 889
Aiken, SC 29802–0889
Award: $117,000.00

Housing Authority of Anderson
1335 East River St
Anderson, SC 29624–2908
Award: $71,100.00

Housing Authority Of Baltimore City
417 E. Fayette Street
Baltimore, MD 21202
Award: $4,325,360.00

Housing Authority of Billings
2415 First Avenue North
Billings, MT 59101
Award: $83,100.00

Housing Authority of Bowling Green
P.O. Box 116
Bowling Green, KY 42101
Award: $157,500.00

Housing Authority Of Brevard County
P.O. Box 338
Merritt Island, FL 32954–0338
Award: $187,500.00

Housing Authority of Catlettsburg
210 24th St.
Catlettsburg, KY 41129
Award: $50,000.00

Housing Authority of Central City
P.O. Box 348
Central City, KY 42330
Award: $50,000.00

Housing Authority of Charleston
20 Franklin St
Charleston, SC 29401–6907
Award: $344,508.00

Housing Authority of Columbia
1917 Harden St
Columbia, SC 29204–1015
Award: $636,220.00

Housing Authority of Conway
2303 Leonard Ave
Conway, SC 29527–4515
Award: $78,000.00

Housing Authority of Cumberland
635 East 1st Street
Cumberland, MD 21502
Award: $129,000.00

Housing Authority of Dallas
3939 North Hampton Road
Dallas, TX 75212–0000
Award: $1,210,820.00

Housing Authority of El Paso
P.O. Box 9895
El Paso, TX 79989–9895
Award: $1,580,800.00

Housing Authority of Florence
P.O. Drawer 969
Florence, SC 29503–0969
Award: $277,370.00

Housing Authority of Fort Mill
105 Bozeman Dr
Fort Mill, SC 29715–2527
Award: $50,000.00

Housing Authority of Fort Worth
P.O. Box 430
Fort Worth, TX 76102–0430
Award: $364,260.00

Housing Authority of Fulton
200 N. Highland Dr.
Fulton, KY 42041
Award: $63,028.00

Housing Authority of Georgetown
P.O. Box 209
Georgetown, SC 29442–0209
Award: $84,000.00

Housing Authority of Greenville
P.O. Box 10047
Greenville, SC 29605
Award: $342,420.00

Housing Authority of Havre De Grace
101 Stansbury Court
Havre De Grace, MD 21078–2641
Award: $50,000.00

Housing Authority of Henderson
901 Dixon St.
Henderson, KY 42420
Award: $129,592.00

Housing Authority Of Henry County
100 Fairview Junction
Kewanee, IL 61443–0000
Award: $140,100.00

Housing Authority of Hickman
50 Holly Ct.
Hickman, KY 42050
Award: $50,000.00

Housing Authority of Homer
329 South Fourth St.
Homer, LA 71040
Award: $50,000.00

Housing Authority of Hopkinsville
P.O. Box 437
Hopkinsville, KY 42240
Award: $137,700.00

Housing Authority of Lebanon
100 Sunset Terrace
Lebanon, KY 40033
Award: $63,000.00

Housing Authority of Lexington
300 New Circle Rd. NW
Lexington, KY 40505
Award: $451,360.00

Housing Authority of Los Angeles County
2 Coral Circle
Monterey Park, CA 91755
Award: $749,580.00

Housing Authority of Louisville
420 South Eighth St.
Louisville, KY 40203
Award: $1,294,800.00

Housing Authority of Lubbock
P.O. Box 2568
Lubbock, TX 79408–2568
Award: $188,700.00

Housing Authority of Lyon County
P.O. Box 190
Eddyville, KY 42038
Award: $50,000.00

Housing Authority of Maysville
P.O. Box 446
Maysville, KY 41056
Award: $82,500.00

Housing Authority of Monroe
300 Harrison Street
Monroe, LA 71201–0000
Award: $395,720.00

Housing Authority of Morgan City
P.O. Box 2393
Morgan City, LA 70381–2393
Award: $99,000.00

Housing Authority of New Orleans
918 Carondelet Street
New Orleans, LA 70130
Award: $3,371,940.00

Housing Authority of Paducah
2330 Ohio St.
Paducah, KY 42002
Award: $317,700.00

Housing Authority of Portland
135 SW Ash Street
Portland, OR 97204–0000
Award: $726,180.00

Housing Authority of Richmond
P.O. Box 447
Richmond, KY 40475
Award: $92,100.00

Housing Authority of Rock Hill
P.O. Box 11579
Rock Hill, SC 29730
Award: $110,700.00

Housing Authority of Saint Louis County
8865 Natural Bridge
St. Louis, MO 63121–0580
Award: $324,000.00

Housing Authority of Salt Lake City
1776 South West Temple
Salt Lake City, UT 84115
Award: $189,600.00

Housing Authority of San Angelo
P.O. Box 1751
San Angelo, TX 76902–1751
Award: $26,395.00

Housing Authority of Savannah
P.O. Box 1179
Savannah, GA 31402–1179
Award: $691,571.00

Housing Authority of Sherman
P.O. Box 2147
Sherman, TX 75091–2147
Award: $89,400.00

Housing Authority of Snohomish County
12625 4th Ave W, #200
Everett, WA 98204
Award: $74,100.00

Housing Authority of Spartanburg
P.O. Box 2828
Spartanburg, SC 29304–2828
Award: $401,960.00

Housing Authority of the Birmingham District
P.O. Box 55906
Birmingham, AL 35255–5906
Award: $1,718,600.00

Housing Authority of the City of Alamogordo
P.O. Box 336
Alamogordo, NM 88310–0336
Award: $66,000.00

Housing Authority of the City of Albany
P.O. Box 485
Albany, GA 31702–0000
Award: $265,800.00

Housing Authority of the City of Alexander City
P.O. Box 788
Alexander City, AL 35011
Award: $143,100.00

Housing Authority of the City of Aliceville
P.O. Box 485
Aliceville, AL 35442–0485
Award: $51,900.00

Housing Authority of the City of Americus
825 N Mayo Street
Americus, GA 31709–2627
Award: $192,300.00

Housing Authority of the City of Annapolis
1217 Madison Street
Annapolis, MD 21403
Award: $300,000.00

Housing Authority of the City of Ansonia
75 Central Street
Ansonia, CT 06401–2042
Award: $81,300.00

Housing Authority of the City Of Arcadia
P.O. Box 1248

Arcadia, FL 33821–1248
Award: $39,000.00

Housing Authority of the City of Atchison, Kansas
103 S. 7th Street
Atchison, KS 66002–0000
Award: $57,000.00

Housing Authority of the City of Athens
P.O. Box 1469
Athens, GA 30603–1469
Award: $329,680.00

Housing Authority of the City of Auburn, Al
931 Booker Street
Auburn, AL 36830
Award: $126,900.00

Housing Authority of the City of Augusta
P.O. Box 3246
Augusta, GA 30904–1246
Award: $719,420.00

Housing Authority of the City of Beaumont
P.O. Box 1312
Beaumont, TX 77708–1312
Award: $179,480.00

Housing Authority of the City of Blackshear
P.O. Box 1407
Waycross, GA 31502–1407
Award: $50,000.00

Housing Authority of the City of Bremen
P.O. Box 776
Bremen, GA 30110–2160
Award: $50,000.00

Housing Authority of the City of Bridgeport
P.O. Drawer A–10
Bridgeport, AL 35740
Award: $50,000.00

Housing Authority of the City of Bristol
P.O. Box 918
Bristol, CT 06011–0918
Award: $165,900.00

Housing Authority of the City of Brunswick
P.O. Box 1118
Brunswick, GA 31521–1118
Award: $176,700.00

Housing Authority of the City of Calexico
1006 East Fifth St.
CALEXICO, CA 92231–0000
Award: $90,600.00

Housing Authority of the City of Calhoun
111–F South Fair St.
Calhoun, GA 30701–2369
Award: $75,000.00

Housing Authority of the City of Camilla
P.O. Box 247
Camilla, GA 31730–0247
Award: $137,400.00

Housing Authority of the City of Canton
1400 Oakside Drive-#
Canton, GA 30114
Award: $50,000.00

Housing Authority of the City of Carbon Hill
P.O. Box 70
Carbon Hill, AL 35549–0070
Award: $50,000.00

Housing Authority of the City of Carrollton
P.O. Box 627
Carrollton, GA 30117–0000
Award: $84,000.00

Housing Authority of the City of Cedartown
P.O. Box 211
Cedartown, GA 30125–0211
Award: $69,700.00

Housing Authority of the City of Charleston
P.O. Box 67
Charleston, MO 63834–0067
Award: $84,000.00

Housing Authority of the City of Clarksville
P.O. Box 407
Clarksville, AR 72830–0407
Award: $51,900.00

Housing Authority of the City of Clayton
P.O. Box 1271
Clayton, GA 30525
Award: $50,000.00

Housing Authority of the City of Clinton, Missouri
7 Bradshaw Drive
Clinton, MO 64735–2513
Award: $50,000.00

Housing Authority of the City of College Park
1908 West Princeton
College Park, GA 30337–2418
Award: $125,700.00

Housing Authority of the City of Columbia
207 Park Street
Columbia, MO 65203
Award: $218,400.00

Housing Authority of the City of Columbus
P.O. Box 630
Columbus, GA 31993
Award: $584,220.00

Housing Authority of the City of Cuthbert
Post Office Box 403
Cuthbert, GA 31740–1496
Award: $50,000.00

Housing Authority of the City of Daleville
101 Donnell Circle
Daleville, AL 36322
Award: $50,000.00

Housing Authority of the City of Danbury
P.O Box 86
Danbury, CT 06813–0086
Award: $125,100.00

Housing Authority Of The City Of Daytona Beach
118 Cedar St
Daytona Beach, FL 32114–0000
Award: $321,900.00

Housing Authority of the City of Decatur
P.O. Box 1627
Decatur, GA 30031–1627
Award: $295,500.00

Housing Authority of the City of Decatur, Al
P.O. Box 878
Decatur, AL 35602
Award: $232,500.00

Housing Authority of the City of Deerfield Beach
425 N.W 1st Terrace
Deerfield Beach, FL 33441–0000
Award: $54,000.00

Housing Authority of the City of Dothan
P.O. Box 1727
Dothan, AL 36302–1727
Award: $201,000.00

Housing Authority of the City of Dublin
P.O. Box 36
Dublin, GA 31040
Award: $164,100.00

Housing Authority of the City of East Point
1600 Connally Drive
East Point, GA 30344–2560
Award: $144,900.00

Housing Authority of the City of Eastman
P.O. Box 100
Eastman, GA 31023–0100
Award: $65,700.00

Housing Authority of the City of Eufaula
P.O. Box 36
Eufaula, AL 36027–0036
Award: $96,300.00

Housing Authority of the City of Evergreen
P.O. Box 187
Evergreen, AL 36401–0187
Award: $50,000.00

Housing Authority of the City of Foley
302 Fourth Ave
Foley, AL 36535
Award: $50,000.00

Housing Authority of the City of Fort Lauderdale
437 S W 4th Avenue
Fort Lauderdale, FL 33315–0000
Award: $266,400.00

Housing Authority of the City of Fort Myers
4224 Michigan Avenue
Ft. Myers, FL 33916
Award: $291,300.00

Housing Authority of the City of Fort Smith
2100 North 31st Street
Fort Smith, AR 72904–6199
Award: $212,086.00

Housing Authority Of The City Of Freeport
1052 W. Galena Ave
Freeport, IL 61032–0000
Award: $134,400.00

Housing Authority of the City of Fulton
P.O. Box 814
Fulton, MO 65251–0814
Award: $60,000.00

Housing Authority of the City of Gainesville
P.O. Box 653
Gainesville, GA 30503–0653
Award: $149,100.00

Housing Authority of the City of Georgiana
P.O. Box 279
Georgiana, AL 36033
Award: $50,000.00

Housing Authority of the City of Greenville
P.O. Box 521
Greenville, AL 36037–0521
Award: $60,000.00

Housing Authority of the City of Hannibal
P.O. Box 996
Hannibal, MO 63401–0996
Award: $76,800.00

Housing Authority of the City of Hartford
475 Flotbush Avenue
Hartford, CT 06106–3728
Award: $724,360.00

Housing Authority of the City of Huntington
P.O. Box 2183
Huntington, WV 25722–2183
Award: $293,700.00

Housing Authority of the City of Independence, MO
1330 N. Hocker St.
Independence, MO 64050–0000
Award: $159,000.00

Housing Authority of the City of Jacksonville
100 Roebuck Manor
Jacksonville, AL 36265
Award: $52,500.00

Housing Authority of the City of Jasper
P.O. Box 582
Jasper, AL 35501–0582
Award: $101,400.00

Housing Authority of the City of Jefferson
1040 Myrtle
Jefferson City, MO 65109
Award: $107,700.00

Housing Authority of the City of Kansas City, MO
712 Broadway
Kansas City, MO 64105–0000
Award: $467,740.00

Housing Authority of the City of Key West
1400 Kennedy Drive
Key West, FL 33040
Award: $174,300.00

Housing Authority Of The City Of Lakeland
P.O. Box 1009
Lakeland, FL 33802–1009
Award: $224,400.00

Housing Authority of the City of Las Cruces
926 S San Pedro
Las Cruces, NM 88001
Award: $102,600.00

Housing Authority of the City of Las Vegas
P.O. Box 179
Las Vegas, NM 87701–0179
Award: $113,100.00

Housing Authority of the City of Lavonia
P.O. Box 4
Lavonia, GA 30553–0004
Award: $53,395.00

Housing Authority of the City of Lawrence, Kansas
1600 Haskell Avenue
Lawrence, KS 66044–0000
Award: $102,900.00

Housing Authority of the City of Lawrenceville
502 Glenn Edge Drive
Lawrenceville, GA 30245
Award: $63,000.00

Housing Authority of the City of Lawton
609 Sw ''f'' Ave.
Lawton, OK 73501–4501
Award: $95,100.00

Housing Authority of the City of Leeds
P.O. Box 513
Leeds, AL 35094–0513
Award: $50,000.00

Housing Authority of the City of Loganville
P.O. Box 550
Monroe, GA 30655–0550
Award: $50,000.00

Housing Authority of the City of Luverne, Al
P.O. Box 311
Luverne, AL 36049–0311
Award: $50,000.00

Housing Authority of the City of Lyons
208 N. Lanier Street
Lyons, GA 30436–1352
Award: $50,000.00

Housing Authority of the City of Macon
1404 South Missouri St.
Macon, MO 63552–9801
Award: $50,000.00

Housing Authority of the City of Macon
P.O. Box 4928
Macon, GA 31208–0000
Award: $577,460.00

Housing Authority of the City of Marietta
P.O. Drawer K
Marietta, GA 30061–0420
Award: $241,200.00

Housing Authority of the City of Mcalester
P.O. Box 819
Mcalester, OK 74501–0819
Award: $82,200.00

Housing Authority of the City of Meriden
P.O. Box 911
Meriden, CT 06451
Award: $145,500.00

Housing Authority of the City of Milwaukee
P.O. Box 324
Milwaukee, WI 53202–3669
Award: $1,234,480.00

Housing Authority of the City of Monroe
P.O. Box 550
Monroe, GA 30655–0550
Award: $114,300.00

Housing Authority of the City of Montezuma
P.O. Box 67
Montezuma, GA 31063–1724
Award: $116,100.00

Housing Authority of the City of Montgomery
1020 Bell St.
Montgomery, AL 36104
Award: $785,460.00

Housing Authority of the City of Moundsville
501 Tenth Street
Moundsville, WV 26041–2234
Award: $77,901.00

Housing Authority of the City of Muskogee
200 N. 40th St.
Muskogee, OK 74401
Award: $120,000.00

Housing Authority of the City of Nacogdoches
715 Summit Street
Nacogdoches, TX 75961
Award: $50,000.00

Housing Authority of the City of Natchitoches
P.O. Box 754
Natchitoches, LA 71457–0754
Award: $123,000.00

Housing Authority of the City of New Bern
P.O. Box 1486
New Bern, NC 28563
Award: $173,700.00

Housing Authority of the City of New Britain
34 Marimac Road
New Britain, CT 06053–2699
Award: $242,000.00

Housing Authority of the City of New Haven
P.O. Box 1912
New Haven, CT 06509
Award: $892,320.00

Housing Authority of the City of Newnan
P.O. Box 881
Newnan, GA 30264–0881
Award: $141,600.00

Housing Authority of the City of Norman
700 N. Berry Rd.
Norman, OK 73069
Award: $51,535.00

Housing Authority of the City of North Little Rock
P.O. Box 516
North Little Rock, AR 72115–0516
Award: $321,000.00

Housing Authority of the City of Northport, Al
P.O. Drawer 349
Northport, AL 35476–0349
Award: $120,000.00

Housing Authority of the City of Norwalk
P.O. Box 508
Norwalk, CT 06854–0508
Award: $246,900.00

Housing Authority of the City of Orange
P.O. Box 3107
Orange, TX 77631–3107
Award: $118,600.00

Housing Authority of the City of Orlando
300 Reeves Court
Orlando, FL 32801–0000
Award: $443,820.00

Housing Authority of the City of Oxnard
1470 Colonia Road
Oxnard, CA 93030–0000
Award: $234,000.00

Housing Authority of the City of Ozark
P.O. Box 566
Ozark, AL 36361–0566
Award: $121,800.00

Housing Authority of the City of Pelham
P.O. Box 269
Pelham, GA 31779–0269
Award: $63,000.00

Housing Authority of the City of Phenix City, Al
P.O. Box 338
Phenix City, AL 36868–0338
Award: $280,800.00

Housing Authority of the City of Piedmont, Al
P.O. Box 420
Piedmont, AL 36272–0420
Award: $63,000.00

Housing Authority of the City of Port Arthur
P.O. Box 2295
Port Arthur, TX 77643–2295
Award: $106,800.00

Housing Authority of the City of Prichard, Al
P.O. Box 10307
Prichard, AL 36610
Award: $128,700.00

Housing Authority of the City of Richmond, MO
302 North Camden
Richmond, MO 64085–1654
Award: $50,000.00

Housing Authority of the City of Rockmart
P.O. Box 312
Rockmart, GA 30153–0312
Award: $50,000.00

Housing Authority of the City of Rome
P.O. Box 1428
Rome, GA 30161–2737
Award: $329,400.00

Housing Authority of the City of Royston
P.O. Box 86
Royston, GA 30662–0066
Award: $55,174.00

Housing Authority of the City of Salem
P.O. Box 808
Salem, OR 97308–0808
Award: $101,100.00

Housing Authority of the City of Salisbury
P.O. Box 159
Salisbury, NC 28145
Award: $167,100.00

Housing Authority of the City of Santa Barbara
808 Laguna Street
Santa Barbara, CA 93101–1590
Award: $147,600.00

Housing Authority of the City of Santa Fe

P.O. Box 4039
Santa Fe, NM 87502–4039
Award: $138,300.00

Housing Authority of the City Of Sarasota
1300 Sixth Street
Sarasota, FL 34236–0000
Award: $168,300.00

Housing Authority of the City of Scottsboro, Al
102 Worthington St.
Scottsboro, AL 35768
Award: $94,800.00

Housing Authority of the City of Seattle
120 Sixth Avenue North
Seattle, WA 98109–5002
Award: $1,685,429.00

Housing Authority of the City of Shawnee
P.O. Box 3427
Shawnee, OK 74802–3427
Award: $132,000.00

Housing Authority of the City of Social Circle
P.O. Box 550
Monroe, GA 30655–0550
Award: $50,000.00

Housing Authority of the City of Springfield, MO
421 W. Madison St.
Springfield, MO 65806–0000
Award: $229,754.00

Housing Authority of the City Of St. Petersburg
P.O. Box 12849
St. Petersburg, FL 33733–2849
Award: $265,800.00

Housing Authority of the City of Stamford
P.O. Box 1376
Stamford, CT 06904–1376
Award: $252,000.00

Housing Authority of the City of Stillwater
807 S. Lowry St.
Stillwater, OK 74074–0000
Award: $50,000.00

Housing Authority of the City of Superior
1219 N. 8th Street
Superior, WI 54880–6699
Award: $138,799.00

Housing Authority of the City of T Or C
108 South Cedar Street
Truth Or Consequences, NM 87901
Award: $50,000.00

Housing Authority of the City of Tacoma
902 South L Street
Tacoma, WA 98405
Award: $392,080.00

Housing Authority of the City of Talladega, AL
151 Curry Court
Talladega, AL 35160
Award: $149,100.00

Housing Authority Of The City Of Titusville
P.O. Box 540338
Merritt Island, FL 32954–0338
Award: $76,500.00

Housing Authority of the City of Toccoa
P.O. Drawer J
Toccoa, GA 30577–0257
Award: $151,800.00

Housing Authority of the City of Troy
P.O. Drawer 289
Troy, AL 36081–0321
Award: $129,600.00

Housing Authority of the City of Tulsa
P.O. Box 6369
Tulsa, OK 74148–0369
Award: $674,440.00

Housing Authority of the City of Tuskegee, AL
2901 Davison St.
Tuskegee Institute, AL 36088
Award: $138,600.00

Housing Authority of the City of Valdosta
P.O. Box 907
Valdosta, GA 31601
Award: $162,900.00

Housing Authority of the City of Warner Robins
P.O. Box 2048
Warner Robins, GA 31099–2048
Award: $133,200.00

Housing Authority of the City of Waukegan
200 South Utica St.
Waukegan, IL 60085
Award: $133,800.00

Housing Authority of the City of Waycross
P.O. Box 1407
Waycross, GA 31502–1407
Award: $151,200.00

Housing Authority of the City of Wheeling
P.O. Box 2089
Wheeling, WV 26003–2089
Award: $280,800.00

Housing Authority of the City of Williamson
P.O. Box 1758
Williamson, WV 25661–1758
Award: $74,400.00

Housing Authority of the City of Winder
P.O. Box 505
Winder, GA 30680–0505
Award: $96,000.00

Housing Authority of the County of Clackamas
13930 S. Gain St
Oregon City, OR 97045–0000
Award: $170,700.00

Housing Authority of the County of Clallam
2603 South Francis St.
Port Angeles, WA 98362–6710
Award: $80,700.00

Housing Authority of the County of Kern
525 Roberts Lane
Bakersfield, CA 93308–4799
Award: $286,500.00

Housing Authority of the County of Riverside
5555 Arlington
Riverside, CA 92504–0000
Award: $147,300.00

Housing Authority of the County of Salt Lake
3595 South Main Street
Salt Lake City, UT 84115
Award: $187,800.00

Housing Authority of the County of San Joaquin
P.O. Box 447
Stockton, CA 95201
Award: $322,500.00

Housing Authority of the County of Santa Fe
52 Camino de Jacobo
Santa Fe, NM 87501–9203
Award: $66,300.00

Housing Authority of the County of Taos
P.O. Box 4239
Taos, NM 87571–4239
Award: $50,000.00

Housing Authority of the County of Yolo
P.O. Box 1867
Woodland, CA 95695
Award: $129,300.00

Housing Authority of the Town of Ashland
Route 3, Box 25
Ashland, AL 36251
Award: $59,700.00

Housing Authority of the Town of Bernalillo
P.O. Box 70
Bernalillo, NM 87004–0070
Award: $50,000.00

Housing Authority of the Town of East Hartford
546 Burnside Avenue
East Hartford, CT 06108
Award: $177,283.00

Housing Authority of the Town of Greenwich
P.O. Box 141
Greenwich, CT 06836–6620
Award: $93,000.00

Housing Authority of the Town of Manchester
24 Bluefield Drive
Manchester, CT 06040
Award: $95,400.00

Housing Authority of the Town of York
P.O. Box 9
York, AL 36925–0009
Award: $50,000.00

Housing Authority of Ville Platte
P.O. Box 249
Ville Platte, LA 70586–0249
Award: $50,000.00

Housing Authority of Walker County, AL
P.O. Box 607
Dora, AL 35062–0607
Award: $50,000.00

Housing Opportunity Commission, Montgomery County
10400 Derricle Avenue
Kensington, MD 20895
Award: $391,300.00

Houston Housing Authority
P.O. Box 2971
Houston, TX 77252–2971
Award: $881,660.00

Hsg Athy of the City & Cnty of Denver
Bx 40305-mile Hi Stn
Denver, CO 80204–0305
Award: $1,082,380.00

Hsg Athy of the City of Boulder
3120 Broadway
Boulder, CO 80304
Award: $114,600.00

Hudson Housing Authority
#1 North Second Street
Hudson, NY 12534–2415
Award: $50,000.00

Imperial Valley Housing Authority
1401 ''D'' Street
BRAWLEY, CA 92227–0000
Award: $153,300.00

Indianapolis Housing
Five Indiana Squa
Indianapolis, IN 46204–0000
Award: $652,080.00

Inkster Housing Commission
4500 Inkster Road
Inkster, MI 48141–1871
Award: $256,000.00

Ithaca Housing Authority
800 South Plain Street

Ithaca, NY 14850–5353
Award: $102,300.00

Jackson Housing Authority
P.O. Box 3188
Jackson, TN 38301–3188
Award: $303,240.00

Jefferson County Ha
P.O. Box 1547
Mount Vernon, IL 62864–0154
Award: $114,000.00

Jefferson County Housing Authority
3700 Industrial Pkwy
Birmingham, AL 35217
Award: $153,000.00

Jefferson Metropolitan Housing Authority
815 N. Sixth Avenue
Steubenville, OH 43952–1847
Award: $238,200.00

Jeffersonville Housing Authority
206 Eastern Blvd
Jeffersonville, IN 47130–0000
Award: $114,300.00

Jersey City Housing Authority
400 U.S. Highway 1
Jersey City, NJ 07306–6731
Award: $953,160.00

Johnstown Housing Authority
P.O. Box 419
Johnstown, PA 15907–2515
Award: $244,656.00

Joliet Housing Authority
P.O. Box 2519
Joliet, IL 60434–2519
Award: $328,200.00

Jonesboro Urban Renewal & Housing Authority
330 Union Street
Jonesboro, AR 72401
Award: $50,000.00

Kankakee Housing Authority
P.O. Box 1289
Kankakee, IL 60901–1289
Award: $100,200.00

King County Housing Authority
15455 65th Avenue South
Tukwila, WA 98188–2583
Award: $845,250.00

Kingsport Housing Authority
P.O. Box 44
Kingsport, TN 37662–0044
Award: $171,000.00

Kingston Housing Authority
132 Rondout Drive
Kingston, NY 12401–2630
Award: $50,000.00

Kinston HA
P.O. Box 697
Kinston, NC 28502
Award: $239,700.00

Kitsap County Consolidated Housing Authority
9265 Bayshore Drive NW
Silverdale, WA 98383–9106
Award: $37,800.00

Knox Cty Ha
255 W. Tompkins Stre
Galesburg, IL 61401
Award: $130,560.00

Knoxville's Community Development Corporation
P.O. Box 3550
Knoxville, TN 37927
Award: $1,015,560.00

La Salle Cty Ha
P.O. Box 782
Ottawa, IL 61350–0782
Award: $279,000.00

Lac du Flambeau Chippewa Housing Authority
P.O. Box 187
Lac Du Flambeau, WI 54538
Award: $92,400.00

Lackawanna Municipal Housing Authority
135 Odell Street
Lackawanna, NY 14218–2238
Award: $147,300.00

Laconia Housing Authority
25 Union Street
Laconia, NH 03246–3558
Award: $50,000.00

Lake County Ha
33928 N Route 45
Grayslake, IL 60030
Award: $163,480.00

Lake Wales Housing Authority
P.O. Box 426
Lake Wales, FL 33859–0426
Award: $72,000.00

Lakewood Housing Authority
P.O. BOX x 1599
Lakewood, NJ 08701–1017
Award: $80,400.00

Lancaster Housing Authority
333 Church Street
Lancaster, PA 17602–4253
Award: $168,300.00

Lansing Housing Commission
310 Seymour Avenue
Lansing, MI 48933
Award: $282,000.00

Lawrence Housing Authority
353 Elm Street
Lawrence, MA 01842–0000
Award: $316,800.00

Lenoir Housing Authority
P.O. Box 1526
Lenoir, NC 28645
Award: $50,000.00

Lewiston Housing Authority
1 College Street
Lewiston, ME 04240–7144
Award: $134,100.00

Long Beach Housing Authority
500 Centre Street
Long Beach, NY 11561–2099
Award: $113,100.00

Long Branch Housing Authority
P.O. Box 336
Long Branch, NJ 07740–0336
Award: $192,900.00

Lorain Metropolitan Housing Authority
1600 Kansas Avenue
Lorain, OH 44052–2602
Award: $372,580.00

Lowell Housing Authority
350 Moody Street
Lowell, MA 01853–0060
Award: $430,040.00

Lucas Metropolitan Housing Authority
P.O. Box 477
Toledo, OH 43697–0477
Award: $813,540.00

Lynn Housing Authority
174 South Common Str
Lynn, MA 01905–0000
Award: $138,000.00

Madison Community Development Authority
215 Martin Luther Ki
Madison, WI 53701–1785
Award: $227,700.00

Madison Ha 1609 Olive Street
Collinsville, IL 62234
Award: $249,900.00

MAKAH Nation IHA
P.O. Box 88
Neah Bay, WA 98357
Award: $73,500.00

Malden Housing Authority
630 Salem Street
Malden, MA 02148–0365
Award: $270,000.00

Manchester Hsg. & Redev. Authority
198 Hanover St.
Manchester, NH 03103–6125
Award: $345,592.00

Massena Housing Authority
P.O. Box 51
Massena, NY 13662–0518
Award: $72,300.00

Maxton Housing Authority
P.O. Box 126
Maxton, NC 28364
Award: $50,000.00

McMinnville Housing Authority
301 Hardaway Street
Mcminnville, TN 37110
Award: $131,355.00

Medford Housing Authority
121 Riverside Avenue
Medford, MA 02155–0000
Award: $144,300.00

Memphis Housing Authority
700 Adams Ave
Memphis, TN 38103–0664
Award: $1,821,300.00

Mercer County Housing Authority
80 Jefferson Ave.,
Sharon, PA 16146–0000
Award: $203,100.00

Metropolitan Development & Housing Agency
701 South Sixth Street
Nashville, TN 37202–0846
Award: $1,679,860.00

Millville Housing Authority
122 East Main Street
Millville, NJ 08332–0803
Award: $143,400.00

Minneapolis PHA in and For the City of Minneapolis
1001 Washington Aven
Minneapolis, MN 55401–1043
Award: $1,707,420.00

Mississippi Regional Housing Authority No. Iv
P.O. Box 1051
Columbus, MS 39703–1051
Award: $116,500.00

Mississippi Regional Housing Authority No. Viii
P.O. Box 2347
Gulfport, MS 39505–2347
Award: $460,460.00

Mobile Housing Board
P.O. Box 1345
Mobile, AL 36633–1345

Award: $1,086,020.00

Monticello Housing Authority
76 Evergreen Drive
Monticello, NY 12701–1630
Award: $50,000.00

Mount Clemens Housing Commission
50 Church Street
Mt. Clemens, MI 48043–2253
Award: $86,400.00

Muncie Housing Authority
409 E. First Street
Muncie, IN 47302–2495
Award: $192,000.00

Municipal Housing Auth. City of Yonkers
P.O. Box 35
Yonkers, NY 10710–0035
Award: $678,340.00

Municipal Housing Authority of Schenectady
375 Broadway
Schenectady, NY 12305–2595
Award: $300,600.00

Municipal Housing Authority of the City of Utica
509 Second Street
Utica, NY 13501–2450
Award: $312,000.00

Muskegon Heights Housing Commission
615 East Hovey Ave
Muskegon Heights, MI 49444
Award: $106,500.00

Nashua Housing Authority
101 Major Drive
Nashua, NH 03060–4783
Award: $198,600.00

Neptune Housing Authority
1810 Alberta Ave
Neptune, NJ 07753–4817
Award: $103,500.00

New Bedford Housing Authority
P.O. Box A–2081
New Bedford, MA 02741–2081
Award: $428,220.00

New Brunswick Housing Authority
P.O. Box 110
New Brunswick, NJ 08903–1368
Award: $169,800.00

New Rochelle Municipal Housing Authority
50 Sickles Avenue
New Rochelle, NY 10801–4029
Award: $162,900.00

New York City Housing Authority
250 Broadway, Room 711
New York, NY 10007–2516
Award: $35,000,000.00

Newport Housing Authority
One York Street
Newport, RI 02840–1212
Award: $330,600.00

Newport News Redev. & Housing Authority
P.O. Box 77
Newport News, VA 23607–0077
Award: $556,140.00

NEZ PERCE TRIBE IHA
P.O. Box 188
Lapwai, ID 83540
Award: $93,300.00

Niagara Falls Housing Authority
744 10th Street
Niagara Falls, NY 14301–1852
Award: $254,700.00

Norfolk Redevelopment & Housing Authority
P.O. Box 968
Norfolk, VA 23501–0968
Award: $1,061,953.00

North Bergen Housing Authority
6121 Grand Ave.
North Bergen, NJ 07047–5436
Award: $295,500.00

North Carolina Indian Housing Authority
P.0. Box 2343
Fayetteville, NC 28302
Award: $76,200.00

NORTH LAS VEGAS HOUSING AUTHORITY
1632 YALE STREET
NORTH LAS VEGAS, NV 89030–0000
Award: $79,100.00

NORTHERN CIRCLE
694 Pinoleville Drive
Ukiah, CA 95482
Award: $87,900.00

OAKLAND HOUSING AUTHORITY
1619 HARRISON ST
OAKLAND, CA 94612–0000
Award: $858,000.00

OGLALA SIOUX
P.O. Box C
Pine Ridge, SD 57770
Award: $374,912.00

Oklahoma City Housing Authority
1700 Ne Fourth St.
Oklahoma City, OK 73117
Award: $817,180.00

Orange Housing Authority
340 Thomas Blvd.
Orange, NJ 07050–4121
Award: $158,700.00

Oxford Housing Authority
P.O. Box 616
Oxford, NC 27565
Award: $83,400.00

Palm Beach County Housing Authority
3432 W 45th Street
West Palm Beach, FL 33407–0000
Award: $162,649.00

Panama City Housing Authority
804 E 15th Street
Panama City, FL 32405–0000
Award: $135,000.00

Pasco County Housing Authority
14517 7th Street
Dade City, FL 33525–2703
Award: $62,100.00

Passaic Housing Authority
333 Passaic Street
Passaic, NJ 07055–5896
Award: $209,400.00

Paterson Housing Authority
60 Van Houten Street
Paterson, NJ 07505–1998
Award: $563,680.00

Pawtucket H A
214 Roosevelt Ave
Pawtucket, RI 02862–1303
Award: $326,100.00

Peekskill Housing Authority
807 Main Street
Peekskill, NY 10566–2028
Award: $84,600.00

Pembroke Housing Authority
P.O. Drawer 910
Pembroke, NC 28372
Award: $72,900.00

Peoria Ha
814 W Brotherson St
Peoria, IL 61605–3905
Award: $463,580.00

Perth Amboy Housing Authority
P.O. Box 390
Perth Amboy, NJ 08862–0390
Award: $199,200.00

Petersburg Redev. & Housing Authority
P.O. Box 311
Petersburg, VA 23804–0311
Award: $141,600.00

Pharr Housing Authority
211 W Audrey
Pharr, TX 78577–0000
Award: $113,700.00

Philadelphia Housing Authority
2012–18 Cestnut Street
Philadelphia, PA 19103–4497
Award: $5,495,740.00

Phoenix Housing Department
251 W Washington 4th flr
Phoenix, AZ 85003
Award: $683,800.00

Pinal County Division Of Housing
970 N Eleven Mile Corner
Casa Grande, AZ 85222–9621
Award: $52,500.00

Plattsburgh Housing Authority
39 Oak Street
Plattsburgh, NY 12901–2830
Award: $169,000.00

Port Huron Housing Commission
905 Seventh Street
Port Huron, MI 48060–5399
Award: $132,000.00

Portland Housing Authority
14 Baxter Blvd.
Portland, ME 04101–4935
Award: $303,900.00

Portsmouth Metropolitan Housing Authority
410 Court Street
Portsmouth, OH 45662
Award: $263,100.00

Portsmouth Redev. & Housing Authority
P.O. Box 1098
Portsmouth, VA 23705–1098
Award: $494,260.00

Poughkeepsie Housing Authority
P.O. Box 630
Poughkeepsie, NY 12601–0632
Award: $105,000.00

Providence H A
100 Broad St
Providence, RI 02903–6400
Award: $671,000.00

Public Housing Agency of the City of Saint Paul
480 Cedar Street
St. Paul, MN 55101–2240
Award: $1,111,760.00

Qualla Housing Authority
P.O. Box 1749, Acquoni Ro
Cherokee, NC 28719–1749
Award: $252,300.00

Rahway Housing Authority
165 E. Grand Ave.
Rahway, NJ 07065–5491
Award: $81,900.00

Raleigh HA
P.O. Box 28007
Raleigh, NC 27611
Award: $516,100.00

Robeson County, Department of Housing
P.O. Box 1088
Lumberton, NC 28359
Award: $86,400.00

Rochester Housing Authority
140 West Avenue
Rochester, NY 14611–2744
Award: $650,000.00

Rockford Housing Authority
223 S Winnebago St
Rockford, IL 61102–2259
Award: $523,380.00

Romulus Housing Commission
34200 Beverly Road
Romulus, MI 48174–4454
Award: $50,000.00

Roxboro Housing Authority
P.O. Box 996
Roxboro, NC 27573
Award: $63,000.00

SAC & FOX OF OKLA
P.O. Box 1252
Shawnee, OK 74801–1252
Award: $114,900.00

Saginaw Housing Commission
2811 Davenport St.
Saginaw, MI 48602–3747
Award: $248,400.00

Saint Louis Housing Authority
4100 Lindell
St. Louis, MO 63108–2999
Award: $1,601,340.00

San Antonio Housing Authority
P.O. Drawer 1300
San Antonio, TX 78295–0000
Award: $2,110,160.00

San Benito Hsg Authority
P.O. Box 1950
San Benito, TX 78586–0000
Award: $90,000.00

San Diego Housing Commission
1625 Newton Ave.
San Diego, CA 92113–1038
Award: $361,920.00

San Marcos Housing Authority
1201 Thorpe Lane
San Marcos, TX 78666–0000
Award: $78,900.00

Saratoga Springs Housing Authority
One South Federal Street
Saratoga Springs, NY 12866–4233
Award: $101,700.00

Selma Housing Authority
711 Lizzie St.
Selma, NC 27576
Award: $54,900.00

Seminole Tribal Housing Authority
6300 Stirling Road
Hollywood, FL 33024
Award: $122,400.00

Sisseton Wahpeton
P.O. Box 687
Sisseton, SD 57262
Award: $189,300.00

Smithfield Housing Authority
P.O. Box 1058
Smithfield, NC 27577
Award: $61,500.00

Somerville Housing Authority
30 Memorial Road
Somerville, MA 02145–0000
Award: $126,300.00

South Bend Housing Authority
P.O. Box 11057
South Bend, IN 46634–0057
Award: $261,600.00

South Central Alabama Regional Housing Authority
100 Spring Rd
Troy, AL 36081
Award: $50,000.00

Southern Pines Housing Authority
801 S. Mechanic St.
Southern Pines, NC 28387
Award: $50,000.00

Springfield Housing Authority
200 N. Eleventh Street
Springfield, IL 62703–1004
Award: $380,000.00

Springfield Metropolitan Housing Authority
437 East John Street
Springfield, OH 45505
Award: $265,800.00

St Clair County Housing Authority
100 North 48th Street
Belleville, IL 62223
Award: $302,400.00

Stark Metropolitan Housing Authority
400 E. Tuscarawas
Canton, OH 44702–1131
Award: $667,680.00

State of Hawaii Housing Authority
P.O. Box 17907
Honolulu, HI 96817
Award: $1,368,380.00

Stevenson Alabama Housing Authority
P.O. Drawer E
Stevenson, AL 35772
Award: $50,000.00

Syracuse Municipal Housing Authority
516 Burt Street
Syracuse, NY 13202–3999
Award: $614,380.00

Tallahassee Housing Authority
2940 Grady Road
Tallahassee, FL 32312–0000
Award: $192,300.00

Tampa Housing Authority
1514 Union St.
Tampa, FL 33607–0000
Award: $1,283,279.00

The Housing Authority of the City of Bay St. Louis
601 Bienville
Bay St. Louis, MS 39520
Award: $50,000.00

The Housing Authority of the City of Columbus
P.O. Box 648
Columbus, MS 39703–0648
Award: $143,400.00

The Housing Authority of the City of Jackson
P.O. Box 11327
Jackson, MS 39283–1327
Award: $145,753.00

The Housing Authority of the City of Lumberton
P.O. Box 192
Lumberton, MS 39455
Award: $50,000.00

The Housing Authority of the City of Mccomb
P.O. Box 469
Mccomb, MS 39648
Award: $139,500.00

The Housing Authority of the City of Meridian
P.O. Box 870
Meridian, MS 39302–0870
Award: $337,220.00

The Housing Authority of the City of Oxford
P.O. Box 488
Oxford, MS 38655
Award: $63,600.00

The Housing Authority of the City of Picayune
P.O. Drawer 40
Picayune, MS 39466
Award: $106,200.00

The Housing Authority of the City of Starkville
P.O. Box 795
Starkville, MS 39759
Award: $72,600.00

The Housing Authority of the City of Tupelo
P.O. Box 3
Tupelo, MS 38802–0003
Award: $122,100.00

The Housing Authority of the City of Vicksburg
P.O. Box 865
Vicksburg, MS 39181–0865
Award: $129,000.00

The Housing Authority of the City of Waveland
P.O. Box 90
Waveland, MS 39576
Award: $50,000.00

The Housing Authority of the City of Yazoo City
P.O. Box 128
Yazoo City, MS 39194–0128
Award: $87,000.00

Tlingit-Haida Reg HA
P.O. Box 32237
Juneau, AK 99803–2237
Award: $171,652.00

Town of Ayden, Department of Housing
P.O. Box 482
Ayden, NC 28513
Award: $52,500.00

Town of Hempstead Housing Authority
760 Jerusalem Avenue
Uniondale, NY 11553–2929
Award: $340,340.00

Trenton Housing Authority
875 New Willow St.
Trenton, NJ 08638–0000
Award: $508,040.00

Troy Housing Authority
201 Stanley St.
Troy, NC 27371
Award: $50,000.00

Troy Housing Authority
One Eddy's Lane
Troy, NY 12180–1498
Award: $373,800.00

Trumbull Metropolitan Housing Authority
1977 Niles Road S.E.
Warren, OH 44484–5197
Award: $378,560.00

Tuckahoe Housing Authority
4 Union Place
Tuckahoe, NY 10707–4236
Award: $50,000.00

Tullahoma Housing Authority

2401 Cedar Lane Vill
Tullahoma, TN 37388
Award: $80,400.00

TURTLE MOUNTAIN
P.O. Box 620
Belcourt, ND 58316
Award: $393,120.00

Tuscaloosa Housing Authority
P.O. Box 2281
Tuscaloosa, AL 35403–2281
Award: $369,000.00

Union City Housing Authority
3911 Kennedy Blvd
Union City, NJ 07087–2622
Award: $135,600.00

Village of Catskill Housing Authority
P.O. Box 36
Catskill, NY 12414–0362
Award: $50,000.00

Village of Spring Valley Housing Authority
76 Gesner Drive
Spring Valley, NY 10977–3998
Award: $50,000.00

Vineland Housing Authority
191 Chestnut Avenue
Vineland, NJ 08360–5499
Award: $201,000.00

Virgin Islands Housing Authority
P.O. Box 7668
St. Thomas, VI 00801–7668
Award: $1,421,420.00

Warren Cty Ha
200 East Harlem Avenue
Monmouth, IL 61462
Award: $82,500.00

Watervliet Housing Authority
2440 Second Avenue
Watervliet, NY 12189–2746
Award: $91,800.00

Waynesboro Redev. & Housing Authority
P.O. Box 1138
Waynesboro, VA 22980–0821
Award: $59,400.00

Weslaco Housing Authority
P.O. Box 95
Weslaco, TX 78596–0095
Award: $54,000.00

West New York Housing Authority
6100 Adams Street
West New York, NJ 07093–1537
Award: $211,800.00

White Earth Reservation Housing Authority
P.O.Box 436
White Earth, MN 56591
Award: $110,400.00

WHITE MOUNTAIN
P.O. Box 1270
Whiteriver, AZ 85941
Award: $348,140.00

Wildwood Housing Authority
P.O. Box 1379
Wildwood, NJ 08260–6135
Award: $51,000.00

Wilmington Housing Authority
400 North Walnut Street
Wilmington, DE 19801
Award: $661,440.00

Winnebago County Housing Authority
2901 Searles Avenue
Rockford, IL 61101
Award: $97,500.00

Woburn Housing Authority
59 Campbell Street
Woburn, MA 01801–0000
Award: $50,000.00

Worcester Housing Authority
40 Belmont Street
Worcester, MA 01605–0000
Award: $560,560.00

Yakima Housing Authority
110 South Fair Avenue
Yakima, WA 98901
Award: $50,000.00

York Housing Authority
P.O. Box 1963
York, PA 17405
Award: $327,600.00

Youngstown Metropolitan Housing Authority
131 Boardman Street
Youngstown, OH 44503–1399
Award: $499,980.00

Zanesville Metropolitan Housing Authority
407 Pershing Road
Zanesville, OH 43701
Award: $201,300.00

Lac Cortes Oreilles Housing Authority
Route 2
Hayword, WI 54843
Award: $132,000.00

[FR Doc. 98–15476 Filed 6–9–98; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey, in three sheets, of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

T. 31N., R. 17W.

The plat, in three sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and a portion of the adjusted original meanders of the former right bank of the Middle Fork of the Flathead River (Glacier National Park Boundary) and the subdivision of sections 6 and 7, and the survey of the present right bank meanders of the Middle Fork of the Flathead River (Glacier National Park Boundary), in sections 6 and 7, Township 31 North, Range 17 West, Principal Meridian, Montana, was accepted May 20, 1998.

This survey was executed by personnel of the Flathead National Forest and was necessary to identify and establish boundaries for Glacier National Park and the Flathead National Forest caused by a change in the flow of the Middle Fork of the Flathead River.

A copy of the preceding described plat, in three sheets, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, in three sheets, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: May 29, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–15434 Filed 6–9–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

National Park Service

Sixty Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and Padre Island National Seashore.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1998–99 to conduct on-site surveys of visitors to Padre Island National Seashore and Mustang Island regarding their perception and understanding of beach garbage (that has washed ashore from the Gulf of Mexico) and their preference regarding shoreline garbage cleaning methods.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to

minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. The NPS goal in conducting these surveys to incorporate survey information into a research report to be used by the National Seashore and local municipalities to guide planning and alternative management strategies for cleaning shoreline garbage from the beaches.

DATES: Public comments will be accepted on or before August 10, 1998.

SEND COMMENTS TO: John Miller, Chief, Division of Science, Resources Management, and Interpretation, Padre Island National Seashore, 9305 S.P.I.D., Corpus Christi, TX 78418.

FOR FURTHER INFORMATION CONTACT: John Miller. Voice: 512–949–8173 x 227, Email: *john__*miller@nps.gov

SUPPLEMENTARY INFORMATION:

Title: Pardre Island National Seashore Shoreline Garbage Visitor On-Site Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information to incorporate into a research report on beach garbage for Padre Island National Seashore which will guide further management and planning for the Seashore.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking visitors about their perceptions, expectations, and preferences in the Padre Island National Seashore area.

Description of respondents: A sample of individuals who use the beaches of Padre Island National Seashore and Mustang Island.

Estimated average number of respondents: 1500.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hour per response: 10–15 minutes.

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 288 hours (12 hours/week @ 24 weeks.

Diane M. Cooke,

Information Collection Clearance Officer, WASO, Administrative Program Center, National Park Service.

[FR Doc. 98–15390 Filed 6–9–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Proposed 3–D Geophysical Exploration; Big Thicket National Preserve

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Continental Geophysical Services, L.L.C., for 3–D Geophysical Exploration within Big Thicket National Preserve, Hardin, Jefferson and Orange Counties, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Both documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701.

Dated: June 3, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–15389 Filed 6–9–98; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renew Collections: Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (1) Whether the continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (2) the accuracy of the burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected, and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notification.

ADDRESS INFORMATION TO: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development,Washington, D.C. 20523, 202–712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0545.

Form Number: AID 1550–4.

Title: Request for Shipment of Commodities for Foreign Distribution (Voluntary Agency).

Type of Submission: Renew.

Purpose: Public Law 480 states that the President may utilize nonprofit voluntary agencies (PVOs) registered with and approved by the USAID in furnishing food commodities to needy persons outside the United States. The USAID Form 1550–4 is an instrument by which the PVOs communicate their specific needs in this regard to the U.S. Government. This form is used by eligible PVOs to request food commodities for approved country programs overseas and to furnish delivery instructions and other information necessary to ship these commodities to destination ports.

Annual Reporting Burden:

Respondents: 70.

Total Annual responses: 1,311.

Total annual hours requested: 120.

Dated: June 3, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–15435 Filed 6–9–98; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renew Collections: Comment Request

SUMMARY: U.S. agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (1) Whether the continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (2) the accuracy of the burden estimates; (3) ways to enhance the quality, utility, and

clarity of the information collected, and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notification.

ADDRESSES INFORMATION TO: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, D.C. 20523, 202–712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0546.

Form Number: AID 1550–12.

Title: Request for Shipment of Commodities for Foreign Distribution. (Foreign Government)

Type of Submission: Renew.

Purpose: A USAID Title III form is needed by which the specific needs of the recipient country can be communicated to U.S. Department of Agriculture by USAID. The form will be used to request food commodities for approved P.L. 480 Title III country programs overseas and to furnish procurement instruction and other pertinent information necessary to ship these commodities to destination ports.

Annual reporting Burden:

Respondents: 13.

Total annual responses: 55.

Total annual hours requested: 60.

Dated: June 3, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–15436 Filed 6–9–98; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renew Collections: Comment Request

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (1) Whether the continuing collections of information is necessary for the proper performance of the functions of the agency, including whether information shall have practical utility; (2) the accuracy of the burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected, and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notification.

ADDRESS INFORMATION TO: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, D.C. 20523, 202–712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0003.

Form Number: AID 1550–3.

Title: Annual Estimate of Requirements (AER), P.L. 480, Title II, Commodities.

Type of Submission: Renew.

Purpose: The Annual Estimate of Requirements (AER) is used by the Office of Food for Peace to obtain information critical for the planning and budgeting cycle of the P.L. 480 Title II Program. The AERs include planned recipient and ration levels, number of distributions, operating reserves that are needed and inventories on hand.

Annual Reporting Burden:

Respondents: 13.

Total annual responses: 56.

Total annual hours requested: 1,344.

Dated: June 3, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–15437 Filed 6–9–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of two information collections under review; Police Corps Interim Final Regulation, extension of a currently approved collection; Police Corps Service Agreement, extension of a currently approved collection.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following two information collection requests for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the two information collections listed below. These proposed information collections were previously published in the **Federal Register** on March 31, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 9, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in each notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information: Police Corps Interim Final Regulation

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Police Corps Interim Final Regulation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form: COPS 17/01. Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be as ore required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal governments. Other: None. The Police Corps Interim Final Regulation sets forth guidance to interested States and Territories and individual participants on the requirements for participation in the Police Corps, a scholarship program for students willing to provide 4 years of service in return for funding. The Regulation specifies required information on each participant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Police Corps Interim Final Regulation: Approximately 8 respondents, at 10 hours per response (including record-keeping). Total annual burden hours requested 160.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 160 annual burden hours.

Overview of this information: Police Corps Service Agreement

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Police Corps Service Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 17/02. Office of Police Corps and Law Enforcement Education, Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be as ore required to respond, as well as a brief abstract: Primary:* Individuals or households. Other: None. The Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and selected Police Corps participants, setting forth the participants' agreement to provide 4 years of law enforcement service in exchange for scholarship or reimbursement funds for educational purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Approximately 144 respondents, at 24 hours per response (including record-keeping). Total annual burden hours requested 24.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 24 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 4, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, Untied States Department of Justice.

[FR Doc. 98–15384 Filed 6–9–98; 8:45 am]

BILLING CODE 4410–07–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Two Information Collections Under Review; Community Oriented Policing Services (COPS), Monitoring Visit Satisfaction Survey, extension of a currently approved collection.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 29, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until July 9, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Community Oriented Policing Services (COPS), Monitoring Visit Satisfaction Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: 23–01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Governments. Other: None. This survey information will better equip the COPS Monitoring Division to determine its best practices in order to improve monitoring protocol for increased grantee satisfaction.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300 respondents at 5 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: June 4, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–15382 Filed 6–9–98; 8:45 am]

BILLING CODE 4410–AT–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–079]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice Number: 98–072.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: Wednesday, June 17, 1998, 8:30 a.m. to 3:00 p.m.; and Thursday, June 18, 1998, 9:00 a.m. to 3:00 p.m., National Aeronautics and Space Administration Headquarters, Room 9H40, 300 E Street, SW, Washington, DC 20546.

CHANGES IN THE MEETING: Time changes will be Wednesday, June 17, 1998, 8:30 a.m. to 3:30 p.m.; and Thursday, June 18, 1998, 8:30 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2096.

Dated: June 2, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–15463 Filed 6–9–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–078)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that The Pregnancy Institute has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,649,934, entitled ''APPARATUS FOR ASSISTING CHILDBIRTH,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections should be sent to Marshall Space Flight Center.

DATES: Responses to this notice must be received by August 10, 1998.

FOR FURTHER INFORMATON CONTACT: Robert L. Broad, Jr., Patent Counsel, Marshall Space Flight Center, Mail Code CC01, Marshall Space Flight Center, AL 35812, telephone (256) 544–0021.

Dated: June 2, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–15462 Filed 6–9–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Space Planning for the National Archives and Records Administration; Public Meetings

The National Archives and Records Administration announces the following meetings:

—Thursday, June 11, 1998, from 7 p.m. to 9 p.m. at the National Archives and Records Administration, Northeast Region (Pittsfield), 10 Conte Drive, Pittsfield, MA 01201–8230. For further information call 781–647–8745 or e-mail diane.leblanc@waltham.nara.gov.

—Tuesday, June 16, 1998, from 7 p.m. to 9 p.m. at the National Archives and Records Administration, Pacific Region (San Francisco), 1000 Commodore Drive, San Bruno, California 94066–2350. For further information call 650–876–9249 or e-mail sharon.roadway@laguna.nara.gov.

—Wednesday, June 17, 1998, from 10 a.m. to noon and 7 p.m. to 9 p.m. at the National Archives and Records Administration, Pacific Alaska Region (Seattle) 6125 Sand Point Way, NE, Seattle, WA 98115–7999. For further information call 206–526–6501 or e-mail steven.edwards@seattle.nara.gov.

—Tuesday, June 23, 1998, from 7 p.m. to 9 p.m. at the Norman P. Murray Community and Senior Center, 24932 Veterans Way, Mission Viejo, CA 92692. For further information call 949–360–2618 or e-mail diane.nixon@laguna.nara.gov.

—Wednesday, June 24, 1998, from 5 p.m. to 7 p.m. at the National Archives and Records Administration, Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, IL 60629-5898. For further information call 773–581–7816 or e-mail david.kuehl@chicago.nara.gov.

—Tuesday, June 30, 1998, from 2 p.m. to 4 p.m. at the National Archives and Records Administration, Rocky Mountain Region, Denver Federal Center, Building 48, Denver, CO 80225. For further information call 303–236–0801 or e-mail robert.svenningsen@denver.nara.gov.

This is a series of meetings at which NARA is seeking public input for a study of its space needs for the next 10 years. NARA representatives will explain the reasons for undertaking a space plan, its objectives, and the planning process, and will invite comments and answer questions. In addition to helping NARA with its planning, this meeting is part of a National Performance Review initiative called Conversations With America: My Government Listens. NARA urges everyone interested to attend.

Reservations are not required. The meetings will be open to the public.

Dated: June 3, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–15402 Filed 6–9–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–462), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Media Arts Section A (Creation & Presentation/ Planning & Stabilization Categories) to the National Council on the Arts will be held on June 22–24, 1998. The panel will meet from 9:30 a.m. to 5:30 p.m. on June 23, and from 9:00 a.m. to 3:00 p.m. on June 24, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 9:00 to 10:30 p.m. on June 24, will be open to the public for a policy discussion on field needs, Leadership/Millennium initiatives, and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on June 22, from 9:00 a.m. to 5:30 p.m. on June 23, and from 10:30 a.m. to 3:00 p.m. on June 24, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed

to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 4, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–15363 Filed 6–9–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Folk & Traditional Arts Section (Creation & Presentation/Planning & Stabilization Categories) to the National Council on the Arts will be held on June 30, 1998, from 9:00 a.m. to 6:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 4:00 to 5:30 p.m., will be open to the public for a policy discussion on field needs, Leadership/Millennium initiatives, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 4:00 p.m. and from 5:00 p.m. to 6:00 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 4, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–15364 Filed 6–9–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–97–070 and ASLBP No. 98–734–01–EA]

Atomic Safety and Licensing Board; Magdy Elamir, M.D., Newark, NJ; Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately); Memorandum

June 4, 1998.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam.

By an announcement dated April 9, 1998, published at 63 FR 18458–59 (April 15, 1998), the Atomic Safety and Licensing Board announced the appointment of Judge Harry Rein to participate in this proceeding as a technical interrogator, pursuant to 10 CFR 2.722(a)(1). Notice is hereby given that Judge Rein will be unable to participate further in this proceeding. Correspondence, documents and other materials no longer need be served on Judge Rein.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–15398 Filed 6–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee) to withdraw its February 1, 1996, application for proposed amendment to Facility Operating License No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have revised the Inservice Leak and Hydrostatic Operation technical specification to allow reactor coolant system hydrostatic while remaining in the Cold Shutdown Mode. .

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 20,1996 (61 FR 25245). However, by letter dated February 6, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 1, 1996, and the licensee's letter dated February 6,1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department , Penfield Library, State University of New York, Oswego , New York 13126.

Dated at Rockville, Maryland, this 3rd day of June 1998.

For the Nuclear Regulatory Commission.

Joseph F. Williams,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–15401 Filed 6–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Company Calvert Cliffs Nuclear Power Plant, Units 1 and 2 Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

The Baltimore Gas & Electric Company (BG&E) has submitted an application for renewal of operating licenses DPR–53 and DPR–69 for an additional 20 years of operation at the Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2, respectively. CCNPP is located in Calvert County, Maryland. The application for renewal was submitted on April 10, 1998, by letter dated April 8, 1998, pursuant to 10 CFR Part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on April 27, 1998 (63 FR 20664). A notice of acceptance for docketing of the application for renewal of the facility operating licenses was published in the **Federal Register** on May 19, 1998 (63 FR 27601). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), BG&E submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW., Washington, DC, and the Local Public Document Room located in the Calvert County Public Library, 30 Duke Street, Prince Frederick, MD 20678.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants' (NUREG–1437) in support of the review of the application for renewal of the CCNPP operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. 10 CFR 51.95 requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The draft supplement to the GEIS will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify, and eliminate from detailed study, those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completion of the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Baltimore Gas & Electric Company.

b. Any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

Participation in the scoping process for the supplement to the GEIS does not, in of itself, entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Participation in the adjudicatory proceeding is governed by the procedures specified in 10 CFR 2.714 and 2.715 and will be the subject of a separate **Federal Register** notice.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold a public meeting for the CCNPP license renewal supplement to the GEIS. The scoping meeting will be held at the Holiday Inn Select, Solomons, Maryland, on Thursday, July 9, 1998. There will be two sessions to accommodate interested parties. The first session will convene at 2:00 p.m. and will continue until 5:00 p.m. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by BG&E of the proposed action, CCNPP license renewal, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Ms. Claudia M. Craig by telephone at 1–800–368–5642, extension 1053, or by Internet to the NRC at cceis@nrc.gov no later than July 2, 1998. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Public comments will be considered in the scoping

process for the supplement to the GEIS. If special equipment or accomodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Craig's attention no later than July 2, 1998, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may provide written comments on the environmental scoping process for the supplement to the GEIS to—Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of written comments should be postmarked by August 7, 1998, to be considered in the scoping process. Submittal of electronic comments may be sent by the Internet to the NRC at cceis@nrc.gov. Electronic submittals should be sent no later than August 7, 1998, to be considered in the scoping process and will be available for inspection at the NRC and Local Public Document Rooms.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection at the NRC and Local Public Document Rooms.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Ms. Craig at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of June 1998.

For the Nuclear Regulatory Commission.

David B. Matthews,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–15399 Filed 6–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 8, 15, 22, and 29, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS OF BE CONSIDERED:

Week of June 8

Thursday, June 11

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of June 15—Tentative

Wednesday, June 17

10:00 a.m. Briefing by National Mining Association on Regulation of the Uranium Recovery Industry (Public Meeting)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

2:00 p.m. Meeting with Advisory Committee on Medical Uses of Isotopes (ACMUI) and Briefing on Part 35 OM Rule (Public Meeting) (Contact: Larry Camper, 301–415–7231)

Week of June 22—Tentative

Thursday, June 25

9:30 a.m. Briefing by IG on Results of NRC Organization Safety Culture and Climate Survey (Public Meeting)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

2:00 p.m. Briefing on EEO Program (Public Meeting)

Week of June 29—Tentative

Tuesday, June 30

10:00 a.m. Meeting with Commonwealth Edison (Public Meeting) (Contact: Bob Capra, 301–415–1430)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

2:00 p.m. Briefing on Performance Assessment Progress in HLW, LLW, and SDMP (Public Meeting)

The schedule for commission meetings is subject to change on short notice to verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information. Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: June 5, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–15640 Filed 6–8–98; 3:59 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Office of Management and Budget.

ACTION: Notice of availability of the 1998 Circular A–133 Compliance Supplement.

SUMMARY: On June 30, 1997 (62 FR 35278), the Office of Management and Budget (OMB) issued the final notice of revision to Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' The notice also offered interested parties an opportunity to comment on Appendix B to Circular A–133 which was entitled ''Circular A–133 Compliance Supplement (provisional).'' OMB received comments from eight different respondents. In general, commenters were very satisfied with the approach and clarity of the document. The 1998 Circular A–133 Compliance Supplement (1998 Supplement) has been updated to add 47 additional programs, update for program changes, make technical corrections, and make changes reflected in the public comment letters. A list of changes to the 1998 Supplement can be found at Appendix 5 of the supplement. Due to its length, the 1998 Supplement is not included in this Notice. See **ADDRESSES** for information about how to obtain a copy. OMB intends to annually review, revise and/or update this supplement.

This notice also offers interested parties an opportunity to comment on the 1998 Supplement.

DATES: The 1998 Supplement will apply to audits of fiscal years beginning after June 30, 1997 and supersedes the provisional ''OMB Circular A–133 Compliance Supplement'' issued on June 30, 1997. All comments on the 1998 Supplement should be in writing and must be received by October 31,

1998. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 1998 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock no. 041–001–00507–2). The main GPO bookstore is located at 710 North Capitol Street, NW, Washington, DC 20401, (202) 512–0132. A copy may also be obtained from OMB home page on the Internet which is located at http://www.whitehouse.gov/WH/EOP/OMB/Grants.

Comments on the 1998 Supplement should be mailed to the Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, Room 6025, New Executive Office Building, Washington, DC 20503. Where possible, comments should reference the applicable page numbers. When comments of five pages or less are sent in by facsimile (fax), they should be faxed to (202) 395–4915. Electronic mail comments may be submitted to RAMSEY__T@A1.EOP.GOV. Please include the full body of the electronic mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, phone number, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as may be appropriate in the circumstances. Subrecipients should contact their pass through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, telephone (202) 395–3993.

Jacob J. Lew,

Acting Director.

[FR Doc. 98–15374 Filed 6–9–98; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Proposed Changes to Current Delivery Record Filing System

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: In the fall of 1998, the Postal Service will begin testing a new technological process that eliminates hardcopy filing of delivery records. If the test is successful, subsequent changes are planned in the portions of the Domestic Mail Manual and Domestic Mail Classification Schedule concerning delivery record information to reflect that hardcopy records will no longer be retained at the office of address.

DATES: Comments must be received on or before July 10, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Expedited and Package Information Systems, USPS Headquarters, 475 L'Enfant Plaza SW, Room 4200NB, Washington, DC 20260–4299.

FOR FURTHER INFORMATION CONTACT: Carrie Bornitz, 202–268–6797.

SUPPLEMENTARY INFORMATION:

Scope

A national Postal Service database for maintaining delivery date, time, and other information is already in place and is being used for Express Mail items. This database is also being expanded to include electronic Delivery Confirmation records. Additional testing will include material handling, operations, and systems tests for the capturing, routing, optical scanning, storage, and retrieval of electronic records that include a signature. Testing of this universal strategy for signature capture is expected to begin in August, 1998, and will be completed by November, 1998. The Postal Service believes that the increased accessibility of an electronic database will improve customer service and response time, and speed up processes involving the filing of indemnity claims.

Current Internal Use

Delivery records are maintained for Postal Service use to reply to delivery inquiries and to substantiate indemnity claims. Current delivery records include article number, recipient signature, printed name (optional), delivery address, and delivery date. Records are also made available to customers in the form of a Return Receipt After Mailing or Duplicate Return Receipt. The Postal Service currently maintains delivery records for Express Mail, COD, Certified, Numbered Insured, Registered, Restricted Delivery, and Return Receipt for Merchandise items. The majority of records are maintained in hardcopy format at the office of delivery. However, some large offices use alternative methods where forms from several delivery units or offices are consolidated in a centralized location for filing and retrieval. Electronic records, without signature information, are maintained for Express Mail and Delivery Confirmation items in a centralized database.

Future Internal Use

The use of delivery record information will not change under this program. The delivery record will include the article number, date of delivery, signature of recipient, name of recipient, and addressee's delivery address if different from the address shown on the mailpiece. All electronic delivery records will be maintained at a Postal Service central database.

Current Customer Use

When a customer/mailer requests a Return Receipt, PS Form 3811, the Postal Service provides the requester with a return receipt showing to whom and date delivered, and the addressee's delivery address if different from the address shown on the mailpiece. (This form also contains the customer/recipient signature). When a customer/mailer requests a Return Receipt After Mailing, PS Form 3811–A, the Postal Service provides the name and date of delivery only. If a Duplicate Return Receipt is requested because the original service was not provided, the Postal Service provides the recipient's name, date of delivery, and the addressee's delivery address if different from the address shown on the mailpiece. If delivery was not made, the customer/mailer is provided this information as well. No actual signatures are provided with the latter two options. All information is provided via the mails in hardcopy format.

Future Customer Use

There would be no change in the service provided by Return Receipt options. Return Receipt (purchased at the time of mailing) would remain the same. Service would be improved for Duplicate Return Receipt and Return Receipt After Mailing by the inclusion of an electronically produced image of the customer/recipient's signature. Requesters would receive a Duplicate Return Receipt or Return Receipt After Mailing via fax or mail. The new form design would closely mimic the current form (PS Form 3811–A).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–15358 Filed 6–9–98; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995

which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Application for Survivor Insurance Annuities: OMB 3220–0030 Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and amount of the annuity applied for.

The RRB utilizes Form(s) AA–17 (*Application for Widow(ers) Annuity*), AA–17b (*Applications for Determination of Widow(er) Disability*), AA–18 (*Application for Mother's/Father's and Child's Annuity*), AA–19 (*Application for Child's Annuity*). AA–19a (*Application for Determination of Child Disability*), and AA–20 (*Application for Parent's Annuity*) to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

The RRB proposes non-burden impacting editorial and formatting changes to all of the forms in this collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is unchanged as follows:]

Form #(s)	Annual responses	Time (min.)	Burden (hrs.)
AA–17 (with assistance)	3,800	27	1,710
AA–17 (without assistance)	200	47	157
AA–17b (with assistance)	380	40	253
AA–17b (without assistance)	20	50	17
AA–18 (with assistance)	333	27	150
AA–18 (without assistance)	17	47	13
AA–19 (with assistance)	665	27	299
AA–19 (without assistance)	35	47	27
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (with assistance)	13	27	6
AA–20 (without assistance)	2	47	2
Total	5,765		2,864

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting materials, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received by August 10, 1998.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–15373 Filed 6–9–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ad–6, SEC File No. 270–151, OMB Control No. 3235–0291

Rule 17Ad–7, SEC File No. 270–152, OMB Control No. 3235–0136

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–6 Recordkeeping requirements for transfer agents.

Rule 17Ad–6 under the Securities Exchange Act of 1934 (15 U.S.C. 78b et. seq.) (the ''Act'') requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquires and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep adequate control over their own performance and to examine registered transfer agents on an historical basis for compliance with applicable rules.

It is estimated that approximately 1,248 registered transfer agents will spend a total of 599,040 hours per year complying with Rule 17Ad–6. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $29,952,000.

• Rule 17Ad–7 Record retention requirements for transfer agents

Rule 17Ad–7 under the Act requires each registered transfer agent to retain, in an easily accessible place for a period of six months to one year, all the records required to be made and kept current under the Commission's rules regarding registered transfer agents. Rule 17Ad–7 also requires such records to be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document.

These record retention requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep adequate control over their own performance and to examine registered transfer agents on an historical basis for compliance with applicable rules.

It is estimated that approximately 1,248 registered transfer agent will spend a total of 142,272 hours per year complying with Rule 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–7 is $7,113,600.

Written 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 estimates of the burden 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associated Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

Dated: June 2, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15420 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40066; File No. SR–CHX–97–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Amending the Minor Rule Violation Plan

June 4, 1998.

I. Introduction

On October 1, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change amending the Minor Rule Violation Plan. The proposed rule change was published for comment in Securities Exchange Act Release No. 39723 (March 5, 1998), 63 FR 12123 (March 12, 1998). No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

On May 30, 1996 the Commission approved a proposed rule change that established a CHX Minor Rule Violation Plan (''Plan'').[2] The Exchange is now proposing to add the failure to display a limit order in the quotation[3] to the section of the Plan relating to Floor Decorum and Minor Trading Rule Violations. The Exchange believes that it is appropriate to add the CHX Limit Order Rule to the Plan because violations of the rule are either objective and technical in nature or easily verifiable. Moreover, the Exchange believes that because the CHX Limit Order Rule is built upon a comparable Commission Rule,[4] violations of such rule require sanctions that are more severe than a warning or cautionary letter. Accordingly, the Exchange is proposing the recommended fine for failure to display a limit order in the quotation (Article XX, Rule 7, interpretation and policy .05) to be $1,000 for the first violation and all subsequent violations.[5]

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[6]

The Exchange's proposal is also consistent with the requirements in Sections 6(b)(1)[7] and 6(b)(6)[8] that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. Moreover, because CHX Article XII, Rule 9 provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7)[9] and 6(d)(1)[10] of the Act.

The Exchange's proposal reinforces the obligations of an exchange specialist to immediately display certain customer limit orders in accordance with the Commission's Limit Order Display Rule[11] and the CHX Limit Order Rule.[12] The Commission believes that displaying customer limit orders benefits investors by providing enhanced execution opportunities and improved transparency.[13]

The Commission expects that the Exchange has the appropriate

[1] 15 U.S.C. 78s(b)(1).

[2] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The CHX's Plan was approved by the Commission in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (approving File No. SR–CHX–95–25).

[3] CHX Article XX, Rule 7 (''CHX Limit Order Rule'').

[4] *See* 17 CFR 200.11Acl–4 (''Limit Order Display Rule'').

[5] The Exchange notes that the minor rule plan violation schedule is merely a recommended fine schedule and that fines of more or less than the recommended fines can be imposed (up to a $2500 maximum) in appropriate circumstances. Moreover, the Exchange may proceed with formal disciplinary action, rather than procedures under the Plan, whenever it finds that a violation of the limit order rule was more than inadvertent.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78f(d)(1).

[11] 17 CFR 250.11Ac1–4.

[12] The Commission believes the increased fine of $1000 for the first violation is appropriate considering the very serious nature of these violations.

[13] *See* Securities Exchange Act Release 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release'').

surveillance procedures to easily identify a specialist who fails to display a customer limit order immediately or is relying on an automated system that does not display limit orders immediately.[14] The Commission, therefore, believes that because certain violations of the Limit Order Rule are amenable to efficient and equitable enforcement they are appropriate for inclusion in CHX's Minor Rule Plan. The Commission expects, however, because a violation of the Limit Order Rule amounts to a violation of a federal securities law, that the Exchange will err on the side of caution in disposing of such violations under the Plan.[15] The Commission expects the Exchange to continue to resolve more serious violations of rules through the use of formal disciplinary procedures, as in the case of an egregious violation or habitual offender.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1), 6(b)(5), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [16] and Rule 19d–1(c)(2) thereunder,[17] that the proposed rule change (SR–CHX–97–25) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15421 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

[14] A specialist is not displaying customer limit orders *immediately* if the specialist regularly executes customer limit orders at, for example, the 27th second after receipt. As stated in the Adopting Release, the requirement that a limit order be displayed ''immediately'' means that the limit order must be displayed as soon as practicable, but *no later* than 30 seconds after receipt under normal market conditions. This 30 seconds is an outer limit under normal market conditions and is not to be interpreted as a 30-second safe harbor.

[15] For example, the Commission expects that the Exchange would not issue several cautionary letters before instituting the fines under the Plan or aggregate multiple violations of the rules before instituting abbreviated disciplinary procedures under the Plan or, if necessary, full disciplinary procedures.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 250.19d–1(c)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40064; International Release No. 1138; File No. SR–DTC–98–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Temporary Approval of a Proposed Rule Change Relating to the Admission of Non-U.S. Entities as Direct Depository Participants

June 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 29, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated temporary approval of the proposed rule change through May 31, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's criteria for entities that are organized in a country other than the United States (''non-U.S. entity'') to become direct DTC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the Commission's temporary approval of DTC's admission criteria for non-U.S. entities as direct DTC participants. The Commission originally granted temporary approval on May 9, 1997.[3] The admission criteria would permit well-qualified, non-U.S. entities to obtain direct access to DTC's services without requiring the non-U.S. entities to obtain financial guarantees.

According to DTC, as of May 8, 1998, it has not admitted any non-U.S. entities under the non-U.S. entities participation standards. DTC is currently reviewing an application from one non-U.S. entity, has sent an application to another non-U.S. entity, and has received numerous inquiries from other non-U.S. entities. DTC expects to admit in 1998 several non-U.S. entities under these standards.

DTC is seeking an extension of the temporary approval so it can admit these non-U.S. entities and can gain experience with the new admission standards and with the unique risks posed by the activities of non-U.S. entities as direct DTC participants.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations promulgated because the admissions criteria takes into account the unique risks to DTC raised by the admission of non-U.S. entities while not unfairly discriminating against foreign entities seeking admission as participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC acknowledges that the additional admissions criteria applicable to non-U.S. entities may impose some additional burden. DTC believes that any such burden is necessary and appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a complete discussion of the admission criteria, refer to Securities Exchange Act Release No. 38600, International Release No. 1078 (May 9, 1997), 62 FR 27086–01 [File No. SR–DTC–96–13] (order temporarily approving a proposed rule change relating to the admission of non-U.S. entities as direct depository participants).

the clearing agency or for which it is responsible.[4] The Commission believes that the rule change is consistent with this obligation because the admission criteria should bind non-U.S. entities to DTC's rules and procedures in a manner similar to U.S. domestic participant and should lesson or eliminate the negative effects that jurisdictional issues could have on DTC's exercise of its rights and remedies against a non-U.S. entity. Therefore, the Commission believes that the admissions criteria will assist DTC in assuring the safeguarding of securities and funds which are in its custody, control, or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because accelerated approval will permit DTC to continue to use its admission criteria without interruption.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–98–11 and should be submitted by July 1, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–11) be, and hereby is, temporarily approved through May 31, 1999, on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15417 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between Kirsten Wells, Senior Analyst, Division of Reserve Bank Operations, Board of Governors of the Federal Reserve System, and Jeffrey Mooney, Special Counsel, Division of Market Regulation, Commission (June 3, 1998).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40065; File No. SR–NASD–98–33]

Self-Regulatory Organizations; Notice of Proposed Rule Change and Amendment 1 Thereto by the National Association of Securities Dealers, Inc., Relating to Exemptions From Fidelity Bonding Requirements

June 3, 1998.

Pursuant to Seciton 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 20, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASD Regulation''). By letter dated may 27, 1998, the Association filed Amendment 1 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend rule 3020 of the Conduct Rules of the NASD to grant to the staff authority to adjust the fidelity bond required of a member in certain circumstances upon a showing of good cause, either conditionally or unconditionally. Below is the text of the proposed rule change. Proposed new language is in italics.

3020. Fidelity Bonds

* * * * *

(c) Annual Review of Coverage

* * * * *

(4) Any member subject to the requirements of this paragraph (c) may apply for an exemption from the requirements of this paragraph (c). The application shall be made pursuant to Rule 9610 of the Code of Procedure. The exemption may be granted upon a showing of good cause, including a substantial change in the circumstances or nature of the member's business that results in a lower net capital requirement. The NASD may issue an exemption subject to any condition or limitation or limitation upon a member's bonding coverage that is deemed necessary to protect the public and serve the purposes of this Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3020 specifies that members are required to maintain fidelity bonds to insure against certain losses and the potential effect of such losses on firm capital. The rule applies to all members with employees who are required to join the Securities Investor Protection Corporation and who are not covered by the requirements of a national securities exchange. The amount of coverage a member is required to maintain is linked to the member's net capital requirements under SEC Rule 15c3–1.[4]

Under paragraph (c) of Rule 3020, each member is required to make an annual review of the adequacy of the member's fidelity bond coverage and is required to maintain coverage that is adequate to cover the member's highest

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] Amendment 1 revised the last sentence of proposed new paragraph (c)(4) of Rule 3020. *See* Letter from Elliott R. Curzon, Assistant Chief Counsel, NASD Regulation, to Lisa Henderson, Attorney SEC, dated May 27, 1998.

[4] 17 CFR 240.15c3–1 (1997).

net capital requirement during the preceding 12 months. NASD Regulation staff have received several requests from members asking for a waiver or interpretation to relieve the member from this requirement in certain circumstances. For example, if a full-service member changed its business by divesting itself of clearing responsibilities so that it no longer holds customer funds or securities, it would still be required to maintain bond coverage that is based on the higher net capital requirement that applied during the preceding year. Currently, Rule 3020 does not permit the staff to provide any relief to the member.

NASD Regulation is proposing to amend Rule 3020 to permit the staff to exempt a member from the requirements of the rule in circumstances similar to those described above and upon a showing of good cause. This authority will permit the staff to adjust the fidelity bond requirements applicable to a member to better tailor the requirements to changes in a member's business. In addition, the proposed rule change will also permit the staff to include conditions in an exemption to ensure that any subsequent increase in capital requirements is accompanied by a corresponding increase in coverage.

The rule change applies a ''good cause'' standard that will require a member to demonstrate that a modification from the bonding requirement is justified by the level of loss exposure that may be expected from the member. NASD Regulation notes that the fidelity bonding premiums are set for certain net capital thresholds on the basis of loss experience. The premiums are changed from time to time to reflect changes in loss experience and to ensure that sufficient funds are available to pay any losses reported to the insurer. In addition, generally losses incurred in a prior year are reported against the firm's current year. NASD Regulation intends to apply this authority only where it is clear that an exemption will not have any unintended impact on the insurance pool, and the modified coverage would adequately protect the member against potential losses.

Request for exemption would be considered under recently adopted Procedures for Exemption in the 9600 Series of Rules in the Code of Procedure. Under the procedures, the staff issues written determinations that are subject to review by the National Adjudicatory Council.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] in that the proposed amendments are designed to accommodate members whose financial circumstances have changed so that they could obtain an exemption from maintaining fidelity bond coverage at higher previous levels if they can show that there is no regulatory reason for the higher coverage required by Rule 3020, without otherwise compromising investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approved such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–33 and should be submitted by July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15418 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40069; File No. SR–NASD–98–38]

Self-Regulatory Organizations; Notice of Filing and Partial Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to NASD Order Audit Trail System and Record-Keeping Rules

June 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1935 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, NASD Regulation, Inc., (''NASDR'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASDR. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDR is proposing to amend NASD Books and Records Rule 3110 and NASD Order Audit Trail System (''OATS'') Rules 6954 and 6957 to: require members to record certain information when an order is transmitted to a non-member; explicitly detail the recordkeeping requirements that will apply to OATS data; require members to record and maintain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

information related to ''orders'' as that term in defined is the OATS rules; indicate effective dates for compliance with the proposed amendments to Rule 3110; and make three nonsubstantive, technical revisions to Rules 3110 and 6957. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

CONDUCT RULES

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(h) [(c)] *Order Audit Trail System Record-Keeping Requirements*

(1) Each member that is a Reporting Member, as that term is defined in Rule 6951(n), Shall record and maintain with respect to each order, *as that term is defined in Rule 6941(j)*, for such security that is received or executed at its trading department: *(A)*[(1)] an identification of each registered person who receives the order directly from a customer; (B)[(2)] an identification of each registered person who executes the order; and *(C)* [(3)] [where] an order is originated by the member and transmitted manually to another department, an identification of the department that originated the order.

(2) Each Reporting Member shall maintain and preserve records of the information required to be recorded under paragraph (h)(1) of this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

(3) The records required to be maintained and preserved under paragraph (h)(1) of this Rule may be immediately produced or reproduced on ''micrographic media'' as defined as SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meets the conditions set forth in SEC Rule 17a–4(f) and be maintained and preserved for the required time in that form.

NASD SYSTEMS AND PROGRAMS

6950. ORDER AUDIT TRAIL SYSTEM

6954. Recording of Order Information

(a) Procedures

(1) through (3): No change:

(4) (*A*) Each Reporting Member shall *maintain and preserve* [retain] records of the information required to be recorded under this Rule *for the period of time and accessibility specified in SEC Rule 17a–4(b)* [in accordance with Rule 3110].

(*B*) *The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on ''micrographic media'' as defined in SEC Rule 17a–4(f)(1)(i) or by means of ''electronic storage media'' as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and be maintained and preserved for the required time in that form.*

(b) No change.

(c) Order Transmittal

(1) through (5): No change

(*6) When a member transmits an order to a non-member, the Reporting Member shall record: (A) the fact that the order was transmitted to a non-member, (B) the order identifier assigned to the order by the Reporting Member, (C) the market participant symbol assigned by the Association to the Reporting Member, (D) the date the order was first originated or received by the Reporting Member, (E) the date and time the order is transmitted, (F) the number of shares to which the transmission applies, and (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member.*

6957. Effective Date

(a) through (c): No change

(d) Rule 3110

The requirements of *Rule 3110(h)(1)(A)* [Rule 3110(c)(1)] and *Rule 3110(h)(1)(B)* [Rule 3110(c)(2)] shall be effective on March 1, 1999, and the requirements of *Rule 3110(h)(1)(C)* [Rule 3110(c)(3)] shall be effective on July 31, 2000. *The requirements of Rule 3110(h)(2) and Rule 3110(h)(3) shall be effective on March 1, 1999.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. The Commission approved NASD OATS Rules 6950 through 6957 on March 6, 1998.[3] The OATS rules require member firms to capture and record specific information related to the handling or execution of orders for equity securities in The Nasdaq Stock Market (''Nasdaq''). Relevant information regarding those orders must be specified to the hour, minute, and second. Firms must then report that information to OATS. The rules also require members to synchronize their business clocks to one time source. The Commission also approved new Rule 3110(c), which requires members to record and maintain certain information that is relevant to the OATS data reporting requirements.

OATS reporting will be implemented in phases. By March 1, 1999, electronic orders received by Electronic Communications Networks (''ECNs'') or at the trading departments of market makers are subject to reporting. Electronic orders are defined as orders that are captured in an electronic order-routing or execution system. By August 1, 1999, all electronic orders are subject to reporting. By July 31, 2000, all manual or non-electronic orders are subject to reporting.

The types of orders that must be reported under the OATS rules include those received from a customer for handling or execution, those received from another member firm for handling or execution, and those originated by a department or desk within a firm for execution by another department or desk within that same member firm. Order events that must be reported under the rules include the receipt, modification, cancellation, execution, or routing of an order to another member firm, another department of the same firm, or an ECN. Orders for a proprietary account generally are exempted.

Discussion. The NASDR proposes to amend the OATS Rules and the books and records requirements that apply specifically to OATS data. The first three amendments are non-substantive, technical revisions to Rules 3110 and 6957. The first amendment would renumber Rule 3110(c) to Rule 3110(h).[4] The second amendment would revise Rule 6957(d) to refer to Rule 3110(h) instead of to Rule 3110(c). Rule 3110(c) is hereinafter referred to as Rule 3110(h). The third amendment would revise Rule 3110(h) to change the word ''where'' to ''when'' because ''when''

[3] *See* Exchange Act Release No. 39729 (March 6, 1998) 63 FR 12559 (March 3, 1998) (order approving file SR–NASD–97–56).

[4]3 The Commission notes that the new Rule 3110(h) was not intended to replace existing Rule 3110(c), which does not deal with OATS. That paragraph is not affected by this filing.

has a more accurate meaning in the context of the sentence in which it appears.

The fourth amendment would revise OATS Rule 6954(c) by adding a new paragraph (6). Rule 6954(c) sets forth the order information that must be recorded under the OATS rules when an order is transmitted, either from one department to another within a member firm or to another member. Rule 6954(c) does not, however, contain a requirement that a member record information when an order is transmitted to a non-member, such as a foreign broker/dealer or a foreign exchange. The NASDR proposes to add new paragraph (6) to require members to record certain information when an order is transmitted to a non-member, including the fact that it was so transmitted. NASD members will be required to report this information to OATS pursuant to Rule 6955. This new information will allow the NASDR to track what has happened to an order that a member has received and reported to OATS that is then routed to a non-member. Without this new requirement, there is no way to track this information.

The fifth amendment would revise both OATS Rule 6954(a)(4) and Rule 3110(h) to set forth specific record-keeping requirements. OATS Rules 6954(a)(1) and 6954(a)(4) require members to record specified information and to retain records of that information; Rule 3110(h) requires members to record and maintain information required by OATS. However, those rules do not specify how long the records must be maintained or the requirements that apply when members wish to utilize micrographic media or electronic storage media to maintain the records. To provide certainty to member firms on record retention requirements related to OATS data, the NASDR proposes to add new language to both Rule 6954(a)(4) and Rule 3110(h) to make explicit the record-keeping requirements related to OATS data. The rules have been revised to specifically reference the record retention period specified in SEC Rule 17a–4(b) and the conditions set forth in SEC Rule 17a–4(f) for reproducing records on micrographic media or by means of electronic storage media.

The sixth amendment would revise Rule 3110(h)(1) to require members to record and maintain information related to an ''order,'' as that term is defined in OATS Rule 6951(j). As stated above, new rule 3110(h) was adopted to require members to record and maintain information relevant to the OATS data recording and reporting requirements. The OATS rules require firms to record and report to OATS information related to an ''order.'' For purposes of the OATS rules, the term ''order'' as defined in Rule 6951(j) means ''any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.'' The NASDR proposes to similarly limit Rule 3110(h) to require members to record and maintain information only with respect to ''orders'' in Nasdaq equity securities.

Finally, the seventh amendment would revise Rule 6957(d) to indicate the effective dates for compliance with the proposed amendments to Rule 3110(h).

2. Statutory Basis

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASDR believes that requiring members to record certain information when an order is transmitted to a non-member and to record and maintain information related to an ''order'' as defined in the OATS rules and explicitly detailing the record-keeping requirements that apply to OATS data will further these requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was reviewed by the NASDR National Adjudicatory Council (''NAC'') and the NASD Small Firm Advisory Board (''SFAB''). The NAC did not have any comments on the proposal. The SFAB did not have any comments on the proposed rules, but did express its concerns about the costs that will be required for compliance by small firms with the OATS rules that already have been approved by the SEC and are scheduled to be implemented starting in March 1999.

[5] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With respect to amendments one through three (*i.e.*, (1) renumber Rule 3110(c) to Rule 3110(h); (2) revise Rule 6957(d) to refer to Rule 3110(h) instead of Rule 3110(c); and (3) revise Rule 3110(h) to change the word ''where'' to ''when.''): The foregoing rule change is concerned solely with the administration of the NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e)(3) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

With respect to amendments four through seven (*i.e.*, (4) add new paragraph (6) to Rule 6954(c); (5) revise Rules 6954(a)(4) and 3110(h) to set forth specific record-keeping requirements related to OATS data, referencing SEC Rule 17a–4; (6) revise Rule 3110(h)(1) to require members to record and maintain information related to an ''order'' as defined in Rule 6951(j); and (7) revise Rule 6957(d) to establish the effective dates for compliance with the proposed amendments to Rule 3110(h)): Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(e)(3).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, 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, 450 Fifth Street, NW, Washington, DC. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–38 and should be submitted by July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15419 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40063; File No. SR–PCX–98–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment 1 Thereto by the Pacific Exchange, Inc., Relating to Fines for Disruptive Action on the Options Floor

June 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On May 28, 1998, the Exchange filed Amendment 1 to the proposal with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

PCX is proposing to increase its recommended fines under the Minor Rule Plan (''MRP'') for disruptive action involving physical contact between members while on the options trading floor. Proposed new language is in italics; proposed deleted language is in brackets.

6133 Minor Rule Plan

Rule 10.13(a)–(j)—No change.

(k) Minor Rule Plan: Recommended Fine Schedule.

(i) Options Floor Decorum and Minor Trading Rule Violations	Fines		
	1st violation	2nd violation	3rd violation
1.–16. No change			
17. Disruptive action involving physician contact while on the trading floor. (Rule 6.2)	[$500.00] 1,500.00	[$1,000.00] 3,000.00	[$2,500.00] 5,000.00
18.–34. No change.			

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase the recommended fines under the MRP[4] for disruptive action involving physical contact between members while on PCX's Options Trading Floor. These fines are currently set at $500, $1,000 and $2,500 for first, second and third violations, respectively, during a running two-year period. The Exchange is proposing to increase these fines at $1,500, $3,000, and $5,000, respective.[5] The purpose of the rule change is to deter future incidents of disruptive conduct involving physical contact. The Exchange notes that there has been a moderate increase recently in the number of such cases, and the Exchange intends that the proposed rule change will serve to reverse that trend.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment 1 clarifies the purpose section of the filing by noting that fines over $2,500 are subject to higher reporting requirements than fines of $2,500 or less. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Lisa Henderson, Attorney, SEC, dated May 26, 1998.

[4] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)–(j) sets forth the specific Exchange rules deemed to be minor in nature.

[5] As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly, any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. *See* Securities Exchange Act Release No. 32080 (January 22, 1992), 57 FR 3452 (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. (''NYSE'') Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade. In addition, the Exchange believes that the proposal will serve to promote fair and orderly markets on the Options Floor and thereby will serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–21 and should be submitted by July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15416 Filed 6–9–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 08/78–0153]

Bluestem Capital Partners II, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 18, 1997, an application was filed by Bluestem Capital Partners II, L.P. at 122 South Phillips Avenue, Suite 300, Sioux Falls, South Dakota 57104, with the Small Business Administration (SBA) pursuant to Section 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. 08/78–0153 on May 22, 1998, to Bluestem Capital Partners II, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 22, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–15353 Filed 6–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0414]

Critical Capital Growth Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 29, 1997, an application was filed by Critical Capital Growth Fund, L.P. at 17 East St. Francis Drake, Suite 230, Larkspur, California 94939, with the Small Business Administration (SBA) pursuant to Section 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. 09/09–0414 on May 4, 1998, to Critical Capital Growth Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1998.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98–15356 Filed 6–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0315]

First United Venture Capital Corporation; Notice of Issuance of a Small Business Investment Company License

On August 27, 1997, an application was filed by First United Venture Capital Corporation, at 1400 West Main Street, Durant, Oklahoma 74701, with the Small Business Administration (SBA) pursuant to Section 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. 06/06–0315 on May 22, 1998, First United Venture Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 22, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–15354 Filed 6–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 08/08–0152]

Rocky Mountain Mezzanine Fund II, L.P.; Notice of Issuance of a Small Business Investment Company License

On December 18, 1997, an application was filed by Rocky Mountain Mezzanine Fund II, L.P. at 1125 17th Street, Suite 1500, Denver, Colorado 80202, with the Small Business Administration (SBA) pursuant to Section 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. 08/08–0152 on May 4, 1998, to Rocky Mountain Mezzanine Fund II, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 8, 1998.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 98–15355 Filed 6–9–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2830]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of internationals organizations with regard to communication and information, and developing country interests.

The guest speaker will be The Honorable Joel Klein, Chief, Antitrust Division, U.S. Department of Justice, to talk about current antitrust issues in the telecommunications and information technology arena.

In addition, the purpose of this meeting will be to hear reports from the working groups on various issues that chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, June 25, 1998, from 9:30 a.m.—12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW, Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385.

Dated: May 26, 1998.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 98–15370 Filed 6–9–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2834]

Advisory Committee on Private International Law Study Group on the Protection of Incapacitated Adults

The Hague Conference on Private International Law, of which the United States is a member state, is developing a convention to deal with the protection of incapacitated adults. This convention is being patterned after a convention related to the protection of children adopted by the Hague Conference at a diplomatic session in October, 1996 (the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children).

At a meeting held on September 3–12, 1997, a Special Commission of the Hague Conference adopted for consideration at a diplomatic session a draft Convention on Jurisdiction, applicable Law, Recognition, Enforcement and Cooperation in Respect of the Protection of Adults. The diplomatic session to consider this draft will take place sometime in 1999. The United States and other countries may submit comments on the draft convention, which the Permanent Bureau of the Hague Conference will then circulate to all of the participating States in advance of the 1999 session.

The draft convention seeks to establish rules for jurisdiction and the law to be applied to proceedings to take measures for the protection of adults who are in some way unable to make appropriate decisions regarding themselves or their property. Such measures include the appointment of guardians with limited or general powers and the execution by an adult of powers of attorney or similar documents to become effective in the event of incapacity. The draft convention would set standards for recognition and enforcement by the States Party of the measures of protection to be covered. Finally, the draft convention would establish a system of cooperation between authorities to ensure that information is exchanged and appropriate action is taken. A copy of the draft convention and of the United States report of the meeting of the special commission are available to the public on request.

In order to ensure that the comments of the United States on the draft convention take into account the views of experts and interested persons and institutions, the Department is interested in receiving comments on the draft convention. In addition, there may from time to time be meetings, open to the public, for the purpose of an exchange of views and discussion of comments received.

Any person or organization who wishes to participate in the work of this study group and to receive documents and notices regarding meetings should contact Rosalia Gonzales in the Office of the Assistant Legal Adviser for Private International Law (L/PIL) to be placed on the mailing list. The address is: 2430 E St., NW, Suite #203, South Bldg.,

Washington, DC 20037–2800; FAX—202–776–8482; PHONE–202–776–8420; EMAIL—pildb@his.com. Questions and comments should be addressed to Gloria F. DeHart, Attorney Adviser International, 50 Fremont St., Suite 300, San Francisco, CA 94105; FAX—415–356–6190; Phone—415–356–6187.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 98–15371 Filed 6–9–98; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 23, 1998 [FR 63, 13903].

DATES: Comments must be submitted on or before July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Vessel Documentation.

OMB Control Number: 2115–0110.

Form(s): CG–1258, CG–1261, CG–1270, CG–1280, CG–1280B, CG–1340, CG–1356, CG–4593, CG–5542, and MA–899.

Type Request: Extension of a currently approved collection.

Affected Public: Owners/builders of yachts and commercial vessels at least 5 net tons.

Abstract: The information collected will be used to establish the eligibility of a vessel to: (a) be documented as a ''vessel of the United States,'' (b) engage in a particular trade, and/or '' become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.

Need: 46 U.S.C. Chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.

Burden Estimates: The estimated burden is 50,092 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer.

Comments are invited on: the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

A comment to OMB is best assured of having its full effect if it is received by OMB within 30 days of publication.

Issued in Washington, DC, on June 5, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–15458 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–52–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–11]

Petitions for Exemption

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 30, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. , 800 Independence Avenue, SW, Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 4, 1998.

Mardi R. Thompson,

Acting Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No. 29203.

Petitioner The Boeing Company.

Regulations Affected 25.783(h), 25.807(d)(1), 25.810(a)(1), 25.812(e), 25.819(a), 25.857(e), 25.1447(c)(1).

Description of Petition To exempt The Boeing Company from the requirements of 14 CFR 25.783(h), 25.807(d)(1), 25.810(a)(1), 25.812(e), 25.819(a), 25.857(e), 25.1447(c)(1) to permit McDonnell Douglas Model MD–17 freighter airplanes operating with Class E cargo compartments to carry up to two supernumeraries in a courier seat on the flight deck.

Petition for Exemption

Docket No. 28888.

Petitioner PEMCO AEROPLEX INC.

Regulations Affected CAR 4b.362(c)(1), 4b.362(e)(7), and 4b.382(d).

Description of Petition PEMCO AEROPLEX INC. petitions for exemption from the noted requirements to permit the accommodation of two supernumeraries forward of a rigid cargo bulkhead and smoke-tight door, on 727–200 aircraft with Class E compartments.

Petitions for Exemption

Docket No: 29148.

Petitioner: Performance Designs, Inc.

Sections of the FAR Affected: 14 CFR 91.307(a)(1) and 105.43(a)(1).

Description of Relief Sought: To permit an owner or operator of a PDI Ram-Air reserve parachute to operate the parachute on a progressive inspection program consisting of an annual repack and detailed external inspections every 120 days.

Docket No: 29196

Petitioner: Lucent Aviation

Sections of the FAR Affected: 14 CFR 61.57(b)(1)(ii)

Description of Relief Sought: To permit pilots employed by Lucent to meet the night currency requirements to act as pilot in command of an aircraft by accomplishing three takeoffs and three landings in the same category and class, but not type, of aircraft in which the pilot will act as pilot in command. The proposed exemption would also permit those pilots to maintain pilot-in-command night currency by accomplishing the required takeoffs, and landings in a flight simulator representative of the category and class, but not type, of aircraft to be flown.

Dispositions of Petitions

Docket No: 28639.

Petitioner: PenAir.

Sections of the FAR Affected: 14 CFR 121.574(a)(1) and (3).

Description of Relief Sought/ Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while on board an aircraft operated by PenAir when the equipment is furnished and maintained by a hospital treating the patient. *GRANT, May 22, 1998, Exemption No. 6523A.*

Docket No: 28485.

Petitioner: Polar Air Cargo, Inc.

Sections of the FAR Affected: 14 CFR 121.583(a)(8).

Description of Relief Sought/ Disposition: To permit up to three dependents of Polar employees who are accompanied by an employee sponsor traveling on official business only and who are trained and qualified in the operation of the emergency equipment on Polar's Boeing-747 cargo aircraft to be added to the list of persons Polar is authorized to transport without complying with the passenger-carrying requirements of §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operation requirements in §§ 121.157(c), 121.161, and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573. *GRANT, May 22, 1998, Exemption No. 6530A.*

Docket No: 17145.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.665 and 121.697(a) and (b)

Description of Relief Sought/ Disposition: To permit UAL to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature. *GRANT, May 22, 1998, Exemption No. 2466K.*

Docket No: 29188.

Petitioner: Civil Air Patrol.

Sections of the FAR Affected: 14 CFR 61.113(e).

Description of Relief Sought/ Disposition: To permit the CAP to reimburse CAP members who are private pilots for fuel, oil, supplemental oxygen, fluids, lubricants, preheating, deicing, airport expenses, servicing, and maintenance expenses and certain per diem expenses incurred while serving on official USAF-assigned CAP missions, subject to certain conditions and limitations. *GRANT, May 28, 1998, Exemption No. 6771.*

Docket No.: 29013.

Petitioner: Vintage Flying Museum.

Sections of the FAR Affected: 14 CFR 91.315.

Description of Relief Sought/ Disposition: To permit Vintage to operate its Boeing B–17G (B–17G) aircraft, which is certificated in the limited category, for the purpose of carrying passengers for compensation or hire. *GRANT, May 27, 1998, Exemption No. 6775.*

Docket No.: 29097.

Petitioner: Daniel Webster College.

Sections of the FAR Affected: 14 CFR 141.35(d)(2)(i).

Description of Relief Sought/ Disposition: To permit Mr. Joyce to be eligible to serve as the chief flight instructor for DWC without meeting the required minimum flight training experience of 1,000 flight hours. *DENIAL, May 21, 1998, Exemption No. 6774.*

Docket No.: 29209.

Petitioner: AirNet Systems, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit AirNet to operate eight Learjet aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *GRANT, May 22, 1998, Exemption No. 6772.*

Docket No.: 29201.

Petitioner: Capt. Richard P. Siano.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit the petitioner to act as pilot in operations conducted under part 121 after reaching his 60th birthday. *DENIAL, May 22, 1998, Exemption No. 6773.*

[FR Doc. 98–15459 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Petition for Declaratory Order Regarding Application of Federal Motor Carrier Truth In-Leasing Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of denial of petition for declaratory order.

SUMMARY: The Owner-Operator Independent Drivers Association, Inc. (OOIDA), Howard Jenkins, Marshall Johnson, Susan Johnson and Jerry Vanboetzelaer filed with the FHWA a petition for declaratory order (the OOIDA petition) seeking a formal ruling by the FHWA that New Prime, Inc., dba Prime, Inc. (Prime) and Success Leasing, Inc. (Success) violated certain provisions of the federal motor carrier truth-in-leasing regulations (49 CFR part 376). This petition was filed after the U.S. District Court for the Western District of Missouri dismissed petitioners' class action complaint against Prime and Success, seeking enforcement of these regulations, on the ground that FHWA has primary jurisdiction to determine whether the regulations have been violated.

The FHWA is denying the OOIDA petition because it fails to raise any issues not adequately addressed by existing legal precedent which require the special expertise of this agency. Although denials of petitions for declaratory orders will not ordinarily be published in the **Federal Register**, the FHWA is publishing this decision to

provide guidance to courts, carriers, owner-operators and other interested parties regarding the agency's general policy in handling such petitions, particularly those involving issues arising under the truth-in-leasing regulations. This policy applies to all petitions for declaratory orders, regardless of whether filed in connection with private litigation.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Falk, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366–1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

The OOIDA Petition

On March 5, 1998, OOIDA and four owner-operators filed a petition for declaratory order seeking a ruling from the FHWA that Prime and Success violated the truth-in-leasing regulations. Petitioners initially sought damages and enforcement of these regulations by filing a class action complaint, under 49 U.S.C. 14704, in the U.S. District Court for the Western District of Missouri. However, the court dismissed the complaint on the ground that the FHWA had primary jurisdiction to resolve the issues in controversy.

According to the OOIDA petition, several owner-operators leased equipment to Prime which they obtained through lease-purchase agreements with Success, an equipment leasing company allegedly under common ownership with Prime. Under the terms of these lease-purchase agreements, Prime deducted rental/purchase payments for the equipment from the owner-operators' compensation and remitted the money to Success. Owner-operators were also required to remit money into several reserve funds maintained by Success to cover the cost of repairs and maintenance of the equipment. Owner-operators who terminated their leases with Prime were not refunded their reserve fund balances.

Petitioners claim that Prime violated 49 CFR 376.12(i) because its leases failed to specify the terms of any lease-purchase agreement authorizing the carrier to deduct lease purchase payments from lessor compensation. They also allege that the reserve funds maintained by Success are escrow funds within the meaning of 49 CFR 376.2(f), and that any balances in these funds must be returned to them with interest, within 45 days of termination of their leases, under 49 CFR 376.12(k).

Petitioners contend that the district court's dismissal of their complaint, potentially with prejudice: (1) conflicts with their right to seek private enforcement by filing a civil action under § 14704; (2) conflicts with congressional intent to eliminate DOT's role in resolving private disputes; and (3) improperly applied the doctrine of primary jurisdiction, which is limited to cases where the reasonableness of a federal regulation is in dispute and an agency's technical expertise is necessary to resolve the issues before the court. Petitioners have appealed the dismissal of their complaint to the Court of Appeals for the Eighth Circuit. Consequently, petitioners request, in the alternative, that the FHWA rulethat it lacks primary jurisdiction over regulatory issues where a private party has elected to litigate these issues in federal district court under 49 U.S.C. 14704. Petitioners further contend that FHWA's technical expertise is not needed in this case because the Interstate Commerce Commission (ICC) previously ruled on the applicability of the part 376 escrow provisions to carrier-affiliated equipment leasing companies in Dart Transit Company—Petition for Declaratory Order, 9 I.C.C. 2d 700 (1993).

Petitions for Declaratory Orders

Although fairly new to the FHWA, petitions for declaratory orders were a common device for obtaining guidance from the ICC in resolving disputes within that agency's jurisdiction. An agency's authority to issue declaratory orders comes from § 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), which gives agencies ''sound discretion'' to issue declaratory orders to ''terminate a controversy or remove uncertainty''. The FHWA intends to exercise this authority much more selectively than the ICC because Congress, in transferring several ICC functions to the Department of Transportation (DOT) through the ICC Termination Act of 1995 (ICCTA), envisioned that DOT would generally not become involved in resolving disputes between private parties.

The ICCTA expanded the rights and remedies of persons injured by carriers by providing for private enforcement of its provisions in court. Under 49 U.S.C. 14704, an injured party may seek both damages and injunctive relief against a motor carrier in federal district court to redress violations of part 376. In discussing this provision, the House Transportation and Infrastructure Committee stated that DOT should not allocate its scarce resources to resolving essentially private disputes, and that the right of private enforcement ''will permit these private, commercial disputes to be resolved the way that all other commercial disputes are resolved—by the parties''. H. Rep. No. 104–311, pp. 87–88.

The FHWA believes that issuing declaratory orders, except in extraordinary circumstances, would undermine the Congressional intent to keep DOT out of private commercial disputes, particularly where one of the parties has filed suit in federal court under § 14704. Accordingly, although the FHWA reserves the right to issue declaratory orders to resolve controversies between third parties in appropriate circumstances, it will generally do so only in cases having industry-wide significance that raise issues not adequately addressed by existing legal precedent.

Primary Jurisdiction

The doctrine of primary jurisdiction is ''a doctrine specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency.'' *Reiter* v. *Cooper*, 507 U.S. 258 (1993), at 268. In contrast to the doctrine of exhaustion of administrative remedies, it does not require parties to seek relief from the agency before invoking the jurisdiction of the court. The court, when faced with an issue it believes requires the special expertise of an agency, has equitable discretion to give that agency the first opportunity to pass on the issue by staying further proceedings and giving the parties a reasonable opportunity to seek an administrative ruling. However, an agency is not required to rule on issues directly referred to it by a court or, as in this case, indirectly referred to it following a court's order of dismissal. If an agency declines to issue a ruling, the court must then resolve the issues without the benefit of the agency's views. See *Atchison, Topeka & S.F. Ry. Co.* v. *Aircoach Transp. Ass'n*, 253 F.2d 877 (D.C. Cir.,1958).

Although the FHWA does not agree with petitioners' contention that the doctrine of primary jurisdiction applies only to issues involving the reasonableness of a federal regulation, it does agree that special expertise is generally not needed to resolve disputes regarding the part 376 truth-in-leasing regulations. These regulations contain specific, straightforward, non-technical requirements which a court is ordinarily competent to construe. Consistent with the Congressional intent underlying 49 U.S.C. 14704, the FHWA will generally

decline to exercise its primary jurisdiction with regard to court referrals involving violations of part 376.

Conclusion

The OOIDA petition does not raise issues which require special expertise by the FHWA. The questions of whether Prime's leases contain the necessary terms required by § 376.12(i), or whether escrow funds were returned within 45 days of lease termination, are fairly straightforward matters clearly within the competence of a court to resolve. Although part 376 does not expressly apply to carrier-affiliated equipment leasing companies, the ICC fully addressed the applicability of the regulations to such entities in the *Dart* decision. The FHWA sees no reason to revisit this issue. Accordingly, OOIDA's petition for declaratory order is denied.

In Washington, District of Columbia, this 29th day of May, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 98–15391 Filed 6–9–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33407]

Dakota, Minnesota & Eastern Railroad Corporation—Construction and Operation of New Rail Facilities in Campbell, Converse, Niobrara, and Weston Counties, Wyoming, Custer, Fall River, Jackson, and Pennington Counties, South Dakota, and Blue Earth, Nicollet, and Steele Counties, Minnesota

AGENCY: Surface Transportation Board.

ACTION: Notice of Availability of Draft Scope of Study for the Environmental Impact Statement (EIS) and Request for Comments.

SUMMARY: On February 20, 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) filed an application with the Surface Transportation Board (Board) for authority to construct and operate new rail line facilities in east-central Wyoming, southwest South Dakota, and south-central Minnesota. The project involves a total new construction of 280.9 miles of rail line. Additionally, DM&E proposes to rebuild 597.8 miles of existing rail line along its current system to standards acceptable for operation of unit coal trains. Because the construction and operation of this project has the potential to result in significant environmental impact, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA will hold agency and public scoping meetings as part of the EIS process, as discussed in the Notice of Intent to Prepare an Environmental Impact Statement (EIS), Request for Comments on the Proposed EIS Scope, and Notice of Scoping Meetings published by the Board on March 27, 1998. As part of the scoping process, the SEA has developed a draft Scope of Study for the EIS. The draft Scope of Study presents those issues that would normally be evaluated in an EIS for a project of this nature.

DATES: Written comments on the draft Scope of Study are due July 10, 1998.

FILING ENVIRONMENTAL COMMENTS: Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted separately to: Office of the Secretary, Case Control Unit, STB Finance Docket No. 33407, Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423–0001.

To ensure proper handling of your comments, you must mark your submission: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Rutson, SEA Project Manager, Powder River Basin Expansion Project, (202) 565–1545 or Mr. Steve Thornhill of Burns & McDonnell, SEA's third party contractor, at (816) 822–3851.

SUPPLEMENTARY INFORMATION:

Draft Scope of Study for the EIS

Proposed Action and Alternatives

The proposed action, referred to as the Powder River Basin Expansion Project, would involve the construction and operation of 280.9 miles of new rail line and the rebuilding of 597.8 miles of existing rail line by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E), Brookings, South Dakota, as described in the February 20, 1998 application for construction and operation authority for the project filed by DM&E and in the March 27, 1998 Notice of Intent to Prepare an EIS published in the **Federal Register** by the Board.

Consistent with its jurisdiction under the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995), the Board intends to conduct an environmental analysis of the new construction and the increase in operations over DM&E's existing system. The EIS will not consider any proposed construction or improvements to DM&E's existing system, but will address the anticipated impacts of the projected increases in train traffic over the entire existing system.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) the no-action alternative (2) construction of the project along the identified preferred alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track and (3) construction of the project along each of the identified alternative alignments in Wyoming and South Dakota for the mainline extension and in Minnesota for the Mankato Bypass and Owatonna connecting track.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate. The scope of the analysis will include the following activities:

1. Proposed construction of new rail mainline extension to access coal mines south of Gillette, Wyoming.
2. Proposed construction of new rail mainline to bypass DM&E's existing trackage rights on Union Pacific Railroad in Mankato, Minnesota.
3. Proposed construction of new rail line connection between DM&E and I&M Rail Link south of Owatonna, Minnesota.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impacts areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed project on each category as described below:

1. Land Use

The EIS will:

A. Describe existing land use patterns within the project area and identify those land uses and the amounts of each

potentially impacted by new rail line construction.

B. Describe the potential impacts associated with the proposed new rail line construction to agricultural lands including cropland, pastureland, rangeland, grassland, woodland, developed land, and any other land uses identified within the project area. Such potential impacts may include impacts to farming/ranching activities, introduction of noxious weeds, fire hazard, incompatibility with existing land uses, relocation of residences or businesses, and conversion of land to railroad uses.

C. Propose mitigative measures to minimize or eliminate potential project impacts to land use.

2. Biological Resources

The EIS will:

A. Describe the existing biological resources within the project area including vegetative communities, wildlife and fisheries, and federally threatened or endangered species and the potential impacts to these resources resultant from construction and operation of new rail line.

B. Describe the wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and the potential impacts to these resources resultant from construction and operation of new rail line.

C. Propose mitigative measures to minimize or eliminate potential project impacts to biological resources.

3. Water Resources

The EIS will:

A. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, streams, stock ponds, wetlands, and floodplains and the potential impacts on these resources resultant from construction and operation of new rail line.

B. Describe the permitting requirements for the proposed new rail line construction in regard to wetlands, stream crossings, water quality, and erosion control.

C. Propose mitigative measures to minimize or eliminate potential project impacts to water resources.

4. Geology and Soils

The EIS will:

A. Describe the geology and soils found within the project area, including unique or problematic geologic formations or soils and prime farmland soils.

B. Describe measures employed to avoid or construct through unique or problematic geologic formations or soils.

C. Describe the impacts of new rail line construction on prime farmland soils.

D. Propose mitigative measures to minimize or eliminate potential project impacts to geology and soils.

5. Air Quality

The EIS will:

A. Evaluate rail air emissions on new rail that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The threshold anticipated to apply to this project is eight trains per day on any segment of new rail line.

B. Evaluate rail air emissions on new rail line, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. The threshold for Class I and non-attainment areas anticipated to apply to this project is 3 trains per day or more.

C. Evaluate the potential air quality benefits associated with the increased availability and utilization of lower sulfur Powder River Basin coal.

D. Discuss the potential air emissions increases from vehicle delays at new grade rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at new grade rail crossings will be factored into the emissions estimates for the affected area, as appropriate.

E. Describe the potential air quality impacts resulting during new rail line construction activities.

F. Propose mitigative measures to minimize or eliminate potential project impacts to air quality during new rail line construction.

6. Noise

The EIS will:

A. Describe the potential noise impacts during new rail line construction.

B. Describe potential noise impacts of new rail line operation for those areas that exceed the Board's environmental threshold of eight or more trains per day.

C. Propose mitigative measures to minimize or eliminate potential project impacts to noise receptors.

7. Energy Resources

The EIS will:

A. Describe the potential environmental impact of the new rail line on the transportation of energy resources and recyclable commodities.

B. Describe the environmental impacts of the new rail line on utilization of the nation's energy resources.

8. Socioeconomics

The EIS will:

A. Describe the potential environmental impacts to residences, residential areas, and communities within the project area as a result of new rail line construction and operation activities.

B. Describe the potential environmental impacts to commercial and industrial development in the project area as a result of new rail line construction and operation.

C. Propose mitigative measures to minimize or eliminate potential adverse project impacts to social and economic resources.

9. Safety

The EIS will:

A. Describe rail/highway grade crossing safety factors at new grade crossings, as appropriate.

B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents at new grade crossings, as appropriate.

C. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operation.

D. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety.

10. Transportation Systems

The EIS will describe the potential effects of new rail line construction and operation on the existing transportation network in the project area including:

(1) Impacts to other rail carriers' operations and

(2) Vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more.

11. Cultural and Historic Resources

The EIS will:

A. Describe the potential impacts to historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred and alternative construction alignments.

B. Describe the potential impacts to archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the National Register of Historic Places within the right-of-way

for the preferred and alternative construction alignments.

C. Describe the potential impacts to historic structures or districts identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within or immediately adjacent to the right-of-way for the preferred construction alignment.

D. Describe the potential impacts to archaeological sites identified by ground survey and determined potentially eligible or eligible for listing on the National Register of Historic Places within the right-of-way for the preferred construction alignment.

E. Describe the potential general impacts to paleontological resources in the project area due to project construction, if necessary and required.

F. Describe the potential impacts to paleontological resources identified by ground survey of the preferred construction alternative alignment on federal lands, if necessary and required.

12. Recreation

The EIS will describe the potential impacts of the proposed new rail line construction and operation on the recreational opportunities provided in the project area.

13. Aesthetics

The EIS will:

A. Describe the potential impacts of the proposed new rail line construction on any areas identified or determined to be of high visual quality.

B. Describe the potential impacts of the proposed new rail line construction on any designated wilderness areas.

C. Describe the potential impacts of the proposed new rail line construction on any waterways considered for or designated as wild and scenic.

14. Environmental Justice

The EIS will:

A. Describe the demographics in the project area and the immediate vicinity of the proposed new construction, as possible, including communities potentially impacted by the construction and operation of the proposed new rail line construction.

B. Evaluate whether new rail line construction or operation activities would have a disproportionately high adverse impact on any minority or low-income groups.

Increased Traffic on Existing DM&E System

Analysis in the EIS will address the potential environmental impacts associated with the increased level of rail traffic on DM&E's existing rail system due to operation of the proposed new rail facilities. The scope of the analysis will include the following activities:

1. Analysis of anticipated changes in the levels of rail traffic along the existing DM&E system to be rebuilt, in association with proposed new construction projects, to facilitate coal transportation. Those segments of rail line that meet or exceed the Board's thresholds for environmental review, as defined in 49 CFR 1105.7, will be evaluated. In cases where the Board's environmental rules do not provide a threshold, the EIS will use eight trains per day or more as the threshold for environmental evaluation.

Impact Categories

The EIS will address potential impacts from the proposed increases in trains operating over existing rail facilities on the human environment. Impacts areas addressed will include the categories of air quality, noise, energy resources, safety, transportation systems, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and address the potential impacts from the proposed operational impacts of the project on each category as described below:

1. Air Quality

The EIS will:

A. Evaluate rail air emissions for existing rail lines that exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(I), in an air quality attainment or maintenance area as designated under the Clean Air Act . The thresholds anticipated to apply to this project include:

(1) A 100 percent increase in rail traffic on any segment of DM&E's existing system.

(2) An increase of eight trains per day on any segment of rail line affected by the proposed construction.

B. Evaluate rail air emissions for existing rail lines, if the proposed project affects a Class I or non-attainment area as designated under the Clean Air Act. Thresholds for Class I and non-attainment areas anticipated to apply to this project are as follows:

(1) An increase in rail traffic of 50 percent or more or

(2) An increase of 3 trains per day or more.

C. Discuss the net increase in emissions from increased railroad operations associated with the proposed operations over the existing DM&E system.

D. Discuss the potential air emissions increases from vehicle delays at existing rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above for attainment, maintenance, Class I, and non-attainment areas and that have an average daily vehicle traffic level of over 5,000. Emissions from vehicle delays at existing rail crossings will be factored into the emissions estimates for the affected area.

2. Noise

The EIS will:

A. Describe potential noise impacts of project operation on existing DM&E rail lines that exceed the Board's environmental thresholds of a 100 percent or more increase in rail traffic or an increase of 8 or more trains per day.

B. Identify whether proposed train operations on DM&E's existing rail lines will cause:

(1) An increase in noise levels of three decibels Ldn or more; or

(2) An increase to a noise level of 65 decibels Ldn or greater. If so, an estimate of the number of sensitive receptors (e.g., schools, libraries, churches, residences) within such areas will be made based on site visits to those areas potentially affected.

3. Energy Resources

The EIS will:

A. Describe the potential environmental impact on transportation of energy resources and recyclable commodities.

B. Describe the environmental impacts from rail operations over the existing DM&E rail system on utilization of the nations energy resources.

4. Safety

The EIS will:

A. Describe rail/highway grade crossing safety factors for existing grade crossings, as appropriate.

B. Describe the potential for increased probability of train accidents, derailments, and train/vehicular accidents along the existing DM&E system, as appropriate.

C. Describe the potential for disruption and delays to the movement of emergency vehicles at existing crossings due to rail operations on the existing DM&E system.

D. Describe the changes at existing grade crosses implemented to increase safety at existing grade crossings due to increased rail operations on the DM&E system. Such changes would include signalization upgrades and conversion of grade crossings to grade separated crossings.

E. Propose mitigative measures to minimize or eliminate potential adverse project impacts to safety.

5. Transportation Systems

The EIS will:

A. Describe the potential effects of project construction and operation on the existing transportation network in the project area including:

(1) impacts to other rail carriers' operations and

(2) vehicular delays at new grade crossings for those crossings having average daily vehicle traffic of 5,000 or more.

B. Describe the effects of the proposed construction and subsequent operation of the proposed project throughout DM&E's existing system.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–15441 Filed 6–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose reportable positions in the 5½% Treasury Notes of February 2008 equaled or exceeded $2½ billion as of close of business June 5, 1998.

DATES: Large Position Reports must be received before noon Eastern time on June 12, 1998.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Market Reports Division, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–8028.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham, Acting Director, or Lee Grandy, Government Securities Specialist, Bureau of the Public Debt, Department of the Treasury, at 202–219–3632.

SUPPLEMENTARY INFORMATION: Pursuant to the Department's large position rules under the Government Securities Act regulations (17 CFR Part 420), the Treasury, in a press release issued on June 8, 1998, and in this **Federal Register** notice, called for Large Position Reports from those entities whose reportable position in the 5½% Treasury Notes of February 2008, Series B–2008, equaled or exceeded $2½ billion as of the close of business Friday, June 5, 1998. The call for Large Position Reports is a test. Entities whose reportable positions in this 10-year note equaled or exceeded the $2½ billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with reportable positions below $2½ billion are not required to file Large Position Reports. Large Position Reports, which must include the required position and administrative information, must be received by the Market Reports Division of the Federal Reserve Bank of New York before noon Eastern time on Friday, June 12, 1998. The Reports may be filed by facsimile at (212) 720–8028 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 5½% Treasury Notes of February 2008 have a CUSIP number of 912827 3X 8, a STRIPS principal component CUSIP number of 912820 CQ 8, and a maturity date of February 15, 2008.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR Part 420, can be obtained by calling (202) 622–2040 and requesting document number 2494. These documents are also available at the Bureau of the Public Debt's Internet site at the following address: http://www.publicdebt.treas.gov.

Questions about Treasury's large position reporting rules should be directed to Public Debt's Government Securities Regulations Staff at (202) 219–3632. Questions regarding the method of submission of Large Position Reports may be directed to the Market Reports Division of the Federal Reserve Bank of New York at (212) 720–8021.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Dated: June 5, 1998.

John D. Hawke, Jr.,

Under Secretary, Domestic Finance.

[FR Doc. 98–15550 Filed 6–8–98; 11:30 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–73–89]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–73–89 (TD 8370), Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals (§§ 52.4682–1(b), 52.4682–2(b), 52.4682–2(d), 52.4682–3(c), 52.4682–3(g), and 52.4682–4(f)).

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals.

OMB Number: 1545–1153.

Regulation Project Number: PS–73–89.

Abstract: This regulation imposes reporting and recordkeeping requirements necessary to implement Internal Revenue Code sections 4681 and 4682 relating to the tax on chemicals that deplete the ozone layer and on products containing such chemicals. The regulation affects manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, the regulation affects persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 150,316.

Estimated Time Per Respondent/ Recordkeeper: 30 minutes.

Estimated Total Annual Burden Hours: 75,142.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15340 Filed 6–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–19–92]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–19–92 (TD 8520), Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit (§§ 1.42–6, 1.42–8, and 1.42–10).

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

OMB Number: 1545–1102.

Regulation Project Number: PS–19–92.

Abstract: Section 42 of the Internal Revenue Code provides for a low-income housing tax credit. The regulations provide guidance with respect to eligibility for a carryover allocation, procedures for electing an appropriate percentage month, the general public use requirement, the utility allowance to be used in determining gross rent, and the inclusion of the cost of certain services in gross rent. This information will assist State and local housing credit agencies and taxpayers that apply for or claim the low-income housing tax credit in complying with the requirements of Code section 42.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents/ Recordkeepers: 2,230.

Estimated Time Per Respondent/ Recordkeeper: 1 hr., 48 min.

Estimated Total Annual Reporting/ Recordkeeping Burden Hours: 4,008.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15341 Filed 6–9–98; 8:45 am]

BILLING CODE 4810–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–102

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 89–102, Treatment of Acquisition of Certain Financial Institutions; Tax

Consequences of Federal Financial Assistance.

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

OMB Number: 1545–1141.

Notice Number: Notice 89–102.

Abstract: Section 597 of the Internal Revenue Code provides that the Secretary of the Treasury shall provide guidance concerning the tax consequences of Federal financial assistance received by certain financial institutions. Notice 89–102 provides that qualifying financial institutions that receive Federal financial assistance prior to a planned sale of their assets or their stock to another institution may elect to defer payment of any net tax liability attributable to the assistance. Such financial institutions must file a statement describing the assistance received, the date of receipt, and any amounts deferred.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15342 Filed 6–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–74–89]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–74–89 (TD 8282), Election of Reduced Research Credit (§ 1.280C–4).

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election of Reduced Research Credit.

OMB Number: 1545–1155.

Regulation Project Number: PS–74–89.

Abstract: This regulation relates to the manner of making an election under section 280C(c)(3) of the Internal Revenue Code. This election enables a taxpayer to claim a reduced income tax credit for increasing research activities and thereby avoid a reduction of the section 174 deduction for research and experimental expenditures.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 4, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15343 Filed 6–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 98–30

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 98–30, Negative Election in a Section 401(k) Plan.

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue ruling should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Negative Election in a Section 401(k) Plan.

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 98–30.

Abstract: Revenue Ruling 98–30 describes certain criteria that must be met before an employee's compensation can be contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee. Generally, before an employer can automatically include its employees in the employer's section 401(k) plan, the employees must be notified by the employer that they can elect out and they must be given a reasonable period in which to do so.

Current Actions: There are no changes being made to the revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15344 Filed 6–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3903, Moving Expenses.

DATES: Written comments should be received on or before August 10, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Moving Expenses.

OMB Number: 1545–0062.

Form Number: 3903.

Abstract: Internal Revenue Code section 217 requires itemization of various allowable moving expenses. Form 3903 is used to compute the moving expense deduction and is filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.

Current Actions: Forms 3903 and 3903–F are being combined to reduce duplication and to simplify the filing procedure, requiring only one form to compute deductible moving expenses for moves both inside the U.S. and outside the U.S. The lines on the prior version of Form 3903 dealing with the distance test have been moved to the instructions as a worksheet and the line numbers on the form have been changed accordingly. Instructions have been added to reflect the fact that the form can be used for moves inside and outside the U.S. Also, instructions have been added relating to Form 2555,

Foreign Earned Income, and storage expenses for moves outside the U.S.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 678,678.

Estimated Time Per Respondent: 1 hr., 8 min.

Estimated Total Annual Burden Hours: 773,693.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–15345 Filed 6–9–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: June 9–10, 1998, commencing at 1:00 p.m. on Tuesday, June 9, 1998.

PLACE: Chicago/O'Hare International Airport Executive Center, Terminal 3 (between Concourses H and K).

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED: Privatization of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 5, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–15539 Filed 6–8–98; 10:47 am]

BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting OMB approval for a three-year reinstatement and revision to the currently approved information collection entitled, ''USIA-Sponsored Educational and Cultural Exchange Activities, USIA Program Participant Survey Questionnaire,'' under OMB control number 3116–0199, which is scheduled to expire on July 31, 1998. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with the program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, P.L. 87–256, and the Government Performance and Results Act of 1993, P.L. 103–62.

DATE: Comments are due on or before (insert date). (Within 30 days).

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, DC 20547, telephone (202) 619–4408, Internet address JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 13, 1998 (vol. 63, No. 70). Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0212) is estimated to average forty five (45) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents are required to respond only one time. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/AOL, 301 Fourth Street, S.W., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

CURRENT ACTIONS: This information collection has been submitted to OMB for the purpose of requesting reinstatement for a three-year period and approval of revisions regarding the total annual burden hours.

TITLE: USIA-Sponsored Educational and Cultural Exchange Activities, USIA Program Participant Survey Questionnaire.''

FOR NUMBER(S): N/A.

ABSTRACT: In the interest of sound program management, USIA undertakes the collection of information about program effectiveness necessary to the

management and evaluation of USIA funded educational and cultural exchange programs. USIA seeks clearance from OMB for these information collection activities among grantees and alumni/ae of these programs.

PROPOSED FREQUENCY OF RESPONSES:

No. of Respondents—5,600.
Recordkeeping Hours—.75.
Total Annual Burden—4,200.

Date: May 28, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–14595 Filed 6–8–98; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
June 10, 1998

Part II

Nuclear Regulatory Commission

10 CFR Parts 2, 140, 170, and 171
Fee Schedules Revision: 100 Percent Fee Recovery (FY 1998); Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 140, 170, and 171

RIN 3150–AF 83

Revision of Fee Schedules; 100 Percent Fee Recovery, FY 1998

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1998, less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1998 is approximately $454.8 million. The NRC is also providing additional payment methods for civil penalties and indemnity fees, as well as annual and licensing fees.

EFFECTIVE DATE: August 10, 1998.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Responses to Comments.
III. Final Action.
IV. Section-by-Section Analysis.
V. Environmental Impact: Categorical Exclusion.
VI. Paperwork Reduction Act Statement.
VII. Regulatory Analysis.
VIII. Regulatory Flexibility Analysis.
IX. Backfit Analysis.
X. Small Business Regulatory Enforcement Fairness Act.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

On April 1, 1998 (63 FR 16046), the NRC published a proposed rule to establish the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1998, less the appropriation received from the Nuclear Waste Fund and the General Fund, and to provide additional payment methods for civil penalties and indemnity fees. These changes were highlighted in the proposed rule (63 FR 16046; April 1, 1998) and have been adopted in this final rule for FY 1998. The major changes are summarized as follows:

1. Adjust all 10 CFR 171 annual fees by the percent change in the NRC budget authority since its FY 1997 appropriation. In this final rule, FY 1998 annual fees have been adjusted downward by about 0.1 percent. This change is consistent with the NRC's intention stated in the FY 1995 final rule. The NRC indicated that, beginning in FY 1996, annual fees would be stabilized by adjusting the prior year annual fees by the percent change (plus or minus) in the NRC budget authority taking into consideration the estimated collections from 10 CFR Part 170 fees and the number of licensees paying fees;

2. Revise, by lowering, the two professional hourly rates in § 170.20 that are used to determine the 10 CFR Part 170 fees assessed by the NRC. The rate for FY 1998 for the reactor program is $124 per hour and the rate for the materials program is $121 per hour.

3. Adjust downward the current licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees to reflect the changes in the revised hourly rates.

4. Revise § 170.12(g) to include full cost recovery for resident inspectors and to recover costs incurred up to approximately 30 days after issuance of an inspection report.

5. Implement a procedural change to assess fees under §§ 170.21 and 170.31 for activities, such as application reviews and inspections, performed during compensated overtime. The compensated overtime hours will be billed at the normal hourly rate.

II. Responses to Comments

The NRC received and evaluated four comments on its proposed rule.

For evaluation purposes, comments similar in nature have been grouped, as appropriate, and addressed as single issues in this final rule.

The comments are as follows.

A. Relationship Between Costs and Annual Fees

1. *Comment.* Two commenters, the Nuclear Energy Institute (NEI) and Florida Power and Light Company (FPL), indicated that the basis for the increase in the annual fees was not explained in the proposed rule. These commenters indicated that NRC has not followed the Congressional directive in the Conference Report on the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) that the annual charges, ''to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees.'' NEI stated that the general descriptions of the activities comprising the basis for the annual fee do not provide sufficient information to enable the public to comment meaningfully on this aspect of the proposed rule, and went on to argue that the NRC's obligation to examine its activities and their associated costs annually pursuant to OBRA–90 cannot be satisfied by merely adjusting the FY 1995 baseline determinations. Both of these commenters indicated that the NRC should not proceed with the rule as proposed and should provide a clear explanation of the relationship between services provided and the proposed annual fee. FPL stated that the description and level of justification should be no less than that employed prior to 1995. NEI also stated that the NRC did not provide any information to enable an evaluation of the basis for the judgment that neither of the two tests for reexamining the basis for the annual fees (e.g., a substantial change in the NRC's budget or in the magnitude of a specific budget allocation to a class of licensees) had been met.

Response. The NRC believes that it has provided sufficient information to allow public evaluation and comment on the proposed fees. The proposed fee rule contained specific explanations for

the changes to the annual fees, including tables showing the calculation of the percentage change to the annual fees. In addition, as stated in the proposed rule, the workpapers supporting the proposed fee rule changes are available for public examination in the NRC Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555. Moreover, a detailed explanation of NRC's budget is set forth in NUREG–1100, Volume 13, Budget Estimates Fiscal Year 1998 published in February 1997 and is available to commenters. Finally, NRC staff during the comment period responded to telephone requests for additional explanation of the proposed rule.

Contrary to the commenters' inference, OBRA–90 does not require NRC to rebaseline annual fees every year. The statute states that ''[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.'' The Conference Report on the statute makes clear that the Congress recognized that the allocation of fees would diverge from the allocation of resources in the budget. The conferees further ''recognize[d] that there are expenses that cannot be attributed either to an individual licensee or a class of licensees.'' (House Conference Report 101–954, p. 962.) This language affords the Commission some flexibility in shaping its annual fee schedules.

In promulgating the FY 1995 fee rule, the NRC solicited comments on a proposal to establish the annual fees for FY 1996 through FY 1998, and FY 1999 if OBRA–90 is extended, based on the percentage decrease or increase in the NRC's total budget, unless there was a substantial change in that total budget or in the magnitude of a specific budget allocation to a class of licensees. The NRC indicated that the annual fees would also be adjusted to compensate for changes in Part 170 fee collections and the number of licensees paying annual fees. The NRC concluded that this approach is ''practicable'' and fully consistent with its statutory mandate. Most commenters in FY 1995 agreed that this method represented a simplification and streamlining of the fee-setting procedures and was necessary to eliminate the large fluctuations in annual fees that had occurred in the past and to provide for greater predictability of fees. At that time, neither NEI nor any reactor licensee objected to the proposed method. Based on the comments received supporting the methodology, the NRC adopted the change, and the revised method was used to determine the FY 1996 and FY 1997 annual fees. The revised method was not challenged by commenters when it produced a reduction of about 6 percent in FY 1996, and at the time NEI stated that it was ''pleased that the annual fees for licensees are being lowered by slightly over 6%'' (letter to John C. Hoyle, Secretary of the Commission, from William H. Rasin, NEI, dated February 28, 1996). The Commission reaffirmed the legality of its approach in its denial of an NEI petition seeking reconsideration of the final fee rule for fiscal year 1997. *See*, October 1, 1997, letter from John C. Hoyle, Secretary of the Commission, to Robert W. Bishop, Vice President and General Counsel, Nuclear Energy Institute.

With regard to the question of whether the criteria established by NRC for rebaselining have been met, the NRC specifically stated in the proposed rule that there has not been a substantial change in the NRC budget or the magnitude of a specific budget allocation to a class of licensees. The FY 1998 budgeted amount to be recovered through NRC's fees is $7.5 million less than in FY 1997. This is clearly not a substantial change. Similarly, as reflected in the NRC's annual budgets, there have not been major changes in the allocation of budgeted resources to specific classes of licensees.

This final rule adopts the methodology to streamline and stabilize FY 1998 annual fees by adjusting these fees by the percentage change in NRC's total budget authority. The FY 1997 fees have been used as base annual fees, and these fees have been adjusted for FY 1998 based on the percentage change in NRC's budget authority, taking into consideration the total number of licensees paying fees and estimated collections from 10 CFR Part 170 fees. The amounts of the annual fees for some of the classes of licensees have decreased since the publication of the proposed rule. The proposed FY 1998 annual fees were developed using an estimated number of days for proration of the FY 1998 annual fees for Zion Stations Units 1 and 2. As a result of this estimation, the FY 1998 proposed annual fees were based on the equivalent of 2.5 fewer power reactors paying annual fees in FY 1998 than in FY 1997, and the proposed FY 1998 annual fees increased by 0.1 percent compared to the actual (prior to rounding) FY 1997 annual fees. The final FY 1998 annual fees have been developed based on the certification dates for permanent cessation of operations and permanent removal of fuel from the Zion 1 and 2 reactor vessels. The certifications were filed later in the fiscal year than anticipated when the proposed rule was developed, resulting in the equivalent of 2.3 fewer power reactors paying annual fees in FY 1998 than in FY 1997. The result is that the final FY 1998 annual fees have decreased by about 0.1 percent compared to the FY 1997 actual (prior to rounding) annual fees.

2. *Comment.* FPL stated that the proposed rule does not reflect any Commission consideration of the specific services driving the cost increase. FPL also questioned why the reactor annual fee was not reduced in light of the premature shutdown of four nuclear units in FY 1997. Another commenter, Tennessee Valley Authority (TVA), stated that, with the shift from operating reactor oversight to decommissioning activities, strong action to reduce overhead and central staff appears appropriate. TVA also stated that the 10 percent fewer power licensees with much better average performance than in the past should yield reductions in total NRC fees.

Response. Although the proposed reactor annual fee increased slightly, by 0.1 percent, from FY 1997, the total budget to be recovered through fees decreased by $7.5 million from FY 1997. In fact, the proposed rule reflected a decrease in the total annual fees for the power reactor class of licensees of approximately $7.4 million compared to FY 1997. The slight increase in the proposed annual fee to be assessed to each reactor licensee was not the result of increased costs or a lack of consideration of the specific services. Rather, the proposed change was primarily the result of the equivalent of 2.5 fewer reactors paying the annual fee compared to FY 1997. As explained in response to the above comment, this final rule reflects the equivalent of 2.3 fewer reactors paying the FY 1998 fees, and as a result the final FY 1998 annual fees decreased by 0.1 percent compared to the FY 1997 exact (prior to rounding) annual fees.

B. Fees for Services That do not Benefit Licensees

1. Comment. NEI, FPL, and TVA continued to urge NRC to take action to eliminate fees for services that do not benefit the licensees paying the annual fees. FPL and NEI concluded that recovering the costs of these activities from reactor licensees violates the provision of OBRA–90 that the charges shall have a reasonable relationship to the cost of providing regulatory services. FPL argued that assessing these non-

reactor costs to reactor licensees exceeds the Congressional delegation of authority and is arbitrary and capricious, and therefore violates the Equal Protection requirements of the Due Process Clause of the Fifth Amendment to the United States Constitution. NEI suggested that the NRC could conclude that recovering 88 percent of its budget authority by eliminating these costs from fee recovery is consistent with the requirement of OBRA–90 to recover ''approximately'' 100 percent of its budget authority from fees, or NRC could seek legislation to resolve the issue, as it has committed to do in the past.

Response. As NRC has stated on many occasions, it shares commenters' concerns that licensees are paying for activities that do not directly benefit them. However, the NRC disagrees with the assertion that recovering these costs from licensees violates statutory requirements. In fact, the Congressional guidelines provided in the Conference Report to the 100 percent fee recovery legislation specifically provide for the assessment of fees to licensees to recover agency costs that may not provide direct benefits to them. The conferees recognized that ''Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties'' and that Congress must provide guidelines for making these assessments. The conferees recognized that certain expenses cannot be attributed either to an individual or to classes of NRC licensees. The conferees intended that the NRC fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from the licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. (136 Cong. Rec. at H12692–3.) Based on these explicit guidelines, the NRC concludes that the assessment of fees to recover these costs from licensees is neither arbitrary nor capricious, and does not violate any statute.

Nevertheless, the NRC continues to take action to minimize the impacts of recovering the costs of these activities from licensees. Although legislation recommended in NRC's February 23, 1994, Report to Congress to address these concerns has not been enacted, the NRC has taken several steps to mitigate the perceived inequities within the constraints of existing law. For example, the Commission successfully obtained appropriation legislation that removed from the fee base certain costs incurred as a result of regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies. In addition, when authorized by law, the NRC has made a concerted effort to obtain reimbursements for services provided to other Federal agencies. The NRC has not submitted proposed legislation that would take out of the fee base the costs of services that do not provide direct benefits to licensees because the Office of Management and Budget has advised that such legislation would be inconsistent with the President's budget. The NRC notes that the Senate Committee on Environment and Public Works recently ordered to be reported legislation which would exclude up to $30 million each year from the NRC's fee base.

The NRC disagrees that eliminating these costs from fee recovery, thereby recovering 88 percent of the budget, would meet the OBRA–90 requirement that NRC recover approximately 100 percent of its budget authority through fees. As the NRC stated in the statement of considerations accompanying the FY 1991 final rule (56 FR 31474), it interprets the words ''approximately 100 percent'' as meaning that the Commission should promulgate a rule that identifies and allocates as close to 100 percent of its budget authority to the various classes of NRC licensees as is practical. The Commission concluded that, based on the Conference Report guidelines, it was Congress' intent that the Commission allocate 100 percent of its budget authority for fee assessment, and that the term ''approximately 100%'' refers only to the inherent uncertainties in estimating and collecting the fees. Furthermore, in NRC's annual appropriations acts, the Congress presumes that the NRC fee collections will approximate 100 percent, not 88 percent, of its budget authority. *See, e.g.*, Title IV of the Energy and Water Development Appropriations Act, 1998, P.L. 105–62.

The Conference Report guidance also provides that the costs be ''recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment.'' The FY 1995 fee rule, which established the baselines used in subsequent annual fee rules, including the current one, allocated the cost of the activities that raised fairness and equity concerns to all licensees based on the budgeted dollars for each class of licensee. This allocation results in the entire population of NRC licensees paying for these costs (see 60 FR 14670, 14674). This continues to be a sensible approach.

C. Part 170 Fees

1. Comment. NEI and FPL indicated that NRC should increase the percentage of costs recovered through Part 170 fees. FPL claimed that there is no exemption authority from the provision that ''any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.'' NEI stated that ''.....79 percent of the fees proposed to be collected from NRC licensees are for non-discrete services. This approach makes it too easy to shift personnel from providing discrete services to working on generic issues, thereby increasing overhead costs as actual services provided to individual licensees decline, rather than make the hard decisions of what activities are really necessary.'' FPL concluded that NRC has not adequately allocated costs to the beneficiaries of the services. NEI and TVA supported NRC's proposed full-cost provision for resident inspectors; however, TVA indicated that time for resident inspectors assigned to special inspections at other plants should be charged to those specific inspections. TVA supported the reduced hourly rate and NRC's proposed long-term policy to progress bill for all inspections.

Response. The NRC previously responded to commenters' claim that there is no exemption authority from the provision that those receiving a service shall pay fees to cover the Commission's costs of providing the service (62 FR 29195). As the NRC pointed out in that response, the NRC is barred by law from charging most Federal agencies 10 CFR Part 170 fees, and exemptions from fees granted by the NRC are well founded in law and are granted only after full and public consideration of the relevant policy questions.

The proposed rule included several actions that would lead to increased cost recovery under Part 170 for services provided to identifiable beneficiaries. The NRC is adopting the proposed change to recover full cost for resident inspectors under 10 CFR Part 170; however, as a result of the comments received the NRC has clarified in 10 CFR 170.12(g) that time spent by a resident inspector in support of activities at other sites will not be billed to the site to which the resident inspector is assigned. The NRC is also adopting the proposed change to recover costs incurred within 30 days after the inspection report is issued, and the

procedural change to assess Part 170 fees for licensing and inspection activities performed during compensated overtime. Because this final rule will not be effective before the fourth quarter of FY 1998, the increased Part 170 collections for these activities do not affect the FY 1998 fee calculations, but will be reflected in the FY 1999 fee rule. As indicated in the proposed rule, the NRC will progress bill for inspections under certain circumstances. Based on the comments received, the necessary changes to 10 CFR 170 will be made in future rulemaking once the system is available to accommodate progress billing for all inspections.

The NRC has established in this FY 1998 final rule a professional hourly rate of $124 for the reactor program and $121 per hour for the materials program. These revised rates, which are a reduction from the FY 1997 rates, will be used to determine the 10 CFR Part 170 fees.

The NRC has already taken steps to evaluate other areas for potential cost recovery under Part 170, with the intention of including the recommended activities in the FY 1999 proposed fee rule for public comment.

D. Annual Fees for Certificates of Compliance Issued to the United States Enrichment Corporation

1. *Comment.* The United States Enrichment Corporation (USEC) requested that a single annual fee be assessed for the two Gaseous Diffusion Plants (GPDs) operated by USEC and that the fee be reduced to a value commensurate with the proposed fee for the low-enriched uranium fuel fabrication facilities. USEC submitted detailed information to support its request. USEC stated that its comments not only address its belief that the proposed rule is not fair and equitable, but also serve as a request for reconsideration of the NRC's March 23, 1998, denial of USEC's request for an exemption from the annual fees.

Response. NRC rejected similar arguments from USEC in the FY 1997 final rule (62 FR 29197), and in its March 23, 1998, denial of USEC's annual fee exemption request. The NRC continues to believe for the reasons stated in these documents that the USEC must pay a full annual fee for each of its enrichment facilities and that its facilities have been placed in the appropriate fee category. Insofar as USEC's comment letter requested a reconsideration of NRC's March 23, 1998, denial of its annual fee exemption request, the NRC will respond to that request separately.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1998 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 1998, the NRC's budget authority is $472.8 million, of which $15.0 million has been appropriated from the NWF. In addition, $3.0 million has been appropriated from the General Fund for activities related to commercial vitrification of waste stored at the Department of Energy Hanford, Washington, site and for the pilot program for the external regulation of the Department of Energy. The FY 1998 appropriation language states that the $3.0 million appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford, Washington, site and activities associated with the pilot program for external regulation of the Department of Energy shall be excluded from license fee revenues notwithstanding 42 U.S.C. 2214. Therefore, NRC is required to collect approximately $454.8 million in FY 1998 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees.

The total amount to be recovered in fees for FY 1998 is $7.5 million less than the amount estimated for recovery for FY 1997. The NRC estimates that approximately $94.6 million will be recovered in FY 1998 from fees assessed under 10 CFR Part 170 and other receipts, compared to $95.2 million in FY 1997. The remaining $360.2 million will be recovered in FY 1998 through the 10 CFR Part 171 annual fees, compared to $367.1 for FY 1997.

In addition to the decrease in the amount to be recovered through annual fees and the slight reduction in the estimated amount to be recovered in 10 CFR Part 170 fees, the number of licensees paying annual fees in FY 1998 has decreased compared to FY 1997. For example, Commonwealth Edison notified the NRC that the Zion Station Units 1 and 2 ceased operations on February 13, 1998. On March 11, 1998, the NRC docketed Commonwealth Edison's certification that all fuel has been removed from the Zion Station Units 1 and 2 reactor vessels. In addition, both the Haddam Neck Plant and the Maine Yankee Plant ceased operations during FY 1997 and therefore are not subject to the FY 1998 annual fees. This is equivalent to a reduction of 2.3 power reactors subject to the FY 1998 annual fees compared to FY 1997. The Big Rock Point Plant, a small, older reactor historically granted a partial exemption from the annual fee, also ceased operations in FY 1997 and is no longer subject to annual fees.

The proposed FY 1998 annual fees were developed using an estimated number of days for proration of the FY 1998 annual fees for Zion Station Units 1 and 2. As a result of this estimation, the FY 1998 proposed annual fees were based on the equivalent of 2.5 fewer power reactors paying annual fees in FY 1998 than in FY 1997, and the proposed FY 1998 annual fees increased by 0.1 percent compared to the actual (prior to rounding) FY 1997 annual fees. The final FY 1998 annual fees have been developed based on the Zion 1 and 2 certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessels, which were filed later in the fiscal year than anticipated when the proposed rule was developed, resulting in the equivalent of 2.3 fewer power reactors paying annual fees in FY 1998 than in FY 1997. As a result, the final FY 1998 annual fees decreased by about 0.1 percent compared to the FY 1997 actual (prior to rounding) annual fees.

Because this is a slight decrease, the final (rounded) FY 1998 annual fees for many fee categories are the same as the final (rounded) FY 1997 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees:

	FY 1997 annual fee	FY 1998 annual fee
Class of Licensees:		
Power Reactors	$2,978,000	$2,976,000
Nonpower Reactors	57,300	57,300
High Enriched Uranium Fuel Facility	2,606,000	2,604,000
Low Enriched Uranium Fuel Facility	1,279,000	1,278,000
UF_6 Conversion Facility	648,000	648,000

	FY 1997 annual fee	FY 1998 annual fee
Uranium Mills	61,800	61,700
Typical Materials Licenses:		
Radiographers	14,100	14,000
Well Loggers	8,200	8,200
Gauge Users	1,700	1,700
Broad Scope Medical	23,500	23,500

Because the final FY 1998 fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 1998 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 1998 final rule to reactors and major fuel cycle facilities. For these licensees, payment will be due on the effective date of the FY 1998 rule. Those materials licensees whose license anniversary date during FY 1998 falls before the effective date of the final FY 1998 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 1998 final rule will be billed at the FY 1998 revised rates during the anniversary month of the license and payment will be due on the date of the invoice.

As announced in the proposed rule, the NRC will no longer mail the final rule to all licensees. In addition to publication in the **Federal Register**, the final rule is available on the Internet at http://ruleforum.llnl.gov/.

Copies of the final rule will be mailed upon request. To obtain a copy of the final rule, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554. As a matter of courtesy, the NRC plans to continue in future years to send the proposed rule to all licensees.

The NRC also announced in the proposed rule that it plans to reexamine its current policy of exempting from annual fees those licensees whose facilities are being decommissioned, or who have possession only licenses. The proposed rule stated that this review would also reexamine NRC's annual fee policy for reactors' storage of spent fuel. Any changes to the current fee policies resulting from these reexaminations will be included in the FY 1999 fee rulemaking. One purpose of the study is to assure consistent fee treatment for both wet storage (i.e., spent fuel pool) and dry storage (i.e., independent spent fuel storage installations, or ISFSIs) of spent fuel. The Commission has previously determined that both storage options are considered safe and acceptable forms of storage for spent fuel. Under current fee regulations, Part 50 licensees whose facilities are being decommissioned and who store spent fuel in a spent fuel pool are not assessed an annual fee, but licensees who store spent fuel in an ISFSI under Part 72 are assessed an annual fee. The NRC will review this policy as part of the overall study of the issues related to annual fees for licensees of facilities being decommissioned.

The NRC is amending 10 CFR Parts 170 and 171 as discussed in Sections A. and B. below

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Four amendments have been made to 10 CFR Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services that each applicant or licensee receives.

First, the NRC is amending § 170.12(g) to include the following for cost recovery:

(1) Full-cost recovery for resident inspectors.

Because the assignment of resident inspectors to a site is an identifiable service to a specific licensee, the NRC will bill the specific licensee for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site. This change is applicable to all classes of licensees having resident inspectors.

(2) Costs expended within approximately 30 days after the issuance of an inspection report.

Part 170 fees will be assessed for activities that occur within approximately 30 days after the inspection report is issued, such as follow-up on the inspection findings. These activities are identifiable services for specific licensees. This change will result in recovery through Part 170 fees of approximately 80 percent of the accumulated costs expended after the inspection report is sent, and will continue to provide applicants and licensees with a definitive point at which billing will cease.

Second, the NRC is revising § 170.12(h) to include credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments will be accepted up to the limit established by the credit card bank. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payment will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

Third, the two professional hourly rates established in FY 1997 in § 170.20 are revised based on the FY 1998 budget. These rates are based on the FY 1998 direct FTEs and the FY 1998 budget excluding direct program support (contractual services costs) and the appropriation from the NWF or the General Fund. These rates are used to determine the Part 170 fees. The NRC has established a rate of $124 per hour ($219,901 per direct FTE) for the reactor program. This rate is applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. A second rate of $121 per hour ($214,185 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to all materials activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1997 final fee rule, these rates were $131 and $125, respectively. The decrease in the hourly rates is primarily due to a change in application of the

types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those paying Part 171 annual fees. The revised hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

In addition, Section Chiefs are included as overhead in the calculation of the FY 1998 hourly rates, and any specific Section Chief effort expended for reviews and inspections will not be billed to the applicant or licensee. Previously, the Section Chiefs' time for specific licensing and inspection activities were directly billed under Part 170 to the applicant or licensee. This change is consistent with the current budget structure which includes Section Chiefs as overhead.

Fourth, the NRC has adjusted the current Part 170 licensing fees in §§ 170.21 and 170.31 to reflect the revised hourly rates.

In addition, although not a specific change to Part 170, the NRC will assess Part 170 fees for compensated overtime hours expended for activities covered by Part 170, such as reviews of applications, inspections, Part 55 exams, and special projects. The compensated overtime hours will be billed at the normal hourly rate.

The NRC will also bill for accumulated inspection costs prior to issuance of the inspection report under certain circumstances. NRC plans to progress bill for inspections in selected cases where it is determined that such billing would be in the best interest of the agency and the licensee. If it is determined that the accumulated costs warrant an exception to the billing method currently provided in 10 CFR 170.12(g), NRC will coordinate with the licensee to establish a mutually agreeable billing schedule and will issue an invoice for inspection costs that have accumulated.

The NRC is developing a system that will accommodate routine billing for accumulated inspection costs at a specified interval. Once that system is available, the NRC intends to progress bill for all inspections. The staff sought early comment on the long-term policy in the FY 1998 proposed rule, and received one comment supporting the change. The necessary revision to 10 CFR 170 will be made in future rulemaking when the system is available to accomplish this.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Four amendments have been made to 10 CFR Part 171.

First, the NRC is amending § 171.13 to delete specific fiscal year references.

Second, the NRC is amending §§ 171.15 and 171.16 to revise the annual fees for FY 1998 to recover approximately 100 percent of the FY 1998 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case occurred, the annual fee base would be recalculated as discussed in the FY 1995 final rule (60 FR 32225; June 20, 1995). In the FY 1995 rule, the NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees.

In the FY 1996 final rule, the NRC stabilized the annual fees by establishing the annual fees for all licensees at a level of 6.5 percent below the FY 1995 annual fees. For FY 1997, the NRC followed the same method as used in FY 1996. Because the amount to be recovered through fees for FY 1997 was identical to the amount to be recovered in FY 1996, establishing new baseline fees was not warranted for FY 1997. Based on a change in the distribution between Parts 170 and 171 fees, a reduction in the amount of the budget recovered from 10 CFR Part 170 fees, a reduction in other offsetting adjustments, and a reduction in the number of licensees paying annual fees, the FY 1997 annual fees for all licensees increased 8.4 percent compared to the FY 1996 annual fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

As indicated in the FY 1995 final rule, because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC followed the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

The FY 1998 amount to be recovered through fees is approximately $454.8 million, which is $7.5 million less than in FY 1997. The estimated amount to be recovered in 10 CFR Part 170 fees is $94.6 million, compared to $95.2 million for FY 1997. In addition, there are the equivalent of 2.3 fewer power reactors subject to annual fees in FY 1998. There is also a reduction of approximately 200 transportation quality assurance approvals as a result of the rulemaking in 1997 that combined these approvals with the Part 34 radiography licenses.

The NRC is establishing the FY 1998 annual fees for all licensees at about 0.1 percent below the FY 1997 actual (prior to rounding) annual fees. Based on the small change, the rounded FY 1998 annual fee for many fee categories is the same as the final (rounded) FY 1997 annual fee. Therefore, for many licensees, the annual fee for FY 1998 is the same as the FY 1997 annual fee. Table I shows the total budget and amounts of fees for FY 1997 and FY 1998.

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1997 ANNUAL FEES

[Dollars in millions]

	FY 1997	FY 1998
Total Budget	$476.8	$472.8
Less NWF	−11.0	−15.0
Less General Fund (Hanford Tanks, Pilot for Regulation of DOE)	−3.5	−3.0
Total Fee Base	462.3	454.8
Less Part 170 Fees	−95.2	−94.6
Less other receipts	.....	.....

TABLE I.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1997 ANNUAL FEES—Continued

[Dollars in millions]

	FY 1997	FY 1998
Part 171 Fee Collections Required	367.1	360.2
Part 171 Billing Adjustment: [1]		
Small Entity Allowance	5.0	5.8
Unpaid current FY invoices	3.0	3.9
Payments from prior year invoices	−2.0	−3.2
Subtotal	6.0	6.5
Total Part 171 Billing	373.1	366.7

[1] These adjustments are necessary to ensure that the ''billed'' amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 1998.

Third, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of annual fees for FY 1998 for those materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to FY 1998 annual fees. This change is being made in recognition of the fact that since the final FY 1997 rule was published in May 1997, some licensees have filed requests for termination of their licenses or certificates with the NRC. Other licensees have either telephoned or written to the NRC since the FY 1997 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all requests before the end of FY 1997 on September 30, 1997. Similar situations existed after the FY 1991–1996 rules were published, and in those cases, the NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Fourth, § 171.19 is amended to update fiscal year references and to credit the partial payments made by certain licensees in FY 1998 either toward their total annual fee to be assessed or to make refunds, if necessary. Section 171.19(a) is also amended to provide credit cards as an additional method of payment, and to provide additional information on electronic payments. Credit card payments will be accepted up to the limit established by the credit card bank. Electronic payments may be made by Fedwire (a funds transfer system operated by the Federal Reserve System) or by Automated Clearing House (ACH). ACH is a nationwide processing and delivery facility that provides for the distribution and settlement of electronic financial transactions. Electronic payments will not only expedite the payment process, but will also save applicants and licensees considerable time and money over a paper-based payment system.

The NRC will send an invoice to reactors and major fuel cycle facilities for the amount of the annual fee after publication of the FY 1998 final rule. For these licensees, payment will be due on the effective date of FY 1998 rule. Those materials licensees whose license anniversary date during the FY 1998 falls before the effective date of the final FY 1998 rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 1998 rule will be billed, at the FY 1998 revised rates, during the anniversary month of the license and payment will be due on the date of the invoice.

The final changes to 10 CFR Part 171 are consistent with the NRC's FY 1995 final rule indicating that, for the period FY 1996–1999, the expectation is that annual fees would be adjusted by the percentage change (plus or minus) to the NRC's budget authority adjusted for NRC offsetting receipts and the number of licensees paying annual fees.

In addition to the amendments to 10 CFR Parts 170 and 171, the NRC is amending 10 CFR Parts 2 and 140 to include the additional methods of payments provided in 10 CFR Parts 170 and 171.

IV. Section-by-Section Analysis

The following analysis of those sections that will be amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 2

Section 2.205 Civil Penalties

Paragraph 2.205(I) is amended to provide additional methods of payment, such as Automated Clearing House and credit cards, and to clarify that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission.

Part 140

Section 140.7 Fees

Paragraphs (a)(5) and (c) are amended to delete references to payment instructions. A new paragraph (d) is added to provide payment instructions, including clarification that payments are to be made in U.S. funds to the U.S. Nuclear Regulatory Commission and to provide additional methods of payments, such as Automated Clearing House and credit cards.

Part 170

Section 170.12 Payment of Fees

Paragraph (g) is amended to indicate that costs incurred within approximately 30 days after an inspection report is issued will be billed to the specific licensee, and that for each site having a resident inspector(s), the licensee will be billed for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site.

Paragraph (h) is revised to provide additional methods of payment for fees assessed under 10 CFR Part 170 and to clarify that payment should be made in U.S. funds.

Section 170.20 Average Cost per Professional Staff-Hour

This section is amended to establish two professional staff-hour rates based on FY 1998 budgeted costs—one for the

reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor direct staff-hour rate for FY 1998 for all activities whose fees are based on full cost under § 170.21 is $124 per hour, or $219,901 per direct FTE. The NRC nuclear material and nuclear waste direct staff-hour rate for all materials activities whose fees are based on full cost under § 170.31 is $121 per hour, or $214,185 per direct FTE. The rates are based on the FY 1998 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF or the General Fund. The NRC has continued the use of cost center concepts established in FY 1995 in allocating certain costs to the reactor and materials programs in order to more closely align budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. Direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because the costs for direct contract support are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for general and administrative support are allocated to each program based on that program's salaries and benefits. This method results in the following costs which are included in the hourly rates.

TABLE II.—FY 1998 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor program	Materials program
Direct Program Salaries & Benefits	$103.9	$20.5
Overhead Salaries & Benefits, Program Travel and Other Support	55.3	14.8
Allocated Agency Management and Support	101.7	22.0
Subtotal	260.9	57.3
Less offsetting receipts	.....	.....
Total Budget Included in Hourly Rate	260.9	57.3
Program Direct FTEs	1,186.4	267.3
Rate per Direct FTE	219,901	214,185
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	124	121

Dividing the $260.9 million (rounded) budget for the reactor program by the reactor program direct FTEs (1,186.4) results in a rate for the reactor program of $219,901 per FTE for FY 1998. Dividing the $57.3 million (rounded) budget for the nuclear materials and nuclear waste program by the program direct FTEs (267.3) results in a rate of $214,185 per FTE for FY 1998. The direct FTE hourly rate for the reactor program is $124 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($219,901) by the number of productive hours in one year (1,776 hours) as indicated in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' The direct FTE hourly rate for the materials program is $121 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($214,185) by the number of productive hours in one year (1,776 hours).

The FY 1998 hourly rates are slightly lower than the FY 1997 rates. The decrease in the hourly rates is primarily due to a change in application of the types of costs included in the hourly rates. Previously, the hourly rates were determined based on the premise that surcharge costs should be shared by those paying Part 170 fees for services as well as those paying Part 171 annual fees. The FY 1998 hourly rates have been determined based on the principle that the surcharge costs are more appropriately included only in the Part 171 annual fee.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is revising the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect FY 1998 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 1998 hourly rate for the reactor program, as shown in § 170.20. The fees in § 170.21 for the review of import and export licensing, facility Category K, are adjusted for FY 1998 to reflect the revised hourly rate.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1998 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Licensing fees based on the average time to review an application (''flat'' fees) are adjusted to reflect the decrease in the professional hourly rate from $125 per hour in FY 1997 to $121 per hour in FY 1998.

The amounts of the materials licensing ''flat'' fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing ''flat'' fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15.A through 15.E and 16. Applications filed on or after the effective date of the final rule will be subject to the fees in this final rule.

For those licensing, inspection, and review fees that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of $121, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to delete specific fiscal year references.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised as described below.

Paragraphs (b), (c) (1), (c)(2), (e) and (f) are revised to comply with the requirement of OBRA–90 that the NRC recover approximately 100 percent of its budget for FY 1998.

Paragraph (b) is revised in its entirety to establish the FY 1998 annual fee for operating power reactors and to change fiscal year references from FY 1997 to FY 1998. The fees are established by decreasing the FY 1997 annual fees (prior to rounding) by 0.1 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as in the number of licensees paying the fees. The activities comprising the base FY 1995 annual fee and the FY 1995 additional charge (surcharge) are listed in paragraphs (b) and (c) for convenience purposes.

The FY 1998 annual fee for each operating power reactor is $2,976,000.

Paragraph (e) is revised to show the amount of the FY 1998 annual fee for nonpower (test and research) reactors. The 1998 annual fee of $57,300 is the same as the FY 1997 annual fee. The NRC will continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

Paragraph (f) is revised to delete specific fiscal year date references.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies by completing and signing NRC Form 526 that it is a small entity. The NRC will continue to assess two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of $350,000 to $5 million pay a maximum annual fee of $1,800. A second or lower-tier small entity fee of $400 is in place for small entities with gross annual receipts of less than $350,000 and small governmental jurisdictions with a population of less than 20,000. No change in the amount of the small entity fees is being made because the small entity fees are not based on budgeted costs but are established at a level to reduce the impact of fees on small entities. The small entity fees are shown in the final rule for convenience.

Section 171.16(d) is revised to establish the FY 1998 annual fees for materials licensees, including Government agencies, licensed by the NRC. The annual fees were determined by decreasing the FY 1997 annual fees (prior to rounding) by about 0.1 percent. After rounding, many of the FY 1998 annual fees for materials licensees are the same as the FY 1997 annual fees.

The amount or range of the FY 1998 annual fees for materials licenses is summarized as follows.

MATERIALS LICENSES ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility.	$2,604,000
Part 70—Low enriched fuel facility.	1,278,000
Part 40—UF_6 conversion facility.	648,000
Part 40—Uranium recovery facilities.	22,300 to 61,700
Part 30—Byproduct Material Licenses.	490 to $23,500 [1]
Part 71—Transportation of Radioactive Material.	1,000 to $78,800

MATERIALS LICENSES ANNUAL FEE RANGES—Continued

Category of license	Annual fees
Part 72—Independent Storage of Spent Nuclear Fuel.	283,000

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $421,000.

Footnote 1 of 10 CFR 171.16(d) is amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. All other licensees and approval holders who held a license or approval on October 1, 1997, are subject to the FY 1998 annual fees.

Holders of new licenses issued during FY 1998 are subject to a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1 through March 31 of the fiscal year will be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 1998, will not be assessed an annual fee for FY 1998. Thereafter, the full annual fee is due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996, (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

Section 171.19 Payment

Paragraph (a) is revised to provide additional methods of payment and to clarify that payments must be made in U.S. funds.

Paragraph (b) is revised to give credit for partial payments made by certain licensees in FY 1998 toward their FY 1998 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1998 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly invoice to

recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest will be waived if payment is received within 30 days from the invoice date.

Paragraphs (c) and (d) are revised to delete specific fiscal year references.

As in FY 1997, the NRC will continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more will continue to be assessed quarterly). The annual fee assessed will be the fee in effect on the license anniversary date. This rule applies to those materials licenses in the following fee categories: 1.C. and 1.D; 2.A. (2) through 2.C.; 3.A. through 3.P.; 4.A. through 9.D., and 10.B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee will continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 1998 before the effective date of the FY 1998 final rule will be billed during the anniversary month of the license and continue to pay annual fees at the FY 1997 rate in FY 1998. Those materials licensees with license anniversary dates falling on or after the effective date of the FY 1998 final rule will be billed, at the FY 1998 revised rates, during the anniversary month of their license and payment will be due on the date of the invoice.

During the past seven years many licensees have indicated that, although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were either not using the material to conduct operations or had disposed of the material and no longer needed the license. In response, the NRC has consistently stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) that required for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through FY 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1998 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1998 budget of $472.8 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program and the general fund related to commercial vitrification of waste at the Department of Energy Hanford, Washington, site and the pilot program pertaining to external regulation of the Department of Energy;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of

regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989).

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1998. The final rule results in a slight decrease in the annual fees charged to some licensees, and holders of certificates, registrations, and approvals. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis (Appendix A to this document) is the small entity compliance guide for FY 1998.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 the NRC has determined that this action is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 140, 170 and 171.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83, Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.205, paragraph (i) is revised to read as follows:

§ 2.205 Civil penalties.

* * * * *

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under Section 234 of the Act are to be made payable to the U.S. Nuclear Regulatory Commission, in U.S. funds, by check, draft, money order, credit card, or electronic funds transfer such as Automated Clearing House (ACH) using Electronic Data Interchange (EDI). Federal agencies may also make payment by the On-Line Payment and Collections System (OPAC's). All payments are to be made in accordance with the specific payment instructions provided with Notices of Violation that propose civil penalties and Orders Imposing Civil Monetary Penalties.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

3. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

4. In § 140.7, paragraphs (a) and (c) are revised and paragraph (d) is added to read as follows:

§ 140.7 Fees.

(a)(1) Each reactor licensee shall pay a fee to the Commission based on the following schedule:

(i) For indemnification from $500 million to $400 million inclusive, a fee of $30 per year per thousand kilowatts of thermal capacity authorized in the license;

(ii) For indemnification from $399 million to $300 million inclusive, a fee of $24 per year per thousand kilowatts of thermal capacity authorized in the license;

(iii) For indemnification from $299 million to $200 million inclusive, a fee of $18 per year per thousand kilowatts of thermal capacity authorized in the license;

(iv) For indemnification from $199 million to $100 million inclusive, a fee of $12 per year per thousand kilowatts of thermal capacity authorized in the license; and

(v) For indemnification from $99 million to $1 million inclusive, a fee of $6 per year per thousand kilowatts of thermal capacity authorized in the license.

(2) No fee will be less than $100 per annum for any nuclear reactor. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective. The various levels of indemnity fees are set forth in the schedule in this paragraph. The amount of indemnification for determining indemnity fees will be computed by subtracting from the statutory limit of liability the amount of financial protection required of the licensee. In the case of licensees subject to the provision of § 140.11(a)(4), this total amount will be the amount, as determined by the Commission, of the financial protection available to licensees at the close of the calendar year preceding the one in which the fee becomes due. For those instances in which a certified financial statement is provided as a guarantee of payment of deferred premiums in accordance with § 140.21(e), a fee of $1,000 or the indemnity fee, whichever is greater, is required.

* * * * *

(c) Each person licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant shall pay to the Commission a fee of $5,000 per year for indemnification. This fee is for the period beginning with the date on which the applicable indemnity agreement is effective.

(d) Indemnity fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payments by the On-Line Payment and Collections System (OPAC's). Where specific payment instructions are provided on the invoices, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

5. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

6. In Section 170.12, paragraphs (g) and (h) are revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(g) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector assigned to a specific plant or facility. The fees will be assessed for all of the resident inspectors' time, excluding leave and time spent by a resident inspector in support of activities at another site. The hours will be billed at the appropriate hourly rate established in § 170.20.

(2) Fees for all inspections subject to full cost recovery will be assessed on a per inspection basis for costs incurred up to approximately 30 days after issuance of the inspection report. Inspection costs include preparation time, time on site, documentation time, and follow-up activities and any associated contractual service costs, but exclude the time involved in the processing and issuance of a notice of violation or civil penalty.

(3) Fees for resident inspectors' time and for specific inspections subject to full cost recovery will be billed on a quarterly basis and are payable upon notification by the Commission.

(h) *Method of payment.* All license fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Payment of invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank at the address indicated on the invoice. Applicants and licensees should contact the License Fee and Accounts Receivable Branch at 301–415–7554 to obtain specific written instructions for making electronic payments and credit card payments.

* * * * *

7. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	$124 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	$121 per hour.

8. In § 170.21, the introductory text, Category K in the table, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services:

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1 2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$7,900
Amendment	$7,900
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	$4,800
Amendment	$4,800
3. Application for export of components requiring foreign government assurances only.	
Application—new license	$2,800
Amendment	$2,800
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application—new license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	
Amendment	$180

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

9. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$560.
Amendment	$380.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	$750.
Amendment	$290.
E. Licenses or certificates for construction and operation of a uranium enrichment facility.	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$120.
Amendment	$280.
C. All other source material licenses:	
Application—New license	$3,600.
Amendment	$560.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$3,800.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,500.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application—New license	$6,800.
Amendment	$630.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application—New license	$1,900.
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,100.
Amendment	$380.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,900.
Amendment	$440.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$4,500.
Amendment	$740.
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$2,700.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Amendment	$1,000.
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application—New license	$4,400.
Amendment	$1,000.
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,700.
Amendment	$300.
K. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application—New license	$1,000.
Amendment	$340.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$5,400.
Amendment	$760.
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,800.
Amendment	$620.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	$2,000.
Amendment	$500.
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations:	
Application—New license	$4,300.
Amendment	$680.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$730.
Amendment	$340.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,500.
Amendment	$520.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$2,200.
Amendment	$220.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,400.
Amendment	$820.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$6,400.
Amendment	$1,000.
7. Medical licenses:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,500.
Amendment	$390.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$3,800.
Amendment	$710.
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,800.
Amendment	$450.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$570.
Amendment	$400.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,600.
Amendment—each device	$590.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$2,100.
Amendment—each device	$1,100.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$910.
Amendment—each source	$610.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$460.
Amendment—each source	$160.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$340.
Amendment	$620.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, renewal, amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to Parts 30, 40, 70, and 72 of this chapter:	
Approval, renewal, amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application-new license	$7,900.
Amendment	$7,900.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application-new license	$4,800.
Amendment	$4,800.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application-new license	$2,800.
Amendment	$2,800.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application-new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$180.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,100.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and certain renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full costs, and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(b) *License/approval/review fees.* Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees.* Applications subject to Full Cost.fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees.*

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the Full Cost.expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

10. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

11. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of the fiscal year. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 until a notice concerning the revised amount of the fees for the fiscal year is published by the NRC. If the NRC is unable to publish a final fee rule that becomes effective during the current fiscal year, then fees would be assessed based on the rates in effect for the previous fiscal year.

12. In § 171.15, paragraphs (b), (c) introductory text, (c)(1), (c)(2), (e), and (f) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

* * * * *

(b) The FY 1998 annual fee for each operating power reactor which must be collected by September 30, 1998, is $2,976,000. This fee has been determined by adjusting the FY 1997 annual fee, (prior to rounding) downward by about 0.1 percent. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996 when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1997 annual fees were also determined by using this method. The FY 1997 annual fees increased 8.4 percent above the FY 1996 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the base FY 1995 annual fee are as follows:

(1) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter.

(2) Research activities directly related to the regulation of power reactors.

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center.

(c) The activities comprising the FY 1995 surcharge are as follows:

(1) Activities not attributable to an existing NRC licensee or class of licensees; e.g., reviews submitted by other government agencies (e.g., DOE) that do not result in a license or are not associated with a license; international cooperative safety program and international safeguards activities; low-level waste disposal generic activities; uranium enrichment generic activities.

(2) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 1998 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$57,300
Test reactor	$57,300

(f) For each fiscal year, annual fees for operating reactors will be calculated and assessed in accordance with § 171.13.

13. In § 171.16, the introductory text and table of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Material Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1998 as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	

	Maximum annual fee per licensed category
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1998, the maximum annual fee a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1998 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 1998 annual fees, which must be collected by September 30, 1998, have been determined by adjusting downward the FY 1997 exact annual fees (prior to rounding), by about 0.1 percent. As a result of rounding, the FY 1998 annual fee for some fee categories is the same as the FY 1997 annual fee. In the FY 1995 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees as well as on the number of licensees paying the fees. The first adjustment to the annual fees using this method occurred in FY 1996, when all annual fees were decreased 6.5 percent below the FY 1995 annual fees. The FY 1997 annual fees were also determined by using this method. The FY 1997 annual fees were increased 8.4 percent above the FY 1996 annual fees. The FY 1995 annual fee was comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1995 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual Fees [1, 2, 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$2,604,000
Nuclear Fuel Services SNM–124	2,604,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,278,000
General Electric Company SNM–1097	1,278,000
Siemens Nuclear Power SNM–1227	1,278,000
Westinghouse Electric Company SNM–1107	1,278,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
B&W Fuel Company SNM–1168	508,000
(b) All Others:	
General Electric SNM–960	345,000
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	283,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) .	3,100
E. Licenses or certificates for the operation of a uranium enrichment facility	2,604,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	648,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	61,700
Class II facilities [4]	34,900
Other facilities [4]	22,300
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) orCategory 2.A.(4)	45,300
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	8,000
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual Fees [1, 2, 3]
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,600
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,600
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	11,200
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued pursuant to §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,700
H. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	5,000
I. Licenses issued pursuant to Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	8,900
J. Licenses issued pursuant to Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,800
K. Licenses issued pursuant to Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,300
M. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for research and development that do not authorize commercial distribution	5,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,100
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 102,000
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,200
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,200

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual Fees [1, 2, 3]
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,700
7. Medical licenses:	
A. Licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,300
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	23,500
C. Other licenses issued pursuant to Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR Part 71 quality assurance programs.	
Users and Fabricators	78,800
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	283,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broadscope issued to Government agencies	421,000
18. Department of Energy:	
A. Certificates of Compliance	[10] $1,168,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,964,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licensees and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1997, and permanently ceased licensed activities entirely by September 30, 1997. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses were issued by NRC for land disposal of special nuclear material. Once NRC issues an LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the FY 1995 surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

14. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by check, draft, money order, credit card, or electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange). Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, e.g. invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments.

(b) For FY 1998, the Commission will adjust the fourth quarterly invoice for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee on the anniversary date of the license. Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

(c) Annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. As established in FY 1996, materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C. and 1.D.; 2.A.(2) through 2.C.; 3.A. through 3.P.; 4.B. through 9.D.; and 10.B. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Beginning June 11, 1996, the effective date of the FY 1996 final rule, licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but prior to the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

Dated at Rockville, Maryland, this 22nd day of May, 1998.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980, as amended, (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified on November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The revised standards adjusted the NRC receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate $1 million size standard for private practice physicians and applied a receipts-based size standard of $5 million to this class of licensees. This mirrored the revised SBA standard of $5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and is the standard applicable to the types of manufacturing industries that hold an NRC license.

The NRC used the revised standards in the final FY 1995, FY 1996, and FY 1997 fee rules and is continuing their use in this FY 1998 final rule. The small entity fee categories in § 171.16(c) of this final rule reflect the changes in the NRC's size standards adopted in FY 1995. A new maximum small entity fee for manufacturing industries with 35 to 500 employees was established at $1,800 and a lower-tier small entity fee of $400 was established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of $250,000 was raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million. The NRC

believes that continuing these actions for FY 1998 will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was about $445.3 million; for FY 1992, about $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $513 million; for FY 1995 about $503.6 million; for FY 1996 about $462.3 million; for FY 1997 about $462.3 million; and the amount to be collected for FY 1998 is approximately $454.8 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR Parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991), in FY 1992 (57 FR 32691; July 23, 1992), in FY 1993 (58 FR 38666; July 20, 1993), in FY 1994 (59 FR 36895; July 20, 1994), in FY 1995 (60 FR 32218; June 20, 1995), in FY 1996 (61 FR 16203; April 12, 1996), and in FY 1997 (62 FR 29194; May 29,1997) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FYs 1991–1997.

The NRC indicated in the FY 1995 final rule that it would attempt to stabilize annual fees as follows. Beginning in FY 1996, it would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be recalculated (60 FR 32225; June 20, 1995). The NRC also indicated that the percentage change would be adjusted based on changes in the 10 CFR Part 170 fees and other adjustments as well as an adjustment for the number of licensees paying the fees. As a result, the NRC is establishing the FY 1998 annual fees for all licensees at about 0.1 percent below the FY 1997 exact (prior to rounding) annual fees. Based on this small change, the FY 1998 annual fees (rounded) for many fee categories are the same as the FY 1997 annual fees. Because there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC has continued to stabilize annual fees by following the same method used for FY 1996 and FY 1997 to establish the FY 1998 annual fees.

Public Law 104–121, the Contract with America Advancement Act of 1996, was signed into law on March 29, 1996. Title III of the law is entitled the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The SBREFA has two purposes. The first is to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations and governmental jurisdictions. The second is to provide the Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC fee rule, published annually, is considered a ''major'' rule and therefore must be reviewed by Congress and the Comptroller General before the rule becomes effective. Section 312 of the Act provides that for each rule for which an agency prepared a final regulatory flexibility analysis, the agency shall prepare a guide to assist small entities in complying with the rule. The NRC's guide is Attachment 1 to Appendix A of this final rule. A regulatory flexibility analysis is prepared for the proposed and final NRC fee rules as implemented by 10 CFR Part 170 and 171 of the Commission's regulations. Therefore, in compliance with the law, Attachment 1 to this Regulatory Flexibility Analysis is the small entity compliance guide for FY 1998.

II. Impact on Small Entities

The comments received on the proposed FY 1991–1997 fee rule revisions and the small entity certifications received in response to the final FY 1991–1997 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 20 percent (approximately 1,400 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991–1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a ''Mom and Pop'' type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since FY 1991 when annual fees were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the $3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these ''Mom and Pop'' type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the following rules: FY 1991 (56 FR 31472; July 10, 1991), FY 1992 (57 FR 32691; July 23, 1992), FY 1993 (58 FR 38666; July 20, 1993), FY 1994 (59 FR 36895; July 20, 1994), FY 1995 (60 FR 32218; June 20, 1995), FY 1996 (61 FR 16203; April 12, 1996), and FY 1997 (62 FR 29194; May 29, 1997). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991–1997 evaluations of these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and will continue for FY 1998, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1998, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of costs that must be recovered from other NRC licensees as a result of establishing the maximum annual fees.

The NRC continues to believe that the 10 CFR Part 170 license fees (application and amendment), or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1998, the NRC concludes that the 10 CFR Part 170 materials license fees do not have a significant impact on a substantial number of small entities and that the 10 CFR Part 171 maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1998 costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase significantly. Therefore, the NRC is continuing, for FY 1998, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of $1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992–1997, the NRC is continuing the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and now includes manufacturing companies with a relatively small number of employees.

III. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $1,800 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 1991–1997 rules remain valid for this final rule for FY 1998. In compliance with Public Law 104–121, a small entity compliance guide has been prepared by NRC and is shown as Attachment 1 to this Regulatory Flexibility Analysis.

Attachment 1 to Appendix A

U. S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 1998

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which requires the NRC to collect approximately 100 percent of its budget authority each year through fees, meets the thresholds for being considered a ''major'' rule under the SBREFA. Therefore, in compliance with the law, this small entity compliance guide has been prepared for FY 1998. The purpose of this guide is to assist small entities in complying with the NRC fee rule.

This guide is designed to aid NRC materials licensees. The information provided in this guide may be used by licensees to determine whether they qualify as a small entity under NRC regulations and are therefore eligible to pay reduced FY 1998 annual fees assessed under 10 CFR Part 171. The NRC, in compliance with the Regulatory Flexibility Act of 1980 (RFA), has established separate annual fees for those materials licensees who meet the NRC's size standards for small entities. These size standards, developed in consultation with the Small Business Administration, were revised by the NRC and became effective on May 11, 1995. The small entity size standards are found at 10 CFR 2.810 of the NRC's regulations. To comply with the RFA, the NRC has established two tiers of small-entity fees. These fees are found at 10 CFR 171.16(c) of the NRC's fee regulations.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 in order to qualify for the reduced annual fee. NRC Form 526 will accompany each annual fee invoice mailed to materials licensees. The completed form, along with the appropriate small entity fee and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice.

NRC Definition of Small Entity

The NRC, in consultation with the Small Business Administration, has defined a small entity for purposes of compliance with its regulations. The definition is codified in NRC's regulations at 10 CFR 2.810. Under the NRC regulation, a small entity is a:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;
2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;
3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;
4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;
5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

NRC Small Entity Fees

The NRC has established two tiers of small-entity fees for licensees that qualify under the NRC's size standards. Currently, these fees are as follows:

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. About 1,400 licensees certify each year that they qualify as a small entity under the NRC size standards and pay a reduced annual fee. Approximately 800 licensees pay the small entity fee of 1,800 while 600 licensees pay the lower-tier, small-entity fee of 400.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

3. The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $1,800 or $400 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $900 or $200 for each fee category billed instead of the full small entity annual fee of $1,800 or $400.

4. A new small entity form (NRC Form 526) is required to be filed with the NRC each fiscal year in order to qualify for reduced fees for that fiscal year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

5. Questions regarding fee invoices may be posed orally or in writing. Please call the license fee staff at 301–415–7554 or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

6. False certification of small entity status could result in civil sanctions being imposed by the NRC pursuant to the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR Part 13.

[FR Doc. 98–15140 Filed 6–9–98; 8:45 am]

BILLING CODE 7590–01–P

federal register

Wednesday
June 10, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11, et al.

Revisions to Digital Flight Data Recorder Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 121, 125, 129, 135

[Docket No. 28109; Amendment No. 11–44]

RIN 2120–AF76

Revisions to Digital Flight Data Recorder Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Disposition of comment.

SUMMARY: This document informs the public of the Office of Management and Budget (OMB) approval and the assigned control number for the Revisions to Digital Flight Data Recorder Rules final rule information collection requirements, and responds to the one comment received. This document also adds the OMB control number to the table in FAA's general rulemaking procedure regulations.

EFFECTIVE DATE: June 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Davis, Air Carrier Operations Branch (AFS–220), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3747.

SUPPLEMENTARY INFORMATION: The following information summarizes the information collection considerations for the Revisions to Digital Flight Data Recorder Rules final rule (62 FR 38362, July 17, 1997).

1. *The reasons the information is planned to be and/or has been collected.* This regulation revises and updates the Federal Aviation Regulations to require that certain airplanes be equipped to accommodate additional digital flight data recorder (DFDR) parameters. These revisions follow a series of safety recommendations issued by the National Transportation Safety Board (NTSB), and the Federal Aviation Administration's decision that DFDR rules should be revised to upgrade recorder capabilities in most transport airplanes. These revisions will require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs.

2. *The way such information is planned to be and/or has been used to further agency purposes and service agency needs.* These revisions will require additional information to be collected and retained by aircraft operators to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs.

3. *An estimate, to the extent practicable, of the average burden of the collection.* Once the DFDR has been upgraded to record the required parameters, no further expenditures are required; recordation and storage of the data in the recorder is automatic. Costs of upgrade and installation vary by type of aircraft and are detailed in the final rule and regulatory evaluation (62 FR 28262).

4. *Whether responses to the collection of information are voluntary, required to obtain or retain a benefit, or mandatory.* Collection of data is required by regulation. In the case of an accident, when the flight data recorder is retrieved from the scene, the 25 hours of information recorded by the aircraft's recorder will be downloaded and analyzed by accident investigators at the NTSB and the FAA to determine probable cause.

5. *The nature and extent of confidentiality to be provided, if any.* Flight data recordings are surrendered to the National Transportation Safety Board only in the event of an accident or an incident. Only after the data has been analyzed and interpreted is a compilation released.

6. *The fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.*

OBM has approved the Digital Flight Data Recorder rule and assigned it the following control number: 2120–0616.

Comments Received: The FAA received one comment from Midwest Airlines. The comment addresses concerns regarding ''language made in the final rule as well as the compatibility of the LORAL F800 DFDR's utilized'' by Midwest Express airlines. This comment goes beyond the scope of the request. The FAA solicited comments on the information requirements in order to: (1) Evaluate whether the proposed collection of information necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) enhance the quality utility, and clarity of the information to be collected; and (4) minimize the burden of data collection by regulated entities, including the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology. Discussion of the compatibility of a particular flight data recorder model with the requirements of the rules has already been addressed in the preamble to the final rule.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 11 as set forth below:

PART 11—GENERAL RULEMAKING PROCEDURES

1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, 46102.

2. Section 11.101(b) is amended by revising the entry for part 125 and by adding the following entries in numerical order to read as follows:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

14 CFR part or section identified and described	Current OMB control No.
* * * * *	
Part 121 (except as below)	
* * *	
* * * * *	
§ 121.344	2120–0616
§ 121.344a	2120–0616
* * * * *	
Part 125 (except as below)	2120–0085
§ 125.226	2120–0616
* * * * *	
§ 129.20	2120–0616
* * * * *	
§ 135.152	2120–0616
* * * * *	

Issued in Washington, DC on June 1, 1998.

Mardi R. Thompson,

Acting Assistant Chief Counsel for Regulations.

[FR Doc. 98–15142 Filed 6–9–98; 8:45 am]

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federal register

Wednesday
June 10, 1998

Part IV

Department of Housing and Urban Development

24 CFR Part 570

Community Development Work Study Program; Repayment Requirements; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4324–F–01]

RIN 2528–AA08

Community Development Work Study Program; Repayment Requirements

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final rule.

SUMMARY: On July 10, 1996, HUD published a Final Rule making various amendments to the Community Development Work Study Program (CDWSP), including the removal of requirements that students who are terminated from the CDWSP repay the tuition and additional assistance to the grant recipient, and that the grant recipient repay those funds to HUD. HUD has determined to extend this relief to all open grants, including those entered into before the effective date of the July 10 final rule.

DATES: *Effective date:* July 10, 1998.

FOR FURTHER INFORMATION CONTACT: John M. Hartung, Office of University Partnerships, Department of Housing and Urban Development, Room 8130, 451 Seventh Street, SW, Washington, D.C. 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TTY number (202) 708–0770, or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), added a new section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), authorizing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD is authorized to award grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time graduate or undergraduate Community Development Academic Program.

On June 27, 1989, HUD published a final rule (45 FR 27128) implementing section 107(c) at 24 CFR 570.415. Based on its experience in administering the CDWSP over many years, HUD made several amendments to 24 CFR 570.415 on July 10, 1996 (61 FR 36456) so that the CDWSP could more effectively and efficiently meet its program objectives. Among other revisions, the July 10, 1996 final rule: (1) Limited the number of students assisted under the CDWSP to five students per participating institution of higher education; (2) limited the CDWSP to graduate level programs; (3) permitted institutions of higher education to apply individually or through APOs; (4) streamlined the selection factors used to select grantees; and (5) eliminated the requirement that students who are terminated from the CDWSP repay tuition and additional assistance and that the grant recipient repay those funds to HUD.

In eliminating the repayment requirement, the Department found, among other considerations, that the requirement was both a disincentive to prospective students and imposed substantial administrative burdens on institutions of higher education. Public comment submitted in response to the proposed rule for removing the repayment requirement strongly favored removal. In addition, HUD is not aware of any adverse consequences following the removal of the repayment requirement. HUD has therefore determined to eliminate the repayment requirement entirely with respect to all open CDWSP grants, including those executed before the effective date of the June 10, 1996 final rule, to the extent that HUD has not received repayment.

This rule amends 24 CFR 570.415(k)(3)(ii) to provide that there is no requirement, with respect to any grant and regardless of date of grant award, for students who are terminated from the CDWSP to repay tuition and additional assistance or for the grant recipient to repay such funds to HUD. Of course, the funds must still be otherwise expended consistent with CDWSP regulations and the grant agreement, or repayment may be required under § 570.415(k)(3)(iii).

II. Findings and Certifications

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. Prior public procedure is unnecessary because public comment on the very issue addressed by this rule, removal of repayment requirements, was solicited in a previous, directly related rulemaking (which resulted in the July 10, 1996 final rule), and was unanimously favorable. This rule only expands the scope of that previous rulemaking to cover any remaining open grants executed before its August 9, 1996 effective date.

Paperwork Reduction Act Statement

The information collection requirements for the Community Development Work Study Program have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2528–0175. This rule does not contain additional information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule only affects applicants and participants in HUD's Community Development Work Study Program, and will not have any meaningful economic impact on any entity.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, the policies and procedures in this document are not subject to the individual compliance requirements of

the authorities cited in 24 CFR 50.4, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969, although this document amends a previous document which as a whole does not fall within the exemption. Accordingly, a Finding of No Significant Impact is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Specifically, the requirements of this final rule are directed toward applicants and participants in HUD's Community Development Work Study Program (CDWSP). It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with CDWSP.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk to children.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.234.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead Poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.415 is amended by revising paragraph (k)(3)(ii) to read as follows:

§ 570.415 Community Development Work Study Program.

* * * * *

(k) * * *

(3) * * *

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term. With respect to any CDWSP grant, there is no requirement, regardless of the date of grant award, for students who are terminated from the CDWSP to repay tuition and additional assistance or for the grant recipient to repay such funds to HUD. Funds must still be otherwise expended consistent with CDWSP regulations and the grant agreement, or repayment may be required under paragraph (k)(3)(iii) of this section.

* * * * *

Dated: June 4, 1998.

Paul A. Leonard,

Deputy Assistant, Secretary for Policy Development and Research.

[FR Doc. 98–15477 Filed 6–9–98; 8:45 am]

BILLING CODE 4210–62–P

federal register

Wednesday
June 10, 1998

Part V

Department of Justice

Immigration and Naturalization Service

8 CFR Part 214

Authorizing Suspension of Applicability of Employment Authorization Requirements in Emergent Circumstances for Certain F–1 Students; Employment Authorization for Certain F–1 Nonimmigrant Students Whose Means of Financial Support Comes From Indonesia, South Korea, Malaysia, Thailand, or the Philippines; Rules

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1914–98]

RIN 1115–AF15

Authorizing Suspension of Applicability of Employment Authorization Requirements in Emergent Circumstances for Certain F–1 Students

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations of the Immigration and Naturalization Service (Service) that apply to nonimmigrant aliens who are admitted to the United States in F–1 student classification for duration of status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (Act), and who are seeking either on-campus employment or authorization for off-campus employment. The rule allows the Commissioner, by notice in the **Federal Register**, to permit specified F–1 students to engage in on-campus employment for more than 20 hours per week and to suspend the applicability of the eligibility requirements for off-campus employment authorization, where emergent circumstances exist. F–1 students who find it necessary to reduce their normal course of study in order to engage in this specially authorized employment will be considered to be maintaining status and pursuing a full course of study. This interim rule is necessary to provide a means for the Service to take immediate action when emergency situations arise.

DATES: *Effective date:* This interim rule is effective June 10, 1998.

Comment date: Written comments must be submitted on or before August 10, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1914–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Maurice R. Berez, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 8 CFR 214.2(f)(8) permit F–1 students to engage in on-campus or off-campus employment while pursuing their studies in the United States as long as certain requirements are met. The regulations provide no flexibility in these requirements. Crises may arise, however, that warrant suspension of some or all of the requirements for certain students. An amendment to the current regulations is necessary to provide the Commissioner a means to institute immediate measures for affected students in case of a crisis. The most expedient means is by notice in the **Federal Register**. This interim rule amends the regulations to provide such a procedure with respect to on-campus employment, off-campus employment authorization, duration of status, and full course of study.

On-Campus Employment

Under the current regulations for on-campus employment at 8 CFR 214.2(f)(9)(i), F–1 students may work no more than 20 hours per week when school is in session. Current regulations provide no exceptions to thIS limitation. This rule amends the regulations for on-campus employment to permit the Commissioner, by notice in the **Federal Register,** to allow specified F–1 students to work on-campus more than 20 hours per week for a temporary period where an emergency situation has arisen. Before a student may engage in such employment, the student must demonstrate to the Designated School Official (DSO) at the student's school that the employment is necessary to avoid severe economic hardship resulting from the emergency, and the DSO must notate the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, in accordance with the **Federal Register** document.

Off-Campus Employment Authorization

Current regulations at 8 CFR 214.2(f)(9)(ii) provide that an F–1 student may be authorized to work off-campus where: the student has been in F–1 status for one full academic year; the student is in good academic standing and is carrying a ''full course of study;'' the student demonstrates that the employment will not interfere with his or her ability to carry a full course of study; and the student demonstrates that he or she must work to avoid severe economic hardship due to unforeseen circumstances beyond the student's control. Just as with on-campus employment, a student granted off-campus employment authorization may work no more than 20 hours per week when school is in session. The student may work full-time during holidays or school vacations. Section 214.2(f)(9)(ii)(A) of the current regulations provides for automatic termination of employment authorization where the student fails to maintain his or her F–1 status as set forth in 8 CFR 214.2(f)(5).

To provide the necessary flexibility to address unforeseeable emergencies, this rule amends the regulations to allow the Commissioner, by notice in the **Federal Register**, to suspend the applicability of some or all of the requirements for off-campus employment authorization for specified F–1 students where an emergency situation has arisen calling for this action.

Duration of Status and Full Course of Study

To maintain F–1 status, all F–1 students must pursue a full course of study. The time during which an F–1 student is pursuing a full course of study is called ''duration of status.'' *See* 8 CFR 214.2(f)(5). An F–1 student who pursues less than a full course of study and violates his or her status can seek reinstatement if he or she meets the requirements of 8 CFR 214.2(f)(16). Where the Commissioner has exercised her authority established by this interim rule to suspend the applicability of the requirements for on-campus and off-campus employment authorization by notice in the **Federal Register**, affected F–1 students may, but are not required to, pursue less than their normal course of study in order to meet their financial needs by accepting the authorized employment. So that these students will not be considered to have violated their status, this interim rule amends the regulations at 8 CFR 214.2(f)(5) to provide that affected F–1 students carrying a reduced course load will be considered to be in status during the authorized employment, as long as the student remains registered for a minimum course load, which will be specified in the **Federal Register** document. Under the rule, in no event may the minimum course load be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or 3 semester or quarter hours of instruction per academic term if the student is at the graduate level. In addition, the rule amends the regulations defining ''full course of study'' at 8 CFR 214.2(f)(6) to provide

that affected F–1 students carrying a reduced course load will be deemed to be engaged in a full course of study during the authorized employment, as long as the student remains registered for a minimum course load, which may not be less than the number of semester or quarter hours specified in the **Federal Register** document. Because affected F–1 students who must reduce their course load will be considered to be in status, they do not need to request reinstatement to return to a full course of study.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). This rule permits the Commissioner to suspend the application of certain regulatory requirements where an emergency situation arises calling for such action. Immediate implementation is necessary because emergency circumstances have, in fact, arisen that require immediate action by the Service. A number of Asian countries are experiencing an extreme economic crisis as a result of a sharp drop in the value of their currencies. This crisis will have a severe impact on the United States' national interest. Thailand, Indonesia, Malaysia, South Korea, and the Philippines are among the hardest hit by this crisis.

There are approximately 80,000 nationals currently in the United States whose means of financial support comes from one of these five countries. As a result of the crisis in the five countries, many of these students may not be able to afford to remain in school or meet living expenses and will be forced to leave the United States. The President and the Secretary of State have requested the Government to assist in addressing this crisis in order to further important foreign policy interests. In light of this crisis, the Service must implement a mechanism to aid affected students immediately. In this issue of the **Federal Register,** the Service is simultaneously issuing a document with this interim rule to notify the public of the suspension of applicability of certain requirements under 8 CFR 214.2(f)(9) for F–1 students whose means of financial support comes from South Korea, Thailand, Indonesia, Malaysia and the Philippines.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities since this rule affects individual aliens, not small entities as that term is defined in 5 U.S.C. 601(b).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Adding a new paragraph (f)(5)(v);

b. Adding a new paragraph (f)(6)(i)(F);

c. Revising the fifth sentence in paragraph (f)(9)(i); and by

d. Adding a sentence at the end of paragraph (f)(9)(ii)(A), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(f) * * *

(5) * * *

(v) *Emergent circumstances as determined by the Commissioner.* Where the Commissioner has suspended the applicability of any or all of the requirements for on-campus or off-campus employment authorization for specified students pursuant to paragraphs (f)(9)(i) or (f)(9)(ii) of this section by notice in the **Federal Register,** an affected student who needs to reduce his or her full course of study as a result of accepting employment authorized by such notice in the **Federal Register** will be considered to be in status during the authorized employment, subject to any other conditions specified in the notice, provided that, for the duration of the authorized employment, the student is registered for the number of semester or quarter hours of instruction per academic term specified in the notice, which in no event shall be less than 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or less than 3 semester or quarter hours of instruction per academic term if the student is at the graduate level, and is continuing to make progress toward completing the course of study.

(6) * * *

(i) * * *

(F) Notwithstanding paragraphs (f)(6)(i)(A) and (f)(6)(i)(B) of this section, an alien who has been granted employment authorization pursuant to the terms of a document issued by the Commissioner under paragraphs (f)(9)(i)

or (f)(9)(ii) of this section and published in the **Federal Register** shall be deemed to be engaged in a ''full course of study'' if he or she remains registered for no less than the number of semester or quarter hours of instruction per academic term specified by the Commissioner in the notice for the validity period of such employment authorization.

* * * * *

(9) * * *

(i) *On-campus employment.* * * * Employment authorized under this paragraph must not exceed 20 hours a week while school is in session, unless the Commissioner suspends the applicability of this limitation due to emergent circumstances, as determined by the Commissioner, by means of notice in the **Federal Register,** the student demonstrates to the DSO that the employment is necessary to avoid severe economic hardship resulting from the emergent circumstances, and the DSO notates the Form I–20 in accordance with the **Federal Register** document.* * *

(ii) * * *

(A) *General.* * * * In emergent circumstances as determined by the Commissioner, the Commissioner may suspend the applicability of any or all of the requirements of paragraph (f)(9)(ii) of this section by notice in the **Federal Register.**

* * * * *

Dated: May 1, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–15507 Filed 6–8–98; 2:23 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1911–98]

Employment Authorization for Certain F–1 Nonimmigrant Students Whose Means of Financial Support Comes From Indonesia, South Korea, Malaysia, Thailand, or the Philippines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of suspension of applicability of certain requirements.

SUMMARY: The Commissioner of the Immigration and Naturalization Service (Service) is temporarily suspending the applicability of certain requirements in 8 CFR 214.2(f)(9) governing on-campus and off-campus employment for nonimmigrant aliens who are admitted to the United States in F–1 classification for duration of status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (Act), and whose means of financial support as reflected in the students' Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, is from Indonesia, South Korea, Malaysia, Thailand, or the Philippines. This action is necessary because students whose means of financial support comes from these countries are experiencing severe economic hardship due to the rapid devaluation of their currencies against the United States dollar and the consequent reduction in financial support. These affected students may need to be exempted from the normal student employment requirements in order to continue their studies in the United States.

DATES: This document is effective June 10, 1998 and will remain in effect until the Attorney General rescinds this document.

FOR FURTHER INFORMATION CONTACT:

Maurice R. Berez, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Why Is The Service Taking This Action?

The currencies of Indonesia, South Korea, Malaysia, Thailand, and the Philippines have experienced a sudden and severe drop in value over recent months relative to the United States dollar. The United States Department of the Treasury advises that this economic crisis will likely continue for the next several months. The President and the Secretary of State have requested the Government, as a matter of foreign policy and wherever feasible, to assist students whose means of financial support comes from these countries to mitigate the adverse impact of this crisis. The economic crisis has had a severe economic impact on many F–1 nonimmigrant students who are presently in the United States and whose means of financial support comes from any of these five countries. The total population of such students attending colleges and universities in the United States is approximately 80,000. Given the magnitude of this student population in the United States, the economic crisis in these students' countries is also having an indirect but serious adverse impact on campuses across the country.

While some affected students will have brought enough money with them to the United States for the entire academic year, many other students who depend on a regular flow of funds from one of the five enumerated countries may be experiencing severe economic hardship as a result of the economic crisis. These students may be unable to continue to cover the full cost of their studies and reasonable living expenses, and may therefore need to seek immediate employment to meet this unexpected change in their financial support.

Based on the above-noted foreign policy grounds, and in order to aid such adversely affected students, the Commissioner is exercising her authority under 8 CFR 214.2(f)(9) and is temporarily suspending the applicability of certain regulatory requirements pertaining to employment authorization for certain F–1 students whose means of financial support, as reflected on their Form I–20, comes from Indonesia, South Korea, Malaysia, Thailand, or the Philippines, and who, due to the economic crisis, would suffer severe economic hardship without such employment authorization. Under this temporary suspension, eligible F–1 students will be permitted to exceed the normal 20-hour limit on both on-campus and off-campus employment, and to reduce their full course of study without violating their F–1 status. This action is taken pursuant to amendments made to the regulations at 8 CFR 214.2(f)(5), 214.2(f)(6), and 214.2(f)(9) in an interim rule issued by the Service and published in this issue of the **Federal Register**.

For What Requirements in 8 CFR 214.2(f)(9) Is The Applicability Temporarily Suspended?

1. On-Campus Employment

For F–1 students whose means of financial support, as reflected in their Form I–20, comes from Indonesia, South Korea, Malaysia, Thailand or the Philippines, and who seek to engage in on-campus employment because of severe economic hardship resulting from the current economic crisis, the Commissioner is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 student's on-campus employment to 20 hours per week while school is in session. The applicability of this requirement will be suspended until this document is rescinded. Students whose means of financial support comes from one of the five enumerated countries, and who are experiencing severe economic hardship due to the

economic crisis in these countries, are authorized to work more than 20 hours per week while school is in session if their Designated School Official (DSO) notates page 4 of both the school and student copies of the Form I–20 in the student employment box with the statement:

Approved for more than 20 hour per week of on-campus employment under the Special Student Relief authorization from (DSO shall insert the beginning date of employment) until (DSO shall insert the earlier of the last day of the student's program or one year from the beginning date of employment)

and signs and dates the notation. To obtain this on-campus employment authorization, students must demonstrate to their DSO that the employment is necessary to avoid severe economic hardship caused by the economic crisis taking place in one of the five specified countries from which their means of financial support is derived. These students are permitted to reduce their normal course of study in order to accept such employment. To be considered to be maintaining F–1 status and engaging in a full course of study under 8 CFR 214.2(f)(5)(v) and 214.2(f)(6)(i)(F), however, undergraduate students must remain registered for a minimum of 6 semester or quarter hours of instruction per academic term and graduate students must remain registered for a minimum of 3 semester or quarter hours of instruction per academic term for the period of authorized employment. The standard rules at 8 CFR 214.2(f)(9)(i) permitting full-time work on-campus when school is not in session or during school vacations will continue to apply during the effective period of this document.

2. Off-Campus Employment

For purposes of off-campus employment authorization under 8 CFR 214.2(f)(9)(ii), the Commissioner has determined that the currency devaluation affecting Indonesia, South Korea, Malaysia, Thailand, and the Philippines constitutes unforeseen circumstances beyond the student's control. Moreover, for students whose means of financial support, as reflected on their Form I–20, is from one of these five countries and who establish severe economic hardship, the Commissioner is suspending the applicability of the following regulatory requirements in 8 CFR 214.2(f)(9)(ii):

1. The requirement that the student has been in F–1 status for one full academic year;

2. The requirement that acceptance of employment will not interfere with the student's carrying a full course of study; and

3. The requirement that the student's work authorization be limited to no more than 20 hours per week when school is in session.

F–1 students who must reduce their normal course of study as a result of accepting employment authorized by this notice will be considered to be maintaining F–1 status and engaging in a full course of study under 8 CFR 214.2(f)(5)(v) and 214.2(f)(6)(i)(F), provided that, for the duration of their authorized employment, undergraduate students are registered for a minimum of 6 semester or quarter hours of instruction per academic term and graduate students are registered for a minimum of 3 semester or quarter hours of instruction per academic term. The standard rules at 8 CFR 214.2(f)(9)(ii) permitting full-time work off-campus when school is in session or during school vacations will continue to apply during the effective period of this document.

How Can F–1 Students, Whose Means of Financial Support Is From One of the Five Enumerated Countries, Apply for Special Off-Campus Employment Authorization Pursuant to This Document?

To apply for this special off-campus employment authorization, F–1 students must file a complete employment authorization application with the Service Center having jurisdiction over the student's place of residence. An application is complete if it contains:

1. A properly completed Form I–765, Application for Employment Authorization, with the required fee of $70 or, in the absence of the fee, a written affidavit requesting waiver of the fee which explains why he or she is entitled to or deserving of the fee waiver and the reasons for his or her inability to pay as provided under 8 CFR 103.7(c);

2. Form I–20 with a written notation by the DSO on page 4 in the student employment box stating,

Special Student Relief recommended from (DSO shall insert the recommended beginning date of employment) until (DSO shall insert the earlier of the last day of the student's program or one year from the recommended beginning date of employment)

that is signed and dated by the DSO; and

3. A copy of Form I–538, Certification by Designated School Official, containing an original, notarized signature of the DSO and a certification by the DSO that the student has demonstrated the following:

a. That the student's means of financial support, as documented on Form I–20, is from Indonesia, South Korea, Malaysia, Thailand or the Philippines (the DSO must note this in the comments section of Form I–538);

b. That the student is in good standing as a student and is carrying a full course of study at the time of the request for employment authorization (the DSO must check the appropriate box in block 9 of Form I–538);

c. That, if the student cannot carry a full course of study as a result of the acceptance of employment, the student will be registered, for the duration of his or her authorized employment, for a minimum of 6 semester or quarter hours of instruction per academic term if the student is at the undergraduate level or for a minimum of 3 semester or quarter hours of instruction per academic term if the student is at the graduate level (the DSO must note this in the comments section of Form I–538); and

d. That the off-campus employment is necessary to avoid severe economic hardship to the individual caused by the economic crisis taking place in one of the five specified countries from which the student's means of financial support is derived (the DSO must note this in the comments section of Form I–538).

To help expedite adjudication of the student's application, the student should:

a. Ensure that the application package includes: (1) A completed Form I–765; (2) the required fee or affidavit requesting waiver of the fee; (3) a copy of Form I–538 with notarized original signature of the DSO; and (4) a copy of the student's I–20 with the appropriate DSO notation on page 4 as previously described in this notice;

b. Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.''

If the Service approves the student's employment authorization application, the Service will send the student an Employment Authorization Document, Form I–766, to evidence his or her employment authorization. The Form I–766 will contain an expiration date that does not exceed the earlier of the last day of the student's program or one year from the date of issuance.

Is There a Cut-Off Date for the Filing of Applications for Off-Campus Employment Authorization Under This Document?

The Service has not yet determined a cut-off date for the filing of applications for off-campus work authorization under this document. The Service will

issue a document in the **Federal Register** announcing a cut-off date for filing such applications when it makes this determination.

Must the F–1 Student Apply for Reinstatement After Expiration of This Special Employment Authorization if the Student Reduces His or Her Full Course of Study?

No. If an F–1 student reduces his or her normal course of study in order to engage in employment pursuant to this document, the F–1 student will be considered to be maintaining his or her status under 8 CFR 214.2(f)(5)(v). As previously discussed, a student will be considered to be maintaining status only if the student is registered for a minimum of 6 semester or quarter hours of instruction per academic term where the student is at the undergraduate level, or is registered for a minimum of 3 semester or quarter hours of instruction per academic term where the student is at the graduate level. Because a student who has reduced his or her full course of study in accordance with this document is considered to be maintaining status, he or she is not required to request reinstatement from the Service under 8 CFR 214.2(f)(16) before the student resumes a full course of study at the conclusion of his or her employment authorization.

Will the Suspension of the Applicability of the Standard Student Employment Requirements Apply to Aliens Who, as of the Effective Date of This Document, Have not yet Been Granted an F–1 Visa in Order to Pursue a Course of Studies in the United States?

No, the suspension of the applicability of the standard regulatory requirements does not apply to such persons, even if their means of financial support comes from any of the five above-noted countries.

Does This Document Apply to F–1 Students Who Leave the United States and Will Need to Obtain a New F–1 Visa During the Validity Period of This Document in Order to Continue Their Educational Program in the United States?

Yes, provided that the DSO has properly notated the Form I–20 in accordance with this document. Subject to the specific terms of this document, however, the normal rules for visa issuance, including those related to public charge and nonimmigrant intent, remain applicable to aliens who need to apply for a new F–1 visa in order to continue their educational program in the United States.

How Long Will This Document Remain in Effect?

The suspension of applicability of on-campus and off-campus employment authorization requirements by this document will remain in effect until this document is rescinded by the Attorney General. During this period, the Service will continue to consult with the President and the Departments of State and Treasury in order to determine whether economic circumstances in the five enumerated countries warrant rescission or modification of the special provisions for F–1 students whose means of support comes from one of these countries. Should these special provisions be modified or rescinded, the Service will issue a document in the **Federal Register** announcing any changes.

Dated: June 5, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–15508 Filed 6–8–98; 2:23 pm]

BILLING CODE 4410–10–M

federal register

Wednesday
June 10, 1998

Part VI

The President

Presidential Determination No. 98–24 of May 29, 1998—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Presidential Determination No. 98–25 of May 30, 1998—Sanctions Against Pakistan for Detonation of a Nuclear Explosive Device

Federal Register
Vol. 63, No. 111
Wednesday, June 10, 1998

Presidential Documents

Title 3—

The President

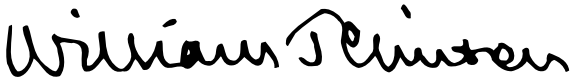
Presidential Determination No. 98–24 of May 29, 1998

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $37,000,000 be made available from the United States Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees, victims of conflict, and other persons at risk in Africa and Southeast Asia. These funds may be used, as appropriate, to provide contributions to international and non-governmental agencies.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 29, 1998.

[FR Doc. 98–15680
Filed 6–9–98; 8:45 am]
Billing code 4710–10–M

Presidential Documents

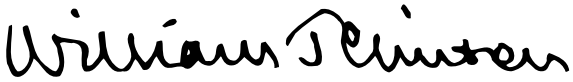
Presidential Determination No. 98–25 of May 30, 1998

Sanctions Against Pakistan for Detonation of a Nuclear Explosive Device

Memorandum for the Secretary of State

In accordance with section 102(b)(1) of the Arms Export Control Act, I hereby determine that Pakistan, a non-nuclear-weapon state, detonated a nuclear explosive device on May 28, 1998. The relevant agencies and instrumentalities of the United States Government are hereby directed to take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

You are hereby authorized and directed to transmit this determination to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 30, 1998.

[FR Doc. 98–15681
Filed 6–9–98; 8:45 am]
Billing code 4710–10–M

federal register

Wednesday
June 10, 1998

Part VII

The President

Memorandum of June 1, 1998—Plain Language in Government Writing

Federal Register
Vol. 63, No. 111
Wednesday, June 10, 1998

Presidential Documents

Title 3—

The President

Memorandum of June 1, 1998

Plain Language in Government Writing

Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government's writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

- common, everyday words, except for necessary technical terms;
- ''you'' and other pronouns;
- the active voice; and
- short sentences.

To ensure the use of plain language, I direct you to do the following:

- By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
- By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the **Federal Register,** unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts.

I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office

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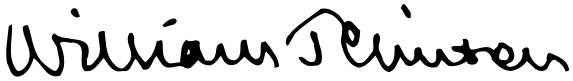

THE WHITE HOUSE,
Washington, June 1, 1998.

[FR Doc. 98–15700
Filed 6–9–98; 10:56 am]
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H.R. 2472/P.L. 105–177

To extend certain programs under the Energy Policy and Conservation Act. (June 1, 1998; 112 Stat. 105)

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