10–6–98
Vol. 63 No. 193
Pages 53543–53778

federal register

Tuesday
October 6, 1998

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[FV–96–703FR]

Potato Research and Promotion Plan; Suspension of Portions of the Plan; Amendments of the Regulations Regarding Importers' Votes; and Clarification of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA or the Department) is adopting without modification as a final rule an interim final rule which suspended portions of the Potato Research and Promotion Plan (Plan) that required National Potato Promotion Board (Board) members to be nominated at meetings, suspended obsolete provisions in the Plan, amended the rules and regulations issued under the Plan to provide for mail balloting as an alternative means of selecting nominees for appointment, permitted importer members of the Board to vote on the basis of the volume of imported potatoes, and provided in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another designated handler.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Washington, DC 20250–0244; telephone (202) 720–9915 or (888) 720–9917 (toll free).

SUPPLEMENTARY INFORMATION: This rule is issued under the Potato Research and Promotion Plan (Plan) [7 CFR Part 1207]. The Plan is authorized by the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627], hereinafter referred to as the Act.

Executive Order 12988

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act, a person subject to a plan may file a petition with the Secretary of Agriculture (Secretary) stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] (RFA), the Agency has examined the impact of this rule on small entities. Accordingly, we have performed this final regulatory flexibility analysis.

According to data from the 1992 Census of Agriculture, published by the Department of Commerce, there are approximately 6,744 potato producers who grow potatoes on 5 or more acres and are thus subject to the provisions of the Plan. Of these, approximately 4,817 potato producers may be classified as small agricultural producers. Small agricultural producers are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. Therefore, the majority of potato producers may be classified as small entities.

According to data from the Board, there are an estimated 1,511 potato handlers, 334 importers of potatoes and potato products for human consumption, and 27 importers of seed potatoes who are subject to the provisions of the Plan. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5 million. For the purpose of this analysis, it is concluded that the majority of potato handlers and importers are small entities.

The 1997 U.S. potato crop is at 46.6 billion pounds, down 8 percent or approximately 3.9 billion pounds from 1996. For 1997, Idaho leads in the production of potatoes with 29 percent of the total, followed by Washington (19 percent). Colorado, Oregon, and Wisconsin each produced 6 percent of the 1997 crop, and North Dakota contributed 5 percent to the total. Other major producing states in 1997 were Minnesota, Maine and California (4 percent each), and Michigan (3 percent). Nebraska, New York, and Florida each produced approximately 2 percent of the U.S. total; all other states produced less than 1 percent each. Per capita consumption of potatoes in the United States has increased from 125.2 pounds in 1976 to 142.4 pounds in 1997.

Using preliminary data from NASS that shows an average U.S. farm price for potatoes in 1997 was $5.68 per cwt., the value of the 1997 U.S. potato crop is estimated at $2.60 billion.

Exports of all types of potatoes and potato products during 1997 totaled approximately 4.3 billion pounds on a fresh weight basis. East Asia and Pacific Rim countries are the largest markets for frozen potatoes and frozen french fries, while Canada is the largest market for exports of U.S. tablestock and seed potatoes.

Imports of tablestock, seed potatoes, and processed potatoes (frozen, canned, chips, etc.) for 1997 totaled 2.7 billion pounds on a fresh weight basis. Tablestock, seed potatoes, and frozen potato products accounted for about 94 percent of the total value of potato imports, and over 99 percent of these items came from Canada. Starch for

human consumption accounted for about 4 percent of the total value of potato imports. Nearly all imports of potato starch for human consumption came from Europe, with The Netherlands accounting for 57 percent, and Germany 34 percent of the total tonnage. The remaining two percent of the value of total potato imports was from flour, flakes, granules, and chips.

The Board administers a national program of research, development, advertising, and promotion designed to strengthen potatoes' competitive position and to maintain and expand domestic and foreign markets for potatoes and potato products. The program is financed by assessments on producers of 5 or more acres of potatoes (collected by the first handler) and on all imported fresh or processed potatoes for human consumption and seed potatoes (collected by the U.S. Customs Service). The Secretary has oversight responsibility for the Board's activities. There are currently 107 Board members—102 producers; 4 importers; and 1 public member—who are appointed by the Secretary to serve a 3-year term on the Board. Approximately one third of the members' terms of office expire each year on the last day of February.

On September 2, 1997 [62 FR 46175], an interim final rule suspended portions of the Plan and amended the rules and regulations issued under the Plan.

The suspension of portions of the Plan eliminated the requirement that industry members be nominated for appointment to the Board only at meetings of producers or importers. The rules issued under the Plan are also being amended to provide mail balloting as an alternative means of selecting nominees for appointment.

At the time, the Plan required nominations for producer and importer members to be submitted to the Department of Agriculture (USDA or the Department) by November 1 of each year for appointments to be made by the Secretary by March 1 of the following year. In order to provide the largest number of producers an opportunity to participate, nomination meetings are typically held in conjunction with meetings of state or local potato or vegetable industry organizations, usually late in the fall after harvesting. However, in many cases, this places nomination meetings close to or after the November 1 deadline for submitting nominations to USDA. Additionally, in some states, potato production may be in widely separated locations, posing a hardship for growers to attend meetings. In some cases, growers must travel several hundred miles and incur the expense of an overnight stay in order to participate in a nomination meeting. In these cases, attendance at meetings has suffered.

In addition, all importers have had to fly to Denver to attend a 1-hour nomination meeting.

For several years, the Board discussed this problem with USDA. At its January 1997 meeting, the Board's Administrative Committee, acting on behalf of the Board, voted to recommend to USDA that action be taken to suspend portions of the Plan and to amend the rules and regulations to permit members of the potato industry the flexibility to choose the manner of nominating candidates for appointment. Providing the option of a mail ballot for nominating candidates provided an opportunity for a greater number of industry members to participate in the nomination process. In some cases, the burden and expense for producers to travel long distances to attend a nomination meeting has been eliminated. Permitting an optional means of nominating importers members also eliminated the time and expense currently incurred for importers to participate in these meetings. Additionally, nomination activity no longer has to be coupled with industry meetings, thus permitting the nomination process to take place early enough that the nominees' applications for appointment can be forwarded to USDA well before the November 1 deadline.

If these changes had not been made, producers and importers would have continued to incur financial and time loss to attend and participate in nomination meetings, and attendance at these meetings would have continued to suffer.

The second amendment to the rules and regulations permitted importer members of the Board to vote on the basis of the volume of imported potatoes, processed potato products, and seed potatoes in the same manner as producer members of the Board vote on the basis of domestic potato production. Since the program's inception, the Plan permitted producer members to call for a vote by the production of each State. In the 1990 Farm Bill, Congress amended the Act to include, along with other changes, imported potatoes and potato products for human consumption and seed potatoes under the program's provisions. When the Plan and rules and regulations were amended to conform with the amended Act, a provision permitting importers to vote on the basis of the volume of imported potatoes was inadvertently omitted. In production votes taken by the Board since imports were included in the program's provisions, importers have voted the volume of potato imports on a fresh-weight basis.

The interim final rule corrected the oversight and included provisions in the regulations to reflect the procedure currently in practice. Importers' votes carry the same proportional weight as producers' votes, resulting in equitable treatment of importers.

The third amendment made by the interim final rule specified in the rules and regulations that designated handlers of potatoes must report to the Board those potatoes of their own production for which the assessment has been paid by another first handler.

Previously, the regulations required designated handlers of potatoes to report and pay assessments on the potatoes of someone else's production that they handle. In some cases, designated handlers are also producers, and the assessment for their potato production may be paid by another designated handler. For example, a processor who purchases field-run potatoes is considered the designated handler and is responsible for reporting to the Board and paying assessments on those potatoes even though the producer may also be a designated handler who is also submitting reports and assessments to the Board. In order for the Board to assure that all handling has been reported and assessments have been paid and credited to the producer, the Board must be able to cross-reference the handling of potatoes on the reports of both designated handlers.

The authority for this information collection exists in § 1207.350 of the Plan. The rulemaking was necessary to provide in the text of the regulation concerning designated handlers' reporting responsibilities that designated handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another designated handler. The information collection burden and the form used to collect the information on handling of potatoes have been reviewed and approved by OMB under approval number 0581–0093. The 1-hour-per-response burden currently approved includes the time necessary for designated handlers to provide information on assessments paid by another designated handler on the reporting form submitted no more often than monthly. This information is readily available from the confirmation each designated handler is required to provide to producers on the amount of assessments paid on their behalf.

In addition, the interim final rule suspended obsolete provisions in the Plan referring to meetings, nomination of the initial Board, and references to importer organizations.

As with all Federal research and promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

This rule finalizes the action that permitted importer members of the Board to vote on the basis of the volume of imported potatoes. This revision does not affect the estimated burden on potato growers or designated handlers.

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

The changes contained in this action finalize the suspension of obsolete provisions in the Plan, provide for alternative means of nominating candidates for appointment to the Board, provide importer members a vote by volume at meetings, and clarify handlers' reporting requirements. These changes enhance the efficiency of the operation of the potato research and promotion program and reduce the financial burden on industry members when nominating candidates for appointment by the Secretary. Accordingly, we believe that these revisions are the best alternatives to facilitate the nomination process, provide for importer voting by production, and to clarify handlers' reporting requirements.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. The information collection and recordkeeping requirements related to this action were previously approved by OMB under number 0581–0093.

Eliminating the requirement that industry members be nominated to serve on the Board at meetings and providing the alternative of mail balloting is less burdensome, overall, for potato producers and importers, but the information collection burden remains the same. When nominations are conducted by mail ballot rather than at a meeting, the nomination ballot will be completed and mailed instead of being turned in at a meeting.

The second amendment to the rules and regulations permits importer members of the Board to vote on the basis of the volume of imported potatoes, processed potato products, and seed potatoes in the same manner as producer members of the Board vote on the basis of domestic potato production. This amendment corrects an oversight and includes provisions in the regulations to reflect procedures currently in practice. Importers' votes carry the same proportional weight as producers' votes and will result in equitable treatment of importers. There is no burden associated with importers voting at Board meetings.

The third amendment provides in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another handler. The information collection burden and the form used to collect information on handling of potatoes have been reviewed and approved by the OMB under approval number 0581-0093. The 1-hour-per-response burden currently approved includes designated handlers providing information on assessments paid by another designated handler on the reporting form submitted no more often than monthly.

The form requires the minimum information necessary to effectively carry out the requirements of the program, and its use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the promotion Board. The forms are simple, easy to understand, and place as small a burden as possible on the person required to file the information. This action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers.

Background

This action finalizes an interim final rule which suspended portions of the Plan and amended three sections of the rules and regulations issued under the Plan.

The suspension of portions of the Plan eliminated the requirement that industry members be nominated for appointment to the Board only at a meeting of producers or importers. Other obsolete provisions of the Plan were also suspended. The rules issued under the Plan were also amended to provide an alternative means of selecting nominees for appointment such as by a mail ballot of the industry.

Previously, the Plan required nominations for producer and importer members be submitted to USDA by November 1 of each year for appointments to be made by the Secretary by March 1 of the following year. In order to provide the largest number of producers an opportunity to participate, nomination meetings are typically held in conjunction with meetings of state or local potato or vegetable industry organizations, usually after harvesting. However, this places nomination meetings close to or after the November 1 deadline for submitting nominations to USDA. Additionally, in some states, potato production may be in widely separated locations, posing a hardship for a grower—in some cases traveling several hours and incurring the cost of an overnight trip—in order to participate in a nomination meeting.

In the case of importer nominations, the Plan provided that the Board could call upon organizations of potato, potato products, and/or seed potato importers to assist in nominating importers for appointment to the Board. This provision was intended to allow importers the opportunity to nominate importer members from their own membership. However, no such organizations have been found to exist, and the Board has conducted importer nomination meetings in Denver. Importers must therefore travel to Denver for nomination meetings.

For several years, the Board discussed this problem with USDA. At its January 1997 meeting, the Board's Administrative Committee, acting on behalf of the Board, voted to recommend to USDA that action be taken to suspend portions of the Plan and to amend the rules and regulations to permit members of the potato industry the flexibility to choose the manner of nominating candidates for appointment in a manner that would provide for the ability for a greater number of industry members to participate in the nomination process with less of a burden.

In order to do this, the interim final rule suspended wording referring to meetings in § 1207.322 of the Plan. Paragraph (a) of § 1207.322 dealt only with nomination of the initial Board and was thus obsolete. Therefore, paragraph (a) was suspended in its entirety. References to meetings were suspended in paragraphs (b) and (c).

Also, because no organizations of potato importers exist, references to importer organizations are unnecessary and were suspended in § 1207.322(d).

In addition, references in § 1207.503 of the rules and regulations to meetings and importer organizations were removed and amendments made to this section to provide the option of mail balloting to nominate producers and importers for appointment to the Board.

A second amendment to the rules and regulations dealt with importers being able to vote on the basis of the volume of the fresh-weight equivalent of imported potatoes and potato products for human consumption and seed potatoes in the same manner that producer members can vote on the basis of potato production within each State.

One of the 1990 Farm Bill amendments to the Act [7 U.S.C. 2611 *et seq.*] extended the Act's coverage to imported potatoes, potato products, and seed potatoes and provided for importer representation on the Board. When the Plan and rules and regulations issued under the Plan were subsequently amended in 1991 to conform with the amended Act, a provision permitting importer members to vote on the basis of the volume of imported product was inadvertently overlooked. From the program's inception, § 1207.325 of the Plan authorized producer members of the Board to call for a production vote in which the Board members from each State are allocated votes based on that State's fresh potato production (i.e., one vote for each 1 million hundredweight of potatoes).

In production votes taken by the Board since imports were included in the program's provisions, importers have voted the volume of potato imports on a fresh-weight basis. At its March 1996 annual meeting, the Board voted to amend the rules and regulations to correct this oversight by amending § 1207.505 to provide the same voting rights as afforded to producer members.

The third amendment provided in the rules and regulations that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler.

Section 1207.350(a) of the Plan provides authority for the Board to prescribe in the regulations the information designated handlers must report in order for the Board to perform its duties, and this information is set forth in § 1207.513 of the regulations. Some designated handlers are also potato producers and, in some cases, the assessment for their potato production may be paid by another designated handler. For example, a processor who purchases field-run potatoes is considered the designated handler and is responsible for reporting to the Board and paying assessments on those potatoes even though the producer may also be a designated handler who is also submitting reports and paying assessments to the Board. In order for the Board to assure that all handling has been reported and assessments have been paid and credited to the producer, the Board must be able to cross-reference the handling of potatoes on the reports of both handlers. Since § 1207.513 of the regulations did not specifically state that designated handlers must report to the Board those potatoes of their own production for which the assessments have been paid by another designated handler, it was necessary to amend this section to provide that handlers must report to the Board those potatoes of their own production for which the assessment has been paid by another first handler. Therefore, the interim final rule amended § 1207.513 of the regulations to provide for this reporting.

The interim final rule was issued on August 26, 1997, and published in the **Federal Register** [62 FR 46179] on September 2, 1997. The deadline for comments was November 3, 1997. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board, it is hereby found that the suspended sections of the Plan no longer tend to effectuate the declared policy of the Act. In addition, it is found that the amendments to the rules and regulations are necessary for the appropriate administration of the Plan and the rules and regulations and that they are consistent with the intention of the Act.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Accordingly, the interim final rule amending 7 CFR Part 1207 which was published at 62 FR 46175 on September 2, 1997, is adopted as a final rule without change.

Dated: September 30, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–26763 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 98–033–2]

Tuberculosis in Cattle, Bison, and Captive Cervids; Indemnity for Suspects

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations concerning animals destroyed because of tuberculosis to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Animal and Plant Health Inspection Service that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. The interim rule also amended the regulations to allow the U.S. Department of Agriculture to pay herd owners some of their expenses for transporting the suspect cattle, bison, and captive cervids to slaughter or to the point of disposal, and for disposing of the animals. Prior to the interim rule, owners of cattle, bison, and captive cervids could only receive Federal indemnity for affected and exposed animals destroyed because of tuberculosis, and animals in an affected herd destroyed as part of a herd depopulation. Indemnity for suspects will provide incentive for owners to promptly destroy suspect animals, thereby hastening the diagnosis of tuberculosis in a herd. The interim rule was necessary to ensure continued progress toward eradicating tuberculosis in U.S. livestock.

EFFECTIVE DATE: The interim rule was effective on June 17, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or e-mail: james.p.davis@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans,

caused by *Mycobacterium bovis.* Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations at 9 CFR part 50, ''Animals Destroyed Because of Tuberculosis'' (the regulations), administered by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (the Department), provide for payment of Federal indemnity to owners of certain cattle, bison, captive cervids, and swine destroyed because of tuberculosis.

In an interim rule effective June 17, 1998, and published in the **Federal Register** on June 24, 1998 (63 FR 34259–34264, Docket No. 98–033–1), we amended the regulations to provide for the payment of Federal indemnity to owners of cattle, bison, and captive cervids that have been classified as suspects for tuberculosis and have been destroyed, when it has been determined by the Administrator of APHIS that the destruction of the suspect animals will contribute to the tuberculosis eradication program in U.S. livestock. This provision was added in a new paragraph (d) to § 50.3, ''Payment to owners for animals destroyed.'' The indemnity will not exceed $450 per animal and the joint State-Federal indemnity payments, plus salvage, may not exceed the appraised value of each animal. In addition, to help ensure that the remainder of the herd is tested for tuberculosis, the interim rule provides that payment of indemnity for suspects will be withheld until the tuberculosis status of the suspect has been determined and, if the suspect is found to be infected with tuberculosis, all cattle, bison, and captive cervids 2 years of age or over in the herd have been tested for tuberculosis under APHIS or State supervision.

In conjunction with the addition of indemnity for certain suspect cattle, bison, and captive cervids, the interim rule also made a number of other changes to the regulations:

- The interim rule added a new paragraph (c) to § 50.4, ''Determination of existence of or exposure to tuberculosis,'' to state that cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication'' (incorporated into the regulations by reference in part 77); and that captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison. The interim rule also revised the heading for § 50.4 to read ''Classification of cattle, bison, and captive cervids as affected, exposed, or suspect;''
- The interim rule revised § 50.8, concerning payment of expenses for transporting and disposing of affected and exposed animals, to allow such payments for suspect cattle, bison, and captive cervids; and
- The interim rule revised § 50.14(b) to exempt cattle, bison, and captive cervids destroyed under new § 50.3(d) from the requirement that all cattle, bison, and captive cervids 2 years of age or over in the herd must be tested before indemnity may be claimed. As in new § 50.3(d), revised § 50.14(b) requires that, if the suspect is found to be infected with tuberculosis, the remainder of the herd must be tested for tuberculosis if indemnity is to be paid.

The interim rule made one miscellaneous change to the regulations. We added the term ''captive'' before ''cervid'' each time it appears in part 50 to clarify that the regulations do not apply to wild cervids.

Comments on the interim rule were required to be received on or before August 24, 1998. We received two comments, both in support of the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Proposal to Revise Definition of Captive Cervid

In § 50.1, a captive cervid is defined to mean ''All species of deer, elk, and moose raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition.'' On April 4, 1996, we published a proposed rule in the **Federal Register** (61 FR 14982–14999, Docket No. 92–076–1) to add interstate movement and testing requirements for captive cervids to 9 CFR part 77. We are currently considering a final rule to follow Docket No. 92–076–1. In the final rule, based on comments received, we are considering adding a definition of captive cervid to part 77 to read: ''All species of deer, elk, moose, and all other members of the family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by APHIS with which to trace the animal back to its herd of origin.''

In the preamble to the interim rule we are affirming in this document, we proposed that, if we added this definition of captive cervid to part 77 in our final rule to Docket No. 92–076–1, we would, in that same final rule, revise the definition of captive cervid in part 50 to be consistent with part 77. Neither of the two comments we received on the interim rule objected to this proposal. Therefore, if we publish a final rule adding the new definition to part 77, the final rule will also revise the definition of captive cervid in part 50. We are making no change to the definition of captive cervid in this document.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity Payments, Reporting and recordkeeping requirements, Tuberculosis.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 50 and that was published at 63 FR 34259–34264 on June 24, 1998.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 30th day of September 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26765 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–063–3]

Tuberculosis in Cattle and Bison; State Designation; Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from an accredited-free (suspended) State to an accredited-free State. We have determined that Hawaii meets the

criteria for designation as an accredited-free State.

EFFECTIVE DATE: The interim rule was effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 1, 1998, and published in the **Federal Register** on June 5, 1998 (63 FR 30582–30583, Docket No. 97–063–2), we amended the tuberculosis regulations in 9 CFR part 77 by removing Hawaii from the list of accredited-free (suspended) States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before August 4, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 63 FR 30582–30583 on June 5, 1998.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 30th day of September 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26764 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–061–2]

Validated Brucellosis-Free States; Oklahoma

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Oklahoma to the list of validated brucellosis-free States. We have determined that Oklahoma meets the criteria for classification as a validated brucellosis-free State. The interim rule relieved certain restrictions on the interstate movement of breeding swine from Oklahoma.

EFFECTIVE DATE: The interim rule was effective on June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on June 24, 1998 (63 FR 34266–34267, Docket No. 98–061–1), we amended the brucellosis regulations in 9 CFR part 78 by adding Oklahoma to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before August 24, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 63 FR 34266–34267 on June 24, 1998.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 30th day of September 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26766 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–068–2]

Brucellosis in Cattle; State and Area Classifications; Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class Free to Class A. We have determined that Louisiana no longer meets the standards for Class Free status. The interim rule was necessary to impose certain restrictions on the interstate movement of cattle from Louisiana.

EFFECTIVE DATE: The interim rule was effective on June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: reed.t.rollo@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on June 16, 1998, and published in the **Federal Register** on June 24, 1998 (63 FR 34264–34266, Docket No. 98–068–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Louisiana from the list of Class Free States in § 78.41(a) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before

August 24, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 63 FR 34264–34266 on June 24, 1998.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 30th day of September 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26767 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–235–AD; Amendment 39–10815; AD 98–21–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Avro 146–RJ85A and RJ100A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model Avro 146–RJ85A and RJ100A series airplanes, that requires a one-time inspection for evidence of machining (undercutting) into the web of the integral stringers of the bottom skin of the wings, 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 prevent reduced wing strength and stiffness, and the onset of premature fatigue cracking, which could result in reduced structural integrity of the airplane.

DATES: Effective November 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 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 Model Avro 146–RJ85A and RJ100A series airplanes was published in the **Federal Register** on August 13, 1998 (63 FR 43351). That action proposed to require a one-time inspection for evidence of machining (undercutting) into the web of the integral stringers of the bottom skin of the wings, 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 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 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 $4,800, or $960 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:

98–21–07 Brtish Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10815. Docket 98–NM–235–AD.

Applicability: Model Avro 146–RJ85A and RJ100A series airplanes, as listed in British Aerospace Service Bulletin SB.57–55, dated April 27, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 reduced wing strength and stiffness, and the onset of premature fatigue cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time detailed visual inspection for evidence of machining (undercutting) into the web of the integral stringers of the bottom skin of the wings, in accordance with British Aerospace Service Bulletin SB.57–55, dated April 27, 1998.

(1) If no machining into the web is detected, no further action is required by this AD.

(2) If any machining into the web is detected, prior to further flight, measure the thickness of the web of the integral stringer in accordance with the service bulletin.

(i) If the web thickness is 0.099 inch or more, no further action is required by this AD.

(ii) If the web thickness is less than 0.099 inch, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Directorate, or the Civil Aviation Authority (or its delegated agent).

(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 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) Except as provided by paragraph (a)(2)(ii) of this AD, the actions shall be done in accordance with British Aerospace Service Bulletin SB.57–55, dated April 27, 1998, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4	Original	April 27, 1998.
5–6	X	Not Dated.

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.

(e) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26390 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–214–AD; Amendment 39–10814; AD 98–21–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that requires either a one-time non-destructive test (NDT) or a visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, 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 fatigue cracking of the fuselage skin in the specified area, which could result in reduced structural integrity of the airplane.

DATES: Effective November 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 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 Model BAe 146–100A, –200A, and –300A series airplanes was published in the **Federal Register** on August 13, 1998 (63 FR 43331). That action proposed to require either a one-time non-destructive test (NDT) or a visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, 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 23 airplanes of U.S. registry will be affected by this AD.

For operators that elect to accomplish the visual inspection rather than the non-destructive test, it will take approximately 6 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required visual inspection on U.S. operators is estimated to be $360 per airplane.

For operators that elect to accomplish the non-destructive test rather than the visual inspection, it will take approximately 8 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required non-destructive test on U.S. operators is estimated to be $480 per airplane.

The cost impact figures discussed above are 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:

98–21–06 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10814. Docket 98–NM–214–AD.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes, as listed in British Aerospace Service Bulletin SB.53–144, dated April 27, 1998; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform either a one-time non-destructive test (NDT) or a one-time detailed visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, in accordance with British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For airplanes identified in paragraph 1.D.(1)(a) of the service bulletin: Inspect prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph 1.D.(1)(b) of the service bulletin: Inspect prior to the accumulation of 16,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph 1.D.(1)(c) of the service bulletin: Inspect prior to the accumulation of 13,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(4) For airplanes identified in paragraph 1.D.(1)(d) of the service bulletin: Inspect prior to the accumulation of 22,000 total flight cycles, or within 1,400 flight cycles after the effective date of this AD, whichever occurs later.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, no further action is required by this AD.

(c) If any cracking is detected during the inspection required by paragraph (a) of this AD, 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 Civil Aviation Authority (or its delegated agent).

(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 paragraph (c) of this AD, the actions shall be done in accordance with British Aerospace Service Bulletin SB.53–144, dated April 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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 005–04–98.

(g) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26391 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–203–AD; Amendment 39–10813; AD 98–21–05]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all SD3–30, SD3–60, SD3–60 SHERPA, and SD3 SHERPA series airplanes, that requires repetitive visual inspections of the flap levers and bracket assembly of the inner flap sub-assembly of the left and right wings to detect certain discrepancies; and corrective actions, if necessary. This amendment is prompted by mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct failure of the levers and bracket assembly, which could result in uncommanded retraction of the inner flap assembly and consequent reduced controllability of the airplane.

DATES: Effective November 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. 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 SD3–30, SD3–60, SD3–60 SHERPA, and SD3 SHERPA series airplanes was published in the **Federal Register** on August 13, 1998 (63 FR 43333). That action proposed to require repetitive visual inspections of the flap levers and bracket assembly of the inner flap sub-assembly of the left and right wings to detect certain discrepancies; 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 99 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 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 $29,700, or $300 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:

98–21–05 Short Brothers PLC: Amendment 39–10813. Docket 98–NM–203–AD.

Applicability: All Model SD3–30, SD3–60, SD3–60 SHERPA, and SD3 SHERPA 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 prevent failure of the levers and bracket assembly, which could result in uncommanded retraction of the inner flap assembly and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a visual inspection of the levers and bracket assembly of the inner flap sub-assembly of the left and right wings to detect discrepancies (i.e., corrosion, cracking, protective coating breakdown, and inadequate clearances between the forward face of the lower levers and the bracket web), in accordance with the applicable Shorts service bulletin specified below, all dated January 14, 1997:

- SD360–27–26 (for Model SD3–60 series airplanes);
- SD360 Sherpa 27–1 (for Model SD3–60 SHERPA series airplanes);
- SD3 Sherpa 27–2 (for Model SD3 SHERPA series airplanes); and
- SD3–27–36 (for Model SD3–30 series airplanes).

(1) If no discrepancy is detected, repeat the visual inspection thereafter at intervals not to exceed 4,800 flight hours or 24 months, whichever occurs earlier.

(2) If any discrepancy is detected, prior to further flight, rework the affected area, and accomplish follow-on corrective actions, in accordance with the applicable service bulletin.

(i) If the reworked parts remain within the allowable rework limits specified in the applicable service bulletin, repeat the visual inspection of the levers and bracket assembly thereafter at intervals not to exceed 1,200 flight hours or 6 months, whichever occurs earlier.

(ii) If any reworked part is outside the allowable rework limits specified in the applicable service bulletin, prior to further flight, replace the reworked part with a new part. Thereafter, repeat the inspection at intervals not to exceed 4,800 flight hours or 24 months, whichever occurs earlier.

(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 the Shorts service bulletins specified below, as applicable:

- SD360–27–26, dated January 14, 1997;
- SD360 Sherpa 27–1, dated January 14, 1997;
- SD3 Sherpa 27–2, dated January 14, 1997; and
- SD3–27–36, dated January 14, 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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. 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 directives 008–01–97, 010–01–97, 011–01–97, and 009–01–97.

(e) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26392 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–173–AD; Amendment 39–10812; AD 98–21–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that currently requires repetitive visual inspections for signs of fuel leakage on the outer wing beginning with Rib 21 and continuing outward; and corrective action, if necessary. This amendment adds a requirement for modification of the lower panels of the outer wing area, which terminates the repetitive inspection requirements. This action also limits the applicability of the existing AD. 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 fuel leakage on the outboard wing, which could result in a fuel explosion and fire.

DATES: Effective November 10, 1998.

The incorporation by reference of Dornier Service Bulletin SB–328–57–255, dated January 21, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of November 10, 1998.

The incorporation by reference of Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997, was approved previously by the Director of the Federal Register as of February 25, 1998 (63 FR 6642, February 10, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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) by superseding AD 98–04–06, amendment 39–10319 (63 FR 6642, February 10, 1998), which is applicable to all Dornier Model 328–100 series airplanes, was published in the **Federal Register** on August 13, 1998 (63 FR 43347). The action proposed to continue to require repetitive visual inspections for signs of fuel leakage of the outer wing beginning with Rib 21 and continuing outward; and corrective action, if necessary. The action also proposed to add a requirement for modification of the lower panels of the outer wing area, which would terminate the repetitive inspection requirements. In addition, the action proposed to limit the applicability of the existing AD.

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

There are approximately 50 airplanes of U.S. registry that will be affected by this AD.

The repetitive inspection that is currently required by AD 98–04–06, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $6,000, or $120 per airplane, per inspection cycle.

The new modification that is required in this AD action takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $21,000, or $420 per airplane.

The cost impact figures discussed above are 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 removing amendment 39–10319 (63 FR 6642, February 10, 1998), and by adding a new airworthiness directive (AD), amendment 39–10812, to read as follows:

98–21–04 Dornier Luftfahrt GMBH: Amendment 39–10812. Docket 98–NM–173–AD. Supersedes AD 98–04–06, amendment 39–10319.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3098 inclusive, excluding serial number 3089; 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)(1) 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 fuel leakage on the outboard wing, which could result in a fuel explosion and fire, accomplish the following:

Restatement of Requirements of AD 98–04–06

(a) Within 30 days after February 25, 1998 (the effective date of AD 98–04–06, amendment 39–10319), perform a visual inspection of the left-and right-hand outer wings, beginning with Rib 21 and continuing outward, for signs of fuel leakage, in accordance with Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997. If any sign of fuel leakage is detected, prior to further flight, re-seal the respective fuel tank in accordance with the alert service bulletin. Repeat the inspection at intervals not to exceed 1,500 flight hours or 6 months, whichever occurs first, until the actions required by paragraph (b) of this AD are accomplished.

New Requirements of this AD

(b) Within 6 months after the effective date of this AD, drill a drainhole in the lower panels of the left- and right-hand outer wings, in accordance with Dornier Service Bulletin SB–328–57–255, dated January 21, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c)(1) 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–04–06, amendment 39–10319, are approved as alternative methods of compliance with this AD.

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 §§ 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 Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997, and Dornier Service Bulletin SB–328–57–255, dated January 21, 1998.

(1) The incorporation by reference of Dornier Service Bulletin SB–328–57–255, dated January 21, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997, was approved previously by the Director of the Federal Register as of February 25, 1998 (63 FR 6642, February 10, 1998).

(3) Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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 German airworthiness directive 1998–218, dated May 7, 1998.

(f) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26393 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–168–AD; Amendment 39–10811; AD 98–21–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires replacement of the existing load limitation labels located in the main baggage compartment with new reduced load limitation labels. This amendment also provides for optional modification of the internal access door of the main baggage compartment, which, if accomplished, terminates the requirement for reduced load limitations. 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 failure of the internal access door latches of the main baggage compartment in the event of an emergency landing, which could delay or impede passenger evacuation due to baggage spilling into the aisle and blocking the emergency exit door.

DATES: Effective November 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 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 (Jetstream) Model 4101 airplanes was published in the **Federal Register** on August 13, 1998 (63 FR 43345). That action proposed to require replacement of the existing load limitation labels located in the main baggage compartment with new reduced load limitation labels. That action also provides for optional modification of the internal access door of the main baggage compartment, which, if accomplished, would terminate the requirement for reduced load limitations.

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 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $3,420, or $60 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:

98–21–03 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10811. Docket 98–NM–168–AD.

Applicability: Jetstream Model 4101 airplanes, as listed in Jetstream Service Bulletin J41–11–010, dated August 9, 1997; 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 prevent failure of the internal access door latches of the main baggage compartment in the event of an emergency landing, which could delay or impede passenger evacuation due to baggage spilling into the aisle and blocking the emergency exit door, accomplish the following:

(a) Within 30 days after the effective date of this AD, replace the existing load limitation labels in the main baggage compartment with new reduced load limitation labels, in accordance with Jetstream Service Bulletin J41–11–010, dated August 9, 1997.

(b) Modification of the internal access door of the main baggage compartment in accordance with Jetstream Service Bulletin J41–25–020, dated August 9, 1997, constitutes terminating action for the requirements of paragraph (a) of this AD.

(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 replacement shall be done in accordance with Jetstream Service Bulletin J41–11–010, dated August 9, 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 004–08–97.

(f) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26394 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–92–AD; Amendment 39–10810; AD 98–21–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050, 100, 200, 300, 400, 500, 600, and 700 Rough Field Version (RFV) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Rough Field Version (RFV) series airplanes, that currently requires inspection of the main landing gear (MLG) legs to determine if parts are missing or damaged, and modification, if necessary; and periodic measurements of the extension of each MLG shock absorber sliding member. That AD also provides for the accomplishment of a certain modification as optional terminating action for the periodic measurements. This amendment requires accomplishment of the previously optional terminating action, and revises the applicability of the existing AD to add an airplane model. 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 MLG sliding member, which could result in reduced structural integrity of the MLG.

DATES: Effective November 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 10, 1998.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 16, 1993 (58 FR 60370, November 16, 1993).

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) by superseding AD 93–22–02, amendment 39–8727 (58 FR 60370, November 16, 1993), which is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Rough Field Version (RFV) series airplanes, was published in the **Federal Register** on August 13, 1998 (63 FR 43342). The action proposed to continue to require inspection of the main landing gear (MLG) legs to determine if parts are missing or damaged, and modification, if necessary; and periodic measurements of the extension of each MLG shock absorber sliding member. That action also provides for the accomplishment of a certain modification as optional terminating action for the periodic measurements. The action also proposed to require accomplishment of the previously optional terminating action, and to revise the applicability of the existing AD to add an airplane model.

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

There are 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 RFV series airplanes, and no Fokker Model F27 Mark 050 series airplanes, of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 93–22–02, and retained in this AD, will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $6,120, or $180 per airplane, per inspection cycle.

The new modification that is required in this AD action will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $4,080, or $120 per airplane.

The cost impact figures discussed above are 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 removing amendment 39–8727 (58 FR 60370, November 16 1993), and by adding a new airworthiness directive (AD), amendment 39–10810, to read as follows:

98–21–02 Fokker Services B.V.: Amendment 39–10810. Docket 98–NM–92–AD. Supersedes AD 93–22–02, Amendment 39–8727.

Applicability: Model F27 Mark 050, 100, 200, 300, 400, 500, 600, and 700 Rough Field Version (RFV) series airplanes, equipped with Dowty Aerospace MLG Legs, part and serial numbers as listed in Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993, or Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992; 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 (g) 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 MLG sliding member, which could result in reduced structural integrity of the MLG, accomplish the following:

Restatement of Requirements of AD 93–22–02

(a) For Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 RFV series airplanes, equipped with Dowty Aerospace MLG, part numbers 200563001, 200679001, 200679002, 200679003, or 200679004: Within 30 days after December 16, 1993 (the effective date of AD 93–22–02, amendment 39–8727), inspect the MLG legs to confirm the correct installation of the sliding member out-stop installation, in accordance with Fokker Service Bulletin F27–32–165, Revision 1, dated April 28, 1993, and paragraph 2.C. (''Part A Procedure'') of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993. If any parts are determined to be missing or damaged, prior to further flight, modify the MLG assembly, in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(b) For Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 RFV series airplanes, equipped with Dowty Aerospace MLG, part numbers 200563001, 200679001, 200679002, 200679003, or 200679004: Within 30 days after December 16, 1993, measure and record the extension of the MLG sliding member when the landing gear is fully extended, in accordance with paragraph 2.D. (''Part B Procedure'') of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993.

(1) If the extension dimension exceeds 410.2 mm (16.15 inches), prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(2) If the extension dimension is equal to or less than 410.2 mm (16.15 inches), repeat the measurement thereafter at intervals not to exceed 500 flight cycles.

(3) If the extension dimension increases by more than 1.0 mm (0.40 inch) above the initially recorded dimension during any measurement required by this paragraph, prior to further flight, inspect the MLG in accordance with paragraph (a) of this AD.

New Requirements of This AD

(c) For airplanes other than those identified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, inspect the MLG legs to confirm the correct installation of the sliding member out-stop installation, in accordance with paragraph 2.C. (''Part A Procedure'') of Messier-Dowty Service Bulletin F50–32–48, Revision 4, dated June 21, 1995. If any parts are determined to be missing or damaged, prior to further flight, modify the MLG assembly, in accordance with Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992.

(d) For airplanes other than those identified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, measure and record the extension of the MLG sliding member when the landing gear is fully extended, in accordance with paragraph 2.D. (''Part B Procedure'') of Messier-Dowty Service Bulletin F50–32–48, Revision 4, dated June 21, 1995.

(1) If the extension dimension exceeds 410.2 mm (16.15 inches), prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992.

(2) If the extension dimension is equal to or less than 410.2 mm (16.15 inches), repeat the measurement thereafter at intervals not to exceed 500 flight cycles.

(3) If the extension dimension increases by more than 1.0 mm (0.40 inch) above the initially recorded dimension during any measurement required by this paragraph, prior to further flight, inspect the MLG in accordance with paragraph (c) of this AD.

(e) For all airplanes: Within 5,000 flight cycles or 24 months after the effective date of this AD, whichever occurs earlier, modify the MLG piston rod assembly, in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993 (for Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes), or Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992 (for Model F27 Mark 050 series airplanes), as applicable. Accomplishment of this modification constitutes terminating action for the repetitive actions required by this AD.

(f) As of the effective date of this AD, no person shall install on any airplane, an MLG piston rod assembly, unless it has been modified in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993 (for Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes), or Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992 (for Model F27 Mark 050 series airplanes), as applicable.

(g) 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.

(h) 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.

(i) The actions shall be done in accordance with Fokker Service Bulletin F27–32–165, Revision 1, dated April 28, 1993; Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993; Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993; Messier-Dowty Service Bulletin F50–32–48, Revision 4, dated June 21, 1995; and Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992, which contains the specified list of effective pages:

Page number shown on page	Revision level shown on page	Date shown on page
1, 5, 6	4	December 18, 1992.
2–4, 7–9	3	September 29, 1992.

(1) The incorporation by reference of Dowty Aerospace Landing Gear Service Bulletin F50–32–27, Revision 4, dated December 18, 1992; and Messier-Dowty Service Bulletin F50–32–48, Revision 4, dated June 21, 1995; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker Service Bulletin F27–32–165, Revision 1, dated April 28, 1993; Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993; and Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993; was approved previously by the Director of the Federal Register as of December 16, 1993 (58 FR 60370, November 16, 1993).

(3) 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 1996–159/2 (A), dated July 31, 1997.

(j) This amendment becomes effective on November 10, 1998.

Issued in Renton, Washington, on September 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26395 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–63–AD; Amendment 39–10809; AD 98–21–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1 Series Turbofan 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 International Aero Engines AG (IAE) V2500–A1 series turbofan engines. This action requires a one-time ultrasonic inspection of fan blade roots for cracks, and, if necessary, replacement of cracked fan blades with serviceable parts. This amendment is prompted by a report of dovetail root cracks visually detected on three fan blades from one engine during a routine inspection. The actions specified in this AD are intended to prevent fan blade root cracks, which could result in fan blade root failures, an uncontained engine failure, and damage to the aircraft.

DATES: Effective October 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–63–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Commercial Aero Engine Limited, P.O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of dovetail root cracks visually detected on three fan blades from one engine during a routine turnaround inspection of an Airbus A320 aircraft powered with International Aero Engines AG (IAE) V2500–A1 turbofan engines. These cracks were located just inboard of the fan blade root/disc abutment area and extend to the front face of the blade root. Ultrasonic inspection of the other fan blades in this engine revealed blade root

cracks in every fan blade initiating in high cycle fatigue from multi origins. Ultrasonic inspection of the fan disc from this engine also revealed small cracks in eleven disc posts. The FAA has determined that these fan blade root and fan disc post cracks were caused by an undetermined event that induced extremely high stresses into the blade roots and disc posts. A review of this engine history has not isolated any event other than a fan case acoustic panel loss six months prior to this routine inspection. However, other in-service V2500–A1 and –A5 engines that experienced a fan case acoustic panel loss have completed the ultrasonic inspections without finding a fan blade root crack. As the investigation continues, IAE has recommended that the V2500–A1 engine fleet ultrasonic inspect the fan blades. Approximately 95% of the V2500–A1 engine fleet have completed this fan blade ultrasonic inspection without finding fan blade root cracks. This condition, if not corrected, could result in fan blade root cracks, which could result in fan blade root failure, an uncontained engine failure, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of IAE Service Bulletin (SB) No. V2500–ENG–72–0316, Revision 2, dated August 28, 1998, that describes procedures for ultrasonic inspection of fan blade roots for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent fan blade root cracks. This AD requires a one-time ultrasonic inspection of fan blade roots for cracks, and, if necessary, replacement of cracked fan blades with serviceable parts. The actions are required to be accomplished in accordance with the SB described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–63–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–21–01 International Aero Engines AG: Amendment 39–10809. Docket 98–ANE–63–AD.

Applicability: International Aero Engines AG (IAE) V2500–A1 series turbofan engines, installed on but not limited to Airbus A320 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fan blade root cracks, which could result in fan blade root failure, an uncontained engine failure, and damage to the aircraft, for those engines that have not previously been inspected in accordance with IAE Service Bulletin (SB) No. V2500–ENG–72–0316, dated May 15, 1998; or No. V2500–ENG–72–0316, Revision 1, dated June 5, 1998; or No.V2500–ENG–72–0316, Revision 2, dated August 28, 1998, accomplish the following:

(a) Within 150 hours time in service (TIS) after the effective date of this AD, perform a one-time ultrasonic inspection of fan blade roots for cracks, and, if necessary, replace cracked fan blades with serviceable parts, in accordance with IAE Service Bulletin (SB) No. V2500–ENG–72–0316, Revision 2, dated August 28, 1998.

(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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(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 aircraft to a location where the inspection requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following IAE SB:

Document No.	Pages	Revision	Date
V2500–ENG–72–0316 ..... Total pages: 7.	1–7	2	August 28, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Commercial Aero Engine Limited, P.O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 21, 1998.

Issued in Burlington, Massachusetts, on September 28, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–26529 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–58–AD; Amendment 39–10817; AD 98–17–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PW530A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–17–10 that was sent previously to all known U.S. owners and operators of Pratt & Whitney Canada (PWC) PW530A series turbofan engines by individual letters. This AD requires recording engine surge events in the aircraft maintenance records. If an engine surge event is experienced, this AD requires, prior to the next flight, inspecting that engine for evidence of second stage stator vanes rubbing on the compressor rotor. In addition, this AD requires reworking all affected engines to increase the clearance between the second stage stator vanes and the compressor rotor. This amendment is prompted by reports of 4 inflight engine shutdowns and 2 additional unscheduled engine removals for significant compressor rotor damage. The actions specified by this AD are intended to prevent an inflight engine shutdown due to rubbing of the second stage stator vanes on the compressor rotor.

DATES: Effective October 21, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–17–10, issued on August 7, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–58–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Pratt & Whitney Canada, Inc., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; Attn: Supervisor, Publications Customer Service (01CA4); telephone (514) 647–2705, fax (514) 647–2702. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7136, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Pratt & Whitney Canada (PWC) PW530A series turbofan engines. Transport Canada advises that they have received reports of 4 inflight engine shutdowns and 2 additional unscheduled engine removals for significant compressor rotor damage. The investigation revealed that compressor rotor damage and a high rate of inflight engine shutdowns result from rubbing of the second stage stator vanes on the compressor rotor. The original type design second stage stator clearance was insufficient to prevent rubbing of the stator vanes on the compressor rotor during all phases of engine operation. This condition, if not corrected, can result in an inflight engine shutdown due to rubbing of the second stage stator vanes on the compressor rotor.

PWC has issued Service Bulletin (SB) No. PW500–72–30063, Revision 2, dated July 10, 1998, that specifies inspection procedures for rubbing of the second stage stator vanes on the compressor rotor, and SB No. PW500–72–30044, Revision 2, dated July 10, 1998, that specifies procedures for reworking the engine to increase the clearance between the second stage stator vanes and the compressor rotor. Transport Canada classified these SBs as mandatory and issued airworthiness directive (AD) CF–98–18, dated July 16, 1998, in order to assure the airworthiness of these engines in Canada.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to

this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

On August 7, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98–17–10, applicable to PWC PW530A series turbofan engines.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD requires, for aircraft with one or more affected engines identified by serial numbers (S/Ns) in the applicability section of this AD, recording engine surge events in the aircraft maintenance records. If an engine surge event is experienced, this AD requires, prior to the next flight, inspecting that engine for evidence of second stage stator vanes rubbing on the compressor rotor. If evidence of rubbing is discovered, this AD requires, prior to further flight, removal from service of the engine that experienced rubbing and replacement with a serviceable engine. In addition, this AD requires, within 200 hours time in service (TIS) after the effective date of this AD, or prior to December 31, 1998, whichever occurs first, reworking all affected engines to increase the clearance between the second stage stator vanes and the compressor rotor. The calendar end-date was determined based upon risk analysis. The actions are required to be accomplished in accordance with the SBs described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 7, 1998, to all known U.S. owners and operators of PWC PW530A series turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–58–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–17–10 Pratt & Whitney Canada: Amendment 39–10817 Docket 98–ANE–58–AD.

Applicability: Pratt & Whitney Canada (PWC) PW530A series turbofan engines, with serial numbers (S/Ns) PCE–DA0001 through PCE–DA0059, and S/Ns PCE–DA0061 through PCE–DA0064 (S/N PCE–DA0060 is not affected, as it was shipped with the increased type design clearance). These engines are installed on but not limited to Cessna Citation Model 550 Bravo aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 inflight engine shutdown due to rubbing of the second stage stator vanes on the compressor rotor, accomplish the following:

(a) In the event of an engine surge, make a record of the engine which surged and the date and approximate time of the event in the aircraft maintenance records. For this purpose, an engine surge is defined as unstable engine operation which is accompanied by unusual sounds which could be described as bangs, pops, growls, or rumbles and which may also be accompanied by increased engine vibration levels.

(b) If an engine surge event is experienced, prior to the next flight, inspect that engine for evidence of rubbing of the second stage stator vanes on the compressor rotor in accordance with PWC Service Bulletin (SB) No. PW500–72–30063, Revision 2, dated July 10, 1998.

(c) If evidence of rubbing is discovered, prior to further flight, remove from service the engine that experienced rubbing and replace with a serviceable engine.

(d) Within 200 hours time in service (TIS) after the effective date of this AD, or prior to December 31, 1998, whichever occurs first, rework all affected engines identified by S/N in the applicability of this AD to increase the clearance between the second stage stator vanes and the compressor rotor, in accordance with PWC SB No. PW500–72–30044, Revision 2, dated July 10, 1998. Completion of this rework constitutes terminating action to the inspection 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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(f) The requirements of this AD shall be done in accordance with the following PWC SBs:

Document No.	Pages	Revision	Date
PW500–72–30063 ..... Total pages: 5.	1–5	2	July 10, 1998.
PW500–72–30044 ..... Total pages: 6.	1–6	2	July 10, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, Inc., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1; Attn: Supervisor, Publications Customer Service (01CA4); telephone (514) 647–2705, fax (514) 647–2702. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective October 21, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–17–10, issued August 7, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on September 28, 1998.

Diane Romanosky,

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

[FR Doc. 98–26528 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–272–AD; Amendment 39–10819; AD 98–21–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–700 and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–700 and –800 series airplanes. This action requires a one-time inspection to determine the serial numbers of the fire detector assemblies and elements for the auxiliary power unit (APU) and engines, and replacement of the assemblies or elements with new or serviceable parts, if necessary. This amendment is prompted by a report indicating that certain fire detector elements were not checked for leaks during manufacturing and, therefore, may not have the correct set points for the fire warning system. The actions specified in this AD are intended to prevent failure of the APU or engine fire detection systems to detect a fire in a timely manner, which could result in egress of an APU or engine compartment fire to other parts of the airplane.

DATES: Effective October 21, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report from the manufacturer of the auxiliary power unit (APU) and engine fire detectors installed on Boeing Model 737–700 and –800 series airplanes indicating that certain fire detector elements were not checked for leaks during manufacturing and may be leaking helium gas. Any leaking would cause the set point for the fire warning system to rise, which may lead to an undetected fire and delayed flight crew response. Failure of the APU or engine fire detection system to detect a fire in a timely manner, if not corrected, could result in egress of an APU or engine compartment fire to other parts of the airplane.

FAA's Determination

In order to ensure that APU and engine fire detection assemblies and elements that were not checked for leaks during manufacturing are not installed on the affected airplanes, the FAA has determined that verification of the serial numbers of these components, and replacement of parts having certain serial numbers, is necessary. Accomplishment of these actions will adequately address failure of the APU or engine fire detection system.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–700 and –800 series airplanes of the same type design, this AD is being issued to prevent failure of the APU or engine fire detection system to detect a fire in a timely manner, which could result in egress of an APU or engine compartment fire to other parts of the airplane. This AD requires a one-time inspection to determine the serial numbers of the fire detector assemblies and elements for the APU and engines, and replacement of the assemblies or

elements with new or serviceable parts, if necessary. The actions are required to be accomplished in accordance with the Boeing 737 Aircraft Maintenance Manual.

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–272–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, 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:

98–21–11 Boeing: Amendment 39–10819. Docket 98–NM–272–AD.

Applicability: Model 737–700 and –800 series airplanes; line positions 1 through 81 inclusive, except line positions 73 and 80; 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 prevent failure of the auxiliary power unit (APU) or engine fire detection system to detect a fire in a timely manner, which could result in egress of an APU or engine compartment fire to other parts of the airplane, accomplish the following:

(a) Within 21 days after the effective date of this AD, perform a one-time inspection of the APU and engine fire detector assemblies to determine the serial number of the assemblies and the elements. Replace any fire detector assembly or element as required by paragraph (a)(1), (a)(2), or (a)(3) of this AD in accordance with procedures specified in Chapters 26–11–01–401 and 26–15–01–401 of the Boeing 737 Aircraft Maintenance Manual, as applicable.

Note 2: The serial number of the fire detector assembly is stamped on the support tube.

(1) If any assembly having a serial number 100 through 999 inclusive is installed, prior to further flight, replace it with a new or serviceable assembly having a serial number 1000 or higher.

(2) If any element of the APU fire detectors having a serial number 1 through 1999 inclusive is installed, prior to further flight, replace it with a new or serviceable element having a serial number 2000 or higher.

(3) If any element of the engine fire detectors having a serial number 1 through 4999 inclusive is installed, prior to further flight, replace it with a new or serviceable element having a serial number 5000 or higher.

(b) As of the effective date of this AD, no person shall install on any airplane an APU or engine fire detector assembly or element having a serial number listed in paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) For the APU or engine fire detector assembly: Boeing part numbers S332T100–27, –28, –29, –30, –31, –38, –42, –43, and –44; Whittaker part numbers 902013, 902014, 902015–01, 902016–01, 902017–01, 902018–01, 902020, 902862, and 902864; serial numbers 100 through 999 inclusive.

(2) For APU fire detector elements: Whittaker part numbers 8880–01, –02, and –03; serial numbers 1 through 1999 inclusive.

(3) For engine fire detector elements: Whittaker part numbers 8870–01, –02, –03, and –04; serial numbers 1 through 4999 inclusive.

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

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

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on October 21, 1998.

Issued in Renton, Washington, on September 29, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26659 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

15 CFR Parts 29a and 29b

[Docket No. 980925248–8248–01]

RIN 0605–AA12

Audit Requirements for State and Local Governments; Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations

AGENCY: Department of Commerce (DoC).

ACTION: Final rule.

SUMMARY: The Department of Commerce (DoC) is removing 15 CFR Part 29a, ''Audit Requirements for State and Local Governments,'' which was published in the **Federal Register** as 15 CFR Part 8a on July 26, 1985 to implement OMB Circular A–128, ''Audits of State and Local Governments,'' and 15 CFR Part 29b, ''Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations,'' which was published in the **Federal Register** on April 19, 1991 to implement Office of Management and Budget (OMB) Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations,'' at which time 15 CFR Part 8a was amended to re-designate Part 8a as Part 29a. Revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' as published in the **Federal Register** on June 30, 1997 established uniform audit requirements for non-Federal entities that administer Federal awards and implemented the Single Audit Act Amendments of 1996, which were signed into law on July 5, 1996. The provisions of the revised Circular A–133 which was re-titled ''Audits of States, Local Governments, and Non-Profit Organizations,'' as published in the **Federal Register** on June 30, 1997 are implemented for the DoC at 15 CFR Part 14, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations,'' and at 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, Director, Office of Executive Assistance Management, Telephone Number—202–482–4115.

SUPPLEMENTARY INFORMATION: The Department of Commerce (DoC) is removing 15 CFR Part 29a, ''Audit Requirements for State and Local Governments,'' which was published in the **Federal Register** at 15 CFR Part 8a on July 26, 1985 (50 FR 30418) to implement OMB Circular A–128, ''Audits of State and Local Governments,'' and 15 CFR Part 29b, ''Audit Requirements for Institutions of Higher Education and Other Non-Profit Organizations,'' which was published in the **Federal Register** on April 19, 1991 (56 FR 15992) to implement Office of Management and Budget (OMB) Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Organizations,'' at which time 15 CFR Part 8a was amended to re-designate part 8a as part 29a. Revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' as published in the **Federal Register** on June 30, 1997 (62 FR 35278) established uniform audit requirements for non-Federal entities that administer Federal awards and implemented the Single Audit Act Amendments of 1996, which were signed into law on July 5, 1996 (Public Law 104–156).

OMB Circular A–128 was rescinded and OMB Circular A–133 was revised by OMB as a result of the consolidation of audit requirements under OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' The provisions of the revised Circular A–133 which was re-titled ''Audits of States, Local Governments, and Non-Profit Organizations,'' as published in the **Federal Register** on June 30, 1997 (62 FR 35279) are implemented for the DoC at 15 CFR Part 14, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations,'' and at 15 CFR part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

Executive Orders 12866 and 12875

This final rule has been determined to be ''not significant'' for purposes of Executive Order 12866, ''Regulatory Planning and Review.'' In addition, it has been determined that, consistent with the requirements of Executive Order 12875, ''Enhancing Intergovernmental Partnership,'' this final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comments is not required under 5 U.S.C. 553, or any other law, for this rule relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this final rule.

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this action does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Paperwork Reduction Act

These actions do not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

15 CFR Part 29a

Accounting, Grant programs, Indians, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements.

15 CFR Part 29b

Accounting, Colleges and universities, Grant programs, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

John J. Phelan,

Director for Executive Assistance Management.

Accordingly, under authority of 5 U.S.C. 301 and 31 U.S.C. 7501, *et seq.*, Title 15 of the Code of Federal Regulations is amended by removing Parts 29a and 29b.

[FR Doc. 98–26770 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–FA–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–009; Order No. 587–I]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued September 29, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is addressing requests for rehearing and clarification of Order No. 587–G, 63 FR 20072 (Apr. 23, 1998). The rehearing and clarification requests concern the regulations relating to intraday nominations, trading of imbalances, and Internet communications. The Commission is revising § 284.10(c)(3)(i)(B) of its regulations to change the implementation date for the transition to Internet communications to June 1, 2000. The Commission also is requiring that pipelines provide a dual communication system involving file transfers and standardized Internet web sites so shippers will have the option of choosing the communication modality that best fits their business needs.

EFFECTIVE DATE: The amendment to the Commission's regulation adopted in this order will become effective November 5, 1998.

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Order on Rehearing

This order addresses requests for rehearing of Order No. 587–G which revised Commission regulations to require interstate natural gas pipelines to comply with a set of standards governing business practices and communication protocols.[1] In Order No. 587–G, the Commission incorporated by reference, in § 284.10(b) of its regulations, the most recent version (Version 1.2) of standards promulgated by the Gas Industry Standards Board (GISB). The Commission also adopted regulations, in new § 284.10(c) of its regulations, governing intraday nominations, operational balancing agreements (OBAs), netting and trading of imbalances, standardization of communications over the public Internet, and notices of operational flow orders. A number of parties filed for rehearing or clarification of Commission regulations regarding intraday nominations, imbalance trading, and the Internet requirements.[2] The Commission denies the rehearing requests relating to the intraday nomination regulations and grants rehearing and clarification with respect to the requirements relating to Internet communication.

I. Background

In Order No. 587–G, the Commission continued its efforts, begun in Order Nos. 587, 587–B, and 587–C,[3] to create a more standardized interstate pipeline grid so that shippers can more easily ship gas and transact business across the grid. Towards this end, the Commission updated its regulations to incorporate by reference version 1.2 of the business practices and communication standards promulgated by GISB, a private consensus standards developer with a membership drawn from all facets of the natural gas industry. The Commission also adopted regulations governing business practices and communication protocols to resolve policy issues that had been dividing the GISB membership. The business practice regulations adopted by the Commission require pipelines to:

- Give firm intraday nominations priority over already nominated and scheduled interruptible transportation service and permit firm intraday nominations submitted on the day prior to gas flow to go into effect at the start of the gas day;
- Enter into operational balancing agreements at all interstate and intrastate pipeline to pipeline interconnects; and
- Permit shippers to offset imbalances across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's systems.

The electronic communication regulations require pipelines to:

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

[2] The parties filing for rehearing are listed on the appendix.

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

• Post all information and conduct all business transactions using the public Internet and internet protocols by June 1, 1999;

• Adhere to standards governing the provision of information on pipeline web sites and retention of electronic records of transactions;

• Notify shippers of critical events affecting the system, such as operational flow orders, by posting the information on pipeline web sites and by direct notice either through Internet E-Mail or notification to the shipper's Internet address.

In addition, in Order No. 587–G, the Commission determined not to issue regulations on other disputed issues that are still under consideration by GISB—title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty calculations. In Order Nos. 587–F [4] and 587–G, the Commission provided guidance on aspects of these issues and established December 31, 1998, as the date for submission of further standards and comments on these issues.

Requests for rehearing of Order No. 587–G were due by May 18, 1998, and 45 parties filed requests for rehearing and clarification.

II. Discussion

The rehearing and clarification requests concern the regulations requiring pipelines to: give firm intraday nominations priority over interruptible shippers; permit shippers to trade imbalances; and transact business using the public Internet and adhere to standards for posting information on Internet web sites and retention of electronic records. In addition, clarification was sought in two areas in which the Commission chose not to issue regulations: title transfer tracking and fuel reimbursement.

The vast majority of the rehearing and clarification requests focus on the regulations requiring pipelines to conduct all business transactions over the public Internet by June 1, 1999.[5] The Commission is revising § 284.10(c)(3)(i)(B) to change the implementation date for the transition to Internet communications to June 1, 2000. The Commission also is requiring that pipelines provide a dual communication system involving file transfers and standardized Internet web sites so shippers will have the option of choosing the communication modality that best fits their business needs.

In addition, with respect to intraday nominations, the Commission denies the requests to revise § 284.10(c)(1)(i)(B) so that a firm intra-day nomination that bumps scheduled interruptible service would take effect at 5 p.m., rather than 9 a.m. It also reaffirms its policy regarding waivers of penalties for bumped interruptible shippers for one day. As to imbalance trading, the Commission reaffirms its policy of requiring pipelines to permit shippers to trade imbalances across rate schedules. The requests for rehearing and clarification are discussed in detail below.

A. Intraday Nominations

An intraday nomination is any nomination submitted after the initial nomination made at 11:30 a.m. central clock time (CCT).[6] An intraday nomination may be made either on the day prior to gas flow (after 11:30 a.m.) or on the day of gas flow.[7] GISB initially passed a standard requiring pipelines to provide one intraday nomination per day. Pipelines implemented this standard in different ways which limited the ability of shippers to coordinate intraday nominations across multiple pipelines.

To achieve better coordination, GISB then approved a revised intraday schedule establishing three synchronization times at which shippers could coordinate intraday nominations: 6 p.m. (to take effect the next gas day), 10 a.m. and 5 p.m. (to take effect on the same gas day). The Commission adopted this timeline in Order No. 587–H.[8] GISB, however, reported that it had been unable to reach agreement on whether intraday nominations should displace (bump) previously scheduled interruptible service.

In Order No. 587–G, the Commission resolved this dispute by adopting regulations, in § 284.10(c)(1)(i), establishing the scheduling priority for intraday nominations. The Commission adopted regulations requiring pipelines to accord an intraday nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers. In addition, the regulations require that an intraday nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT. The Commission, however, also agreed with the GISB consensus that the third intraday nomination opportunity should not have priority over scheduled interruptible volumes.

In effect, the regulations as adopted in Order No. 587–H require pipelines to permit intraday nominations by firm shippers at 6 p.m. (on the day prior to gas flow) and 10 a.m. (on the day of gas flow) to bump scheduled interruptible service, while a firm intraday nomination at 5 p.m. (on the day of gas flow) would not bump scheduled interruptible service. Under the regulations, a firm intraday nomination at 6 p.m. would bump scheduled interruptible service as of the 9 a.m. start of the next gas day.

The regulations further provide that pipelines must give an interruptible shipper advance notice of its reduction in scheduled volumes and inform the shipper whether penalties will apply on the day its volumes are reduced. The Commission further stated that it would consider whether pipelines should waive certain daily penalties for bumped interruptible shippers when pipelines made their filings to comply with the regulations. As a general principle, the Commission found that pipelines should follow the Commission's previous precedent and waive non-critical penalties, such as daily variance or scheduling penalties.

1. Effective Time of Intraday Nominations Submitted the Day Prior to Gas Flow

Natural Gas Clearinghouse (NGC) and Exxon Company, U.S.A. (Exxon) do not challenge the Commission's determination that firm intraday nominations should be entitled to scheduling priority over interruptible service. They contest only the determination that a firm intraday nomination submitted on the day prior to gas flow will take effect at the start of the gas day (9 a.m. central clock time). They contend that instead of becoming effective at 9 a.m., a firm intraday nomination that bumps scheduled interruptible service should not become effective until 5 p.m. NGC argues that, if the Commission does not change the effective time to 5 p.m., the Commission should, in the alternative, require pipelines to allow bumped interruptible shippers an overnight rescheduling opportunity.

NGC and Exxon maintain that the 9 a.m. effective time causes problems for interruptible shippers because they will have no opportunity to reschedule their

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–F, 62 FR 61459 (Nov. 18, 1997), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,527 (Nov. 12, 1997).

[5] The Commission also received a number of letters relating to these requirements.

[6] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.2.4.

[7] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.2.7 (deleted by Order No. 587–H).

[8] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–H, 63 FR 39509 (July 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,063 (July 15, 1998).

bumped gas before the bump becomes effective at 9 a.m. CCT, and the producers and marketers serving interruptible shippers may not always have the capability of shutting down plants and remote wells during non-working hours. In contrast, if firm shippers' nominations do not become effective until 5 p.m., the interruptible shippers could reschedule their bumped supply at the 10 a.m. intraday nomination opportunity the next day. Exxon maintains the balance between firm and interruptible shippers in Order No. 587–G weighs too heavily on the side of the firm shippers.

The Commission denies the rehearing requests. The Commission's general policy is that firm service is entitled to priority over scheduled interruptible service. Firm shippers pay reservation charges for firm service and, therefore, are entitled to have their intraday nominations become effective at the earliest possible time. Interruptible shippers, by contrast, take the risk that their service will be interrupted. Thus, the Commission concludes that when balancing the rights of firm and interruptible shippers, the balance must weigh more heavily on the side of firm shippers.

Exxon maintains that prior to Order No. 587–G, firm shippers on many pipelines were not able to bump interruptible shippers and had a more limited number of intraday opportunities available to them. It, therefore, maintains that firm shippers' ability to bump interruptible shippers should be limited to protect interruptible shippers.

In fact, however, prior to Order No. 587–G, the Commission had required pipelines filing to implement intraday nominations to follow the Commission's general policy that firm intraday nominations would be given priority over scheduled interruptible service.[9] It was only on those pipelines which had pre-existing no-bump rules that interruptible shippers were protected against bumping. To achieve uniformity, the Commission, in Order No. 587–G, applied the same rule to all pipelines.

Moreover, when all the intraday nomination changes are considered together, interruptible shippers receive as great a benefit from these changes as firm shippers, and interruptible shippers are not left unprotected under the Commission's regulation. Prior to Order No. 587, many pipelines provided no opportunity for interruptible shippers to reschedule gas bumped by firm nominations. Even after implementation of Order No. 587, firm nominations submitted at 11:30 a.m. could reduce or terminate existing interruptible flow starting at 9 a.m. the next day, and the interruptible shipper would have no opportunity to reschedule that gas until after the reduction took effect.

In contrast, under the new regulations providing for multiple intraday nominations, an interruptible shipper whose existing flow is reduced by a firm nomination will have an opportunity to reschedule that gas using the 6 p.m. intraday nomination. Moreover, an interruptible shipper bumped by a 6 p.m. intraday nomination will have two additional opportunities to reschedule gas on an industry-wide basis (the 10 a.m. and 5 p.m. intraday opportunities).

Interruptible shippers are protected in other ways as well. The Commission has given interruptible shippers the tools, such as pooling, gas package identifiers, ranking, and allocation flexibility[10] that they can use to manage their gas supplies in the event of a bump. For instance, even if a producer has some remote wells, it can use pooling and ranking to ensure that the gas from its more easily accessible wells is cut before gas from remote wells.[11] The Commission has also protected interruptible shippers by requiring pipelines to waive certain daily penalties, such as daily scheduling or variance penalties, for bumped interruptible shippers.

Finally, if interruptible shippers or their suppliers have to adjust flows, the standards give them ample notice (11 hours) to do so. The gas business is increasingly becoming a 24-hour per day business. Indeed, the industry agreed that all parties need to support a seven-days-a-week, twenty-four-hours-a-day nominations process.[12] Thus, all participants must structure their businesses to accommodate to that change, and ultimately producers dealing with interruptible shippers need to be able to adjust their gas flows when necessary to accommodate nomination changes.

Establishing a delayed effective time for 6 p.m. firm intraday nominations that bump interruptible service, as NGC and Exxon suggest, also could have negative effects on interruptible shippers by creating incentives for firm shippers to overnominate at the 11:30 a.m. initial nomination. Under a delayed effective time, firm shippers would have an incentive to overnominate on their initial nominations to protect themselves. A firm shipper that overnominates at the 11:30 a.m. nomination always retains the ability to reduce that nomination by submitting an intraday nomination at 6 p.m. (that day) or 10 a.m. or 5 p.m. (the next day) to decrease its scheduled quantity. However, under NGC's and Exxon's proposed delayed effective time, the firm shipper could not increase its initial nomination until 10 a.m. (the next day) to become effective at 5 p.m. Thus, Exxon's and NGC's proposal create an incentive for firm shippers to overnominate at the initial 11:30 a.m. nomination to protect themselves, potentially resulting in less interruptible service being available.

NGC maintains unless the Commission adopts an overnight rescheduling opportunity, the current rule could result in decreased flows for interruptible shippers using multiple pipelines and cause pipelines to lose interruptible revenues. It argues that, if an interruptible shipper is bumped on the upstream pipeline, its gas will not flow on the downstream pipeline either. Without at least an overnight rescheduling opportunity, NGC argues, the downstream pipeline will lose revenue.

The Commission, however, made clear in Order No. 587–G that pipelines are permitted to institute overnight rescheduling opportunities for bumped interruptible shippers if the pipeline deems it necessary to preserve its revenue. Each pipeline needs to judge the efficacy of instituting such a policy on its own system, rather than having the Commission impose the requirement

[9] *See, e.g.*, El Paso Natural Gas Company, 77 FERC ¶ 61,176 (1996); Alabama-Tennessee Natural Gas Company, 79 FERC ¶ 61,117 (1997); Algonquin Gas Transmission Company, 78 FERC ¶ 61,281 (1997); ANR Pipeline Company, 78 FERC ¶ 61,142 (1997); Arkansas-Western Pipeline Company, 78 FERC ¶ 61,250 (1997); Canyon Creek Compression Company, 78 FERC ¶ 61,003 (1997); CNG Transmission Corporation, 78 FERC ¶ 61,131 (1997); Great Lakes Gas Transmission Limited Partnership, 79 FERC ¶ 61,194 (1997); Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,196 (1997); K N Interstate Gas Transmission Company, 79 FERC ¶ 61,208 (1997); Mojave Pipeline Company, 78 FERC ¶ 61,153 (1997); National Fuel Gas Supply Corporation, 78 FERC ¶ 61,332 (1997); NorAm Gas Transmission Company, 79 FERC ¶ 61,069 (1997); Overthrust Pipeline Company, 78 FERC ¶ 61,285 (1997); Questar Pipeline Company, 78 FERC ¶ 61,305 (1997); Southern Natural Gas Company, 78 FERC ¶ 61,125 (1997); Texas Gas Transmission Corporation, 79 FERC ¶ 61,175 (1997); Trailblazer Pipeline Company, 77 FERC ¶ 61,328 (1996); Viking Gas Transmission Company, 78 FERC ¶ 61,243 (1997); Young Gas Storage Company, Ltd., 79 FERC ¶ 61,030 (1997).

[10] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.3.17–1.3.18 (pooling), 1.3.23 (ranking), 1.3.24–1.3.25 (package identifiers); 18 CFR 284.10(b)(1)(ii) (1998), Flowing Gas Related Standards 2.3.19 (allocations).

[11] Pooling refers to the ability of producers to aggregate gas from many wells in a single pool. Ranking refers to the ability to inform the pipeline which well will be cut first in the event of a cut.

[12] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.3.4.

on a generic basis. As one pipeline pointed out in its comments in this proceeding, in many cases, an overnight rescheduling opportunity might be of little value since the nominations could not be confirmed.[13]

2. Penalty Waivers

In Order No. 587–G, the Commission proposed to adhere to its previous policy requiring pipelines to waive certain daily penalties for interruptible shippers whose scheduled volumes are reduced by a firm intraday nomination.[14] Under this policy, penalties would be waived only for the day on which the bump takes place. Given the variety of penalty provisions in pipeline tariffs, the Commission concluded that the determination as to which penalties should be waived would be made when pipelines fail to comply with the regulations.

The Commission set forth principles as to how it would determine which penalties should be waived. The Commission found that no penalties should be imposed if shippers have not received appropriate notice of their reduced volumes. During non-critical periods, pipelines would be expected to waive daily penalties, such as daily variance or scheduling penalties, but they would not be expected to waive daily penalties during critical periods, when operational flow orders (OFOs) are in effect. During OFO periods, the Commission did expect pipelines to comply with standard 1.1.14, which provides that, unless critical circumstances dictate otherwise, OFO penalties should not be imposed when a nomination is required to comply with the OFO and the shipper has not been given an opportunity to correct the circumstance giving rise to the OFO.[15]

Koch Gateway Pipeline Company (Koch) and ANR Pipeline Company and Colorado Interstate Gas Company (ANR/CIG) raise questions about the Commission's policy on waiver of penalties. Koch contends the Commission should not require pipelines to waive daily penalties during non-critical or critical periods because pipelines will lose control of their systems if shippers can continue to dump gas onto the pipelines with no liability. Koch contends waiver of penalties should be at the pipelines' discretion. ANR/CIG requests clarification that the Commission's guidance about penalties should not foreclose GISB from adopting standards related to, or even contrary to those proposals, and should not predetermine the scope of pipeline proposals.

As a general matter, the Commission finds its principles establish a reasonable balance between the needs of pipelines to manage their systems and the difficulties imposed on shippers whose scheduled volumes are reduced. While the Commission expects shippers to adjust gas flows to accord with revisions to their scheduled volumes, the Commission recognizes that, in some circumstances, the shortened notice period (three hours under the standards) [16] may make such adjustments difficult. Thus, for non-critical periods, pipelines should waive daily penalties for the day of the bump. This rule does not immunize shippers from liability for placing extra gas on the system, as Koch asserts. Shippers would still have an incentive to minimize the amount of excess gas they put on the system, because the waiver applies only to penalties for the day of the bump; shippers would still be responsible for excess gas on the system and would be subject to penalties resulting from that gas on subsequent days. At the same time, during non-critical periods, having some extra gas on the system should not create operating difficulties for pipelines. During normal operations, pipelines should be able to absorb some extra gas on their systems for one day.

In contrast, during critical periods, pipelines should not be required to waive daily penalties, because having extra gas on the system even for one day may cause operational problems. Moreover, during critical periods, all shippers may have difficulty in adjusting to an OFO and bumped interruptible shippers should not necessarily be given different treatment, particularly when any extra latitude given to interruptible shippers may come at the expense of reduced service or increased penalties for other shippers.

These principles are intended to provide pipelines with guidance as to the Commission's view as to which penalties should be waived. As stated in Order No. 587–G, the Commission will consider specific pipeline penalties depending on the circumstances involved when pipelines make their compliance filings, and the principles do not predetermine the result of that inquiry.

3. Relative Priority of Firm Primary and Secondary Nominations

National Fuel Gas Supply Corporation (National Fuel) requests clarification that, in its filing to comply with Order No. 587–G, it can revise its tariff to establish that a firm intraday nomination to firm primary receipt or delivery points will not bump already scheduled firm volumes to secondary receipt or delivery points. National Fuel points out that in the November 12, 1997 Notice of Proposed Rulemaking (NOPR), which led to Order No. 587–G, the Commission stated that its general policy regarding relative firm priorities is that intraday nominations to primary points do not bump already scheduled firm nominations to secondary points. National Fuel asserts that its current tariff does not protect firm shippers using secondary points from being bumped by firm intraday nominations to primary points. It contends that it should be able to change this policy in its compliance filing, because much of the benefit of the intraday timetable would be lost if secondary firm nominations are not protected from bumping by primary firm nominations.

In Order No. 587–G, the Commission rejected requests to adopt a regulation or a generic policy on the priority of firm primary and firm secondary intraday nominations.[17] The Commission determined that the current priorities for firm service in effect on each pipeline should continue.

Since Order No. 587–G did not adopt a regulation regarding the relative priorities of firm primary and secondary capacity, National Fuel should not include a change to its current priority scheme for firm shippers in a compliance filing. Any such filing must be made as a separate section 4 filing. This is consistent with the manner in which the Commission previously handled filings to comply with GISB standards. In those compliance filings, the Commission permitted changes to tariff provisions only when necessary to comply with the standards. Pipelines seeking to reduce, eliminate, or change other service offerings as a result of the standards were required to submit such proposed changes in a filing under section 4 of the Natural Gas Act made coincident with the compliance filing.[18]

[13] Order No. 587–G, 63 FR at 20079, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 at 30,673.

[14] Order No. 587–G, 63 FR at 20077, III FERC Stats. ¶ Regs. Regulations Preambles ¶ 31,062 at 30,672.

[15] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.1.14.

[16] 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.3.2 (iii) (three-hour notice of bumping at the 10 a.m. intraday nomination cycle).

[17] Order No. 587–G, 63 FR at 20079, III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 at 30,673–74.

[18] *See* El Paso Natural Gas Company, 77 FERC ¶ 61,176, at 61,660, 61,662 (1996); Florida Gas Transmission Company, 77 FERC ¶ 61,177, at 61,664 (1996); National Fuel Gas Supply

B. Imbalance Trading

In Order No. 587–G, the Commission adopted a regulation (§ 284.10(c)(2)(ii)) requiring pipelines to permit shippers (and their agents) to offset imbalances on different contracts held by the shipper and to trade imbalances with other shippers so long as the imbalances have similar operational impact on the pipeline. The Commission required pipelines to permit netting and imbalance trading across contracts under different rate schedules. The Commission reiterated its current policy that if a pipeline can document that such trading will cause a loss of transportation revenue, the pipeline would be permitted to implement an appropriate mechanism to ensure that it is made whole for all appropriate transportation charges.[19]

Williston Basin requests clarification that it will be allowed to devise a mechanism to protect against loss of transportation revenue when interruptible imbalances are traded with firm imbalances. Williston Basin poses the following as an example of a situation in which imbalance trading will result in a loss of transportation revenue:

Assume a shipper has a 1,000 Dth positive imbalance (*i.e.,* delivers into Williston Basin's system 1,100 Dth of which Williston Basin delivers 100 Dth off its system at a rate of $0.41) under an interruptible contract and trades the 1,000 Dth positive imbalance with a shipper who has a 1,000 Dth negative imbalance (*i.e.,* delivers into Williston Basin's system 100 Dth of which Williston Basin delivers 1,100 Dth off its system at a rate of $0.04) under a firm contract. The imbalance on Williston Basin's system is 0 Dth. However, Williston Basin will have received transportation revenues of only $85 ($41 based on 100 Dth at the Rate Schedule IT–1 [interruptible] rate of $0.41 and $44 based on 1,100 Dth at the Rate Schedule FT–1 [firm] rate of $0.04). Under Williston Basin's currently effective FERC Gas Tariff, Second Revised Volume No. 1, which does not allow shippers to trade imbalances across rate schedules and under the same scenario just illustrated, the Rate Schedule IT–1 shipper must trade its 1,000 Dth positive imbalance with another Rate Schedule IT–1 shipper's 1,000 Dth negative imbalance. Williston Basin would have received transportation revenues of $451 based upon 1,100 Dth at the Rate Schedule IT–1 rate of $0.41 and $41 (sic) based upon 100 Dth at the Rate Schedule FT–1 rate of $0.04.

In the example above, allowing shippers to trade imbalances would cause Williston Basin to forego $407 of transportation revenues.[20]

If the Commission does not grant Williston Basin's requested clarification, Williston Basin requests rehearing of the Commission's requirement that pipelines permit imbalance trading across rate schedules.

Williston Basin's example is confusing. For example, it derives revenue of $41 from 100 Dth of firm transportation at the firm usage rate of $0.04. But the correct calculation would be $4.00. It may be that Williston Basin intended in the second example to refer to imbalance trading between two interruptible shippers rather than an interruptible and a firm shipper. In that case the revenue received would be $41 (100 Dth at an interruptible rate of $0.41).

However, if that is the case, then Williston Basin is determining differential revenues by, in one case, evaluating revenues from an interruptible and a firm shipper and, in the other case, from two interruptible shippers. But this is an apples and oranges comparison. The proper analysis to determine whether imbalance trading results in transportation revenue loss is to compare revenues received from the same two shippers (interruptible and firm) with imbalance trading and without such trading. When this comparison is made, the Commission can see no such transportation revenue loss.

Williston Basin's tariff, like those of many pipelines, states that transportation charges for interruptible service are based on the ''quantity of gas in dkt delivered * * * for Shipper's account at the point(s) of delivery.'' [21] In Williston Basin's example, there are two shippers, one interruptible and one firm. If no imbalances are traded between these shippers, the interruptible shipper would pay transportation revenues of $41 (100 Dth of delivered gas multiplied by $.41) and the firm shipper would pay $44 (1,100 Dth of delivered gas multiplied by $.04). Thus, without imbalance trading, Williston Basin would still receive the same $85 from the two shippers as it receives with imbalance trading.

Williston Basin's only potential loss of revenue would seem to be a loss of potential penalty revenue on the imbalance. Without imbalance trading, both shippers would have imbalances of 1,000 Dth, although going in opposite directions. But penalties are imposed solely to discourage shipper conduct inimical to the system; pipelines are not entitled to expect such revenue. As the Commission explained in Order No. 587–G, and Williston Basin does not contest, as long as the imbalances net out, there is no adverse operational effect on the pipeline.

Given the confusion in Williston Basin's example, it may be that Williston Basin has other circumstances in mind. If there are other circumstances that should be considered, Williston Basin can propose in an NGA section 4 filing an appropriate mechanism to ensure that imbalance trading does not result in a reduction in transportation revenue to which it is legitimately entitled.

C. Internet Communications

In Order No. 587–G, the Commission promulgated regulations, in § 284.10(c)(3), requiring pipelines to post all information and conduct all business using the public Internet by June 1, 1999, and to adhere to other standards relating to electronic communication. As discussed below, the vast majority of the clarification and rehearing requests concern the principles the Commission established for the transition to Internet communications. Other requests relate to the regulations establishing standards for presentation of information on pipeline web sites, requiring pipelines to provide tables cross-referencing numeric designations with common names, and requiring pipelines to adhere to standards for retention of electronic data.

1. Transition to Internet Communications

Prior to Order No. 587–G, the pipelines communicated with their shippers using dial-up Electronic Bulletin Boards (EBBs) on which shippers would view pipeline information and enter their own information on the screen through keystrokes. The EBBs, however, created difficulties for shippers dealing with multiple pipelines because each EBB required unique software, logon, and other procedures. In Order No. 587–G, the Commission required pipelines to conduct all business transactions using Internet communications to solve the difficulties created by the proprietary EBBs and to provide shippers with a standardized method of doing business across multiple pipelines.

In Order No. 587–G, the Commission also provided guidance on how the transition to standardized Internet

Corporation, 77 FERC ¶ 61,178, at 61,673 (1996); Northern Border Pipeline Company, 77 FERC ¶ 61,179, at 61,680, 61,682 (1996); Transwestern Pipeline Company, 77 FERC ¶ 61,180, at 61,684 (1996).

[19] *See* Panhandle Eastern Pipeline Company, 64 FERC ¶ 61,009, at 61,066 (1993).

[20] Williston Basin's Request for Clarification And/Or Rehearing, Docket No. RM96–1–009, at 4 (May 15, 1998).

[21] Williston Basin Interstate Pipeline Company, FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 91.

communication should be implemented. The Commission set forth the following four principles.

- Pipelines had to conduct all business transactions (which they currently conduct using their EBBs) through downloading and uploading files in ASC X12 electronic data interchange (EDI) format.[22]
- Pipelines could, but were not required to, provide interactive web sites.[23] Pipelines would be permitted cost-of-service recovery in subsequent section 4 rate cases for the costs of the interactive web sites only if the pipelines created standards governing the access to, presentation, and format (''look and feel'') of the sites.
- Pipelines must assure a level playing field for shippers using EDI and the interactive web site. Regardless of which system is used, the shipper must obtain the same service and same information handling and response priority from the pipeline.
- By the June 1, 1999, conversion to Internet communications, communications using EBBs should cease, although pipelines could maintain EBBs solely as a back-up system for a period of one year after the June 1, 1999 date for implementing Internet communication. Pipelines would be required to remove EBB costs from cost-of-service in any general section 4 rate case effective after June 1, 2000.

The rehearing requests do not challenge the Commission's decision to require pipelines to conduct communications via the Internet. They focus on the principles articulated by the Commission for implementing the requirement. The rehearing requests focus on four issues: the relationship between EDI file transfers and interactive web sites, the requirement that pipelines assure a level playing field for EDI and interactive web sites, the June 1, 1999 implementation date, and cost recovery for pipeline EBBs and interactive web sites.

a. File Transfers and Interactive Web Sites. (1) *Rehearing Requests.* In Order No. 587–G, the Commission required pipelines to conduct all business transactions using EDI. At the same time, it permitted pipelines to establish interactive web sites. These interactive web sites would operate much the same way as EBBs with shippers able to view information on-line and transmit information to the pipelines by filling in on-line forms. The Commission permitted the pipelines to recover the costs for establishing interactive web sites in their cost-of-service as long as the sites conformed to standards governing access to the web sites as well as the presentation and format (''look and feel'') of the sites.

While shippers and pipelines do not object to the requirement that pipelines support the use of EDI, they contend that EDI should not be the exclusive means of communication and that some form of interactive approach is also necessary.[24] They maintain that EDI is cost-effective only for those doing a high volume of transactions. While the cost to shippers of using EDI is the paramount concern, some shippers are also concerned about the potential for losing some of the interactive functionality provided by EBBs [25] To avoid having to use EDI, some shippers suggest pipeline EBBs should be continued,[26] while many others support a mandatory requirement for pipelines to provide interactive web sites.[27] PSCo/Cheyenne and National Fuel Distribution contend that in addition to EDI file transfers, pipelines should continue to transact business using flat files (not in EDI format).

On July 15, 1998, GISB filed with the Commission a report that included the steps it was taking to achieve the transition to the Internet required by Order No. 587–G. GISB requested that pipelines provide a list of current EBB applications for which no EDI standards had been developed. Four hundred eighty-five items were identified. GISB is having these items independently reviewed by Ernst & Young to determine which of the 485 items are susceptible to EDI usage. In addition, GISB is considering several models for Internet transition, including a model developed by a consortium of pipeline and shipper interests providing for both pipeline interactive web sites and EDI file transfers.

(2) Commission Resolution. In Order No. 587–G, the Commission required pipelines to establish a standardized communication system using the Internet because, despite shipper complaints about the difficulties of using non-standardized EBBs, GISB and the pipelines had not developed a plan for moving to a standardized communication system.[28] The Commission is pleased that given the impetus of Order No. 587–G, GISB and the industry are now developing standards for both EDI and interactive web sites.

The Commission continues to favor an approach to communication in which shippers can either transact business using computer-to-computer file transfers or conduct business on-line in an interactive fashion, whichever approach best fits their needs. For instance, currently, pipelines' EBBs provide the interactive access and EDI is used for standardized file transfers. Both EBBs and EDI are included in the pipelines' cost-of-service. The rehearing requests raise issues related to both interactive web sites and file transfers.

(a) Interactive Web Sites. While the Commission did not mandate the use of an interactive web site in Order No. 587–G, it permitted pipelines to respond to customer demand to provide an interactive web site and to recover the costs of establishing the web site in the pipelines' cost-of-service as long as the site complied with applicable standards developed by GISB. This approach was a carry-over from the prior cost treatment of EBBs; the Commission had required pipelines to conduct only certain transactions on their EBBs, but, if pipelines chose to offer more services, they could include those costs in their cost-of-service.

Many customers request that the Commission mandate that pipelines provide interactive Internet web sites in order to ensure that the sites are developed on the same schedule as the EDI file transfers. The pipelines themselves generally support the development of such an approach. The Commission, therefore, will require pipelines to develop interactive web sites that comply with the standards being developed by GISB. If there are pipelines where parties prefer only to use EDI file transfers to avoid the added costs of having the pipeline establish an interactive web site, the pipelines may seek a waiver of the requirement to develop an interactive web site.

(b) File Transfer Standards. The Commission chose to require pipelines

[22] EDI was chosen by the industry and GISB as the standardized format for file transfers. Standards for EDI are promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.

[23] Interactive web sites permit shippers to view information on-line and transmit information to the pipelines by filling in on-line forms.

[24] *See, e.g.,* AGDF, Atlanta/Chattanooga, CNG, Consumers, El Paso/Tennessee, Engage, East-of-California Shippers, Florida Municipalities, Florida Power, INGAA, IPAA, Koch, MCV, MGE, National Fuel Distribution, NGT/MRT, Pacific Northwest Shippers, PG&E GT–NW, PSCo/Cheyenne, Reedy Creek, RPC, Southern, TCGS.

[25] *See* Pacific Northwest Shippers, East-of-California Shippers.

[26] *See* Piedmont, PSCo/Cheyenne, IPAA, RPC, Western.

[27] *See* AGA, *et al.,* East-of-California Shippers, Brooklyn Union/Long Island, MCV, Florida Power, TCGS, Florida Municipals, NGC, NGSA, Pacific Northwest Shippers.

[28] GISB standard 4.3.6 states that all transactions should be achieved through one mode of communications, but GISB apparently had reached an impasse on achieving this goal.

to use EDI as the standardized format for file transfers, because that was the method chosen by the industry. In the industry working groups and later through GISB, the industry chose EDI, because it found that non-EDI flat files,[29] would be less flexible and lacked the validation programs available for EDI.[30] Rehearing requests raise questions relating to pipeline obligations to provide for EDI and non-EDI file transfers.

In its rehearing request, Koch suggests it has a choice as to whether to provide EDI file transfers. But providing standardized EDI communication is not optional. The current regulations require Koch to provide for EDI communication. Indeed, in the rehearing requests in this proceeding, shippers and pipelines support the continuation of the EDI requirement because they find that file transfers may be more efficient for some shippers, particularly where large volumes of transactions are involved. Thus, to the extent Koch was seeking rehearing of the requirement to provide for EDI file transfers, the Commission denies the request.

However, the Commission recognizes that some smaller pipelines already have been granted waivers or extensions of time to implement EDI file transfers. If smaller pipelines demonstrate that there is no demand to use EDI, they may file for waivers of the EDI requirement.

National Fuel Distribution and PSCo/Cheyenne argue that those pipelines that currently provide non-EDI, flat file transfers should continue this practice, because non-EDI file transfers may be less expensive than EDI for some shippers. National Fuel Distribution contends that GISB should develop standardized flat file transfers.

GISB is considering whether and how to standardize non-EDI flat file transfers,[31] and the Commission encourages the industry to continue this inquiry. Even if standardizing non-EDI file transfers is not deemed worthwhile, pipelines that already provide this service must continue to provide it on a non-discriminatory basis, and other pipelines will be free to offer the service on a non-discriminatory basis.

The Commission recognizes that in the rapidly changing frontiers of electronic communication, technology does not remain stagnant. The movement from EBB technology to the Internet is one example, as is the movement from value-added-networks to the Internet for file transfers. The Commission's goal is to provide shippers with the ability to transact business interactively or through file transfers. If, however, changing commercial circumstances or evolving technology render any current technology, such as EDI, sub-optimal for purposes of bulk data transfer before the June 1, 2000 deadline, the Commission expects that GISB and the industry will begin to explore how to adopt the best solutions for the market. GISB and the industry should continue their efforts to explore new technological solutions and to adopt those technologies that prove to be more cost-effective and user-friendly.

b. Level Playing Field. In Order No. 587–G, the Commission required pipelines to assure a level playing field for those using EDI and interactive web sites by ensuring that regardless of the format used, shippers receive the same service and the same response priority from the pipelines. The pipelines, as well as some shippers, maintain that shippers should not necessarily receive identical service from interactive web based systems and EDI. They contend interactive systems, by their very nature, are more responsive than EDI and a requirement for maintaining a level playing field will only serve to limit the services offered to shippers using interactive systems.[32] The rehearing requests concern two issues: whether all transactions should be made available in EDI format; and how to ensure equality of treatment regardless of the communication modality a shipper adopts.

(1) Transactions To Be Made Available in EDI File Transfer Format. Pipelines and shippers identify a number of transactions which are currently provided on EBBs, but are not provided through file transfers. These include on-line contracting, storage and other special reports.[33] They want pipelines to continue to be able to provide these services even if they are not also provided using EDI. GISB requested pipelines to submit all their business transactions that are not currently provided using EDI and is having these items reviewed independently by Ernst & Young to determine whether these business transactions can be reasonably conducted using EDI file transfers.

While not every transaction may be suited to file transfer, pipelines must provide for EDI file transfer in every case where it is feasible. For instance, the ability to nominate by using file transfers may be of little value if the shipper has to go online to amend the receipt points in its contract. The Commission is encouraged by GISB's efforts to obtain an independent, impartial review of whether transactions should be provided through file transfers and looks forward to receiving that report.

The Commission also recognizes that pipelines need to be able to develop and offer their customers new services on their interactive web sites. At the same time, to maintain equality between interactive web sites and EDI file transfers, services provided on the interactive web site must, whenever feasible, be provided using EDI or other standardized file transfers (if the industry determines to standardize non-EDI file transfers).

Thus, when pipelines are developing new services for their interactive web sites, they must also consider the method for implementing the business practice using EDI and, in compliance with standard 1.2.2,[34] provide advance notice of their proposed EDI solution to GISB for review. Before initiating the new service, pipelines should file under section 4 of the NGA at least 30 days prior to the proposed implementation date detailing the efforts they have made to develop a standardized file transfer. If the pipeline has complied with the requirement to provide GISB with advance notice of their proposed EDI solution, it would be permitted to implement its new service on schedule. This approach should not inhibit development of new interactive solutions while at the same time helping to ensure that those using file transfers are not denied a reasonable opportunity to obtain the same service.

(2) Ensuring Shippers are not Disadvantaged by their Choice of Communication Modality. The pipelines contend that the requirement to provide a level playing field will eviscerate the value of interactive web sites because it will prevent the pipelines from providing the immediate error checking and responsiveness that is the principal benefit of interactivity.[35] They claim that interactive error checking is ill-suited to the EDI process

[29] Flat files contain the same information as the EDI files, but without the special formatting included in EDI files.

[30] *See* Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563–A, 59 FR 23624 (May 9, 1994), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,994 at 31,042 (May 2, 1994).

[31] *See* July 28, 1998 Minutes of GISB EBB-Internet Implementation Task Force, http://www.gisb.org/eii.htm (Aug. 10, 1998).

[32] *See* INGAA, El Paso/Tennessee, PG&E GT–NW, Western.

[33] *See* El Paso/Tennessee, East-of-California Shippers, Pacific Northwest Shippers.

[34] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.2.2.

[35] *See* INGAA, CNG, El Paso/Tennessee.

which relies on batch processing of requests. El Paso/Tennessee suggest that the requirement for a level playing field should be interpreted to mean that pipelines must ensure that EDI shippers are not disadvantaged by the use of EDI, not that pipelines must reduce all service to the EDI level.

The Commission continues to hold that pipelines should treat those using file transfers and interactive web communications similarly to ensure that users of EDI are not disadvantaged. This is important not only to ensure non-discrimination, but to prevent pipelines from attempting to limit competition by favoring their own interactive web system over the standardized file transfer system. At the same time, the Commission does not want to limit the ability of the pipelines to provide as efficient and responsive an interactive web site as is possible.

The Commission agrees with El Paso/Tennessee that, in order to achieve both these goals, the proper formulation of the requirement is that pipelines must ensure that no business disadvantage accrues to shippers using EDI compared with those using interactive approaches. Pipelines can ensure equal treatment without compromising the value of interactive service. For instance, EDI is not necessarily restricted to batch communication and pipelines could assure equal treatment by processing EDI file transfers in real time so shippers using EDI will receive an error report in the same time frame as shippers using interactive modalities. If developing real-time EDI is too expensive, pipelines could provide those shippers using EDI with added time so that they can receive and respond to error messages. This would be similar to the 15-minutes of extra time given to third-parties processing nominations on behalf of shippers.[36] GISB and the industry should work on developing whatever standards are necessary to ensure that those using file transfers are not placed at a business disadvantage to those using the pipelines' interactive web site.

c. Implementation Date. Both shippers and pipelines[37] contend that the June 1, 1999 implementation date does not allow sufficient time for development of standards and implementation of both EDI and interactive web sites, particularly given the industry's need during the same time period to devote information technology personnel to dealing with the Year 2000 computer problem.[38] Some recommend that the Commission delay implementation until GISB develops the standards,[39] while others recognize the need for a deadline to ensure compliance, but recommend that the deadline should be changed to June 1, 2000.[40] NGSA and NGC argue that the Commission should adopt a staggered implementation schedule. They maintain pipelines reasonably should be able to implement standardized interactive web sites for nomination-related transactions by June 1, 1999, with the remainder of functions made available on interactive web sites by June 1, 2000. GISB's EBB-Internet Transition Task Force also is working on a staged approach to implementation—with nominations and confirmations by June 1, 1999, allocation, imbalance, and measurement reporting by November 1999, invoice and payment information by April 2000, and capacity release information by June 2000—although these are not firm dates. INGAA recommends that the pipelines be responsible for providing access to their current EBBs over the Internet by June 1, 1999, with June 1, 2000 as the start for a phased-in compliance for interactive web sites and completion of EDI.

Given the effort GISB is making to effectuate the transition to Internet communications, the Commission finds that providing additional time will help ensure a smooth transition. The Commission, therefore, will amend § 284.10(c)(3)(i)(B) to require pipelines to complete the move to Internet communications by June 1, 2000.

Even though the Commission has provided an extra year to achieve full compliance, the Commission expects the pipelines to be working throughout that period to develop their Internet sites. GISB's phased implementation to Internet transition makes sense because it not only provides shippers with the ability to conduct the crucial nomination and confirmation and flow gas transactions at an earlier date, but also enables the industry to begin testing initial transactions to see how the standards work. The Commission finds that the timetable for phased implementation laid out by GISB is reasonable and has every confidence that the industry can meet those targets. The Commission fully expects pipelines to implement the Internet transition according to this schedule. In setting out its implementation schedule, GISB has expressed concern about the potential need for regulatory approval.[41] The Commission emphasizes that pipelines need not and should not wait for Commission adoption of the standards to begin implementation.

So that the Commission is kept abreast of the industry's progress in meeting its staggered implementation schedule, GISB and others in the industry should submit quarterly reports starting December 1998 and running through December 1999 detailing the progress being made in the standardization process.[42] While all pipelines are required to complete the transition to the Internet by June 1, 2000, the Commission recognizes that some pipelines may have more difficulty in meeting the interim implementation timetable than others. To keep the Commission apprised of the industry's progress, those pipelines that find themselves unable to meet the interim implementation dates must file with the Commission an explanation of the reasons for the delay and when implementation of the interim transactions will take place.

INGAA has suggested that, as an interim step, pipelines might simply provide access to their current EBBs over the Internet by June 1, 1999. This, however, would not be the equivalent of a standardized Internet web site, since once logged on, shippers would still be using the pipelines' current EBB. The Commission is reluctant to require pipelines to provide such an interim option because it would take time and resources that would be more productively spent on meeting GISB's plan for staggered implementation of interactive web sites. While pipelines are free to make this option available as an interim measure, the Commission will not require them to do so.

d. Cost Recovery. (1) Continuation of EBBs. In Order No. 587–G, the Commission found that pipelines

[36] 18 CFR 284.10(b)(1)(i) (1998), Nominations Related Standards 1.3.2. Parties nominating directly to the pipeline using EBBs must send nominations by 11:30. Parties using third-parties also must send their information to the third-party by 11:30, but the third-party is accorded 15 minutes of processing time before it has to transmit the information to the pipeline.

[37] AGA, *et al.*, AGDF, Atlanta/Chattanooga, CNG, ECT, El Paso/Tennessee, Engage, Florida Municipals, Great Lakes, INGAA, KN, Brooklyn Union/Long, MCV, National Fuel, NGSA, Pacific Northwest Shippers, Peoples, Peoples/NorthShore, Piedmont, PSCo/Cheyenne, Southern, TCGS, WGP.

[38] The Year 2000 problem refers to the use of two digits to represent the year in computer programs and embedded computer chips. If not corrected, the digits 00 may be interpreted as referring to the year 1900, rather than 2000.

[39] Atlanta/Chattanooga, CNG, ECT, MCV, TCGS.

[40] AGA, *et al.*, NGSA, Pacific Northwest Shippers. *See also* KN (recognizing the need for a firm implementation date), INGAA (proposing an implementation schedule).

[41] *See* June 1, 1998 Report to the Board of Directors re EBB-Internet Transition Plan at 30 (included in GISB's July 15, 1998 filing in Docket No. RM96–1).

[42] The reports would be due at the end of December 1998, March 1999, June 1999, September 1999, and December 1999.

should be able to continue their EBB systems until they have converted to a standardized system (including an interactive web site) and could maintain their EBBs as a back-up system for one year thereafter. Upon conversion to the standardized system, however, the Commission concluded that pipelines should no longer be able to recover the costs for their EBBs in their cost-of-service.

A number of shippers request clarification that pipelines can continue to use their EBBs until the implementation of a standardized interactive web site.[43] Other shippers and pipelines maintain that pipelines should be permitted to continue to provide EBBs as an additional option.[44]

Once an interactive Internet-based system is implemented, there appears no reason for pipelines to continue to support a third, non-standardized communication modality. Interactive web sites will provide users with the same interactive functionality they now receive from EBBs. Pipelines, therefore, should not receive recovery for the operation and continued maintenance or enhancements of EBBs in rate cases filed one year after implementation of the interactive web site and standardized file transfer systems. Pipelines, however, will be free to continue to provide EBB services as an additional option as long as they recover the costs for such services through a separate charge.

(2) Recovery of Costs for Interactive Web Sites.

In Order No. 587–G, the Commission concluded that pipelines could recover the costs for both EDI file transfers and standardized interactive web sites through their cost-of-service. The Commission concluded that including such costs did not provide an undue preference to the users of interactive web sites, because the costs for both EDI and interactive web sites would be recovered through cost-of-service and because attempting to separate the costs of implementing EDI and interactive web sites would be difficult due to the integrated nature of communication systems.

The pipelines are concerned about the Commission's limitation of cost recovery to standardized Internet web sites. INGAA and KN maintain that the Commission should permit recovery of all costs in developing interactive web systems as long as the pipelines ultimately adhere to the standards developed by GISB. Enron and Columbia Gas/Columbia Gulf maintain that cost recovery should be determined in individual rate cases.

As stated above, pipelines should be permitted to recover the costs for developing standardized interactive web sites. As long as the pipelines' web sites adhere to the standards being developed by GISB, pipelines generally should be permitted to recover those costs. Specific issues relating to cost recovery must be addressed in specific pipeline rate cases.

TransCapacity seeks rehearing of the determination to include interactive web sites in cost-of-service, claiming the decision will limit competition between the pipelines' presentation systems and those sold by third-parties. Including the cost of presentation in cost-of-service, which is recovered through transportation rates, TransCapacity asserts, will make the use of the pipelines' interactive web site essentially free to all customers, while customers will have to pay an added charge to obtain a presentation system from third parties.[45] Providing the pipelines' presentation systems for free, TransCapacity argues, distorts customers' choices about which systems have greater value. Rather than having pipelines bear the entire cost of processing information, TransCapacity contends a fairer and more competitive approach would be to have the pipelines bear their costs of sending and receiving information and pipeline customers bear their costs of organizing and processing the data sent to the pipeline. TransCapacity urges the Commission either to remove pipeline interactive systems from cost-of-service or institute a form of crediting under which firm shippers using EDI or third-parties would receive a credit for not using the pipelines' interactive web site.

The Commission's determination to permit cost-of-service recovery for pipeline interactive web sites continues current policy. The Commission permitted pipelines to recover the costs of both EBB and EDI in their cost-of-service so that shippers could select the option that best fit their business needs.

TransCapacity's argument is that EDI file transfers compete directly with pipeline provision of interactive web sites, because both approaches can be used to achieve the same result—the provision to the customer of an interactive presentation that enables them to enter information directly from their computer screen. If that were the primary benefit of EDI, however, there would be little need to require EDI file transfers in the first place; a standardized interactive web site, without file transfers, would be sufficient. Interactive webs sites and EDI file transfers are not simply two ways of achieving the same result; they provide two different options from which shippers can choose the approach that best fits their business needs.

Interactive web sites permit human beings to conduct business from their computer desktops, but such web sites do not permit direct computer-to-computer communications, without human intervention. File transfers, on the other hand, permit customers to store and process information on their own computer systems. For instance, using a pipeline's interactive web site, a human being would have to access a pipeline's web site to view capacity release offerings on a screen, but would have to take notes on what offerings were available. In contrast, using EDI file transfers, the information could be automatically downloaded to the customer's computer system which would process the information to the customer's specification. Thus, providing cost-of-service recovery for pipeline interactive web sites does not foreclose competition from third parties. Given the added advantages of file transfers in terms of processing and recordkeeping, third-parties still have a valuable service to provide to shippers even if interactive web site costs are included in cost-of-service.

TransCapacity, in essence, is arguing that communications can be separated into two components: the transmission of information and the graphical interface or presentation of that information on the customer's computer. TransCapacity would include the costs of transmitting information in the pipelines' cost-of-service, but not the cost of the graphical interface, which would have to be recovered through a separate fee.

But this model incorrectly views an interactive web site as two products. An interactive web site is an integrated product in which the transmission of information and the graphical interface are combined in a single product. While a pipeline conceivably could design a system that would transmit information in EDI format, and then use that information to create the graphical interface, most interactive web sites are not designed in this manner and TransCapacity has not shown that such

[43] *See* NGSA, Louisville.

[44] *See* CNG, El Paso/Tennessee, IPAA, Piedmont, PSCo/Cheyenne, RPC, Southern, Western.

[45] TransCapacity maintains that for those shippers paying transportation rates, the pipelines' interactive system is effectively ''free,'' because the shippers have to pay the same transportation rate whether they decide to use the pipelines' or third parties' systems. Those who use the pipelines' communication systems but do not pay transportation rates, TransCapacity maintains, pay nothing to use the service.

a dual approach would be as technologically, or cost, effective as an integrated product.[46] Because interactive web sites combine information transmission and presentation, the costs of these two items cannot be separated, as TransCapacity suggests.

As AGA, *et al.*, correctly points out, TransCapacity's proposal would have the effect of subsidizing those shippers using EDI file transfers. Under TransCapacity's proposal, the costs of EDI file transfers would be included in the cost-of-service, while the total costs for interactive web sites would be excluded. TransCapacity itself does not propose attempting to segregate the transmission related costs from the presentation-related costs. Thus, shippers paying transportation rates would have to pay for EDI services in transportation rates even if they preferred to use interactive web sites.

TransCapacity next argues that cost-of-service treatment for EDI is justifiable because it is far less expensive for pipelines to provide EDI file transfers than an interactive web site. According to TransCapacity, EDI costs only a few hundred thousand dollars while interactive web sites would cost $5–20 million per pipeline. TransCapacity analogizes to Order No. 636 in which the Commission required the pipelines to unbundle (separate) the costs of transmission and merchant service and recommends the Commission establish proceedings under section 5 of the NGA to require pipelines to disclose such costs.

AGA, *et al.*, sought leave to file an Answer to TransCapacity's rehearing request. AGA, *et al.*, maintain that TransCapacity's $5–20 million estimate for interactive web sites is misleading because the majority of costs would be back-office programming costs and personnel which would be a required cost of doing business regardless of whether an interactive web site is built. In other rehearing requests, pipelines and shippers contend that the costs for pipelines (and shippers) to obtain and install EDI translation software is itself expensive.[47]

As the Commission found in Order No. 587–G, attempting to allocate pipeline costs of implementing EDI and interactive web sites could be difficult. AGA, *et al.*, point out that separating EDI from the costs of interactive web sites is particularly difficult given the integrated nature of pipeline computer systems. TransCapacity's analogy to the unbundling in Order No. 636 is inapt since there is no showing that potential competition in communications has nearly the competitive impact of bundled sales and transportation services. Indeed, before attempting to unbundle products, there should be some showing that customers favor unbundled services.[48] Based on the large number of rehearing requests, most customers in the gas industry do not favor a policy where shippers must acquire their presentation interface independently from the transmission of the information.

Moreover, even if costs of both systems could be segregated, establishing a rate would require pipelines to project estimated usage for each system without any actual experience. For instance, pipelines may initially project that few parties will use EDI which could raise the rate for using EDI even if its implementation costs were less. That higher unit cost might then discourage users from trying EDI. Since the gas industry has not had long experience with either EDI or interactive web-based technologies, the rate structure should not bias shippers' determination as to which approach they might prefer. At this stage, the Commission prefers to give shippers the option to choose which system they prefer.

AGA, *et al.*, agree with TransCapacity on one point: they both contend that all users, including non-shippers, should be required to pay the costs of using the pipelines' communication system. They argue that the current system of including all communication costs in cost-of-service results in non-shippers paying none of the costs of the communication system.

No other party to this proceeding has raised this issue, and the Commission is not convinced that non-shippers, such as producers, marketers, or point operators, should pay a special fee for using a pipelines' communication system. These non-shippers are acting on behalf of shippers and unless they can communicate easily with the pipeline, the efficiency of the industry may suffer. A producer or point operator, for example, needs to confirm a nomination for a shipper's gas to flow. While the producer or point operator is not a shipper, it is acting to benefit the shipper when it uses the pipelines' electronic communication system to confirm the nomination. Since the shipper is paying transportation rates, charging a separate fee to the producer or point operator is not necessarily justifiable. Moreover, neither AGA, *et al.*, nor TransCapacity has shown that the costs of pipeline communication systems are so large that they significantly effect shippers' rates.

If the concern is that providing communication service without a separate fee will encourage overuse of the system, the Commission has already given pipelines the ability to charge separate fees to deter overuse. In Order No. 636, the Commission found that pipelines could charge a usage fee to recover the variable costs for operating their communication systems.[49] The majority of pipelines, however, have not seen a need to impose such usage charges.

If the Commission cannot resolve these cost issues on the pleadings in this proceeding, TransCapacity recommends that the Commission establish a generic proceeding in this docket to deal with the cost issues. A generic conference to explore recovery of pipeline communication cost issues does not appear warranted. There has been no showing that these costs are so substantial that they seriously affect the level of rates. Issues about the provision of free service also require inquiry into the actual costs of constructing and operating systems. To the extent parties want to raise such issues, they can be considered in individual pipeline proceedings where actual costs and impacts can be evaluated.[50]

2. Standards for Internet Web Sites

In Order No. 587–G, the Commission adopted a regulation establishing certain minimum standards governing pipeline display of information on their Internet web sites to be implemented August 1, 1998.[51] The regulation requires that: documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement; users must be able to search an entire document

[46] *See* X Areeda, Antitrust Law § 1746b at 227–229 (1996) (integrated products involve some physical or technological linkage that makes the single product superior to a product that the customer can produce by installing the components separately).

[47] *See* INGAA, East-of-California Shippers, Pacific Northwest Shippers.

[48] *See* X Areeda, Antitrust Law, ¶ 1743(a) at 192 (1996) (if buyers do not desire unbundled products, nothing useful could be accomplished by condemning the bundle).

[49] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950 at 30,564 n.171.

[50] As AGA, *et al.*, point out, issues concerning recovery of communication costs have been raised in rate cases. *See* Transcontinental Gas Pipe Line Corporation, 82 FERC ¶ 63,019 (1998) (initial decision).

[51] 18 CFR 284.10(c)(3)(ii).

online for selected words and users must be able to copy selected portions of the documents; and documents on the Web site should be directly downloadable without the need for users to first view the documents on the web site.

KN contends that the Commission should delay implementation of these standards until GISB completes its review of ''look and feel'' standards for Internet web sites. KN maintains that implementation of two sets of standards may cause pipelines to incur duplicative development costs.

The Commission denies the rehearing request. The regulation adopted by the Commission in Order No. 587–G provides a basic foundation to ensure that currently available web browser software will permit users access to all pipeline web sites and that, once at a site, users will, at a minimum, be able to search a document efficiently and copy, paste, and download material. As an example, the regulation ensures that when a pipeline posts its tariff on its web site,[52] users will have the ability to search the entire tariff for the information they are seeking. The standards established in the regulation would be necessary regardless of whatever additional standards GISB devises.

3. Cross-Reference Table

In Order No. 587–G, the Commission required pipelines to provide a table cross-referencing any numeric designation with the applicable name or other information being represented.[53] This requirement was needed to ensure that the Commission and shippers can identify parties to transactions which Commission regulations require to be made public. The GISB standards currently rely on numbers published by Dun & Bradstreet (D&B) to identify shippers. If D&B, however, is unwilling to permit the development of a cross-reference table, the Commission required the pipelines either to cease using numeric designations or develop their numeric identifiers and post the cross-reference table.

Koch contends the Commission should rescind this requirement, because the D&B numbers are proprietary information and development of a substitute cross-reference table would take a considerable amount of time and could require substantial changes in pipeline computer systems that are setup to use the D&B numbers.

The Commission denies Koch's rehearing request. Pipelines are required by Commission regulations to publicly identify the names of shippers, such as those involved in capacity release transactions. Without a cross-reference table, no one receiving the numeric identifier will be able to identify the shipper. Koch suggests that this may not be information anyone wants. For one, the Commission itself needs a cross-reference table to be able to monitor capacity release transactions for possible discrimination. As other industry participants begin to use EDI and other file transfers to obtain information, they too are likely to need a cross-reference table to monitor capacity release transactions.

Koch argues that the D&B information is proprietary, and D&B may not permit disclosure. As the Commission made clear in Order No. 587–G, if D&B is unwilling to permit development of a cross-reference table, the industry can agree to use actual shipper names or develop its own numeric identifier. If the industry took the latter course, no modification of computer systems would be necessary, since the identifier could use the same number of digits as the current D&B numbers. Having to modify computer systems to accept names also should not be unduly burdensome.

As an alterative to pipelines providing the D&B information, Koch suggests the Commission should purchase the cross-reference table from D&B. The Commission does not find this to be an acceptable solution. It is the pipelines' responsibility to comply with Commission regulations and disclose public information and the pipelines must, therefore, choose a method that provides that information. After all, it was the pipelines together with other segments of the industry, not the Commission, who chose D&B numeric designations in the first place.[54] Moreover, the pipelines are the best source for obtaining a complete database listing both the D&B numbers and shippers on each of their systems, and they are responsible for devising a means of providing publicly available information in an intelligible format.

4. Electronic Record Retention

In Order No. 587–G, the Commission required pipelines to maintain for a period of three years all information displayed and all transactions conducted electronically and to be able to recover and regenerate all such electronic information when necessary.[55] The pipelines must make this archived information available to users in electronic form for a reasonable fee. This regulation essentially continued the three-year recordkeeping requirement that applies to pipeline EBBs.[56]

National Fuel requests clarification that the record retention requirement applies to the substance of the information and does not require the pipelines to maintain an exact visual image of the information on the pipelines' web site. The Commission agrees. The regulation does not require pipelines to maintain visual images of web site information. It requires only that pipelines maintain the substance of the information and provide that information, upon request, in an easy to use electronic format including an explanation describing the way in which the information is presented or formatted.

D. Issues on Which The Commission Did Not Promulgate Regulations

In Order No. 587–G, the Commission did not implement regulations as requested by industry members in certain areas: title transfer tracking, cross-contract ranking, multi-tiered allocations, fuel reimbursement, and penalty determinations. The Commission did provide guidance to the industry as to its policies in these areas to assist the industry in developing standards and set a December 31, 1998 date for submission by GISB and others of standards in these areas. Requests for clarification were filed with respect to title transfer tracking and fuel reimbursement

1. Title Transfer Tracking

Title transfer tracking refers to keeping records of transfers of title at nomination points when no transportation is involved. In Order No. 587–G, the Commission found insufficient justification to require pipelines to perform title transfer tracking services. The Commission concluded that shippers have responsibility for furnishing sufficient information to establish their title to gas. The Commission further recognized that shippers might want to use third-parties to track title transfers and required pipelines to accept title transfer information from third-parties. GISB

[52] 18 CFR 284.10(b)(1)(iv) (1998), Electronic Delivery Mechanism Related Standards 4.3.6 (requiring pipelines to post tariff terms and conditions on the Internet).

[53] 18 CFR 284.10(c)(3)(iii).

[54] *See* Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563–A, 59 FR 23624 (May 9, 1994), FERC Stats. & Regs. Regulations Preambles [Jan. 1991-June 1996] ¶ 30,994 at 31,043–44 (May 2, 1994).

[55] 18 CFR 284.10(c)(3)(v).

[56] 18 CFR 284.10(a)(3).

already is working on standards for dealing with title transfer tracking and the Commission set December 31, 1998 for the submission of proposed standards by GISB and others.

NGSA requests clarification that the Commission's guidance on title transfer tracking should not foreclose the consideration by GISB of the option of having pipelines provide title transfer tracking. It also requests clarification that the Commission's statement does not represent a final decision by the Commission on the propriety of requiring pipelines to perform title transfer tracking. NGSA points to a number of outstanding issues at GISB that it claims makes any final Commission pronouncement on this issue premature.

As the Commission found in Order No. 587–G, it does not see a basis for requiring pipelines to perform title transfer tracking service. The Commission provided guidance to the industry on its policies regarding title transfer tracking to ensure that continued debate over whether pipelines should provide this service did not stymy GISB's deliberations. GISB, and other industry participants, therefore, should develop a set of business practice and electronic communication standards dealing with the information a shipper needs to provide to pipelines to establish the shipper's title to gas, as well as standards establishing procedures for pipelines to receive title transfer tracking information from third parties.

As the Commission stated in Order No. 587–G, its determination should not foreclose discussion at GISB regarding options for dealing with title transfer tracking. If GISB reaches a consensus that pipelines should be required to provide this service, the Commission will give such agreement great weight in future considerations of this issue. Once GISB files the standards with the Commission, parties will have an opportunity to file comments on the feasibility of particular standards.

2. Reimbursement for Compressor Fuel

Fuel reimbursement refers to pipeline requirements that shippers provide gas greater than their nominated quantity to compensate the pipeline for the gas it uses to operate its compressors.[57] The applicable fuel percentages are included in pipeline tariffs. The process of calculating fuel reimbursement for shipment across multiple pipelines, and pipeline zones, can be complex and the Commission has adopted GISB standards to simplify this process. To further reduce the difficulty of calculating fuel reimbursement, the Commission, in Order No. 587–G, found that pipelines should accept fuel nominations from third parties, such as marketers. The Commission, however, determined not to impose this requirement until GISB had been given the opportunity to consider standards for how this process would work.

Koch contends the cost and confusion of requiring pipelines to accept fuel nominations from third-parties would exceed any benefit and urges the Commission not to go forward with this requirement. Koch asserts, for example, that such a requirement has the potential to double the number of nominations pipelines have to process. KN also believes that establishing separate procedures for third-party fuel reimbursement is unnecessary, but urges the Commission to reserve judgment until after GISB seeks to develop standards.

The Commission has set December 31, 1998 as the date for submission of standards and comments on fuel reimbursement by GISB and others. The Commission will evaluate its policy regarding third-party fuel reimbursement upon receipt of these filings.

III. Effective Date

The amendments to the Commission's regulations adopted in this order on rehearing will become effective November 5, 1998.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.10, paragraph (c)(3)(i)(B) is revised to read as follows:

§ 284.10 Standards for Pipeline Business Operations and Communications.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) A pipeline must implement this requirement no later than June 1, 2000.

* * * * *

Note—The following appendix will not appear in the **Code of Federal Regulations.**

PARTIES FILING FOR REHEARING DOCKET NO. RM96–1–009

Party filing rehearing request	Abbreviation
Altra Energy Technologies, Inc	Altra.
American Gas Association, American Public Gas Association, Process Gas Consumers (Arizona Public Service Company, Boeing Company, Northwest Industrial Gas Users, Salt River Project and Phelps Dodge Corporation).	AGA, *et al.*
ANR Pipeline Company and Colorado Interstate Gas Company	ANR/CIG.
Associated Gas Distributors of Florida, Inc	AGDF.
Atlanta Gas Light Company and Chattanooga Gas Company	Atlanta/Chattanooga.
The Brooklyn Union Gas Company and Long Island Lighting Company	Brooklyn Union/Long Island.
CNG Transmission Corporation	CNG.
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company	Columbia Gas/Columbia Gulf.
Consumers Energy Company	Consumers.

[57] For instance, if a shipper needs 100 MMBtus at its city-gate, it may have to nominate an additional 10 MMBtus to compensate the pipeline for its compressor fuel requirements.

PARTIES FILING FOR REHEARING DOCKET NO. RM96–1–009

Party filing rehearing request	Abbreviation
Salt River Project Agricultural Improvement and Power District, Arizona Public Service Company, El Paso Electric Company, PEMEX Gas y Petroquimica Basica, Phelps Dodge Corporation, ASARCO, Inc., BHP Copper, Inc., Cyprus Miami Mining Corp., PNM Gas Services, El Paso Municipal Customer Group (Cities of: Mesa, AZ, Safford, AZ, Benson, AZ, Wilcox, AZ, Las Cruces, NM, Socorro, NM, Deming, NM; Town of Ignacio, CO, Navajo Tribal Utility Authority; Graham County Utilities, Inc.; Duncan Rural Service Corp.; and Black Mountain Gas Company).	East-of-California Shippers.
Eberly & Meade, Inc	Eberly & Meade.
El Paso Energy Corporation Interstate Pipelines	El Paso/Tennessee.
Engage Energy US, L.P	Engage.
Enron Capital & Trade Resources Corporation	ECT.
Enron Interstate Pipelines	Enron.
Exxon Company, U.S.A	Exxon.
Florida Cities, Southern Cities, and Louisiana Municipal Gas Association	Florida Municipals.
Florida Power Corporation	Florida Power.
Great Lakes Gas Transmission Limited Partnership	Great Lakes.
Independent Petroleum Association of America	IPAA.
Intermountain Gas Company, IGI Resources, Inc., Cascade Natural Gas Corporation, Northwest Natural Gas Company, and Washington Water Power Company.	Pacific Northwest Shippers.
Interstate Natural Gas Association of America	INGAA.
KN Interstate Pipelines	KN.
Koch Gateway Pipeline Company	Koch.
Louisville Gas & Electric Company	Louisville.
Midland Cogeneration Venture Limited Partnership	MCV.
NorAm Gas Transmission Company and Mississippi River Transmission Corporation	NGT/MRT.
Missouri Gas Energy, a Division of Southern Union Company	MGE.
National Fuel Gas Distribution Corporation	National Fuel Distribution.
National Fuel Gas Supply Corporation	National Fuel.
Natural Gas Clearinghouse	NGC.
Natural Gas Supply Association	NGSA.
Peoples Gas System	Peoples.
The Peoples Gas Light and Coke Company and North Shore Gas Company	Peoples/NorthShore.
PG&E Gas Transmission, Northwest Corporation	PG&E GT–NW.
Piedmont Natural Gas Company, Inc	Piedmont.
Public Service Company of Colorado and Cheyenne Light, Fuel and Power Company	PSCo/Cheyenne.
Reedy Creek Improvement District	Reedy Creek.
Richardson Products Company	RPC.
Southern Natural Gas Company	Southern.
TransCanada Gas Services, a Division of TransCanada Energy Limited	TCGS.
TransCapacity Limited Partnership	TransCapacity.
Western Gas Resources, Inc	Western.
Williams Gas Pipelines	WGP.
Williston Basin Interstate Pipeline Company	Williston Basin.

[FR Doc. 98–26677 Filed 10–5–98; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Iron Dextran Injection

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 an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of iron dextran injection in baby pigs for prevention or treatment of iron deficiency anemia.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–256 that provides for use of iron dextran injection-200 in baby pigs for prevention or treatment of iron deficiency anemia.

Approval of Phoenix Scientific, Inc.'s ANADA 200–256 for iron dextran injection is as a generic copy of Boehringer Ingelheim Vetmedica, Inc.'s NADA 134–708 iron dextran complex injection. The ANADA is approved as of August 17, 1998, and the regulations are amended in 21 CFR 522.1182(b)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 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, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(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 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1182 [Amended]

2. Section 522.1182 *Iron dextran complex injection* is amended in paragraph (b)(2)(i) by removing ''No. 000010'' and adding in its place ''Nos. 000010 and 059130''.

Dated: September 23, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–26648 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Hydrochloride Sterile Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pharmacia & Upjohn Co. One supplemental NADA provides for veterinary prescription use of ceftiofur hydrochloride sterile suspension for intramuscular or subcutaneous injection in cattle for treatment of bovine respiratory disease and acute bovine interdigital necrobacillosis. The second supplemental NADA provides for a revised label warning against use in veal calves.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed two supplements to NADA 140–890. One supplement provides for veterinary prescription use of Excenel® (ceftiofur hydrochloride) Sterile Suspension for intramuscular or subcutaneous injection in cattle for treatment of bovine respiratory disease (BRD, shipping fever, pneumonia) associated with *Pasteurella haemolytica, P. multocida*, and *Haemophilus somnus* and acute bovine interdigital necrobacillosis (foot rot, pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus*. This supplemental NADA is approved as of July 26, 1998. The second supplemental NADA provides for a revised label warning against use in veal calves and is approved as of August 18, 1998. The regulation is amended in 21 CFR part 522.314 to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In addition, due to injection site residues following subcutaneous use of this product in cattle, 21 CFR 556.113 is amended to establish tolerances for residues of ceftiofur in edible tissues of treated cattle. Also, the regulation is amended to establish an acceptable daily intake (ADI) for total ceftiofur residues. The ADI represents the total amount of drug residue that can safely be consumed by humans every day.

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, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this approval for food producing animals qualifies for 3 years of marketing exclusivity beginning July 26, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new species (cattle) for which the supplemental application is approved.

The agency has determined under 21 CFR 25.33(d)(5) 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

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

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 parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.314 is amended by adding paragraph (d)(2) to read as follows:

§ 522.314 Ceftiofur hydrochloride sterile suspension.

* * * * *

(d) * * *

(2) *Cattle*— (i) *Dosage*. 1.1 to 2.2 milligrams per kilogram (0.5 to 1.0 milligrams per pound) of body weight, at 24-hour intervals for 3 to 5 consecutive days. In addition, for bovine respiratory disease, administer 2.2 milligrams per kilogram (1.0 milligram per pound) of body weight every other day on days 1 and 3 (48-hour interval).

(ii) *Indications for use*. For treatment of bovine respiratory disease (BRD, shipping fever, pneumonia) associated with *Pasteurella haemolytica, P. multocida*, and *Haemophilus somnus* and acute bovine interdigital necrobacillosis (foot rot, pododermatitis) associated with *Fusobacterium necrophorum* and *Bacteroides melaninogenicus*.

(iii) *Limitations*. For intramuscular or subcutaneous use only. Do not inject more than 15 milliliters at each intramuscular injection site. Do not slaughter treated cattle for 48 hours (2 days) after last treatment. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.113 is revised to read as follows:

§ 556.113 Ceftiofur.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of ceftiofur is 30 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Swine, poultry, and sheep.* A tolerance for residues of ceftiofur in edible tissue is not required.

(2) *Cattle.* Tolerances are established for residues of desfuroylceftiofur (marker residue) in edible cattle tissues at 8 parts per million in kidney (target tissue), 2 parts per million in the liver, 1 part per million in muscle, and 100 parts per billion in milk.

Dated: September 23, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–26650 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 97F–0522]

Food Additives Permitted in Feed and Drinking Water of Animals; Formaldehyde

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of formaldehyde (CAS No. 50–00–0; 37 percent aqueous solution), at a rate of 5.4 pounds (2.5 kilograms) per ton, as an antimicrobial food additive for maintaining animal feeds and feed ingredients *Salmonella* negative for up to 21 days. This action is in response to a food additive petition filed by Anitox Corp. of Buford, GA.

DATES: Effective October 6, 1998; written objections and request for hearing should be submitted by November 5, 1998.

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

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of February 11, 1998 (63 FR 6945), FDA announced that a food additive petition (animal use) (FAP 2237) had been filed by Anitox Corp., P. O. Box 1929, Buford, GA 30519. The petition proposed that the food additive regulations in § 573.460 *Formaldehyde* (21 CFR 573.460) be amended to provide for the safe use of formaldehyde (37 percent aqueous solution) at a rate of 5.4 pounds per ton of animal feeds and feed ingredients to maintain the animal feeds and feed ingredients free of *Salmonella*. The notice of filing provided for a 30-day comment period on the petitioner's environmental assessment. No comments have been received.

The sponsor has amended the petition three times since it was originally filed, on March 2, 1998, providing additional data to establish utility of formaldehyde for the intended use; July 14, 1998, providing the proposed wording to be included on the product labeling that indicated formaldehyde treatment maintains complete feed and feed ingredients *Salmonella* negative up to 21 days from date of application; and July 20, 1998, providing information requested by CVM on the Good Laboratory Practice Statement, clarifying the chemical description of the product on the labeling and in the proposed regulation, and modifying the references to environmental authorities on the labeling and in the proposed regulation. The amended petition proposes that § 573.460 be amended to provide for the safe use of formaldehyde (CAS No. 50–00–0; 37 percent aqueous solution), at a rate of 5.4 pounds (2.5 kilograms) per ton, as an antimicrobial food additive for maintaining animal feeds and feed ingredients *Salmonella* negative for up to 21 days.

Data submitted by the sponsor in support of the petition permitted the agency to make an independent evaluation of whether formaldehyde could be safely used to achieve the intended purpose. When included in complete feed or feed ingredients as proposed, formaldehyde will constitute 0.1 percent of the feed or feed ingredient. The sponsor submitted data showing that this level of formaldehyde should not present a human food safety concern. Formaldehyde occurs in animals as a normal metabolite and is rapidly oxidized to formic acid which further metabolizes into carbon dioxide and water. Formaldehyde is currently approved for use in poultry feed at the inclusion level requested by the petitioner.

Also, formaldehyde has been approved for use in feeds for beef and non-lactating dairy cattle (§ 573.460(a)(2)). The level of formaldehyde in feeds manufactured according to the approval under § 573.460(a)(2) can be as high as 0.25 percent. Formaldehyde is exempted from tolerance requirements under 40 CFR 180.1032 when used as a pesticide/fungicide in cereal grains and forages. Furthermore, although formaldehyde has been found in chronic rat studies to be carcinogenic when inhaled continuously at high doses (> 2 ppm), it has *not* been found to be carcinogenic in rodents when orally ingested at high doses (~5 percent) for a lifetime (Ref. 1).

Formalin (formaldehyde 37 percent aqueous solution) can be life threatening if improperly handled. The proposed label for formaldehyde (CAS No. 50–00–0; 37 percent aqueous solution) acknowledges this fact. To further minimize concerns for worker safety, the label contains adequate directions for use, strong cautionary statements about potential carcinogenic and adverse respiratory effects; information about emergency aid in case of inhalation, ingestion or skin or eye contact, and a contact address and telephone number for reporting adverse reactions experienced by users or to request a copy of the material safety data sheet (MSDS). The label also contains a statement that ''Formaldehyde is subject to SARA Title III, Section 313 reporting'' (Superfund Amendments and Reauthorization Act (SARA), and the Occupational Safety and Health Administration's (OSHA) human safety guidance regulations). The petition contains assurances by the sponsor that the proposed label will be placed on all containers of the product. However, because formaldehyde is nonproprietary, FDA will include these requirements in the amended formaldehyde food additive regulation. That will enable others marketing formaldehyde to be informed of the requirements and to comply with them.

The petition also includes satisfactory information about the chemical identity of formaldehyde and indicates that formaldehyde will achieve its intended effect in a manner that is safe to the animals consuming the treated products.

II. Conclusion

FDA concludes that the data establish the safety and functionality of formaldehyde (CAS No. 50–00–0; 37 percent aqueous solution), for use as proposed and that the food additive regulations should be amended as set forth below.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

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

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may at any time on or before November 5, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

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

1. FDA Talk Paper ''Formaldehyde,'' T80–27, May 21, 1980, and T82–40, June 17, 1982.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

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 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

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

2. Section 573.460 is amended by revising paragraphs (b)(1), (b)(2)(ii), (b)(2)(iii), and (b)(3)(iv), and by adding paragraph (b)(2)(iv) to read as follows:

§ 573.460 Formaldehyde.

* * * * *

(b)(1) The food additive is formaldehyde (CAS No. 50–00–0; 37 percent aqueous solution). It is used at a rate of 5.4 pounds (2.5 kilograms) per ton of animal feed or feed ingredient. It is an antimicrobial agent used to maintain complete animal feeds or feed ingredients *Salmonella* negative for up to 21 days.

(2) * * *

(ii) A statement that formaldehyde solution which has been stored below 40 °F or allowed to freeze should not be applied to complete animal feeds or feed ingredients.

(iii) Adequate directions for use including a statement that formaldehyde should be uniformly sprayed on and thoroughly mixed into the complete animal feeds or feed ingredients and that the complete animal feeds or feed ingredients so treated shall be labeled as containing formaldehyde. The label must prominently display the statement: ''Treated with formaldehyde to maintain feed *Salmonella* negative. Use within 21 days.''

(iv) The labeling for feed or feed ingredients to which formaldehyde has been added under the provisions of paragraph (b)(1) of this section is required to carry the following statement: ''Treated with formaldehyde to maintain feed *Salmonella* negative. Use within 21 days.''

(3) * * *

(iv) Statements reflecting requirements of applicable sections of the Superfund Amendments and Reauthorization Act (SARA), and the Occupational Safety and Health Administration's (OSHA) human safety guidance regulations.

* * * * *

Dated: September 28, 1998.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 98–26646 Filed 10-5-98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1270

[Docket No. NHTSA–98–4493]

RIN 2127–AH41

Open Container Laws

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA–21) Restoration Act, which provides for the transfer of Federal-aid highway construction funds to 23 U.S.C. 402 State and Community Highway Safety Program grant funds for any State that fails to enact and enforce a conforming ''open container'' law.

This regulation is being published as an interim final rule, which will go into effect prior to providing notice and the opportunity for comment. Following the close of the comment period, NHTSA will publish a separate document responding to comments and, if appropriate, will amend provisions of the regulation.

DATES: This interim final rule becomes effective on November 5, 1998. Comments on this interim rule are due no later than December 7, 1998.

ADDRESSES: Written comments should refer to the docket number of this notice

and be submitted (preferably in two copies) to: Docket Management, Room PL–401 Section, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Jennifer Higley, Office of State and Community Services, NSC–01, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Mr. Bing Wong, Office of Highway Safety, HHS–20, telephone (202) 366–2169; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21), H.R. 2400, Pub. L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, a technical corrections bill, entitled the TEA–21 Restoration Act, Pub. L. 105–206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA–21 conference report. Section 1405 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 154, which established a transfer program under which a percentage of a State's Federal-aid highway construction funds will be transferred to the State's apportionment under Section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming ''open container'' law.

In accordance with Section 154, these funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws, or States may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

As provided in Section 154, to avoid the transfer of funds, State ''open container'' laws must prohibit the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the State.

This new program was established to address the issue of impaired driving, which is a serious national problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs. In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes and 7 percent of all crashes. Every 32 minutes, someone in this country dies in an alcohol-related crash. In 1994, alcohol-involved crashes resulted in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Open Container Law Incentives

State open container laws can serve as an important tool in the fight against impaired driving. In order to encourage States to enact and enforce effective impaired driving measures (including open container laws), Congress enacted 23 U.S.C. Section 410 (the Section 410 program). Under this program, States could qualify for supplemental grant funds if they were eligible for a basic Section 410 grant, and they had an open container law that met certain requirements.

TEA–21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage States to enact open container laws, but this new program was inadvertently omitted from the TEA–21 conference report. The program was included instead in the TEA–21 Restoration Act, which was signed into law on July 22, 1998.

Section 154 Open Container Law Program

Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under Sections 104(b)(1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under Section 402 of that title, if the State does not meet certain statutory requirements. All 50 States, the District of Columbia and Puerto Rico are considered to be States, for the purpose of this program.

To avoid the transfer, a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

Consistent with other programs that are administered by the agencies, a State's law must have been both passed and come into effect to permit a State to rely on the law to avoid the transfer of funds. In addition, the State must be actively enforcing the law.

Any State that does not enact and enforce a conforming open container law will be subject to a transfer of funds. In accordance with Section 154, if a State does not meet the statutory requirements on October 1, 2000 or October 1, 2001, an amount equal to one and on-half percent of the funds apportioned to the State on those dates under each of Sections 104(b)(1), (3) and (4) of title 23 of the United States Code will be transferred to the State's apportionment under Section 402 of that title. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

Section 154 and this implementing regulation, provides also that the amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4).

In other words, the total amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections.

The funds transferred to Section 402 under this program are to be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for

the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. The Act provides that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Compliance Criteria

To avoid the transfer of funds under this program, Section 154 provides that a State must enact and enforce:

> A law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

The interim final rule specifies a number of elements that State open container laws must meet to be considered to be conforming and to enable a State to avoid the transfer of Federal-aid highway construction funds. The elements are described below.

1. Prohibits Possession of Any Open Alcoholic Beverage Container and the Consumption of Any Alcoholic Beverage

To avoid the transfer of funds, the State's open container law must prohibit the possession of any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way. The State's law must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way.

The agencies are aware of 16 States that prohibit the consumption of alcoholic beverages, but not the possession of an open container in the absence of consumption. These laws do not conform to the requirements of the regulation.

2. In the Passenger Area of Any Motor Vehicle

To avoid the transfer of funds, the State's open container law prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages must apply whenever such activity is taking place in the passenger area of any motor vehicle, consistent with the definitions of ''motor vehicle'' and ''passenger area'' that are included in § 1270.3 of the regulation.

The agencies have defined ''motor vehicle'' in the regulation to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways. The term does not include a vehicle operated exclusively on a rail or rails.

Passenger area is defined in the regulation to mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.

The agencies have reviewed existing State open container laws and identified certain exceptions to this element contained in those laws. The agencies' review revealed that two States prohibit occupants from possessing open alcoholic beverage containers in the passenger area, but do not consider it to be an offense if the container is located in a locked glove compartment of the vehicle.

The agencies' review revealed also that a number of States prohibit occupants from possessing open alcoholic beverage containers in motor vehicles, but provide an exception when the vehicle is not equipped with a trunk. These States do not consider it to be an offense to keep an open alcoholic beverage container behind the last upright seat of such vehicles or in an area of such vehicles not normally occupied by the driver or passengers.

These exceptions will not disqualify an otherwise qualified State from complying with the requirements of the regulation. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements of the regulation. The agencies note, for example, that one State permits occupants to keep an open alcoholic beverage container in a closed glove compartment of a motor vehicle. Such an exception is not acceptable under the regulation.

3. All Alcoholic Beverages

To avoid the transfer of funds, the State's open container law must apply to all ''alcoholic beverages.'' In accordance with section 154, ''alcoholic beverage'' is defined in the regulation to include all types of alcoholic beverages, including beer, wine and distilled spirits. Beer and wine are covered by the definition if they contain one-half of 1 percent or more of alcohol by volume. Distilled spirits containing any amount of alcohol are covered. Accordingly, a State law that does not define 3.2 percent beer, for instance, as an alcoholic beverage would not conform to the requirements of the regulation.

An ''open alcoholic beverage container'' is any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open or has a broken seal, or the contents of which are partially removed.

4. Applies to All Occupants

To avoid the transfer of funds, the State's open container law must apply to all occupants of the motor vehicle, including the driver and all passengers.

The agencies are aware of one State that prohibits drivers from possessing an open alcoholic beverage container, but passengers are not covered by the prohibition. Since this law does not apply to all occupants in the passenger area, it does not conform to the requirements of the regulation.

The statute provides for two exceptions, however, to the all-occupant requirement. A State's law will be deemed to apply to all occupants if the law prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in ''the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation'' (such as buses, taxis and limousines) and those ''in the living quarters of a house coach or house trailer.''

The regulation clarifies that the exceptions may apply to the consumption of alcoholic beverages by a passenger as well as to the passenger's possession of open alcoholic beverage containers. The driver of a motor vehicle, however, may not be covered by the exception.

5. Located on a Public Highway or the Right-of-way of a Public Highway

To avoid the transfer of funds, the State's open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. The agencies have defined ''public highway or the right-of-way of a public highway'' to mean the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

The agencies are aware of 11 States with open container laws that apply only when the motor vehicle is being operated on a highway, but do not prohibit possession or consumption by persons in a vehicle that is stopped or parked on the highway or on the right-of-way, along the side of the highway. These laws do not conform to the requirements of the regulation.

The agencies are also aware of one State with an open container law that applies only to motor vehicles in

parking areas in certain counties of the State. Since this law does not apply when the vehicle is located on the highway or right-of-way and since it does not apply Statewide, it does not conform to the requirements of the regulation.

6. Primary Enforcement

To avoid the transfer of funds, the State must provide for primary enforcement of its open container law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause to believe that another violation had been committed. A State open container law that provides for secondary enforcement will not conform to the requirements of the regulation.

The agencies are aware of one State open container law that can be enforced only as a secondary action when the driver has been determined to have a blood alcohol concentration above a specified minimum blood alcohol level. Since this open container law cannot be enforced in the absence of this condition, it does not conform to the requirements of the regulation.

Demonstrating Compliance

Section 154 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, this interim final rule provides that each State must submit a certification demonstrating compliance.

The certifications submitted by the States under this Part will provide the agencies with the basis for finding States in compliance with the Open Container requirements. Accordingly, until a State has been determined to be in compliance with these requirements, a State must submit a certification by an appropriate State official that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270 of this Part.

Certifications must include citations to the State's conforming open container law. These citations must include all applicable provisions of the State's code including, for example, citations to the State's definition of alcoholic beverage.

Once a State has been determined to be in compliance with the requirements, the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed or the State had ceased to enforce the open container law. It is the responsibility of each State to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

States are required to submit their certifications on or before September 30, 2000, to avoid the transfer of FY 2001 funds on October 1, 2000.

States that are found in noncompliance with these requirements in any fiscal year, once they have enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid the transfer of funds in that following fiscal year. Such certifications demonstrating compliance must be submitted on or before the first day (October 1) of the following fiscal year.

The agencies strongly encourage States to submit their certifications in advance. The early submission of these documents will enable the agencies to inform States as quickly as possible whether or not their laws satisfy the requirements of Section 154 and the implementing regulation, and will provide States with noncomplying laws an opportunity to take the necessary steps to meet these requirements before the date for the transfer of funds.

The agencies also strongly encourage States that are considering the enactment of open container legislation to request preliminary reviews of such legislation from the agencies while the legislation is still pending. The agencies would determine in these preliminary reviews whether the legislation, if enacted, will conform to the new regulation, thereby avoiding a situation in which a State unintentionally enacts a non-conforming open container law and the State remains subject to the transfer of funds. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

Enforcement

Section 154 provides that, to qualify for grant funding, a State must not only enact a conforming law, but must also enforce the law. To ensure the effective implementation of an open container law, the agencies encourage the States to enforce their open container laws rigorously. In particular, the agencies recommend that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. States should also take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws.

To demonstrate that they are enforcing their laws under the regulation, however, States are required only to submit a certification that they are enforcing their laws.

Notification of Compliance

For each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with Section 154, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not submitted a certification or if the State has submitted a certification and it does not conform to Section 154 and the implementing regulation, the agencies will make an initial determination that the State does not comply with Section 154 and with this regulation, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have an opportunity to rebut the initial determination. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

As stated earlier, NHTSA and the FHWA expect that States will want to know as soon as possible whether their laws satisfy the requirements of Section 154, or they may want assistance in drafting conforming legislation.

States are strongly encouraged to submit certifications in advance, and to request preliminary reviews and assistance from the agencies. Requests should be submitted through NHTSA's Regional Administrators, who will refer these requests to appropriate NHTSA and FHWA offices for review.

Interim Final Rule

This document is being published as an interim final rule. Accordingly, the new regulations in part 1270 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agencies is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. Some State legislatures do not meet every year. Other State legislatures do meet every year, but limit their business every other year to certain limited matters, such as

budget and spending issues. The agencies are aware of six State legislatures that are not scheduled to meet at all in the Year 2000, and additional State legislatures may have limited agendas in that year. These States will have just one opportunity (during the 1999 session of their State legislatures) to enact conforming legislation, and they are preparing agendas and proposed legislation now for their 1999 legislative sessions. These States have an urgent need to know what the criteria will be as soon as possible so they can develop and enact conforming legislation and avoid the transfer of funds on October 1, 2000.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to avoid the transfer of funds under this new program are similar to procedures that States have followed in other programs administered by NHTSA and/or the FHWA. These procedures were established by rulemaking and were subject to prior notice and the opportunity for comment.

Moreover, the criteria that States must meet to demonstrate that they have a conforming open container law are derived from the Federal statute and are similar to the criteria that the agencies followed when an open container criterion was included as an incentive under the Section 410 program. NHTSA's Section 410 program regulations were subject to prior notice and the opportunity for comment.

For these reasons, the agencies believe that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agencies request written comments on these new regulations. All comments submitted in response to this document will be considered by the agencies. Following the close of the comment period, the agencies will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1270.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by December 7, 1998. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and the FHWA will mail copies to all Governors' Representatives for Highway Safety and State Departments of Transportation.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket 98–4493 in Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce an open container law, in conformance with Pub. L. 105–206, and thereby avoid the transfer of Federal-aid highway funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of open container laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA–21 Restoration Act. As the result of this new Federal program, and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce laws prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages. This interim final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate, because the resulting annual

expenditures are not expected to exceed the $100 million threshold. In addition, the program is optional to the States. States may choose to enact and enforce a conforming open container law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

List of Subjects in 23 CFR Part 1270

Alcohol and alcoholic beverages, Grant programs—transportation, Highway safety.

In accordance with the foregoing, a new Subchapter D—Transfer and Sanction Programs is added to Chapter II of Title 23 Code of Federal Regulations and a new Part 1270 is added to Subchapter D to read as follows:

SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

PART 1270—OPEN CONTAINER LAWS

Sec.
1270.1 Scope.
1270.2 Purpose.
1270.3 Definitions.
1270.4 Compliance criteria.
1270.5 Certification requirements.
1270.6 Transfer of funds.
1270.7 Use of transferred funds.
1270.8 Procedures affecting States in noncompliance.

Authority: 23 U.S.C. 154; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1270.1 Scope.

This part prescribes the requirements necessary to implement Section 154 of Title 23 of the United States Code which encourages States to enact and enforce open container laws.

§ 1270.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 154.

§ 1270.3 Definitions.

As used in this part:

(a) *Alcoholic beverage* means:

(1) Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(2) Wine of not less than one-half of 1 per centum of alcohol by volume; or

(3) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(b) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(c) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(d) *Open alcoholic beverage container* means any bottle, can, or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(i) Is open or has a broken seal; or

(ii) The contents of which are partially removed.

(e) *Passenger area* means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.

(f) *Public highway or right-of-way of a public highway* means the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(g) *State* means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 1270.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1270.6 of this part, a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

(b) The law must apply to:

(1) The possession of any open alcoholic beverage container and the consumption of any alcoholic beverage;

(2) The passenger area of any motor vehicle;

(3) All alcoholic beverages;

(4) All occupants of a motor vehicle; and (5) All motor vehicles located a public highway or the right-of-way of a public highway.

(c) The law must provide for primary enforcement.

(d) *Exceptions.* (1) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle, but permits the possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk, the State shall be deemed to have in effect a law that applies to the passenger area of any vehicle, as provided in paragraph (b)(2) of this section.

(2) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container or the consumption of any alcoholic beverage by the driver (but not by a passenger) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law that applies to all occupants of a motor vehicle, as provided in paragraph (b)(4) of this section.

§ 1270.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 154, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 154 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270.4 of this part. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional

Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 154, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's open container law changes or the State ceases to enforce such law.

§ 1270.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

§ 1270.7 Use of transferred funds.

(a) Any funds transferred under § 1270.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Federal share of the cost of any project carried out with the funds transferred under § 1270.6 of this part shall be 100 percent.

(d) The amount to be transferred under § 1270.6 of this part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(e)(1) If any funds are transferred under § 1270.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1270.6 of this part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(f) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1270.6 to the apportionment of a State under such section.

§ 1270.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 154 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1270.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 154 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 154 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1270.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: September 30, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–26639 Filed 10–1–98; 9:31 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–059]

RIN 2115–AE46

Special Local Regulations; Columbus Day Regatta Sailboat Race, Miami, FL

AGENCY: Cost Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Columbus Day Regatta Sailboat Race. The event will be held in Biscayne Bay from 9 a.m. to 5 p.m. Eastern Daylight Time (EDT) each day, on October 10 and 11, 1998. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 9 a.m. and terminate at 5 p.m. each day on October 10 and 11, 1998.

FOR FURTHER INFORMATION CONTACT: QMCS T.E. KJERULFF Coast Guard Group Miami, Florida at (305) 535–4448.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Columbus Day Regatta, Inc., is sponsoring a sailboat race with approximately 500 sailboats, ranging in length from 20 to 60 feet, participating in the event. The race will take place in Biscayne Bay from Dinner Key to Soldier Key on October 10 and 11, 1998. There will also be approximately fifty (50) spectator craft. These regulations are intended to promote safe navigation on the waters of Biscayne Bay by controlling the traffic entering, exiting, and traveling within the regulated area.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to safety interests as there was not sufficient time remaining after receipt of the permit request to publish proposed rules in advance of the event or to provide for a delayed effective date.

Regulatory Evaluation

This regulation 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 Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only eight hours each day of the event and the regulated area would not have a significant impact on commercial traffic.

Small Entities

Under the Regulatory Flexibility Act (U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulation will only be in effect for approximately eight hours on two days in a limited area of Biscayne Bay with little impact on commercial traffic.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking 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 action and has determined pursuant to Figure 2–1, paragraph 34 (h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100–[AMENDED]

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

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–059 is added to read as follows:

§ 100.35T–07–059 Columbus Day Regatta Sailboat Race; Miami, Florida

(a) *Definitions:*

(1) *Regulated Area.* A regulated area is established for the race area by joining the following points (all coordinates reference Datum: NAD 83):

25–43.399N, 80–12.500W;
25–43.399N, 80–10.500W;
25–33.000N, 80–11.500W;
25–33.000N, 80–15.900W;
25–40.000N, 80–15.000W.

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

(b) *Special local regulations:*

(1) Entry into the regulated area by other than event participants is prohibiting unless otherwise authorized by the Patrol Commander. At the completion of the daily races traffic may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any and all vessels to take immediate steps to avoid collision. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(3) Spectators are required to maintain a safe distance from the racecourse at all times.

(c) *Dates:* This section becomes effective at 9 a.m. and terminates at 5 p.m. each day on October 10 and 11, 1998.

Dated: September 21, 1998.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–26728 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 120 and 128

[CGD 91–012]

RIN 2115–AD75

Security for Passenger Vessels and Passenger Terminals

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard implements a final rule for the security of passenger vessels and passenger terminals. The purpose of this rule, as of the interim rule now in effect, is to deter, or mitigate the results of, terrorism and other unlawful acts against passenger vessels and passenger terminals. The rule should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

DATES: This final rule is effective on November 13, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477. A copy of the material listed in *Incorporation by Reference* of this preamble is available for inspection at room 1210, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR John Farthing, Project Manager, Vessel and Facility Operating Standards Division, 202–267–6451.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 25, 1994, the Coast Guard published [59 FR 14290] a notice of proposed rulemaking (NPRM) entitled ''Security for Passenger Vessels and Passenger Terminals.'' The Coast Guard

held three public meetings and received over 115 comments on the NPRM.

On July 18, 1996, the Coast Guard published [61 FR 37648] an interim rule requiring the development of Security Plans based on three threat levels. The interim rule required all passenger vessels and passenger terminals covered by the rule to submit Plans by October 16, 1996.

On October 3, 1996, the Coast Guard published [61 FR 51597] a Notice of Policy clarifying the tonnage requirement and the submission of Terminal Security Plans by entities other than the terminals themselves.

Background and Purpose

The death of a U.S. citizen, during the hijacking of the ACHILLE LAURO in 1985, demonstrates the threat of terrorism to passenger vessels and associated terminals. This vulnerability has caused major national and international concern about terrorism. To address this threat, the President signed into law the Omnibus Diplomatic Security and Antiterrorism Act of 1986 [Pub. L. 99–399; 100 Stat. 889], Title IX of which constitutes the International Maritime and Port Security Act. That Act amended the Ports and Waterways Safety Act [33 U.S.C. 1221], and provided the Coast Guard authority to ''carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism'' [§ 906].

The International Maritime Organization (IMO) adopted and published ''Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships,'' also in 1986. Those measures, which are guidelines, apply to passenger ships engaged on international voyages of 24 hours or more and to the port facilities that serve them. We, the Coast Guard, published a notice listing these measures as ''guidelines'' and encouraging voluntary compliance [52 FR 11587; April 9, 1987].

Initially, the response was promising as many passenger vessels and associated passenger terminals operating in the U.S. began implementing the guidelines. However, we determined that voluntary compliance had not produced the industry-wide level of security necessary to ensure that acts of terrorism are deterred, or responded to, in the best possible manner. We have seen an increase in domestic terrorism along with a consistent, if not increasing, threat of international terrorism. For these reasons, the Secretary of the Department of Transportation asked all agencies of the Department to reassess their security procedures and standards. Consequently, we determined that implementing a rule to ensure that passenger vessels and passenger terminals are prepared to handle terrorist threats or actions was necessary.

On July 18, 1996, the Coast Guard published [61 FR 37648] an interim rule requiring the development of Security Plans by passenger vessels and passenger terminals. The interim rule required all passenger vessels and passenger terminals covered by the rule to submit Plans by October 16, 1996.

Implementation of the interim rule has been highly successful. The passenger vessels and passenger terminals affected by this rule have developed plans to ensure that passenger vessels and passenger terminals are prepared to handle terrorist threats or actions. Additionally, the Department of Transportation, the Coast Guard, and industry have cooperatively embarked on several related projects to enhance security for these vessels and terminals.

Discussion of Comments and Changes

1. General

We received six comments on the interim rule, most of which expressed satisfaction with the rule as written.

Several of the sections, and their headings, in Parts 120 and 128 have been revised to reflect the new ''plain language'' style of regulations.

2. Definition of Terms Relative to Security Level

Several comments expressed concern about the use of the terms ''High Threat,'' ''Medium Threat,'' and ''Low Threat.'' They felt that these terms were confusing because many other agencies use the same terms with no commonality among the definitions.

We agree that these terms are confusing and have changed (120.110 of the rule by removing those terms and substituting three Security Levels with similar definitions.

3. Definitions of ''embarks'' and ''disembarks''

There were also several comments expressing concern about the meaning of embarking and disembarking passengers. Some felt this meant only the initial embarkation or final debarkation of passengers. They recommended that the rule should be changed to define these terms.

We do not agree. We consider the concepts embarking and disembarking to be clear and to need no further definition. ''Webster's New World Dictionary'' defines the terms embark and disembark as ''to put or take (passengers or goods) aboard a ship ...'' and ''to unload from or leave a ship ...'' respectively. Security is necessary anytime passengers or stores are placed on or taken off a vessel. The degree of security will vary depending on the location, the operation, and the perceived threat.

4. Other Types of Vessels

One comment raised a question about the requirement of Security Plans for other types of vessels (such as tankers and cargo vessels) that also carry passengers for hire.

At present, we do not require Plans for vessels whose primary service is not the carriage of passengers. In the future, should the degree of threat increase, we may amend this rule to encompass other vessels that handle passengers regardless of service.

5. Terminal Operators

One comment raised the issue of who is the terminal operator, and the issue also arose during several meetings between industry and local Coast Guard Captains of the Port (COTPs).

This issue (together with the issue of tonnage) led to the publication of the Notice of Policy on October 3, 1996. We understand that terminals differ in size and complexity. It is in the interest of all parties to allow for the submission of Security Plans for terminals by entities other than the terminals themselves. These Plans can be based upon legal contracts between vessels and terminals or upon responsibilities for absolute control over terminal areas. In some instances annexes to the Security Plan for vessels may substitute for Plans for terminals, with the approval of the COTPs, enabling vessels to operate in remote sites where typical terminal facilities do not exist. This will still provide a degree of security for their passengers commensurate with the reduced level of activity taking place in those sites. We have incorporated this policy clarification into this rule by inserting the text from the Notice of Policy into a new (120.303 and a new (128.305, after renumbering (128.305 to 128.307, (128.307 to 128.309, and (128.309 to 128.311.

6. Exemption from ''Freedom of Information Act''

During the previous comment periods, many parties asked to have the required Security Plans exempted from requests under the ''Freedom of Information Act.'' The Coast Guard, in turn, asked Congress for express authority to withhold them.

Congress granted this authority in the ''Coast Guard Authorization Act of

1996'' [Pub. L. 104–324], which exempts these plans from required disclosure to the public [(302; 33 U.S.C. 1226(c)].

7. Plain Language

In an effort to develop a more customer-oriented approach to drafting regulations, the Coast Guard will publish the final rule using ''plain language'' techniques. Clear, more readable regulations are important for the success of our government's reinvention initiative.

Incorporation by Reference

The Director of the Federal Register has approved the material in ((120.220, 120.300, 128.220, and 128.300 from International Maritime Organization (IMO), MSC Circular 443, ''Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships'', dated September 26, 1986, for incorporation by reference effective October 16, 1996, under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the source listed in ((120.120 and 128.120.

Regulatory Assessment

This rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866. The Office of Management and Budget (OMB) reviewed the rulemaking under that Order. This final rule needs an assessment of potential cost and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation [44 FR 11040 (February 26, 1979)]. We prepared an Assessment, which is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the Assessment follows:

We expect that this rule will affect about 137 passenger vessels and 53 passenger terminals. Of the vessels, about 134 are cruise vessels, each carrying in excess of 100 passengers and operating out of U.S. ports. Of the terminals, all serve these cruise vessels. There may be up to 40 more vessels and 20 more terminals that will be subject to this rule only on occasion. Such occasions could include where a vessel subject to this rule would schedule a port call outside its usual itinerary (i.e. for a special event), or if a vessel not usually subject to this rule was chartered for a voyage that would make it applicable. There are around 4 million passengers a year that will be subject to, and will benefit from, the security measures required by this rule.

We estimate initial total implementing costs at $611,040. We estimate annual total operating costs at $30,768. If the number of passengers remains constant at about 4 million a year, the cost to consumers will be negligible.

The potential exists for the loss of many lives and for significant property damage from even a single act of terrorism against a passenger vessel. Although the benefits of avoiding such an act cannot be exactly quantified, we assert that the benefits from this rule outweigh the costs.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], we must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Firms affected by this rulemaking are classified as ''Water Transportation of Passengers, N.E.C.'', Standard Industrial Code (SIC) #4489. According to 13 CFR Part 121, small businesses under this SIC are those firms that employ less than 500 people.

Of the 137 passenger vessels affected by this rulemaking, the average displacement of each vessel is 31,050 gross tons. The average passenger capacity is 1,171 passengers and the crew size averages 440 persons. All but 12 of these affected passenger vessels belong to a fleet of two or more vessels. The tonnage of the vessels, the crew size, and passenger capacity together suggest that the majority of these passenger vessels are not owned and operated by small entities.

To ensure compliance with the Small Business Regulatory Enforcement Fairness Act, the Coast Guard analyzed the affected population to determine with more certainty the prospective impact upon small entities. The Passenger Vessel Association (PVA) was contacted to determine if any of the firms operating passenger vessels affected by this rulemaking were members. Approximately 98 percent of PVA members are unaffected small entities. Only one affected vessel was found to be operated by a PVA member, but its operator was not a small entity.

The Coast Guard contacted companies which own and operate only one vessel. We determined that two of the single-vessel companies being affected by this rule are small entities and that two of the single-vessel companies affected by this rule exceed the 500-employee threshold and were not small entities. Information on the remaining eight single-vessel companies was not made available to the Coast Guard. We concluded that this rule impacts at least two, and up to ten, small entities.

The costs attributable to this rule are a function of the time it takes to perform security planning and surveys. Security requirements for small vessels and terminals will be less complex, and therefore less expensive to implement, than for large vessels and terminals. The reduced complexity will result in costs to small entities that are less than the relatively low average initial cost of $3,216 per vessel/terminal and annual costs of $161 per vessel/terminal calculated for the rulemaking. Very few small entities are affected, in all likelihood no more than 10 firms, and the per-firm costs are quite low. Accordingly, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we offered through the interim rule to assist small entities to understand this final rule so they can better evaluate its effects on them and participate in the rulemaking. We received no comments in response to the interim rule on this matter.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*]. It requires the development of security plans for both passenger vessels and passenger terminals. It also requires the amendment of the plans to keep them current and the reporting of unlawful acts to the Coast Guard. It affects about 137 vessels and 53 terminals. During previous comment periods we received no comments concerning the collection of information.

As required by 5 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget for its review of the collection of information. OMB has approved the collection. The sections are §§ 120.220, 120.300, 128.220, 128.300, 128.305, and 128.309, and the control number for them is OMB Control Number 2115–0622, which expires on January 31, 2000.

There is no requirement for persons to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

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

Environment

We have considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2.e.(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule implements statutory authority of the Coast Guard in maritime safety. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 120

Passenger vessels, Incorporation by reference, Reporting and recordkeeping requirements, Security.

33 CFR Part 128

Incorporation by reference, Reporting and recordkeeping requirements. Security, Waterfront facilities.

Accordingly, the Coast Guard adopts with the following changes the interim rule amending 33 CFR parts 120 and 128, which was published at 61 FR 37648 onJuly 18, 1996, as a final rule:

PART 120-SECURITY OF PASSENGER VESSELS

1. The cite of authority for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Revise the heading of § 120.100 to read as follows:

§ 120.100 Does this part apply to me?

* * * * *

3. In § 120.110 remove definitions of ''High Threat,'' ''Low Threat,'' and ''Medium Threat,'' and add, in alphabetical order, definitions to read as follows:

§ 120.110 Definitions.

As used in this part:

* * * * *

Security Level I means the degree of security precautions to take when the threat of an unlawful act against a vessel or terminal is, though possible, not likely.

Security Level II means the degree of security precautions to take when the threat of an unlawful act against a vessel or terminal is possible and intelligence indicates that terrorists are likely to be active within a specific area, or against a type of vessel or terminal.

Security Level III means the degree of security precautions to take when the threat of an unlawful act against a vessel or terminal is probable or imminent and intelligence indicates that terrorists have chosen specific targets.

* * * * *

We means the United States Coast Guard.

You, unless otherwise specified, means the owner, operator, or charterer of a passenger vessel.

4. Revise § 120.200 to read as follows:

§ 120.200 What must my Vessel Security Program cover?

(a) If this part applies to your passenger vessel, you must implement a program for that vessel that—

(1) Provides for the safety and security of persons and property traveling aboard the vessel, against unlawful acts;

(2) Prevents or deters the carriage aboard the vessel of any prohibited weapon, incendiary, or explosive, on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive, in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to the vessel and to restricted areas aboard the vessel;

(4) Provides appropriate security measures for Security Levels I, II, and III that allow for increases in security when the Commandant or Captain of the Port (COTP) advises you that a threat of an unlawful act exists and may affect the vessel or any person aboard it;

(5) Designates, by name, a security officer for the vessel;

(6) Ensures that all members of the crew are adequately trained to perform their duties relative to security; and

(7) Provides for coordination with terminal security while in port.

(b) If this part applies to your passenger vessel, you must work with the operator of each terminal at which that vessel embarks or disembarks passengers, to provide security for the passengers and the vessel. You need not duplicate any provisions fulfilled by the terminal unless directed to by the Commandant. When a provision is fulfilled by the terminal, the applicable section of the Vessel Security Plan required by § 120.300 must refer to that fact.

5. Revise § 120.210 and its heading to read as follows:

§ 120.210 What are the responsibilities of my vessel security officer?

(a) If this part applies to your passenger vessel, you must designate a security officer for your vessel.

(b) This officer must ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The Vessel Security Plan required by § 120.300 is implemented and maintained, and amendments to correct its deficiencies and satisfy the security requirements for the vessel are proposed;

(3) Adequate training for members of the crew responsible for security is provided;

(4) Regular security inspections of the vessel are conducted;

(5) Vigilance is encouraged, as well as is general awareness of security, aboard the vessel;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported under § 120.220; and

(7) Coordination, for implementation of the Vessel Security Plan required by § 120.300, takes place with the terminal security officer at each terminal where the vessel embarks or disembarks passengers.

6. Revise § 120.220 to read as follows:

§ 120.220 What must I do to report an unlawful act and related activity?

(a) Either you or the vessel security officer must report each breach of security, unlawful act, or threat of an unlawful act against any of your passenger vessels to which this part applies, or against any person aboard it, that occurs in a place subject to the jurisdiction of the United States. You must report the incident to both the COTP and to the local office of the Federal Bureau of Investigation (FBI). Also, if your vessel is a U.S.-flag vessel, you must report each such incident that occurs in a place outside the jurisdiction of the United States to the hotline of the Response Center of the Department of Transportation at 1–800–424–0201, or, from within metropolitan Washington, D.C., at 202–267–2675.

(b) Either you or the vessel security officer must file a written report of the incident, using the form ''Report on an Unlawful Act,'' contained in IMO MSC Circular 443, which you or the officer must forward as soon as possible to Commandant (G-MOR), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. You may initially file the report with Commandant (G-MOR) by fax at (202) 267–4085 or –4065.

7. Revise § 120.300 to read as follows:

§ 120.300 What is required to be in a Vessel Security Plan?

(a) If your passenger vessel is subject to this part, you must develop and

maintain, in writing, for that vessel, an appropriate Vessel Security Plan that—

(1) Is unique to the vessel;

(2) Articulates the program required by § 120.200; and

(3) Includes an appendix, for each port where the vessel embarks or disembarks passengers, that contains port-specific security information.

(b) The Vessel Security Plan must be developed and maintained under the guidance in IMO MSC Circular 443, and must establish security measures to take for Security Levels I, II, and III, to—

(1) Deter unauthorized access to the vessel and its restricted areas;

(2) Deter the introduction of prohibited weapons, incendiaries, or explosives aboard the vessel;

(3) Encourage vigilance, as well as general awareness of security, aboard the vessel;

(4) Provide adequate training to members of the crew for security aboard the vessel;

(5) Coordinate responsibilities for security with the operator of each terminal where the vessel embarks or disembarks passengers; and

(6) Provide information to members of the crew and to law-enforcement personnel, in case of an incident affecting security.

(c) You must amend the Vessel Security Plan to address any known deficiencies.

(d) You must restrict the distribution, disclosure, and availability of information contained in the Vessel Security Plan to those persons with an operational need to know.

8. Add new § 120.303 to read as follows:

§ 120.303 Who must submit a Terminal Security Plan?

(a) You must submit a Terminal Security Plan whenever—

(1) There is an agreement with the owner or operator of a terminal that you will submit the Plan;

(2) You have exclusive use of the pier and terminal building immediately adjacent to the pier and have complete control of that area;

(3) There is no terminal; or

(4) Passengers embark or disembark but no baggage or stores are loaded or offloaded.

(b) In the situations described in paragraphs (a)(3) and (4) of this section, you may, with the permission of the cognizant COTP, use an annex to the vessel's security plan instead of a Terminal Security Plan.

(c) The owner or operator of a terminal must submit a Terminal Security Plan whenever—

(1) There is an agreement with you that the owner or operator of the terminal will submit the Plan;

(2) No security agreement exists; or

(3) (i) At least one vessel other than a passenger vessel uses the terminal;

(ii) More than one passenger vessel line uses the terminal; or

(iii) The terminal loads or offloads baggage or stores.

9. Revise § 120.305 to read as follows:

§ 120.305 What is the procedure for examination?

(a) You must submit two copies of each Vessel Security Plan required by § 120.300, or of any Terminal Security Plan or annex required or permitted under § 120.303 or § 128.305 of this chapter, to the Commanding Officer, National Maritime Center (NMC), 4200 Wilson Blvd., Suite 510, Arlington, Virginia 22203, for examination at least 60 days before embarking passengers on a voyage described in § 120.100.

(b) If the Commanding Officer of the NMC, finds that the Vessel Security Plan meets the requirements of § 120.300, he or she will return a copy to you marked ''Examined by the Coast Guard.''

(c) If the Commanding Officer of the NMC, finds that the Vessel Security Plan does not meet the requirements of § 120.300, he or she will return the Plan with an explanation of why it does not meet them.

(d) No vessel subject to this part may embark or disembark passengers in the United States, unless it holds either a Vessel Security Plan that we have examined or a letter from the Commanding Officer of the NMC, stating that we are currently reviewing the Plan and that normal operations may continue until we have determined whether the Plan meets the requirements of § 120.300.

10. Revise § 120.307 to read as follows:

§ 120.307 What do I do if I need to amend my Vessel Security Plan?

(a) If your passenger vessel is subject to this part, you must amend your Vessel Security Plan when directed by the Commanding Officer of the NMC, and may amend it on your own initiative.

(b) You must submit each proposed amendment to the Vessel Security Plan you initiate, including changes to any appendix required by § 120.300(a)(3), to the Commanding Officer of the NMC, for review, at least 30 days before the amendment is to take effect, unless he or she allows a shorter period. He or she will examine the amendment and respond according to § 120.305.

(c) The Commanding Officer of the NMC, may direct you to amend your Vessel Security Plan if he or she determines that implementation of the Plan is not providing effective security. Except in an emergency, he or she will issue you a written notice of matters to address and will allow you at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance where the COTP determines that implementation of the Plan is not providing effective security, and the procedures in paragraph (c) of this section are impracticable, the COTP may give you an order to implement increases in security immediately. The order will incorporate a statement of the reasons for it.

11. Revise § 120.309 to read as follows:

§ 120.309 What is my right of appeal?

Any person directly affected by a decision or action taken by the Commanding Officer of the NMC, under this part, may appeal that action or decision to the Assistant Commandant for Marine Safety and Environmental Protection [Commandant (G–M)] according to the procedures in 46 CFR 1.03–15.

PART 128—SECURITY OF PASSENGER TERMINALS

12. The cite of authority for part 128 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

13. Revise the heading of § 128.100 to read as follows:

§ 128.100 Does this part apply to me?

* * * * *

14. Revise § 128.110 to read as follows:

§ 128.110 Definitions.

The definitions in part 120 of this chapter apply to this part, except for the definition of *You*. As used in this part:

You means the owner or operator of a passenger terminal.

15. Revise § 128.200 to read as follows:

§ 128.200 What must my Terminal Security Plan cover?

(a) If this part applies to your passenger terminal, you must implement for that terminal a program that—

(1) Provides for the safety and security of persons and property in the terminal and aboard each passenger vessel subject to part 120 of this chapter moored at the terminal, against unlawful acts;

(2) Prevents or deters the carriage aboard any such vessel moored at the

terminal of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to any such vessel and to restricted areas in the terminal;

(4) Provides appropriate security measures for Security Levels I, II, and III that allow for increases in security when the Commandant or Captain of the Port (COTP) advises you that a threat of an unlawful act exists and may affect the terminal, a vessel, or any person aboard the vessel or terminal;

(5) Designates, by name, a security officer for the terminal;

(6) Provides for the evaluation of all security personnel of the terminal, before hiring, to determine suitability for employment; and

(7) Provides for coordination with vessel security while any passenger vessel subject to part 120 of this chapter is moored at the terminal.

(b) If this part applies to your passenger terminal, you must work with the operator of each passenger vessel subject to part 120 of this chapter, to provide security for the passengers, the terminal, and the vessel. You need not duplicate any provisions fulfilled by the vessel unless directed to by the COTP. When a provision is fulfilled by a vessel, the applicable section of the Terminal Security Plan required by § 128.300 must refer to that fact.

16. Revise § 128.210 to read as follows:

§ 128.210 What are the responsibilities of my terminal security officer?

(a) If this part applies to your passenger terminal, you must designate a security officer for the terminal.

(b) This officer must ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The Terminal Security Plan required by § 128.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements of the terminal are proposed;

(3) Adequate training for personnel responsible for security is provided;

(4) Regular security inspections of the terminal are conducted;

(5) Vigilance is encouraged, as well as is general awareness of security, at the terminal;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported under § 128.220 and records of the incident are maintained; and

(7) Coordination, for implementation of the Terminal Security Plan required by § 128.300, takes place with the vessel security officer of each vessel that embarks or disembarks passengers at the terminal.

17. Revise § 128.220 to read as follows:

§ 128.220 What must I do to report an unlawful act and related activity?

(a) Either you or the terminal security officer must report each breach of security, unlawful act, or threat of an unlawful act against the terminal, a passenger vessel subject to part 120 of this chapter destined for or moored at that terminal, or any person aboard the terminal or vessel, to the COTP, to the local office of the Federal Bureau of Investigation (FBI), and to the local police agency having jurisdiction over the terminal.

(b) Either you or the terminal security officer must file a written report of the incident using the form ''Report on an Unlawful Act,'' contained in IMO MSC Circular 443, as soon as possible, to the local COTP.

18. Revise § 128.300 to read as follows:

§ 128.300 What is required to be in a Terminal Security Plan?

(a) If your passenger terminal is subject to this part, you must develop and maintain, in writing, for that terminal, an appropriate Terminal Security Plan that articulates the program required by § 128.200.

(b) The Terminal Security Plan must be developed and maintained under the guidance in IMO MSC Circular 443 and must address the security of passengers aboard passenger vessels subject to part 120 of this chapter, of members of crews of such vessels, and of employees of the terminal, by establishing security measures to take for Security Levels I, II, and III, to—

(1) Deter unauthorized access to the terminal and its restricted areas and to any passenger vessel moored at the terminal;

(2) Deter the introduction of prohibited weapons, incendiaries, and explosives into the terminal and its restricted areas and onto any passenger vessel moored at the terminal;

(3) Encourage vigilance, as well as general awareness of security, at the terminal;

(4) Provide adequate security training to employees of the terminal;

(5) Coordinate responsibilities for security with the operator of each vessel that embarks or disembarks passengers at the terminal; and

(6) Provide information to employees of the terminal and to law-enforcement personnel, in case of an incident affecting security.

(c) You must amend the Terminal Security Plan to address any known deficiencies.

(d) You must restrict the distribution, disclosure, and availability of information contained in the Terminal Security Plan to those persons with an operational need to know.

19. Redesignate §§ 128.305, 128.307, and 128.309 as §§ 128.307, 128.309, and 128.311, respectively; add new § 128.305 to read as follows:

§ 128.305 Who must submit a Terminal Security Plan?

(a) The owner or operator of the vessel must submit a Terminal Security Plan whenever—

(1) There is an agreement with you that the owner or operator of the vessel will submit the Plan;

(2) The owner or operator of the vessel has exclusive use of the pier and terminal building immediately adjacent to the pier and has complete control of that area;

(3) There is no terminal; or

(4) Passengers embark or disembark but no baggage or stores are loaded or offloaded.

(b) In the situations described in paragraphs (a)(3) and (4) of this section, the owner or operator of the vessel may, with the permission of the cognizant COTP, use an annex to the vessel's security plan instead of a Terminal Security Plan.

(c) You must submit a Terminal Security Plan whenever—

(1) There is an agreement with the owner or operator of the vessel that you will submit the Plan;

(2) No security agreement exists; or

(3)(i) At least one vessel other than a passenger vessel uses the terminal;

(ii) More than one passenger vessel line uses the terminal; or

(iii) The terminal loads or offloads baggage or stores.

20. Revise § 128.307 to read as follows:

§ 128.307 What is the procedure for examination?

(a) Unless a plan for your passenger terminal will be submitted by an entity other than yourself under § 128.305 or § 120.303 of this chapter, you must submit two copies of each Terminal Security Plan required by § 128.300 to the COTP for examination at least 60 days before transferring passengers to or from a vessel subject to part 120 of this chapter.

(b) If the COTP finds that the Terminal Security Plan meets the requirements of § 128.300, he or she will

return a copy to you marked ''Examined by the Coast Guard.''

(c) If the COTP finds that the Terminal Security Plan does not meet the requirements of § 128.300, he or she will return the Plan with an explanation of why it does not meet them.

(d) No terminal subject to this part may transfer passengers to or from a passenger vessel subject to part 120 of this chapter, unless it holds either a Terminal Security Plan that we have examined or a letter from the COTP stating that we are currently reviewing the Plan and that normal operations may continue until the COTP has determined whether the Plan meets the requirements of § 128.300.

21. Revise § 128.309 to read as follows:

§ 128.309 What do I do if I need to amend my Terminal Security Plan?

(a) If your passenger terminal is subject to this part, you must amend your Terminal Security Plan when directed by the COTP, and may amend it on your own initiative.

(b) You must submit each proposed amendment to the Terminal Security Plan you initiate to the COTP for review at least 30 days before the amendment is to take effect, unless he or she allows a shorter period. The COTP will examine the amendment and respond according to § 128.307.

(c) The COTP may direct you to amend your Terminal Security Plan if he or she determines that implementation of the Plan is not providing effective security. Except in an emergency, he or she will issue you a written notice of matters to address and will allow you at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give you an order to implement increases in security immediately. The order will incorporate a statement of the reasons for it.

22. Revise the heading of § 128.311 to read as follows:

§ 128.311 What is my right of appeal?

* * * * *

Dated: September 25, 1998.

James M. Loy,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 98–26578 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–15–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, Alaska, Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the Final Rule (COTP Western Alaska 98–003) which was published August 28, 1998 [63 FR 45949–45950]. The rule establishes a 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 Corportion, Narrow Cape, Kodiak Island, Alaska. The new information to be added corrects the date when the safety zone will be established.

DATES: This correction is effective October 6, 1998.

FOR FURTHER INFORMATION CONTACT: LCDR Rick Rodriguez at Chief of Port Operations, Coast Guard Captain of the Port of Western Alaska, 510 L Street, Suite 100 Anchorage, Alaska, 99501, (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Final Rule incorrectly states that the safety zone will be established from October 6, 1998, through October 20, 1998. The correct establishment date for the safety zone is October 20, 1998 through November 20, 1998.

Correction of Publication

Accordingly, in the publication on August 28, 1998, of the Final Rule (COTP Western Alaska 98–003), which is the subject of FR Doc. 98–23221 [63 FR 45949–45950], make following corrections:

1. On page 45949 in the second & third columns remove the dates ''October 6, 1998'' and ''October 20, 1998'' and add the dates October 20, 1998'' and ''November 20, 1998'', respectively.

2. On page 45950, in the first column, remove ''6 a.m. September 26, 1998 through 10 p.m. October 8, 1998'' and add ''October 20, 1998 through November 20, 1998'' in its place.

3. On page 45950, in the second column, in § 165.T17–003, in paragraph (b), remove ''October 6, 1998'' and ''October 20, 1998'' and add the dates ''October 20, 1998'' and ''November 20, 1998'' respectively.

Dated: September 25, 1998.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 98–26727 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ09

Eligibility Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning eligibility verification reports (EVRs) for recipients of pension under programs in effect prior to January 1, 1979. The amendment reduces the number of circumstances under which VA requires such pensioners to furnish annual EVRs. The intended effect of this amendment is to reduce the reporting burden on these beneficiaries, reduce the workload at VA regional offices, and enable VA to use its resources more effectively.

DATES: Effective date: October 6, 1998.

Comment date: Comments must be received on or before December 7, 1998.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN: 2900–AJ09.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). (In addition, see the Paperwork Reduction Act heading under the Supplementary Information section of this preamble regarding submission of comments on the information collection burden.)

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The term ''eligibility verification report'' (EVR)

means a VA form requesting information, such as income and marital status, that VA needs to determine or verify eligibility for its need-based benefit programs, such as old law pension and section 306 pension. The term ''old law pension'' means the disability and death pension programs that were in effect on June 30, 1960. The term ''section 306 pension'' means those disability and death pension programs in effect on December 31, 1978.

Old law and section 306 pension are need-based benefits in that an individual's eligibility for either depends on his or her income being below a certain limit. If an individual's income exceeds the limit, the individual is no longer eligible. Also, the rate of pension paid is affected by the number of dependents the eligible individual has. For these reasons, EVRs request information concerning income and marital status.

Former 38 CFR 3.256(b)(3) required every old law and section 306 pension recipient, as a condition to continuing to receive pension, to furnish VA an EVR upon request. Former 38 CFR 3.256(b)(2) required VA to require an EVR under the following circumstances: (i) If the Social Security Administration has not verified the recipient's Social Security number and, if the recipient is married, his or her spouse's Social Security number; (ii) if there is any reason to believe that the recipient or, if the recipient's spouse's income could affect entitlement, his or her spouse may have received income other than Social Security benefits during the current or previous calendar year; or (iii) if the Secretary determines that an EVR is necessary to preserve program integrity. This interim final rule requires VA to require an EVR from an old-law or section-306 pension recipient only if the Secretary determines that an EVR is necessary to preserve program integrity.

VA has determined that it is no longer necessary to require EVRs from old law or section 306 pension recipients solely on the bases described in former 38 CFR 3.256(b)(2)(i) and (ii). VA required EVRs in these circumstances to help determine whether the recipients' income exceeded applicable limits. However, the annual income of all old law and section 306 pension recipients has been below applicable limits every year since 1978, and we believe it unlikely that their income will exceed applicable limits in the future. If a recipient's income does exceed the applicable limit, 38 CFR 3.256(a) still requires that he or she promptly notify VA.

Based on these facts, we have determined that it is no longer necessary to require old law and section 306 pension recipients to submit EVRs based on unverified Social Security numbers or suspected additional income.

Requiring fewer EVRs from old law and section 306 pensioners will reduce the reporting burden for these elderly beneficiaries (the average age is 75) without significantly increasing the risk of erroneous pension payments. Because the rates of payment do not change, changes in income have no effect on payments except in the rare instance of income exceeding the income limit. Furthermore, VA has data exchange programs with other agencies such as the Internal Revenue Service, the Social Security Administration, the Railroad Retirement Board, and the Office of Personnel Management. These computer matching programs increase the likelihood that VA will learn of increases in income in those rare instances where the beneficiary failed to report the change. This amendment will also reduce workload at VA regional offices and enable VA to redirect scarce resources to other types of claims processing.

VA will still require old law and section 306 pensioners to furnish EVRs if it determines that it is necessary to preserve program integrity, which means it is necessary for VA, or an agency with oversight authority over VA, to verify that EVR-exempt beneficiaries are accurately reporting changes in entitlement factors. 38 CFR 3.256 is amended accordingly.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501–3520), this interim final rule includes information collection provisions in 38 CFR 3.256 and 3.277. Prior to the effective date of this document, the information collections contained in §§ 3.256 and 3.277 were approved by OMB through November 30, 2000, under OMB Control No. 2900–0101. For some recipients of pension under programs in effect prior to January 1, 1979, this interim final rule eliminates the previous requirement they submit EVRs to VA annually. The only action concerning information collection taken by this document is to eliminate certain collections of information contained in the approval under OMB Control No. 2900–0101. In accordance with section 3507(j) of the Act and 5 CFR 1320.13, we have requested that OMB approve the information collection provisions in §§ 3.256 and § 3.277 under OMB Control No. 2900–0101 on an emergency basis for 180 days.

VA intends to seek an extension of the approval for the information collection changes made by this document. Therefore, VA asks for comments regarding the information collection provisions contained in §§ 3.256 and 3.277. After considering any comments received during the comment period, VA will submit a copy of the proposed information collection provisions to OMB for approval.

This document eliminates 22,500 reporting hours from the total of 354,725 burden hours that OMB had previously approved under the same control number. The Secretary has determined that the collection of information is essential to the mission of the agency, that use of the collection of information in this document is needed before the normal time periods established under 5 CFR part 1320, and that public harm is reasonably likely to result if normal clearance procedures are followed. This interim final rule eliminates the need for VA to mail approximately 45,000 elderly recipients of old law or section 306 pensions reporting forms that would require responses. Accordingly, emergency approval of the information collection as amended by this interim final rule is needed to eliminate VA's obligation to mail out unnecessary EVR forms and thereby avoid an unnecessary burden to the public.

Title: Eligibility Verification Reports.

Summary of collection of information: This collection of information consists of written information concerning entitlement factors in VA's income-based benefit programs, pension and parents' dependency and indemnity compensation, that a person must submit on a form prescribed by the Secretary within 60 days of a request by VA. It also consists of written information concerning the same entitlement factors that a person must report promptly if there is a change affecting entitlement, but need not submit on a form.

Description of need for information and proposed use of information: Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary of changes affecting entitlement to such benefits and respond within 60 days of a request by VA for written information concerning entitlement factors. The information is required to comply with statutory eligibility requirements.

Description of likely respondents: Individuals or households.

Estimated number of respondents: 664,450.

Estimated frequency of responses: Once per year.

Estimated total annual reporting and recordkeeping burden: 332,225 hours.

Estimated average burden per collection: 30 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the collection of information must be submitted by October 14, 1998 and be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900—AJ09.'' We have asked OMB to act by October 21 1998.

Administrative Procedure Act

There is good cause under the provisions of 5 U.S.C. 553 to publish this interim final rule without regard to prior notice and comment and effective date provisions. Compliance with these provisions would be impracticable, unnecessary, and contrary to the public interest. This interim final rule merely eliminates collections of information that are no longer needed.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This interim final rule affects only individuals.

Executive Order 12866

OMB has reviewed this document under the provisions of Executive Order 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 18, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.256 is revised to read as follows:

§ 3.256 Eligibility reporting requirements.

(a) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary in writing of any change affecting entitlement in any of the following:

(1) Income;

(2) Net worth or corpus of estate;

(3) Marital status;

(4) Nursing home patient status;

(5) School enrollment status of a child 18 years of age or older; or

(6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(b) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth (if applicable), dependency status, and any other information necessary to determine or verify entitlement to pension or parents' dependency and indemnity compensation.

(2) VA will not require old law or section 306 pensioners to submit eligibility verification reports unless the Secretary determines that doing so is necessary to preserve program integrity.

(3) The Secretary shall require an eligibility verification report from individuals receiving parents' dependency and indemnity compensation under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number.

(ii) If there is reason to believe that the beneficiary or, if the spouse's income could affect entitlement, his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(4) An individual who applies for or receives pension or parents' dependency and indemnity compensation as defined in §§ 3.3 or 3.5 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(c) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: Sec. 306(a)(2) and (b)(3), Pub. L. 95–588, 92 Stat. 2508–2509; 38 U.S.C. 1315(e))

3. Section 3.277 is republished as follows:

§ 3.277 Eligibility reporting requirements.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Department of Veterans Affairs may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child from whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as

a *dependent child*), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a *surviving child*), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension must promptly notify the Secretary in writing of any change affecting entitlement in any of the following:

(1) Income;

(2) Net worth or corpus of estate;

(3) Marital status;

(4) Nursing home patient status;

(5) School enrollment status of a child 18 years of age or older; or

(6) Any other factor that affects entitlement to benefits under the provisions of this part.

(c) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

(2) The Secretary shall require an eligibility verification report under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;

(ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in § 3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request,

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(Authority: 38 U.S.C. 1506)

[FR Doc. 98–26781 Filed 10–5–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME014–6994c; A–1–FRL–6172–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Source Surveillance Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On August 11, 1998, the EPA published a proposed rule (63 FR 42784) and a direct final rule (63 FR 42726) approving Maine's Chapter 117 ''Source Surveillance Regulation.'' The EPA is withdrawing this final rule due to adverse comments and will summarize and address the comments received in a subsequent final rule (based upon the proposed rule cited above).

DATES: This withdrawal of the direct final rule will be effective October 6, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 28, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–26789 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered or Threatened Status for Five Desert Milk-vetch Taxa From California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended, (Act) for three plants—*Astragalus jaegerianus* (Lane Mountain milk-vetch), *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), and *Astragalus tricarinatus* (triple-ribbed milk-vetch); and threatened status for two plants, *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), and *Astragalus magdalenae* var. *peirsonii (Peirson's milk-vetch).* Many taxa in the genus *Astragalus*, including the taxa covered by this rule, are endemic to habitats with specific substrate or hydrologic conditions and are, therefore, naturally limited in distribution by the availability of habitat. The five taxa in this rule occur in specific habitats within the three deserts of California; the Sonoran, Mojave, and Great Basin deserts. *Astragalus jaegerianus* occurs in granitic soils in San Bernardino County; *A. lentiginosus* var. *coachellae* occurs in the dune system of the Coachella Valley in Riverside County; *A. lentiginosus* var. *piscinensis* grows in moist alkaline flats near the border of Inyo and Mono counties; *A. tricarinatus* occurs in canyon slopes and washes in Riverside and San Bernardino counties and *A. magdalenae* var. *peirsonii* occurs primarily on dunes in Imperial County.

These five plant taxa are threatened by one or more of the following—mining, urban development, off-highway vehicle (OHV) use and recreational development, pipeline maintenance, alteration of a wetland ecosystem, and low recruitment possibly due to rabbit herbivory or altered soil hydrology following fishery enhancement activities. Military training, and cattle grazing are potential threats. Two of the taxa are known from fewer than 200 individuals during the last decade. They are vulnerable to extinction from random natural events

or unplanned activities that can destroy a substantial portion of remaining individuals. This rule implements the protection and recovery provisions afforded by the Act for these plants.

DATES: This rule is effective on November 5, 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, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Diane Steeck, Botanist, at the above address (telephone 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

The genus *Astragalus*, in the pea family (Fabaceae), is well represented in North America with close to 400 species. In California, the genus is highly diversified in the deserts and surrounding desert ranges. *Astragalus jaegerianus* (Lane Mountain milk-vetch), *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch), and *Astragalus tricarinatus* (triple-ribbed milk-vetch) are adapted to habitats with specific substrate or hydrologic conditions in the three deserts that occur in California. The southernmost desert, the Sonoran (or Colorado) Desert, includes the southeastern corner of California and the Coachella Valley, and extends southward into Mexico. The Sonoran Desert occurs at elevations primarily below 600 meters (m) (2,000 feet (ft)), where a diverse mixture of cacti and succulent plants comprise a significant component of the vegetation. To the north of the Sonoran Desert lies the Mojave Desert, with a transitional zone between these deserts occurring within the bounds of Joshua Tree National Park. The Mojave Desert, at elevations primarily between 600 and 1,200 m (2,000 and 4,000 ft), is characterized by the presence of Joshua trees (*Yucca brevifolia*) scattered within creosote bush (*Larrea tridentata*) scrub. The Great Basin Desert covers most of Nevada as well as portions of Utah, Idaho, and Oregon. In California, the Great Basin Desert extends from the Oregon border southward along the east side of the Sierra Nevada range, where it intergrades with the Mojave Desert in southern Owens Valley. The Great Basin Desert, at elevations above 1,200 m (4,000 ft), is characterized by the dominance of sagebrush (*Artemisia* spp.). Descriptions of Mojave and Sonoran Desert plant communities can be found in Rowlands et al. (1982), Thorne (1982), Thorne (1986), Vasek and Barbour (1988), and Burk (1988). The sagebrush-dominated communities of the Great Basin Desert are described by Young *et al.* (1986) and Holland and Keil (1990).

Discussion of the Five Taxa

Astragalus jaegerianus (Lane Mountain milk-vetch) was described by Philip A. Munz (1941) based on a specimen he collected ''. * * * 2 miles south of Jay Mine, about 12 miles south of Goldstone * * *'' in San Bernardino County, in April 1941. This species has been consistently recognized by botanists in floristic treatments (Munz and Keck 1959, Munz 1974, Spellenberg 1993).

Astragalus jaegerianus is a wispy perennial that is somewhat woody at the base, with stems 30 to 50 centimeters (cm) (12 to 20 inches (in)) long, that often grow in a zigzag pattern, usually up through low bushes. Leaves have 7 to 15 silvery pubescent linear leaflets, 5 to 25 millimeters (mm) (0.2 to 1.0 in) long. The flowers, 5 to 15 per stalk, are cream to purple, or lighter with veins of a deeper color. The keel petals are less than 10 mm (0.4 in) long. Fruits are pencil-shaped, linear, smooth, and pendant, 16 to 25 mm (0.6 to 1.0 in) long.

After the early collections in 1939 and 1941, the plant was not collected again until it was rediscovered in 1985 about 8 kilometers (km) (5 miles (mi)) north of the presumed type locality. A total of 87 plants were counted (Mark Bagley, John Chesnut, and Mary DeDecker, *in litt.* 1985). Intensive surveys over the next seven years led to the discovery of a few additional small populations. The most recently discovered population, located a few miles west of Lane Mountain, closely approximates the type locality (Connie Rutherford, U.S. Fish and Wildlife Service (Service), *in litt.* 1992; Brandt *et al.* 1993).

Currently, *Astragalus jaegerianus* is known from four general sites. Three of the sites occur within an area of about 35 square km (14 sq mi) and the plants within each site are widely scattered. Fewer than 130 plants have been located at these three sites in the last decade, although repeated searches of suitable habitat have been made (J. Chestnut, M. Bagley, and M. DeDecker, *in litt.* 1985; Brandt *et al.* 1993; C. Rutherford, *in litt.* 1995). The fourth site, near Lane Mountain, is located about 14 km (9 mi) to the south. No more than 30 plants have been found at the Lane Mountain site since its discovery in 1992 (Connie Rutherford, Service, pers. comm. 1996). At the northern sites, *A. jaegerianus* occurs on lands managed by the Department of Defense (DOD) at the National Training Center (NTC) of Fort Irwin, and on adjacent lands managed by the Bureau of Land Management (BLM). At the southernmost site, near Lane Mountain, plants are known to occur on BLM lands, although Lane Mountain Mesa is a patchwork of public and private lands.

At the northern sites, *Astragalus jaegerianus* has been found most often in shrub associations where Mormon tea (*Ephedra nevadensis*) or Cooper goldenbush (*Ericameria cooperi*) are the dominant or subdominant shrub species within the larger creosote bush/white bursage (*Larrea tridentata/Ambrosia dumosa*) community (Brandt *et al* 1993). At all sites, Astragalus jaegerianus plants are almost exclusively found growing up through shrubs or, occasionally, through clumps of dead bunchgrass (Brandt *et al* 1993; C. Rutherford, pers. comm. 1996). On the NTC, *Astragalus jaegerianus* grows in granitic soils that are more coarse, at least on the surface, than surrounding soils (Brandt *et al* 1993).

Threats to *Astragalus jaegerianus* include habitat destruction from dry wash gold mining, other mining activities (materials lease mining), rock and mineral collecting, off-highway vehicle (OHV) activity, and potentially from increasing fire frequency and any associated fire suppression activities. At the time the proposed rule was being prepared, military vehicle maneuvers occurred in the plant's habitat. Since that time, the military has installed protective fencing; however, trespass by military vehicles remains a potential threat until the efficacy of the fencing can be determined. In addition, an expansion of the NTC at Fort Irwin onto surrounding BLM lands has been proposed. Although the location of the expansion has not yet been chosen, locations that support *A. jaegerianus* are being considered. Few individuals combined with the proximity of the species to roads and active mining areas in both the northern and Lane Mountain sites, and to private lands and dwellings at the Lane Mountain site, make *A. jaegerianus* vulnerable to unplanned, potentially destructive, human activities. In the proposed rule, sheep grazing was considered a minor threat. Sheep grazing no longer occurs on the lands where *A. jaegerianus* grows (Tom Eagen, BLM, pers. comm. 1996).

Astragalus lentiginosus was first described by Sir William Jackson Hooker (1831) based on a specimen collected by David Douglas in the ''. . .

subalpine ranges of the Blue Mountains [Oregon] of North-West America.'' The species has been placed in three different genera—*Tragacantha lentiginosa* (Kuntze 1891), *Phaca lentiginosa* (Piper 1906), and *Cystium lentiginosum* (Rydberg 1913). However, these segregate genera have not been sustained in the literature and this species is currently recognized as *Astragalus lentiginosus* (Barneby 1945, Munz and Keck 1959, Munz 1974, Spellenberg 1993). The epithet *lentiginosus* means ''freckled'' and refers to its mottled fruit or pod.

Astragalus lentiginosus var. *coachellae* (Coachella Valley milk-vetch) was described by Rupert Barneby in Shreve and Wiggins (1964) based on a 1913 collection by Alice Eastwood near Palm Springs, Riverside County. Prior to publication of this variety, Barneby (1945) had included this taxon under *A. lentiginosus* var. *coulteri.* Subsequently, Barneby determined that variety *coulteri* was based upon material that was quite different, resulting in the description of the variety *coachellae.* The recent treatment by Spellenberg (1993) supports Barneby's treatment.

Astragalus lentiginosus var. *coachellae* is an erect winter annual or short-lived perennial, 20 to 30 centimeters (cm) (8 to 12 in) tall and covered with white-silky hairs. The flowers are deep pink-purple, in a loose or dense 13-to 25-flowered raceme (an inflorescence in which stalked flowers are arranged singly along a central stem). The two-chambered fruits are strongly inflated.

Astragalus lentiginosus var. *coachellae* is found on loose wind-blown or alluvial sands on dunes or flats in the Coachella Valley, Riverside County, California. Barneby (1964) described this taxon as ''. . . apparently confined to Coachella Valley . . . ,'' although in 1973, he identified specimens collected from an area about 80 km (50 mi) to the east, near Desert Center, as *A. lentiginosus* var. *coachellae* (specimens located at the herbarium of Rancho Santa Ana Botanic Garden; Gary D. Wallace, Service, pers. comm. 1996). Currently, populations are known only from the Coachella Valley between Cabazon and Indio (California Natural Diversity Database (CNDDB) 1996; Katie Barrows, Coachella Mountains Conservancy, *in litt.* 1996).

The historical abundance of *Astragalus lentiginosus* var. *coachellae* in the Coachella Valley is unknown. Twenty to twenty-five ''occurrences'' of *A. lentiginosus* var. *coachellae* have been recorded as extant within the past decade (CNDDB 1996; K. Barrows, *in litt.* 1996) and 90 percent of these are located within 5 km (3 mi) of Interstate 10 from north of Indio to Cabazon (Barrows 1987, CNDDB 1996, K. Barrows, *in litt.* 1996). About 20 to 25 percent of the occurrences of *A. lentiginosus* var. *coachellae* are protected in the three preserves of the Coachella Valley Preserve System. The largest preserve protects populations of *A. lentiginosus* var. *coachellae* in the southeastern part of its range and two other preserves in the central range of this taxon also support populations. The Coachella Valley Preserve System, jointly owned and managed by the BLM, The Nature Conservancy (TNC), California Department of Fish and Game (CDFG), California Department of Parks and Recreation, and the Service, was established in 1986 to conserve habitat for the federally threatened Coachella Valley fringe-toed lizard (*Uma inornata*), and other taxa endemic to the habitats of the Coachella Valley. None of the plants in the northwestern part of the range of *A. lentiginosus* var. *coachellae* are currently protected, although acquisition of habitat in this region is being considered by the Coachella Valley Mountains Conservancy (K. Barrows, pers. comm. 1996). About 75 to 80 percent of the occurrences of *A. lentiginosus* var. *coachellae* are located on unprotected lands. Of those, about 7 percent are on lands owned by Southern California Edison, about 7 percent are on lands owned by the Agua Caliente Indian Reservation, and the remainder are privately owned.

Population sizes vary widely from year to year, depending on environmental conditions, making assessment of total numbers of individual plants difficult. At sites where *Astragalus lentiginosus* var. *coachellae* was monitored in 1995, densities varied from 1.25 plants per hectare (ha) (.67 plants per acre (ac)) to 60 plants per ha (24 plants per ac) (Sanders and Thomas Olsen Associates 1995). One of the largest known remaining sites for this taxon occurs in the north, near Snow Creek Road. In 1995, this area supported about 60 plants per ha (24 plants per ac), the greatest densities of *A. lentiginosus* var. *coachellae* found during 1995 surveys (Barrows 1987, Sanders and Thomas Olsen Associates 1995).

The primary threat to *Astragalus lentiginosus* var. *coachellae* is habitat destruction due to the extensive urban development occurring in the Coachella Valley. Urbanization destroys populations by direct conversion of the land on which they occur and by altering or reducing the source and transport of blow sands that maintain the sand habitats of the Coachella Valley. Populations of *A. lentiginosus* var. *coachellae* have been altered by development of wind energy parks and degraded by OHV use (Barrows 1987; K. Barrows, pers. comm. 1996). Initially, *A. lentiginosus* var. *coachellae* may respond favorably to low-levels of artificial disturbance, but its long-term response in these situations is unknown (Stevens and Pearson 1984; BLM, *in litt.* 1992; Pearson *in litt.* 1993).

Astragalus lentiginosus var. *piscinensis* (Fish Slough milk-vetch) was described by Barneby (1977) based on a collection made by Mary DeDecker in 1974, from BLM Spring, Fish Slough, northwest of Bishop. Spellenberg (1993) retained this variety in his treatment of *Astragalus.* The plant is a prostrate perennial, with few-branching stems that are up to 1 m (3 ft) long and are covered with stiff appressed hairs. The leaflets are reduced to only 1 to 2 pairs laterally, with a greatly elongated terminal leaflet. The lavender flowers are arranged in loose but short 5-to 12-flowered racemes. The fruits are papery, strongly inflated with a complete septum, and are covered with appressed hairs.

Astragalus lentiginosus var. *piscinensis* is restricted to a 6-mile stretch of alkaline flats paralleling Fish Slough, a desert wetland ecosystem in Inyo and Mono counties, California. It grows in seasonally moist alkaline flats that support a cordgrass-dropseed (*Spartina-Sporobolis*) association and is absent from nearby lower areas that are seasonally flooded (Ferren 1991a; Wayne Ferren, University of California at Santa Barbara, *in litt.* 1992). Appropriate alkali habitat covers less than 219 ha (540 ac) of the slough and portions of this area do not currently support *A. lentiginosus* var. *piscinensis,* for unknown reasons (Ferren 1991, Odion *et al.* 1991).

At the time this taxon was proposed, the total number of plants at Fish Slough was thought to be about 700. In 1992, during intensive surveys of all potential habitat of *Astragalus lentiginosus* var. *piscinensis* within Fish Slough, about 3,200 individuals were found widely scattered or grouped over approximately 212 ha (530 ac) (Patti Novak, Los Angeles Department of Water and Power (LADWP), *in litt.* 1992). This first complete, intensive, survey for this species was conducted over several days and covered all suitable alkali habitat at Fish Slough. During the survey, several of the previously monitored sites were found to be much greater in extent than had been previously known. However, one site that had supported six plants in

earlier visits failed to support any, and another previously recorded site showed a substantial decline—44 plants in 1983, 29 in 1985, and 8 in 1992. The four-fold increase in the total number of plants encountered in the 1992 survey does not suggest an increase or decrease in population size, but provides the first comprehensive data on the species-wide abundance of *A. lentiginosus* var. *piscinensis*. Over 60 percent of this population is located in the northern portion of the slough on land owned by the LADWP and approximately 35 percent of known *A. lentiginosus* var. *piscinensis* plants grow in the central zone of the slough on lands owned and managed by both BLM and LADWP. About 5 percent are in scattered patches downstream as far as McNally Canal, but Fish Slough is narrow at its southern end, with little suitable habitat (P. Novak, *in litt.* 1992; W. Ferren, *in litt.* 1992).

In 1991, LADWP constructed a 32 ha (80 ac) cattle exclosure at the northern end of the slough. In 1992, over 95 percent of the *Astragalus lentiginosus* var. *piscinensis* plants in the northern zone were within the exclosure. Other than the area encompassed by the exclosure in the north end of Fish Slough, lands under LADWP management that support this taxon are grazed (Paula Hubbard, LADWP, pers. comm. 1996). Grazing is not permitted in the habitat of *A. lentiginosus* var. *piscinensis on lands* managed by BLM, in the central zone of the slough.

Current threats to *Astragalus lentiginosus* var. *picinensis* include a lack of recruitment in the central zone population of Fish Slough, trampling and grazing by cattle, modification of wetlands, and alteration of slough hydrology. A long-term threat may be the expansion of Fish Slough Lake, which may be due to natural geologic processes or the existence of Red Willow Dam, resulting in increased inundation of soils and loss of suitable alkali habitat for this taxon (W. Ferren 1991c, W. Ferren, *in litt.* 1992). Historical alterations of the Fish Slough ecosystem to enhance fisheries appear to have caused similar increases in seasonally flooded habitats, which are less suitable for *A. lentiginosus* var. *piscinensis*. Modifications include creation of dams and weirs in the main slough channel, construction of a dirt road through milk-vetch habitat, and soil compaction and trail creation by cattle. These activities have altered the slough hydrology by causing an increase in permanently flooded habitats, artificial ponding, alteration in drainage patterns, and changes in seasonal flooding of milk-vetch habitat. These changes have resulted in expansion of emergent wetland vegetation and conversion of alkali flat habitats which support *A. lentiginosus* var. *piscinensis* to other vegetation types (Ferren 1991b; Ferren *in litt.* 1992). Trampling and grazing by cattle, and associated ecological changes, also potentially threaten this taxon.

Astragalus magdalenae var. *peirsonii* (Peirson's milk-vetch) was originally described as *A. peirsonii* by Munz and McBurney from two collections (cotypes) from sand dunes west of Yuma in Imperial County, California (Munz 1932). One specimen was collected by Munz and Hitchcock in 1932, while the other was collected by Frank Peirson, for whom the taxon was named, in 1927. *Astragalus peirsonii* was variously included with *A. crotalariae* var. *piscinus* (Jepson 1936) and *A. niveus* (Barneby 1944), before its affiliation with *A. magdalenae* was clarified (Barneby 1958).

Astragalus magdalenae var. *peirsonii* is a stout, short-lived perennial reaching 20 to 70 cm (8 to 27 in) high. The stems and leaves are covered with fine silky hairs and the leaves are 5 to 15 cm (2 to 6 in) long, with 3 to 13 small oblong leaflets. The flowers are dull purple, arranged in 10- to 17-flowered racemes and the resulting pods are 2 to 3.5 cm (0.8 to 1.4 in) long, inflated, with a triangular beak. The variety *peirsonii* is separated from two other varieties of *A. magdalenae* based on the number of leaflets, the length of the peduncles, and the length and diameter of the fruits. With a length of 4.5 to 5.5 mm (0.2 in), *A. magdalenae* var. *peirsonii* has the largest seeds of any *Astragalus* in North America (Barneby 1964).

Astragalus magdalenae var. *peirsonii* grows in the Sonoran Desert, on the slopes and hollows of windblown dunes. According to Munz and Keck (1959) and Barneby (1964), it is known from the Borrego Valley, in San Diego County, and the Algodones Dunes, in Imperial County, which extend just south of the International Border into northeastern Baja California (Westec 1977). Since the proposed rule was published, the Service has also become aware of collections of *A. magdalenae* var. peirsonii from the Gran Desierto in Sonora, Mexico. The specimens from Sonora were all collected south and southeast of the Sierra Pinacate lava field in the southern Gran Desierto over a 15-year period (Richard Felger, Drylands Institute, pers. comm. 1996; J. Rebman, San Diego Museum of Natural History, pers. comm. 1996; Alan Romspert, California Desert Studies Center, pers. comm. 1996; Gary D. Wallace, Service, pers. comm. 1996). The Service is unaware of any information that *A. magdalenae* var. *peirsonii* occurs elsewhere in the Gran Desierto, and could not locate any information on size of populations that occur in the Gran Desierto. Although Wiggins (1980) included San Felipe, in central Baja California, within the range of this taxon, no collections of variety *peirsonii* could be located from that region. Botanists preparing a flora for the area have located other varieties of *A. magdalenae* from the dunes of the San Felipe area, but not variety *peirsonii* (Jon Rebman, San Diego Museum of Natural History Herbarium, pers. comm. 1996). A report of *A. magdalenae* var. *peirsonii* occurring in the dunes west-southwest of the Salton Sea in Imperial County, California, remains unconfirmed (CDFG, Natural Diversity Database record 1996).

Within San Diego County, *Astragalus magdalenae* var. *peirsonii* has not been seen for several decades (M. Beauchamp, Pacific Southwest Biological Services, pers. comm. 1996). Surveys in 1978 failed to locate the variety in the Borrego Valley where it was originally collected (Spolsky 1978), and a portion of the dune habitat in Borrego Valley is currently used as a county landfill (Jim Dice, CDFG, pers. comm. 1996). A major landowner in the area, the California Department of Parks and Recreation, does not have any information or reports of this taxon occurring in Anza Borrego Desert State Park (Paul Johnson, Anza Borrego Desert State Park, pers. comm. 1996).

The only location where the Service could confirm that *Astragalus magdalenae* var. *peirsonii* is extant in the United States is on the Algodones Dunes, an active dune system located southeast of the Salton Sea and extending south about 2.5 km (1.5 mi) into Baja California (Westec 1977, BLM 1987). In 1977, a survey of the sensitive plant taxa of the Algodones Dunes showed that *A. magdalenae* var. *peirsonii* was distributed in what can be considered one extensive population of scattered colonies spanning the length of the dune system, primarily along its western side. The Algodones Dunes are a linear dune system, approximately 64 km (40 mi) long and 8 km (5 mi) wide, supporting several species of plants and animals that occur only in dune systems in the Sonoran Desert (Westec 1977, BLM 1987). Managed by the BLM, the Algodones Dunes, also known as the Imperial Sand Dunes Recreation Area, are the most intensively used OHV recreation area in California's deserts, attracting several hundred thousand OHV users each year (BLM 1987).

The primary threat to *Astragalus magdalenae* var. *peirsonii* is destruction of individuals and dune habitat from OHV use and the recreational development associated with it. Approximately 75 percent of the Algodones Dune system is open to motorized vehicle use (BLM 1987) and between 75 and 80 percent of all known colonies of *A. magdalenae* var. *peirsonii* in 1977 are within those areas. The greatest concentration of colonies was located in the central dunes, within a 4-mile radius of the southern end of Gecko Road (Westec 1977), an area that has since been more fully developed for recreational use (BLM 1987). Surveyors in 1977 reported that no seedlings of any of the sensitive plant taxa, including *A. magdalenae* var. *peirsonii*, could be found in areas receiving heavy OHV use (Westec 1977), and large areas receiving intensive OHV use showed a virtually complete loss of all plant cover (Bury and Luckenback 1983). By 1990, colonies of mature *A. magdalenae* var. *peirsonii* plants could not be located in areas of heavy OHV use and colonies located in areas receiving moderate OHV use had lower reproductive success and poorer health than comparable populations located in areas closed to OHVs (ECOS 1990).

Approximately 9,300 ha (23,000 ac), or 18 percent, of the Algodones Dunes has been closed to motorized vehicle use since 1972 (BLM 1987). In 1994, most of this closed area and an extension to the north, a total of 13,060 ha (32,240 ac) or about 25 percent of the dune system, was designated the North Algodones Dunes Wilderness (CDPA 1994; T. Finger, BLM, pers. comm. 1996). The wilderness, a linear section of the northern dunes, is bounded by an area designated for intensive OHV use to the north and by Highway 78 and an intensively-used OHV area to the south. Approximately 20–25 percent of the known colonies of *Astragalus magdalenae* var. *peirsonii* occur in the wilderness area (Westec 1977).

Astragalus tricarinatus (triple-ribbed milk-vetch) was described by Asa Gray (1876) based on a specimen collected by Charles C. Parry at Whitewater Canyon, Riverside County in 1876. Per Axel Rydberg (1927) transferred this species to the segregate genus *Hamosa*, as *H. tricarinata*. This combination was not widely accepted and the species continues to be listed as *A. tricarinatus* in floristic treatments (Jepson 1936, Munz and Keck 1959, Shreve and Wiggins 1964, Munz 1974, Spellenberg 1993).

Astragalus tricarinatus is a short-lived erect perennial, reaching 5 to 25 cm (2 to 10 in) in height. Leaves are 7 to 20 cm (1.3 to 2.7 in) long, with 17 to 20 leaflets that are silvery strigose on the upper surface. The flowers are white or pale cream-colored, arranged in loose 6- to 17-flowered racemes. The fruit is narrow, 2 to 4 cm (0.8 to 1.6 in) long, glabrous and distinctly three-ribbed.

Astragalus tricarinatus grows in sandy and gravelly soils in dry washes, at the base of canyon slopes, and on steep scree slopes of decomposed granite (Barrows 1987b, Sanders and Thomas Olsen Associates 1995). Although *A. tricarinatus* is a short-lived perennial, its numbers fluctuate significantly from year to year and the species may not be present above-ground in drought years (Barrows 1987b; Robin Kobaly, BLM, pers. comm. 1996).

According to Munz and Keck (1959) the range of *Astragalus tricarinatus* extends from Morongo and Whitewater Pass, located at the north end of the Coachella Valley, south to the Orocopia Mountains. During the last 2 decades, *A. tricarinatus* has been located in four areas—in the north at Big Morongo Canyon and its tributary canyons; at two nearby locations at Whitewater Canyon and Mission Creek; and at a disjunct location about 40 miles to the south in Agua Alta Canyon.

The occurrence of *Astragalus tricarinatus* in Agua Alta Canyon was discovered in 1985 by Jon Stewart and consisted of only one plant. The taxon had not been seen during previous explorations of this canyon wash nor has it been seen since, although the site was searched the following two years (Jon Stewart, *in litt.* 1985; J. Stewart, pers. comm., 1996). In the north, Whitewater Canyon is the type locality for *A. tricarinatus* and specimens were collected there in the 1940s, 1960s and mid 1980s (A. Sanders, herbarium of University of California at Riverside, pers. comm. 1996). A search of the east ridge of Whitewater Canyon over several days in 1995 failed to locate a population there, although a single immature plant was discovered in alluvial sands from the wash (A. Sanders, pers. comm., 1996). The Mission Creek occurrence is also known from only one plant, discovered during 1995 surveys for this taxon (Sanders and Thomas Olsen Associates 1995). Although *A. tricarinatus* has the potential to occur in other canyons within its range, populations of greater than one plant are currently known only from Big Morongo Canyon and may occur at Whitewater Canyon.

Astragalus tricarinatus at Big Morongo Canyon is within the Big Morongo Preserve, managed by the BLM. In 1984 one site in Big Morongo Canyon that supported fewer than 10 plants was bulldozed during maintenance for a gas pipeline (Barrows 1987b). No plants have been found at that site since 1984, although searches were conducted in 1987, 1992, and 1994 (Barrows 1987b, Carol Jacobsen, *in litt.* 1993, Mathews 1994). *A. tricarinatus* also occurs 3 to 4 km (2 mi) farther down Big Morongo Canyon and within the mouths of two tributary canyons. In 1992 botanists surveyed this region and counted 70 plants in 5 groupings scattered along a 2 to 3 km (1 to 2 mi) stretch of canyon floor (C. Jacobsen, *in litt.* 1993). In 1993, 33 plants were counted along this same stretch (Roland DeGouvenian, BLM, *in litt.* 1993) and in 1994 a total of 20 plants in 5 patches were found there (Mathews 1994).

In spring of 1995, the Four Corners Pipeline Company conducted substantial earth-moving activities along this stretch of Big Morongo Canyon to realign segments of a crude oil pipeline that had been exposed during winter storms in 1992–1993 (Service 1995). In 1996, weather conditions appeared poor for growth of *Astragalus tricarinatus*. BLM staff conducted limited surveys and found no plants in the canyon, in either disturbed or undisturbed areas (R. Kobaly, pers. comm. 1996).

Astragalus tricarinatus is threatened by maintenance activities for the crude oil pipeline which runs through its habitat at Big Morongo Canyon and by vehicle use in the canyons. Its limited number of individuals make it especially vulnerable to unanticipated events, such as pipeline leaks, breaks, or emergency repairs.

Previous Federal Action

Federal action on one of these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and recommended *Astragalus jaegerianus* for endangered status. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823), of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3)) and of the Service's intention thereby to review the status of the plant taxa named therein, including *Astragalus jaegerianus*. The Service published a proposal in the June 16, 1976, **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section

4 of the Act. *Astragalus jaegerianus* was included in the June 16, 1976, **Federal Register** document.

General comments received in regard to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909). The Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than two years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants in the December 15, 1980 **Federal Register** (45 FR 82480). This notice included *Astragalus jaegerianus*, *A. lentiginosus* var. *coachellae*, *A. lentiginosus* var. *piscinensis*, and *A. magdalenae* var. *peirsonii* as category 1 candidate species (species for which information in the Service's possession was sufficient to support proposals for listing). On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640), in which *A. jaegerianus* and *A. magdalenae* var. *peirsonii* were included as category 2 candidate species (species for which information in the Service's possession indicated listing may be appropriate, but for which additional information was needed to support a proposed rule). The plant notice was again revised on September 27, 1985 (50 FR 39526), and on February 21, 1990 (55 FR 6184). In both of these notices, both varieties of *Astragalus lentiginosus* were included as category 1 candidate species, while *A. jaegerianus* and *A. magdalenae* var. *peirsonii* were included as a category 2 candidate species. *Astragalus tricarinatus* was included in the February 21, 1990, notice for the first time as a category 2 candidate (the use of candidate categories has subsequently been discontinued by the Service (55 FR 7596)).

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus jaegerianus* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). The Act requires that following such a warranted but precluded finding, the petition be recycled pursuant to section 4(b)(3)(C)(i). The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the warranted finding for the petitioned taxa.

On May 8, 1992, the Service published a proposed rule in the **Federal Register** (57 FR 19844) to list seven *Astragalus* taxa, including the five taxa addressed in this rule. *Astragalus jaegerianus* and *A. magdalenae* var. *peirsonii* were included in the proposal on the basis of new information gathered during surveys performed in 1990 and 1991 that resulted in their elevation to category 1 candidate status. *Astragalus tricarinatus* was included in the proposal after a review of existing information indicated that the species should be elevated to category 1 candidate status and that listing was warranted. The taxa included in the proposed rule but not addressed in this document, *A. lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetralis*, are being withdrawn and are addressed in a separate document published concurrently in the proposed rule section of this issue of the **Federal Register**.

The processing of this final rule conforms with the Service's Final Listing Priority Guidance for Fiscal Year (FY) 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), the second highest priority (Tier 2) includes actions to—resolve the listing status of the outstanding proposed listings, process new proposals to add species to the lists, and process administrative petition findings on petitions to list, delist, and reclassify species. This final rule for five desert milk-vetch species from California falls under Tier 2. The species discussed in this rule face high magnitude threats to their continued existence. Tier 3 includes processing of critical habitat designations.

Comments received during the original comment period and the re-opening of the public comment period in September 1996 (61 FR 46430) for the proposed rule have resulted in new information that has been incorporated into this final rule and the concurrently published withdrawal for two of the species originally proposed for listing in 1992.

Summary of Comments and Recommendations

In the May 8, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on July 7, 1992. A final determination on the proposal was delayed by other listing priorities, a limited budget, and the Federal moratorium on final listing actions. Due to the amount of time that had passed since the proposed rule was published, the Service opened a second comment period for 45 days on September 3, 1996 (61 FR 46430). Appropriate State and Federal agencies, County governments, scientific organizations, and other interested parties were contacted and requested to comment. During the comment periods newspaper notices were published in the *Palm Springs Desert Sun* (June 4, 1992; October 5, 1996), the *Imperial Valley Press* (May 28, 1992; October 3, 1996), the *San Bernardino Sun* (June 2, 1992; October 7, 1996), the *Barstow Desert Dispatch* (October 3, 1996), and the *Inyo Register* (May 29, 1992; October 2, 1996), inviting public comments on the proposed rule.

Peer Review

In accordance with the interagency Peer Review Policy published on July 1, 1994 (59 FR 34270), the Service solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population estimations, and supportive biological and ecological information for taxa under consideration for listing. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two specialists responded and their comments on the biology, population numbers and sizes, and threats, have been incorporated into this rule and the concurrently published withdrawal.

During the two comment periods, the Service received comments from 23 parties addressing the listing of the 7 taxa included in the proposed rule. Twelve commenters supported some or all of the proposed action, six commenters opposed some or all of the proposed action, and five commenters provided information or raised issues about which they were concerned. Technical information provided by commenters has been incorporated into this rule where appropriate. Comments

have been organized into specific issues. These issues and the Service's response to each issue are summarized as follows.

Issue 1: Two commenters were concerned that the listing of varieties is improper and constitutes a misuse of the Act. One of these commenters elaborated that since subspecies contain the same genetic makeup as the species with a slight variation, ''(i)f we save the species as a whole, we will have the genetic basis from which the subspecies evolved.''

Service Response: Section 3(16) of the Act states that ''(t)he term 'species' includes any subspecies of fish or wildlife or plants . . . which interbreeds when mature.'' In response to concerns from the Smithsonian Institution that the definition included subspecies but not varieties, the Service discussed in a **Federal Register** notice published on April 26, 1978 (43 FR 17912), the common use of both terms by botanists, and concluded that plants named as ''varieties'' are essentially subspecies and, therefore, ''species'' as defined in the Act.

Issue 2: Two commenters asserted that insufficient data are presented in the proposal on which to base the listing of these plants. One of these commenters believed that not enough information was presented about the biology of the species and that information concerning the types of OHV activity that threaten the taxa should be described more thoroughly.

Service Response: Section 4 of the Act directs the Service to use the best scientific and commercial data available in preparation of proposed and final rules. After reviewing new information available since the original proposal was published and reevaluating existing information, the Service is withdrawing the proposals to list two of the taxa included in the proposed rule. For the five taxa being listed in this final rule, the Service has presented adequate detail to indicate the types of activities that threaten these taxa and to discuss their biology. Readers wishing additional detailed information should refer to the documents cited in the text.

Issue 3: Two commenters expressed the opinion that the listing of *Astragalus lentiginosus* var. *piscinensis* is unnecessary because sufficient protection from grazing and OHV use was provided by the multi-agency management of the Fish Slough Area of Critical Environmental Concern (ACEC). One commenter stated that no data exists documenting that the species is threatened by OHV use, agricultural discing, predation by rabbits, and groundwater pumping.

Service Response: The Service acknowledges that agricultural discing is not currently known to be a threat to this taxon. Vehicle use has, and continues to result in the loss of some habitat for *Astragalus lentiginosus* var. *piscinensis* south of BLM Spring, on the east side of the Slough, where a road currently bisects one population (BLM, *in litt.* 1993; Diane Steeck, Service, pers. obs. 1996) and there has been some OHV use of the area noted in the west-central area of the Slough as recently as 1992 (P. Novak, in lit. 1992). The soil compaction and topographical changes caused by roads can alter flooding and draining of slough habitats, resulting in changes in length of seasonal inundation to which the milk-vetch is subjected. Mazer and Travers (1992) and Novak (*in litt. 1992*) have documented substantial herbivory of the flowers and fruit of *A. lentiginosus* var. *piscinensis* at Fish Slough.

The Service recognizes the efforts of all agencies involved in the establishment of the Fish Slough ACEC and those cooperating in the management of the ACEC. However, the suite of factors that threaten *Astragalus lentiginosus* var. *piscinensis* are complex. Because of the long narrow configuration of the Slough, bounded by uplands on both sides, the specific alkali wetland habitat required by *A. lentiginosus* var. *piscinensis* is limited. Human activities or natural changes in the landscape that cause an increase in the area of seasonal flooding of alkali habitat have decreased the habitat suitable for this taxon, which tolerates seasonally moist, but not flooded soils. Monitoring conducted by the BLM suggests a lack of recruitment in one population of *A. lentiginosus* var. *piscinensis* in the central region of Fish Slough. The reasons for this are as yet unexplained, but may include rabbit herbivory or larger landscape changes (alterations in soil hydrology or chemistry) that result in a decline in habitat suitability.

The Service recognizes the efforts of the LADWP to protect *Astragalus lentiginosus* var. *piscinensis* from the direct effects of trampling in the north region of the Slough by constructing a fenced exclosure, and commends the efforts of the BLM and LADWP to monitor the status of the plant. The Service also recognizes that conflicts that arise in the management of the Slough have not been easily resolved in the past and that the past modifications of the slough environment have caused changes in the hydrology that are not well understood nor easily returned to their original condition. The Service maintains that despite the best intentions of the current managing committee for the Fish Slough ACEC, the threats facing the limited number of individuals of *A. lentiginosus* var. *piscinensis* are important enough to warrant its listing as threatened.

A draft Owens Basin Wetland and Aquatic Species Recovery Plan was produced by the Service in 1996 that addressed *Astragalus lentiginosus* var. *piscinensis*, two endangered fish species, and selected species of concern. Public and agency comment on this plan was solicited during two public comment periods—August 26, 1996, to October 25, 1996, and January 13, 1997, to April 14, 1997. The Service is currently revising the recovery criteria and discussion of *A. lentiginosus* var. *piscinensis* to more accurately reflect the current knowledge of the species' status and the activities needed to ensure its protection and recovery in the Fish Slough ecosystem. Additional discussions of *Astragalus lentiginosus* var. *piscinensis* are included under the ''Summary of Factors Affecting the Species'' section of this final rule.

Issue 4: Two commenters in 1992 suggested that livestock grazing is compatible with maintaining populations of *Astragalus lentiginosus* var. *piscinensis* and one commenter, in 1996, stated that the Service did not provide adequate evidence to support the conclusion that grazing was a threat to this taxon. In 1996, one of the parties used data collected by biologists from the grazed and ungrazed areas on LADWP lands to conclude that, from 1991 to 1996, ''(t)he areas grazed by livestock show an 8 percent increase in vetch [sic] populations.'' and ''(t)he ungrazed area shows a 42 percent reduction in vetch [sic] numbers.''

Service Response: The LADWP gathered population trend data from 5 plots (radius 3.6 m (11.8 ft)) in the Fish Slough ecosystem from 1991 to 1996 (LADWP, *in litt.* 1996; Paula Hubbard, LADWP, pers. comm. 1996). Two plots are located in the cattle exclosure in north Fish Slough and have been inaccessible to cattle since 1991, one plot is north of this exclosure in a pasture that receives cattle use, and two more are in the middle region of Fish Slough, north of BLM Spring, in an area also used by cattle.

The monitoring data indicate that the total number of plants in the three plots from the grazed area consisted of 16 seedlings, 24 mature plants, 0 immature plants in 1991 and 14 seedlings, 25 mature plants, 4 immature plants in 1996. Plots in the ungrazed exclosure supported 56 seedlings, 72 mature plants, 0 immature plants in 1991 and 0 seedlings, 83 mature plants, 1

immature plant in 1996. In arriving at the stated percentage increases and declines the commenter used counts of total plants. Typically, when biologists analyze simple changes in the sizes of plant populations, they focus on changes in the number of mature individuals (plants of reproductive size or age). Seedlings are typically not grouped with mature plants because it is common for many more seedlings to emerge initially than will survive to reproduce.

In the data described above, from 1991 to 1996 the combined number of mature *Astragalus lentiginosus* var. *piscinensis* plants increased by 1 in the grazed plots (from 24 to 25 plants, a 4 percent increase) and increased by 11 individuals in the ungrazed plots (from 72 to 83 plants, a 15 percent increase). These data show a slight increase in numbers of mature plants in grazed plots and a larger increase in the number of mature individuals in ungrazed plots from 1991 to 1996. Several aspects of the data illustrate the need for a longer monitoring period before drawing conclusions, however. First, in both grazed and ungrazed areas the multiple plots failed to show consistent trends; that is, of the two ungrazed plots, one showed an increase in the number of mature plants from 1991 to 1996, the other a decrease. A similar situation occurred in the grazed plots. The small number of plots sampled make the data very susceptible to site differences that may result from environmental conditions other than grazing. Secondly, numbers of plants within a single plot fluctuated from year to year; that is, none of the five plots showed a consistently increasing or consistently declining trend. In this situation, using only two years of data from the data set (for example, considering only the years 1991 and 1996) can lead to erroneous conclusions. These data suggest that population growth is occurring in the north Fish Slough Area and north of BLM Springs in both grazed and ungrazed areas. This potential growth is important, since recruitment has not been observed in one area in the central zone of the Slough that BLM has monitored since 1991.

The Service concludes that data collected by LADWP do not conclusively demonstrate that *Astragalus lentiginosus* var. *piscinensis* plants located in plots in the grazed areas fared any better or worse than those in the ungrazed exclosures during the past five years. If cattle grazing will continue in habitat for *A. lentiginosus* var. *piscinensis* at Fish Slough, the Service recommends increasing the number of monitoring plots in both grazed and ungrazed areas to help clarify the relationship between cattle grazing and population dynamics of *A. lentiginosus* var. *piscinensis.* The Service remains concerned about the effects of cattle grazing on the alkali wetland habitat that supports *A. lentiginosus* var. *piscinensis*, including the potential for grazing to cause changes in the composition of the plant community or maintain changes that have already occurred, and the potential for the creation of cattle trails to alter the topography and change drainage patterns.

Issue 5: One commenter suggested that listing *Astragalus lentiginosus* var. *coachellae* would be unnecessary if a conservation plan for that species could be developed, perhaps by incorporating it into the management of the existing Coachella Valley Preserve.

Service response: The Coachella Valley Preserve System, established primarily to protect the Coachella Valley fringe-toed lizard (*Uma inornata*), contains populations of *Astragalus lentiginosus* var. *coachellae* on three preserve lands in the south and central range of this taxon. No populations in the northern range of *A. lentiginosus* var. *coachellae* are currently protected. Within the last two years, the Coachella Valley Association of Governments and the Coachella Valley Mountains Conservancy have begun a planning process to address conflicts between conservation needs and economic development within a 4500sq km (1,850 sq mi) area that includes the Coachella Valley and surrounding region in Riverside County. The expected result of this process, a Coachella Valley Multispecies Habitat Conservation Plan (CVMSHCP), will address conservation needs for 12 species that are listed or proposed for listing, 21 candidate species, and 17 additional species of concern. *Astragalus lentiginosus* var. *coachellae* is to be addressed in the plan.

The Service recognizes the importance of such a planning process for the Coachella Valley and is participating through the Scientific Advisory Committee, as are other agencies responsible for resource protection in the area. The planning process is in its initial stages, however, and its funding is not secured, nor is a product yet available that can be implemented. Thus, development of the CVMSHCP does not provide current protection for *Astragalus lentiginosus* var. *coachellae* and is not sufficient to preclude the need to list the species at this time.

Issue 6: One commenter speculated that the proposed rule had been promulgated to fulfill the requirements of a settlement resulting from the suit filed against the Service by the California Native Plant Society (CNPS).

Service Response: The procedures for designating species as threatened or endangered are outlined in section 4(a)(1) of the Act and promulgated regulations (50 CFR part 424). As discussed in detail in the ''Background'' section of this rule, Federal action on several of these taxa began as early as 1975. The proposed rule did, in fact, comply with the terms and conditions of the settlement stemming from the CNPS suit. While the CNPS lawsuit settlement may have accelerated the rate at which species were proposed for listing, the suit did not address final determinations, nor did it change the standards by which species are evaluated for potential listing.

Issue 7: Two commenters expressed concern over potential land use restrictions where listed species occur. One of these commenters stated that the listing of these plants ''. . . would result in large acreage throughout the west being ''locked up'' to preserve these forbs or weeds.'' The other commenter believed that the Service's true intent is ''. . . full control over land management activities . . .'' on private, as well as public lands.

Service Response: Listing of plant species under the Act triggers the protective measures of section 9 of the Act, including prohibiting the collection, destruction, or damaging of these species on any area if it is in knowing violation of any State law (see the ''Available Conservation Measures'' section of this rule for a complete discussion). In addition, the Act requires that Federal agencies, in consultation with the Service, insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species, or destroy or adversely modify its critical habitat, if any is designated. Thus for any activity on private land requiring Federal action (such as a section 404 permit under the Clean Water Act (33 U.S.C. 1251–1376)) that may affect listed species, the Federal action agency is required to enter into the section 7 consultation process with the Service.

These protections afforded to plants listed under the Act do not ''lock up'' private land. Conservation measures and recovery planning for these species rarely include recommendations for land acquisition or easements involving private landowners. These efforts would be undertaken with the cooperation of

the landowners. In most cases, private landowners are not precluded from utilizing their land in the manner originally intended.

Issue 8: One commenter questioned whether the listing of these plants could be justified in light of the numerous species already listed and the thousands more that are candidates for listing, and questioned what benefit there would be to mankind in saving these species. The commenter pointed out that because ''the law of the land is survival of the fittest,'' certain species were not meant to survive forever and a niche vacated by one species would be taken over by another.

Service Response: In enacting the Act in 1973, Congress recognized that ''various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation.'' It further stated ''these species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.'' Although it is true that extinction is a natural process, it is human-caused extinction that the Act is attempting to minimize. A number of studies have estimated rates of extinction throughout geologic time and, more recently, since the influence of European man. The studies indicate that rates of extinction over the past 200 years are unparalleled in human history, and extinction rates are continuing to increase (Reid and Miller 1989, Raven 1993). The Service concludes that proceeding with this listing action is within the intent of the Act.

Issue 9: One commenter stated that the Service must prepare an Environmental Impact Statement (EIS) and a Takings Implication Assessment before issuing a final rule.

Service response: For the reasons set out in the National Environmental Policy Act (NEPA) section of this document, the Service has determined that the rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. In *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Circuit 1981), and subsequent cases, the Federal courts have held that an EIS is not required for listing under the Act. The Sixth Circuit decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act.

Takings Implications Assessments (TIAs) are prepared pursuant to the requirements of Executive Order 12630, ''Government Actions and Interference with Constitutionally Protected Property Rights.'' The Attorney General has issued guidelines to the Department of the Interior (Department) regarding TIAs. The Attorney General's guidelines state that TIAs used to analyze the potential for Fifth Amendment taking claims are to be prepared after, rather than before, an agency makes a restricted discretionary decision. In enacting the Act, Congress required the Department to list a species based solely upon scientific and commercial data. The Service may not withhold a listing decision based upon economic concerns. Therefore, any TIA that may be required for a listing action would be prepared only after the final determination to list a species has been made.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. 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 *Astragalus jaegerianus* Munz (Lane Mountain milk-vetch), *A. lentiginosus* Douglas ex Hook. var. *coachellae* Barneby (Coachella Valley milk-vetch), *A. lentiginosus* Douglas ex Hook. var. *piscinensis* Barneby (Fish Slough milk-vetch), *A. magdalenae* Greene var. *peirsonii* (Munz & McBurney in Munz) Barneby (Peirson's milk-vetch) and *A. tricarinatus* A. Gray (triple-ribbed milk-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

All five taxa are threatened by loss of habitat due to one or more of the following factors—mining, urbanization in the form of commercial and residential development, motorized vehicle recreation and unauthorized motor vehicle use, pipeline maintenance activities, and loss of habitat due to modifications of a wetland ecosystem.

Astragalus jaegerianus is threatened by dry wash gold mining at the Lane Mountain site and potentially by a materials lease mining operation at one northern site on BLM lands. The majority of Lane Mountain Mesa, where *A. jaegerianus* occurs, and all of the adjacent Coolgardie Mesa, are covered by mining claims (BLM *in litt.* 1992; T. Eagen, pers. comm. 1996). Dry wash gold mining operations result in removal of vegetation as surface soils are mined. Mining that falls under the definition of ''casual use'' also can destroy the habitat of *A. jaegerianus* in the Lane Mountain area. ''Casual use'' mining is small scale recreational mining that can be carried out by a claim holder without submission of any plan or notice to BLM. In 1993, Coolgardie Mesa experienced a sharp increase in recreational gold mining. Within a few miles of the Lane Mountain population of *A. jaegerianus*, the BLM recorded 300 to 400 people mining within a 2.5 sq km (1 sq mi) area during a single weekend. Joshua trees (*Yucca brevifolia*) and other vegetation were uprooted and destroyed in this process (T. Eagen, pers. comm. 1996). The BLM has since developed guidelines to limit activities that fall under the definition of ''casual use'' mining. Under the new definition, ''casual use'' mining is limited to the use of non-mechanized tools and cannot result in the destruction of perennial vegetation. This still permits the digging of mining pits and soil surface disturbance that degrade habitat and could impact *A. jaegerianus*. Past disturbance has also resulted in an increase in non-native annual grasses in the area (T. Eagen, pers. comm. 1996) and this ongoing small scale disturbance provides new opportunities for further invasions of these highly competitive species. The sites where *A. jaegerianus* occurs on BLM land to the north, while not currently under claim, are available for claim, should mining interest renew in that area (J. Aardahl, BLM, pers. comm. 1997). Additional discussion of mining regulations can be found under Factor D of the ''Summary of Factors Affecting the Species Section'' of this rule.

To the north, *Astragalus jaegerianus* is also threatened by proliferation of OHV trails/tracks and cross country vehicle travel associated with decorative rock extraction, the potential for other mining exploration, and general recreation. Although the extraction activity is by permit through BLM, permit violations, including cross country vehicle travel and rock extraction outside the bounds of the permitted area occurred numerous times in 1995–1996, within and adjacent to *A. jaegerianus* habitat (T. Eagen, pers. comm. 1996). At least one of the populations of *A. jaegerianus* in the north is already bisected by a road (Bagley, *in litt.* 1985), and other roads/trails adjacent to the population are a concern. Recreational vehicle activity is also causing a proliferation of tracks through potential habitat just south of

the northern populations. At the Lane Mountain site, tracks have been seen near *A. jaegerianus* habitat. The area is laced with roads, and the majority of this small population occurs within about 100 m (300 ft) of a road, with some plants within 5 m (15 ft) of the road (C. Rutherford, pers. comm. 1996).

Within habitat for *Astragalus jaegerianus* on DOD lands, military maneuvers at the NTC at Fort Irwin, or National Guard training in 1992, may have destroyed plants (Steve Ahmann, NTC, *in litt.* 1993). Following this incident and the publication of the proposed rule, the military constructed a wire fence to restrict vehicle access from 260 ha 650 ac in 1993, which includes all of the *A. jaegerianus* plants known on military lands (S. Ahmann, *in litt.* 1993). No breaches of the fence have occurred in the past 2 years, although a military vehicle breached the fence three years ago (Ahmann, pers. comm. 1996). The military currently uses these fenced lands only for compass orienteering exercises. Impacts to this taxon from military training may increase following the expansion of the NTC at Fort Irwin. Although the size and location of the expansion has not been decided, it may encompass several hundred square miles of BLM lands including those which support *A. jaegerianus.*

Astragalus lentiginosus var. *coachellae* (Coachella Valley milk-vetch) is currently known from fewer than 25 occurrences in the Coachella Valley. Habitat destruction in the Coachella Valley began with the introduction of agriculture over a century ago, but urbanization has accelerated greatly in the past 40 years. In the 20 years from 1970 to 1990, the human population of the Coachella Valley more than doubled from under 100,000 to over 215,000 people. In the next 20 years the human population of the Coachella Valley is expected to again double, reaching a total of almost 500,000 people by the year 2010 (Coachella Valley Association of Governments, *in litt.* 1997). Significant dune habitats that once occurred along the southwest edge of the Coachella Valley, at the base of the Santa Rosa Mountains, now support cities such as Rancho Mirage and Palm Desert (Barrows 1987). Increased urbanization of the area has altered available habitat in the valley both through direct conversion of land and through alterations in the sand transport system responsible for the creation and maintenance of the region's sand habitats (Barrows 1987; A. Sanders, pers. comm. 1996; K. Barrows, *in litt.* 1996).

The historical loss of populations of *Astragalus lentiginosus* var. *coachellae* is not known. Since 1986, two occurrences and part of a third, located adjacent to roads on private land in the southern part of this taxon's range, have been repeatedly graded and curbs have been laid over portions of what was previously suitable habitat. Although they have not been resurveyed, these sites are degraded to the extent that they are unlikely to support viable populations of *A. lentiginosus* var. *coachellae*. A fourth occurrence, in the same region, was found to support no plants in 1987, although suitable habitat still remained at the site. By 1996, this site had been converted to a truck stop and suitable habitat had been eliminated (Barrows 1987; K. Barrows, *in litt.* 1996; K. Barrows, pers. comm. 1996).

Urbanization and development, like that occurring in the Coachella Valley, result in both direct loss of populations and the restriction of populations to fragments of suitable habitat. As areas are increasingly developed, these habitat fragments, especially those adjacent to roads, may be degraded by vehicle use or roadside maintenance activities and are often subsequently paved over or landscaped. Secondary impacts to *Astragalus lentiginosus* var. *coachellae* associated with increased urbanization include habitat damage from OHV use. OHV use has eliminated plants from a portion of one population in the northern part of the range of this variety where a commercial OHV rental operation exists. Plants are now found only on the margins of this site (K. Barrows, pers. comm. 1996).

Astragalus lentiginosus var. *piscinensis* is currently restricted to a 10-km (6-mi) stretch of alkaline flats paralleling Fish Slough on lands owned and managed by the LADWP and BLM. In 1984, BLM established an ACEC on these lands to protect the federally endangered Owens pupfish (*Cyprinodon radiosus*) and the entire wetland ecosystem. This ACEC encompasses the range of *A. lentiginosus* var. *piscinensis*. The ACEC is jointly managed by BLM, the Service, CDFG, University of California Natural Reserve System (NRS), and LADWP. Because of the availability of water and wetland vegetation at Fish Slough, the area has sustained extensive human-related uses, beginning with cattle grazing in the 1860s. Additional discussion of cattle impacts can be found under Factor E of the ''Summary of Factors Affecting the Species'' section of this rule. Ferren (1991b) summarized impacts to botanical resources at Fish Slough, noting that those related to the enhancement of fisheries (construction of ponds, impoundments, roads, and ditches) have resulted in the greatest losses to this taxon's specific alkali habitats. Because of the long narrow configuration of the Slough, bounded by uplands on both sides, this alkali wetland habitat is limited in extent. In the west-central zone of Fish Slough, Fish Slough Lake is expanding, perhaps due to natural geologic subsidence and/or construction of Red Willow Dam, resulting in loss of suitable habitat for *A. lentiginosus* var. *piscinensis* as the soils become increasingly saturated for greater portions of the year (Ferren 1991c; W. Ferren, *in litt.* 1992). Other impoundments created in the past, some for the protection of endangered fish habitat, have similarly altered the local hydrology (BLM 1984; Ferren 1991; BLM *in litt.* 1993).

Astragalus magdalenae var. *peirsonii* is currently known to be extant in the United States only within the Algodones Dunes, where it is threatened by increasing habitat loss from OHV use and associated recreational development. Approximately 75 percent of the dune system, supporting 75 to 80 percent of the colonies of *A. magdalenae* var. *peirsonii*, as mapped in 1977, are open to OHV recreation within the Imperial Sand Dunes Recreation Area (Westec 1977, BLM 1987). Between 1977 and 1985, OHV use in the Imperial Sand Dunes Recreation Area increased by over 60 percent (BLM 1987). With the rising popularity of all-terrain vehicles and the expanding human population in southern California, use is expected to more than double from 1985 to the year 2000 (BLM 1987). The most recent figures available from the BLM show that in 1996 the number of recorded visits at the recreation area rose to over 430,000, an increase of 15 percent from 1994 (BLM, *in litt.*, 1996).

Of the dune-restricted plant taxa, *Astragalus magdalenae* var. *peirsonii* appears to be the most vulnerable to destruction by OHVs. Its small stature provides little obstacle to riders (Romspert and Burke 1978, ECOS 1990); the brittle nature of its single stem causes plants to break, rather than bend, when hit by a vehicle (ECOS 1990); and a lack of lateral roots may reduce its ability to remain anchored and survive vehicle-induced damage (Romspert and Burke 1978). In addition, seedling establishment in *A. magdalenae* var. *peirsonii* occurs in winter and spring (Romspert and Burke 1978), which are also the most popular periods for recreational riding on the dunes. BLM estimates that an average winter weekend in the year 2000 will draw

about 7,000 OHV recreationalists to the dunes (BLM 1987).

Although the condition of *Astragalus magdalenae* var. *peirsonii* has not been documented throughout the dune system since 1977, the condition of its dune habitat has been declining. In 1977, biologists noted that no seedlings of any of the sensitive plant taxa could be found in the dune areas receiving high OHV use, although seedlings were abundant in other regions of the dunes (Westec 1977). In 1990, biologists monitoring the dunes noted that no seedlings or colonies of adult plants of *A. magdalenae* var. *peirsonii* could be found in these high use areas (ECOS 1990). The 1990 study compared colonies of *A. magdalenae* var. *peirsonii* located in areas closed to OHVs to those in areas receiving moderate OHV use. Biologists found that plants in moderate use areas had poorer health and lower reproductive success than those in areas closed to OHVs. In one comparison, 40 percent of the sampled individuals located in the closed area reproduced, while no individuals located in the area open to OHVs reproduced (ECOS 1990). As OHV use of the dunes increases, the amount of dune habitat experiencing ''moderate'' impacts will continue to expand. These results suggest that OHV use has a detrimental effect on populations beyond that due to the direct crushing of individuals. Factors such as sand compaction, disruption of hydrologic factors, or changes in community composition may also be responsible for the decline of *A. magdalenae* var. *peirsonii* in areas used by OHVs (ECOS 1990).

While loss of colonies and declines in reproductive success and health of *Astragalus magdalenae* var. *peirsonii* have been documented in areas receiving high and moderate levels of OHV use, a 20,000-ha (50,000-ac) central section of the dunes has been designated ''limited use'' under the California Desert Conservation Area Plan (BLM 1980). According to this plan, the ''limited use'' designation is designed to protect sensitive resource values, while allowing multiple use. However, *Astragalus magdalenae* var. *peirsonii* colonies in these areas may decline if present trends continue. Because the area is on a dune system, the ''limited use'' designation prohibits the construction of roads or campgrounds within its boundaries, but does not include any restriction on OHV use of the area. In 1988, BLM constructed a campground at the south end of Gecko Road, just 3/4 mile north of the boundary of the ''limited use'' zone and adjacent to the highest concentration of colonies of *A. magdalenae* var. *peirsonii* in the dune system. This region of dunes was also a Wilderness Study Area (WSA) in the 1970s and 1980s. When the BLM recommended against designating this WSA as wilderness in 1989, it cited four reasons for its recommendations—(1)''* * * the long tradition of motor vehicle use;'' (2) ''* * * the projected continued demand for OHV use;'' (3) ''* * * the WSA's potential for energy and mineral development;'' and (4) ''* * * the similarity of the area to a nearby WSA recommended for wilderness.'' (BLM 1989). While OHV use is expected to increase throughout the recreation area, OHV use in the former southern WSA is expected to increase faster than the overall rate, tripling from 1985 to the year 2000 (BLM 1987). In addition, these projections from BLM's 1987 Recreation Area Management Plan did not consider the increase in dispersed camping that is occurring along the railroad tracks and canal road that bound the central dunes on their east and west side (A. Schoeck, BLM, pers. comm. 1997). Camping in these areas facilitates quick, easy access to the central ''limited use'' dunes for OHV use (D. Steeck and T. Thomas, Service, pers. obs. 1997). Construction of a bridge over the All American Canal in the southern portion of the Algodones Dunes, planned for 1997 but as yet not constructed, will also increase ease of access to the central dunes, and may thereby encourage additional OHV use (Service, *in litt.* 1996). The Service concludes that the trend for habitat conditions of *A. magdalenae* var. *peirsonii* in the central, limited use, zone of the dunes is one of continuing decline.

Astragalus tricarinatus is known to be extant only in Big Morongo Canyon. This canyon bottom has been disturbed by pipeline maintenance activities several times in the last decade and these activities are likely to continue. One occurrence of fewer than 10 *A. tricarinatus* plants at the north end of the canyon was graded during maintenance of a gas pipeline access road in 1985 and has not been seen since, despite searches (Barrows 1987b; C. Jacobsen, *in litt.* 1993; Mathews 1994). In 1995, the Four Corner's Pipeline Company excavated and realigned three segments of a crude oil pipeline that extended through habitat for *A. tricarinatus* in Big Morongo Canyon and had been exposed by streambed scouring (Service 1994). One section of the realignment extended through a site that had supported 20 *A. tricarinatus* plants in 1992. Plants present at the time of construction were shielded from the construction zone by protective fencing, and the topsoil scraped from the site was stockpiled and later replaced (Service 1994; Ted Rado, consultant, pers. comm. 1996). However, the project, originally scheduled for October 1994, was not carried out until April 1995, the period when plants are flowering but before fruits have matured. Any damage to plants during this period would have resulted in diminished seed production by the population that year. *Astragalus tricarinatus* population sizes fluctuate widely from year to year and may depend on the persistence of a soil seedbank during years when weather limitations are unfavorable for growth or reproduction. Due to poor growing conditions for this taxon throughout the Canyon in 1996, the effect of this pipeline realignment on *A. tricarinatus* in Big Morongo Canyon has not yet been determined (R. Kobaly, BLM, pers. comm. 1996).

Astragalus tricarinatus is threatened by maintenance activities for the crude oil pipeline which runs through its habitat at Big Morongo Canyon and by vehicle use in the canyons. Its limited number of individuals make it especially vulnerable to unanticipated events, such as pipeline leaks, breaks, or emergency repairs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization has not been documented for the five taxa discussed in this final rule. However, rare taxa have, at times, become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal. The extremely limited number of *Astragalus jaegerianus* and *A. tricarinatus* make them vulnerable to scientific collectors. The potential for collection of these plants upon publication of this final rule may increase.

C. Disease or Predation

Disease is not known to be a factor for any of the taxa. Evidence exists that native herbivores may exert a substantial effect on reproduction of individual plants of *Astragalus lentiginosus* var. *piscinensis*. It is unclear whether gradual increases in soil saturation are reducing plant vigor in the central zone of Fish Slough, making them more vulnerable to attack by native herbivores. Whatever the causes, infestations of vegetative parts and root systems by phloem-sucking insects and red ants, respectively, and high rabbit herbivory have all been reported for individuals of *A.*

lentiginosus var. *piscinensis* in the central zone of Fish Slough (Mazer and Travers 1992; BLM, *in litt.* 1993; LADWP, *in litt.* 1996). Ferren (1991a) observed rabbit feces adjacent to individuals of *A. lentiginosus* var. *piscinensis* that had been virtually stripped of leaves, flowers, and seeds. Mazer and Travers (1992) found that plants in the central western zone of Fish Slough suffered high herbivory levels when compared to plants in the north section of the Slough. By August, sampled plants in the central zone of the Slough had 80 percent of their branches grazed by rabbits or rodents, while in the north zone of the Slough fewer than 20 percent of branches of sampled plants had been grazed. It is unknown whether the reduced reproduction of *A. lentiginosus* var. *piscinensis* caused by native herbivores results in lowered recruitment, or whether native herbivores may be responsible for the low recruitment seen in certain areas by preferentially feeding on seedlings. In addition to herbivory by rodents and rabbits, in 1996, plants of *A. lentiginosus* var. *piscinensis* appeared to have been killed by red ants, probably through damage to the root system (LADWP *in litt.* 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms that may provide some protection for these taxa include—(1) the California Endangered Species Act (CESA), (2) the California Environmental Quality Act (CEQA), (3) the Federal Endangered Species Act, in those cases where these taxa occur in habitat occupied by other listed species, (4) the Clean Water Act, (5) the Federal Land Policy and Management Act, and (6) regional planning efforts.

Pursuant to the Native Plant Protection Act (chapter 10 section 1900 *et seq.* of the California Fish and Game Code) and CESA (chapter 1.5 section 2050 *et seq.* of the Fish and Game Code), the California Fish and Game Commission listed *Astragalus magdalenae* var. *peirsonii* as endangered in 1979. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. *Astragalus magdalenae* var. *peirsonii* is currently known only from public lands under BLM management, however, and these CESA provisions do not apply to Federal agencies. In an attempt to address management of the Algodones Dune system on an ecosystem basis for the conservation of its wildlife and botanical resources, the BLM and CDFG developed a habitat management plan (HMP) for the Algodones Dunes in 1987. The plan included a monitoring program to track the effects of the 1988 construction of Roadrunner campground and the subsequent increase in OHV use on the wildlife and vegetation in the central dunes. In the HMP, the BLM also agreed to establish monitoring transects for sensitive plants, including *A. magdalenae* var. *peirsonii*, in all land use classes and monitor them every other year until trends were established. Little of the monitoring specific to sensitive plant species has been carried out (N. Nicolai, BLM, pers. comm. 1996, J. Dice, CDFG, pers. comm. 1997). At the Service's request for distribution and abundance data, the BLM provided only sensitive plant monitoring data from 1990, and the baseline studies conducted in 1977 and 1978.

In Mexico, the Gran Desierto, where *Astragalus magdalenae* var. *peirsonii* occurs, was designated a UNESCO Biosphere Reserve in 1993. Although this designation recognizes the unique resource values of the area, actual enforcement of conservation laws will be dictated by the availability of the limited resources of the Mexican government. The status of *A. magdalenae* var. *peirsonii* in Mexico is not well documented.

CEQA requires a full disclosure of potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' If significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species and their habitats. Protection of species through CEQA is, therefore, dependent upon the discretion of the lead agency.

Of the taxa included in this proposed rule, only *Astragalus lentiginosus* var. *coachellae* occurs on private lands that are subject to CEQA. Protection of *A. lentiginosus* var. *coachellae* has not been adequately considered in the CEQA process. For instance, projects are sometimes approved when biological surveys have not been conducted at the appropriate time of year to locate this taxon (K Barrows, pers. comm. 1997). The biology of the taxon may also result in it being missed or the extent of its distribution severely underestimated if surveys are carried out in years of low rainfall, or other times when plants may occur at very low densities. In addition, development of lands in the Coachella Valley may have an indirect effect on *A. lentiginosus* var. *coachellae* by blocking transport of sands throughout the Valley. These indirect, cumulative effects could result in large-scale changes to the sand habitats of the Coachella Valley, but are not often addressed on an individual project basis.

The taxa in this rule may already receive some habitat protection from the Act where their ranges overlap those of species already listed under the Act. The range of *Astragalus lentiginosus* var. *coachellae* overlaps with that of the Coachella Valley fringe-toed lizard. The three preserves set aside for the lizard support populations of *A. lentiginosus* var. *coachellae*, but this represents only 20 to 25 percent of the occurrences of this taxon. Over 75 percent of the occurrences of this plant are located on unprotected sites on private or tribal lands.

The range of *Astragalus jaegerianus* overlaps with that of the desert tortoise (*Gopherus agassizii*) on some portions of DOD lands at Fort Irwin and on some BLM lands. However, the distribution of *A. jaegerianus* is very localized and areas too small or fragmented to support viable tortoise populations could support significant numbers of the plant. Overlapping range with the tortoise does not provide adequate protection for *A. jaegerianus*. *Astragalus magdalenae* var. *peirsonii* and *A. tricarinatus* do not co-occur with any taxa already listed under the Act.

Astragalus lentiginosus var. *piscinensis* occurs within the Fish Slough ecosystem, a wetland supporting the Owens pupfish (*Cyprinodon radiosus*), a federally listed endangered species. The listing of the Owen's pupfish under the Act has provided additional recognition of the need to protect the Fish Slough ecosystem, and in that way has indirectly benefitted *A. lentiginosus* var. *piscinensis*. Conversely, impoundments and other manipulations of the spring system of the slough, created in part to provide habitat for the pupfish, have resulted in

the loss of alkali meadow habitat of *A. lentiginosus* var. *piscinensis*. Management emphasis on only one species or group of related species (e.g. endangered fishes) will not provide adequate protection to all sensitive species in the wetland system and, as in this case, may be detrimental to the survival or recovery of co-occurring species. The occurrence of federally listed fish species in Fish Slough does not provide adequate protection for *A. lentiginosus* var. *piscinensis* in its adjacent wetland habitat.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, including navigable waters, wetlands, and other waters (33 CFR parts 320–330). The Clean Water Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material, etc.) that would result in the filling of wetlands subject to the Corps' jurisdiction. The habitat of *Astragalus lentiginosus* var. *piscinensis* is seasonally moist alkaline flats adjacent to Fish Slough and is a jurisdictional wetland under the purview of section 404. Some protection from wetland fill activity, such as the construction of new dams, may be afforded by the regulatory process. However, unless a population of *A. lentiginosus* var. *piscinensis* were directly within the footprint of the fill area, impacts of the project on the species, e.g., changes in hydrology, may not be considered. Fluctuating water levels behind the dams at Fish Slough are not subject to regulation under section 404, but can result in undesirable changes in the hydrologic characteristics of the habitat of *A. lentiginosus* var. *piscinensis*, a primary threat to the species. Protections afforded to wetland areas under section 404 of the Clean Water Act are not sufficient to preclude listing the species.

Currently, the majority of *Astragalus jaegerianus* sites are either covered by mining claims, or are available for claims for mineral extraction. The BLM has only limited authority under the Federal Land Policy and Management Act (FLPMA) to control surface mining once claims are made. The policy of FLPMA, as expressed by regulation, grants individuals a statutory right to mine certain Federal lands (43 CFR 3809.0–6). Although mining projects are required to submit a Plan of Operations (for projects over 2 ha (5 ac) in size) or a Notice of Operations (for projects under 2 ha (5 ac), including exploratory mining), the BLM has only 15 days in which to respond. Since the notices may be submitted at times when the plants are not present above-ground, BLM must frequently base its response on existing knowledge of where plants are located, or were located in the past, rather than on field surveys to determine if a site supports this species. The options that are available to the Service and the BLM in response to a project are limited, unless an action may jeopardize the continued existence of the listed species pursuant to section 7 of the Act. *Astragalus jaegerianus* currently receives minimal regulatory protection in areas where mining activity is occurring.

Astragalus jaegerianus is included within the planning area of the West Mojave Coordinated Management Plan, a multi-agency effort to coordinate resource information and provide general resource management direction in the west Mojave Desert. Unresolved issues stalled the planning team's progress in 1996. The planning effort has since been reinitiated, with a modified objective and fewer species to be addressed. Although *A. jaegerianus* is one of the included taxa, the planning process is not yet at a stage that will provide it protection.

Astragalus lentiginosus var. *piscinensis* occurs within Zone 1 of an ACEC on public lands managed by the BLM, and on lands owned by the LADWP. A joint management committee composed of representatives of the LADWP, BLM, the Service, CDFG, and the University of California Natural Reserve System provide guidance on management issues. Although the management committee is making progress in addressing the needs of the sensitive plants and animals in the Fish Slough ecosystem, the changes in slough hydrology resulting from existing dams and, potentially, from natural causes (Ferren 1991c), are complex and will not be easily resolved. The Service concludes that the existence of the Fish Slough ACEC and management committee do not preclude the need to list *A. lentiginosus* var. *piscinensis* at this time.

Astragalus lentiginosus var. *coachellae* occurs within the bounds of the Coachella Valley Multispecies Habitat Conservation Planning (CVMSHCP) area. This planning process is being coordinated by the Coachella Valley Association of Governments and the Coachella Valley Mountains Conservancy to address a 4500 sq km (1,850 sq mi) area that includes the Coachella Valley and surrounding region in Riverside County. The plan is expected to address conservation needs for 12 species that are listed or proposed for listing as endangered or threatened species, 21 candidate species, and 17 additional species of concern to the Service. However, the planning process is in its initial stages and its funding is not secured, nor is a product yet available that can be implemented. Thus, the inclusion of *A. lentiginosus* var. *coachellae* in the CVMSHCP planning process is not sufficient to preclude the need to list the species at this time.

E. Other Natural or Human-caused Factors Affecting Their Continued Existence

A potential threat to *Astragalus jaegerianus* is habitat destruction from emergency fire suppression activities in response to wildfires occurring at Lane Mountain Mesa. An increase in fire frequency has been documented for the nearby Superior Dry Lake area (T. Eagen, pers. comm. 1997) and the Lane Mountain Mesa area is experiencing similar increases in human activity (the ignition source) and nonnative annual plant species (the significant fuel source) (T. Eagen, pers. comm. 1996). Although the population of *A. jaegerianus* has not been burned recently, the existence of fewer than 30 plants at this site make it extremely vulnerable to emergency fire suppression activities or similar unplanned events.

Lack of recruitment is a potential threat to *Astragalus lentiginosus* var. *piscinensis*. BLM has been monitoring this taxon in the central-eastern zone of Fish Slough since 1992 and has observed no recruitment in the area during that time (BLM, *in litt.* 1993, 1996; Anne Halford, BLM, pers. comm. 1996). Two potential explanations for this are high rabbit/rodent herbivory of seedlings and changes in soil hydrology or chemistry that make the area less hospitable for seedlings. Alterations in the extent and timing of soil saturation have occurred in several areas of the slough due to past hydrologic modifications, most recently for the enhancement of endangered fish habitat.

Astragalus lentiginosus var. *piscinensis* is subject to grazing from livestock. The Fish Slough area was first grazed by cattle in the 1860s, and grazing currently occurs on all LADWP lands that support *A. lentiginosus* var. *piscinensis* except for those within the northern 32-ha 80-ac exclosure (P. Hubbard, pers. comm. 1996). Data on plant numbers, collected from plots in grazed and ungrazed areas of Fish Slough from 1991 to 1996, suggest that some recruitment of new individuals into the population is occurring in both the grazed and ungrazed sample areas. The sampled plots are few (three grazed

plots and two ungrazed plots) and numbers of plants within the plots fluctuated substantially over the sampling period without clear increasing or declining trends.

Grazing by livestock alters the composition of the plant community over time by reducing or eliminating those species that cannot tolerate trampling and by enabling those that can to increase in abundance. Other taxa that were not previously part of the native plant community may be introduced and flourish under the disturbance caused by grazing and may reduce or eliminate native taxa through competition for resources. The Service considers cattle grazing a potential threat until more conclusive evidence is available. Additional discussion of cattle grazing can be found in this document in the Service's ''Response to Comments'' section of this final rule (see Issue 4).

Astragalus tricarinatus is vulnerable to crushing by motorized vehicles in Big Morongo Wash. Although access to the bottom of the canyon is gated, botanists conducting surveys for *A. tricarinatus* in 1994 noted motor vehicle tracks within several feet of the plants. While some of the vehicle activity may have been associated with pipeline maintenance, other vehicle use may have been recreational (Mathews 1994). Due to the limited number of individuals (less than 100 known plants), *A. tricarinatus* remains extremely vulnerable to loss of plants due to OHVs, maintenance operations, and unforseen events relating to the pipeline (e.g., pipeline breaks or leaks) that could cause local population extirpation and potentially lead to extinction of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on new information that has come to light since these taxa were proposed and based on reevaluation of existing data, the Service's preferred action is to list *Astragalus jaegerianus, A. tricarinatus,* and *A. lentiginosus* var. *coachellae* as endangered, and *A. lentiginosus* var. *piscinensis* and *A. magdalenae* var. *peirsonii* as threatened. The three endangered taxa face the following threats—habitat alteration and destruction resulting from construction, urban development, mining, pipeline maintenance, and OHV activity; and the inadequacy of existing regulatory mechanisms. The low numbers and small population sizes of *A. jaegerianus* and *A. tricarinatus* make them particularly vulnerable to extinction from random natural events (e.g., flooding that could wash substantial amounts of the seedbank into unsuitable habitat) or unforeseen events (e.g., wildfire suppression activities, pipeline breaks, leaks, or repairs). Because these three taxa are in danger of extinction throughout all or a significant portion of their ranges, they meet the definition of endangered under the Act.

Both *Astragalus magdalenae* var. *peirsonii* and *A. lentiginosus* var. *piscinensis* were originally proposed for endangered status. Since the proposed rule was published, the northern portion of Algodones Dunes habitat that supports *A. magdalenae* var. *peirsonii* was formally designated as wilderness in 1994 under the California Desert Protection Act. This wilderness is permanently closed to motorized-vehicle use. Since publication of the proposed rule, the Service has also become aware of collections of *A. magdalenae* var. *peirsonii* from the Gran Desierto in Sonora, Mexico. The specimens from Sonora were all collected from the southern Gran Desierto over a 15-year period (Richard Felger, Drylands Institute, pers. comm. 1996; J. Rebman, San Diego Museum of Natural History, pers. comm. 1996; Alan Romspert, California Desert Studies Center, pers. comm. 1996; Gary D. Wallace, Service, pers. comm. 1996). While this taxon remains vulnerable to the OHV use occurring over most of its dune habitat, the Service believes that the dispersed nature of its colonies and the wilderness designation reduce the potential for immediate extinction. Therefore, a designation of threatened is appropriate for this taxon. *Astragalus lentiginosus* var. *piscinensis* is threatened by hydrologic modification of its wetland ecosystem, and reduced recruitment that may be due to past alteration of habitat or rabbit/rodent herbivory. A significant portion of the northern population is protected by an exclosure, reducing the threat from grazing. In addition, the lands on which it occurs receive specific management consideration due to its inclusion in an ACEC. The Service determines that, while this taxon may not be in immediate danger of extinction, it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range, thus a threatened designation is appropriate. Critical habitat is not being designated for these five taxa for reasons discussed in the following section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management 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 are determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. The requirement that Federal agencies must not destroy or adversely modify critical habitat in any action authorized, funded or carried out by such agency (agency action) is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species; and it is the only mandatory legal consequence of a critical habitat designation. The Service's implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification of habitat means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.''

Common to both definitions is an appreciable detrimental effect to both the survival and recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species by reducing reproduction, numbers, or distribution because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

For a listed plant species, an analysis to determine jeopardy under section 7(a)(2) would consider loss of the species associated with habitat impacts. Such an analysis would closely parallel an analysis of habitat impacts conducted to determine adverse modification of critical habitat. As a result, an action that results in adverse modification also would almost certainly jeopardize the continued existence of the species concerned. Listing these species will ensure that section 7 consultation occurs and potential impacts to the species and their habitat are considered for any Federal action that may affect these species. In many cases, listing also ensures that Federal agencies consult with the Service even when Federal actions may affect unoccupied suitable habitat where such habitat is essential to the survival and recovery of the species. This is especially important for plant species where consideration must be given to the seed bank component of the species, which are not necessarily visible in the habitat throughout the year. A significant portion of their vegetative structure may not be in evidence during cursory surveys; occupancy of suitable habitat can only be reliably determined during the growing season. In practice, the Service usually consults with Federal agencies proposing projects in areas where the species was known to recently occur or to harbor known seed banks.

Specific areas outside the geographical area occupied by a species are included in the Act's definition of ''critical habitat.'' Critical habitat can be designated for suitable, but unoccupied, habitat of listed species. However, the Act indicates that critical habitat ''shall not include the entire geographical area which can be occupied by the threatened or endangered species'' except when determined by the Secretary. In the case of the species addressed in this final rule, the Service does not know specifically why some areas that seem suitable are unoccupied. Designating all potentially suitable areas could, therefore, encompass ''the entire geographical area'' which can be occupied by the species. Furthermore, the Service has not yet made a determination as to how much habitat is required for recovery. Designating all or a portion of unoccupied habitat under these circumstances seems inappropriate and contrary to Congressional intent. The Service believes the issue of conserving and managing potentially suitable unoccupied habitat is best addressed during the recovery planning process as biologists learn more about these species and are able to work directly with affected landowners on how to best manage these habitats.

Apart from section 7, the Act provides no additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Critical habitat would provide no benefit to the species addressed in this rule on non-Federal lands (i.e., private, State, County or City lands) beyond that provided by listing. Critical habitat provides protection on non-Federal lands only if there is Federal involvement (a Federal nexus) through authorization or funding of, or participation in a project or activity on non-Federal lands. In other words, designation of critical habitat on non-Federal lands does not compel or require the private or other non-Federal landowner to undertake active management for the species or to modify any activities in the absence of a Federal nexus. Possible Federal agency involvement or funding that could involve the species addressed in the rule on non-Federal lands include the BLM, DOD, and the Corps. Federal involvement, if it does occur, will be addressed regardless of whether critical habitat is designated because interagency coordination requirements such as the Fish and Wildlife Coordination Act (FWCA) and section 7 of the Act are already in place. When these plant species are listed, activities occurring on all lands subject to Federal jurisdiction that may adversely affect these species would prompt the requirement for consultation under section 7(a)(2) of the Act, regardless of whether critical habitat has been designated.

While a designation of critical habitat on private lands would only affect actions where a Federal nexus is present and would not confer any additional benefit beyond that already provided by section 7 consultation because virtually any action that would result in an adverse modification determination would also likely jeopardize the species, a designation of critical habitat on private lands could result in a detriment to the species. This is because the limited effect of a critical habitat designation on private lands is often misunderstood by private landowners whose property boundaries could be included within a general description of critical habitat for a specific species. Landowners may mistakenly believe that critical habitat designation will be an obstacle to development and impose restrictions on their use of their property. In some cases, members of the public may believe critical habitat designation to be an attempt on the part of the government to confiscate their private property. Unfortunately, inaccurate and misleading statements reported through widely popular medium available worldwide, are the types of misinformation can and have led private landowners to believe that critical habitat designations prohibit them from making use of their private land when, in fact, they face potential constraints only if they need a Federal permit or receive Federal funding to conduct specific activities on their lands. These types of misunderstandings, and the fear and mistrust they create among potentially affected landowners, make it very difficult for the Service to cultivate meaningful working relationships with such landowners and to encourage voluntary participation in species conservation and recovery activities. Without the participation of landowners in the recovery process, the Service will find it very difficult to recover species that occur on non-Federal lands.

A designation of critical habitat on private lands could actually encourage habitat destruction by private landowners to rid themselves of the perceived endangered species problem. Listed plants have limited protection under the Act, particularly on private lands. Section 9(a)(2) of the Act, implemented by regulations at 50 CFR section 17.61 (endangered plants) and 50 CFR 17.71 (threatened plants) prohibits—(1) removal and reduction of listed plant species to possession from areas under Federal jurisdiction, or their malicious damage or destruction on areas under Federal jurisdiction; or (2) removal, cutting, digging up, or damaging or destroying any such species in knowing violation of any State law or regulation including state criminal trespass laws. Generally, on private lands, collection of, or

vandalism to, listed plants must occur in violation of State law to be a violation of section 9. The Service is not aware of any state law in California that generally regulates or prohibits the destruction or removal of federally listed plants on private lands. Vandalism is a potential threat to the five taxa listed in this rule. In the general area where the plants addressed in this rule are found, a development and construction company was documented to have deliberately bulldozed known federally listed plant locations at a work site. (T. Thomas, Service). The designation of critical habitat requires the publication of precise habitat descriptions and mapped locations of the species in the **Federal Register**, increasing the likelihood of collection and vandalism, including potential search and removal activities at specific sites.

The Service acknowledges that in some situations critical habitat designation may provide some value to the species by notifying the public about areas important for species' conservation and calling attention to those areas in special need of protection. However, when this limited benefit is weighed against the potential threat of collection and vandalism associated with the designation of critical habitat, the Service concludes that the possible detriment to the species from a critical habitat designation outweighs the possible conservation benefit of such designation and that such designation is therefore not prudent. The information and notification process can more effectively be accomplished by working directly with landowners and communities during the recovery planning process and by the section 7 consultation and coordination process when a Federal nexus exists. The use of these existing processes will provide the same level of conservation benefit to the species that the designation of critical habitat would, but without the confusion and misunderstandings associated with critical habitat designation.

For similar reasons, the Service also concludes that there would be no additional benefits to the species covered in this rule beyond the benefits conferred by listing from a designation of critical habitat on Federal lands. In the case of each of these plant species, the existing occurrences of the species are known by the BLM and DOD; and any action that would result in adverse modification of critical habitat would almost certainly result in likely jeopardy to the species, so that a designation of critical habitat on Federal lands would not confer any additional benefit on the species. On the other hand a designation of critical habitat could increase the threats to these species from vandalism and collection similar to the threats identified in response to listing a species (Oberbauer 1992, Beauchamp *in litt.* 1997). Simply listing a species can precipitate commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for both commercial and scientific purposes. The listing of species as endangered or threatened publicizes a species' rarity and may make the species more susceptible to collection by researchers or curiosity seekers (Mariah Steenson pers. comm. 1997, M.Bosch, U.S. Forest Service *in litt.* 1997). For example, the Service has documented an incident where, following the publication of critical habitat designation in the **Federal Register**, unidentified persons visited a Forest Service wilderness area where listed plants were located and asked directions to the location of the plants in question. Several plants were later found to be missing from the Service study plots (Nora Murdock, Service, pers. comm. 1998).

Because public lands such as BLM lands are open for public use, this threat exists whenever maps of listed plant locations are made known to the public, as required for critical habitat designation. Critical habitat designation also makes plant species more vulnerable to vandals who would destroy occurrences of plants and other protected species in order to avoid perceived or potential land management conflicts. The potential threat of vandalism and collection would likely be exacerbated by publication of descriptions and maps of critical habitat in the **Federal Register**. The Service concludes that the absence of any additional conservation benefit from a designation of critical habitat for the plant species covered by the rule known to occur on Federal lands, and the likely detriment from such designation resulting from increased threats of collection and vandalism renders a designation of critical habitat for the plants not prudent.

The Service has weighed the lack of overall benefits of critical habitat designation beyond that provided by listing species as threatened or endangered along with the benefits of public notification against the detrimental effects of the negative public response and misunderstanding of what critical habitat designation means and the increased threats of illegal collection and vandalism, and has concluded that critical habitat designation is not prudent for *Astragalus jaegerianus*, *A. lentiginosus* var. *coachellae*, *A. lentiginosus* var. *piscinensis*, *A. magdalenae* var. *peirsonii*, and *A. tricarinatus*. More specific details why designation of critical habitat is not prudent for each of these species is addressed in the following discussion.

Astragalus jaegerianus

Astragalus jaegerianus occurs on lands managed by the BLM and the DOD. Because so few plants are known to occur, it is likely that any activity that would be considered an adverse modification of critical habitat would also likely jeopardize the continued existence of the species; thus, a critical habitat designation would provide no advantage or additional conservation benefit in this instance. However, *A. jaegerianus* occurs in desert shrublands that appear no different from surrounding, unoccupied habitat. There is no easily observable difference in dominant vegetation type, landform, soil, or hydrologic characteristics, to distinguish occupied habitat of *A. jaegerianus* from surrounding unoccupied or unsuitable habitat. For this reason, the designation of critical habitat could potentially benefit this species by formally delineating for the Federal agencies those areas occupied by the species or that the Service deems critical to its survival and recovery, thus ensuring that consultation will take place when a federally authorized activity (such as military maneuvers or mining) occurs in critical habitat. While this small benefit may exist, it is offset by the potential negative effects of designating critical habitat. Known populations of *A. jaegerianus* total only a few hundred plants. A critical habitat map that delineated occupied habitat areas would increase the potential for overcollecting by amateur and unethical professional botanists, especially since one of the populations is easily accessible from a road. Increases in collection of rare plant species following publications discussing the species' rarity have been documented (Gary Wallace, Service, pers. comm. 1997; Nora Murdock, Service, pers. comm. 1998). The threat of vandalism on Federal lands exists for this species.

The Service finds that critical habitat designation would provide little conservation benefit over that provided by listing where this species occurs. Federal agencies where the species occurs on their lands are aware of its presence and status. Critical habitat designation on these lands would not necessarily change the way those lands are managed or require that specific management actions take place. All

activities that may affect the species on these Federal lands would be subject to section 7 consultation. The Service believes that the conservation of this species on Federal lands can best be addressed by working directly with the agencies during the recovery planning process and the interagency coordination and consultation processes of section 7 for those activities with Federal agency involvement. In conclusion, the Service has weighed the general lack of benefit beyond that provided by listing as endangered against the detrimental effects of the increased threat of vandalism and the potential for misunderstandings by the public about the effects of critical habitat designation on Federal lands, and concludes that critical habitat is not prudent for *Astragalus jaegerianus.*

Astragalus lentiginosus var. *coachellae*

Astragalus lentiginosus var. *coachellae* is currently known from fewer than 25 occurrences in the Coachella Valley. About 75 to 80 percent of the known occurrences of *Astragalus lentiginosus* var. *coachellae* are located on private lands. The primary threat to *A. lentiginosus* var. *coachellae* is habitat destruction due to the extensive urban development occurring in the Coachella Valley. Urbanization destroys populations by direct conversion of the land on which they occur and by altering or reducing the source and transport of blow sands that maintain the sand habitats of the Coachella Valley. As discussed above, widespread misunderstanding exists in the public sector about the regulatory effect of a designation of critical habitat. On these lands, a designation of critical habitat could lead to increased vandalism; and because plants on private lands have few protections under section 9 of the Act, acts of take or vandalism would be difficult to prosecute. Where the taxon does occur on Federal lands or where Federal involvement may occur on non-Federal lands, actions that could adversely affect this taxon would be subject to consultation under section 7 of the Act. In some cases, delineating areas as critical habitat may provide a benefit to the taxon by increasing awareness of its location and by triggering additional consultations under section 7 that otherwise might not occur if the Federal agencies are unaware of population locations. The locations of *A. lentiginosus* var. *coachellae* on Federal land are being tracked and additional surveys are being conducted as part of the planning process for the Coachella Valley Multispecies Habitat Conservation Plan. Due to this active planning effort, a designation of critical habitat would not provide any benefit through increased awareness or through consultation with the Service. The Service determines that designation of critical habitat for this taxon will provide it no additional conservation benefits beyond those provided by its listing, and that the designation could lead to acts of collection or vandalism. Therefore, the risks associated with a designation of critical habitat outweigh the possible benefits of designating critical habitat. Designation of critical habitat is, therefore, not prudent.

Astragalus lentiginosus var. *piscinensis*

Astragalus lentiginosus var. *piscinensis* is restricted to a 6-mile stretch of alkali flat habitat and the transition zones to alkali scrub paralleling Fish Slough, in Inyo and Mono Counties, California. These habitat types form a ring around the seasonally and permanently flooded wetland areas of the slough itself. Over 60 percent of this population is located in the northern portion of the slough on land owned by the LADWP and approximately 35 percent of known *A. lentiginosus* var. *piscinensis* plants grow in the central zone of the slough on lands owned and managed by both BLM and LADWP. About 5 percent are in scattered patches downstream as far as McNally Canal, but Fish Slough is narrow at its southern end, with little suitable habitat (P. Novak, *in litt.* 1992; W. Ferren, *in litt.* 1992).

The alkali flat and alkali scrub habitat in the Fish Slough ecosystem were well-mapped by 1991 (Ferren 1991a) and the distribution of *Astragalus lentiginosus* var. *piscinensis* was mapped by BLM and LADWP in 1992, during surveys in which all potential habitat was searched. The habitat types in which *A. lentiginosus* var. *piscinensis* grows are visually different in dominant species than the surrounding upland habitat and are limited in extent. The lands on which *A. lentiginosus* var. *piscinensis* occurs receive specific management consideration due to its inclusion in an ACEC. The entire range of this taxon is encompassed within the Fish Slough ACEC under multi-agency management that includes BLM and the LADWP and this, combined with its proximity to a BLM Resource Area office, have provided *A. lentiginosus* var. *piscinensis* substantial recognition by BLM staff. As a result of this taxon occurring partially on lands managed by the BLM, section 7 consultations are probable. Because the habitat of this taxon is distinctive and the Fish Slough area is a management area of specific concern to the BLM, a designation of critical habitat would not provide *A. lentiginosus* var. *piscinensis* any additional recognition, or increased protection through consultation, beyond that provided by its listing. In 1991, LADWP constructed a 32 ha (80 ac) cattle exclosure at the northern end of the slough. In 1992, over 95 percent of the *A. lentiginosus* var. *piscinensis* plants in the northern zone were within the exclosure. Other than the area encompassed by the exclosure in the north end of Fish Slough, lands under LADWP management that support this taxon are grazed (Paula Hubbard, LADWP, pers. comm. 1996). Grazing is not permitted in the habitat of *A. lentiginosus* var. *piscinensis* on lands managed by BLM, in the central zone of the slough. The Service recognizes the efforts of the LADWP to protect *A. lentiginosus* var. *piscinensis* from the direct effects of trampling in the north region of the Slough by constructing a fenced exclosure and commends the efforts of the BLM and LADWP to monitor the status of the plant. Critical habitat designation on these lands would not change the way those lands are managed or require that specific management actions take place. Because this taxon is very narrowly distributed, any activity that would be significant enough to be considered an adverse modification of critical habitat would also likely jeopardize the continued existence of the species. For these reasons, the Service determines that designation of critical habitat for this taxon is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Astragalus magdalenae var. *peirsonii*

BLM manages all of the Algodones Dunes, the location of the only confirmed extant populations of *Astragalus magdalenae* var. *peirsonii* in the United States. Given the sensitivity of the sand dune habitat of this species to physical disturbance and the limited distribution and reliance of *A. magdalenae* var. *peirsonii* to a specific habitat type, the biological threshold for ''jeopardy'' and ''destruction or adverse modification'' is essentially identical. That is, any action that would impact the habitat of this species to the degree of causing destruction or adverse modification (i.e., appreciably diminishing the value of the area for both the survival and recovery of the species) would also jeopardize the continued existence of the species (i.e., reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species).

Approximately 180 sq mi of the Algodones Dunes are open to OHV access and 30 sq mi of dunes are ''closed'' to OHV use. The Service's review of aerial photography of Algodones Dunes indicates that the most intensive OHV use and the resulting destruction of plant habitat occurs in about 1/3 of the open area. Given the public's misperception about critical habitat and greater access to the dunes by OHV users (see Factor A of the ''summary of factors Affecting the Species'' section of this rule), it seems likely that a designation of critical habitat could lead to acts of vandalism. The Service believes that if critical habitat is designated for *Astragalus magdalenae* var. *peirsonii*, in any portion of the dune system, such action may provoke deliberate incidents of vandalism by OHV users. The public's misperception that critical habitat essentially limits or nullifies use of public lands may serve to encourage acts of vandalism. The threat of vandalism on Federal lands exists for this species.

The Service finds that critical habitat designation would provide little conservation benefit over that provided by listing where this species occurs. The Service acknowledges that critical habitat designation, in some situations, may provide limited additional benefit to a species by identifying areas important for the conservation of the species and calling attention to those areas in special need of protection. The BLM is already aware of the presence of *Astragalus magdalenae* var. *peirsonii* and its status. Critical habitat designation on these lands would not necessarily change the way those lands are managed or require that specific management actions take place. All activities that may affect the species on these Federal lands would be subject to section 7 consultation. Thus, with the listing of *A. magdalenae* var. *peirsonii*, activities occurring on all lands under Federal jurisdiction or ownership that may adversely affect *A. magdalenae* var. *peirsonii* would prompt the same standard for consultation pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto regardless of whether critical habitat has been designated. The Service believes that the conservation of this species on Federal lands can best be addressed by working directly with the BLM during the recovery planning process and the interagency coordination and consultation processes of section 7. In conclusion, the Service has weighed the general lack of conservation benefit of designating critical habitat beyond that provided by listing against the detrimental effects of the increased threat of vandalism and the potential for misunderstandings of critical habitat by the public, and concludes that critical habitat is not prudent for *A. magdalenae* var. *peirsonnii*.

Astragalus tricarinatus

As of January 1997, *Astragalus tricarinatus* is known to be extant along approximately 2 to 3 km (1 to 2 mi) of Big Morongo Canyon and its tributary canyons. Collections of this taxon exist from three other canyons within its range, however at two sites, only a single plant was found. At Big Morongo Canyon, this taxon is found on lands managed by the BLM and included within a preserve. Any Federal action that occurs in the wash habitat of this species will require consultation with the Service through the section 7 guidelines. Because *A. tricarinatus* occurs in only a few locations, any Federal action significant enough to be considered adverse modification of critical habitat would also likely jeopardize the continued existence of this species, thus there is no additional conservation benefit to designating critical habitat. The habitat map that would be required for designation of critical habitat would delineate occupied habitat areas, and would increase the potential for overcollecting by amateur and unethical professional botanists, especially since one of the populations is easily accessible from a road. Increases in collection of rare plant species following publication of articles discussing their rarity has been documented in the past (Gary Wallace, Service, pers. comm. 1997). The Service determines that the negative effects of designating critical habitat outweigh any potential benefits of its designation. For these reasons, the Service determines that designation of critical habitat for this taxon is not prudent because it would provide no additional benefit to the species beyond that conferred by its listing, and the designation of critical habitat would increase the potential for acts of vandalism due to the public's misperceptions about critical habitat. Therefore, designation of critical habitat for *A. tricarinatus* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, 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 certain activities involving listed plants 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 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 subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of 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.

Four of the five taxa occur wholly or primarily on Federal lands managed by the BLM or the DOD. Three of the taxa occur partially or wholly within areas designated as ACECs, one species occurs within a wind energy development corridor, and one species occurs within a recreation area. BLM activities that could potentially affect these taxa and their habitats include review of mining operation plans and minerals leasing, geothermal energy leasing, permitting of grazing, alteration of dams and hydrologic conditions at Fish Slough, the permitting of pipeline maintenance, wind energy development and associated rights-of-way in the Coachella Valley, and the development of recreational facilities and improvement of access in the Imperial Dunes Recreation Area. The BLM is currently developing a Habitat Conservation Plan for the desert tortoise in the western Mojave Desert that includes the entire range of *Astragalus jaegerianus*. Specific actions have not been identified at this time. The DOD training activities conducted at the NTC at Fort Irwin could potentially affect *Astragalus jaegerianus*. Specific actions

on DOD lands have not been identified at this time.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened and endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, and at 50 CFR 17.71 for threatened plants apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species. This protection may apply to *Astragalus lentiginosus* var. *piscinensis* and *A. magdalenae* var. *peirsonii* in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because these species are not common in cultivation or in the wild.

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 be likely to constitute a violation of section 9 of the Act. The intent of this policy is intended to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Four of the taxa in this rule are known to occur on lands under the jurisdiction of the BLM, with one also occurring on lands under the jurisdiction of the DOD. Collection, damage, or destruction of individuals of these species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations, including violation of State criminal trespass law. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

The Service believes that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of pesticides/herbicides in violation of label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

The Act and 50 CFR 17.62 and 17.63 for endangered plants and 17.72 for threatened plants provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Questions regarding whether specific activities would constitute violations of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants (50 CFR 17.61 and 17.71) and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

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 Endangered Species Act of 1973, 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).

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits 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 Ventura Field Office (see **ADDRESSES** above).

Author. The primary author of this final rule is Diane Steeck, Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus jaegerianus.	Lane Mountain milk-vetch.	U.S.A. (CA)	Fabaceae	E	647	NA	NA
*	*	*	*	*	*		*
Astragalus lentiginous var. *coachellae.*	Coachella Valley milk-vetch.	U.S.A. (CA)	Fabaceae	E	647	NA	NA
*	*	*	*	*	*		*
Astragalus lentiginous var. *piscinensis.*	Fish Slough milk-vetch.	U.S.A. (CA)	Fabaceae	T	647	NA	NA
*	*	*	*	*	*		*
Astragalus magdalenae var. *peirsonii.*	Peirson's milk-vetch	U.S.A. (CA)	Fabaceae	T	647	NA	NA
*	*	*	*	*	*		*
Astragalus tricarinatus.	Triple-ribbed milk-vetch.	U.S.A. (CA)	Fabaceae	E	647	NA	NA

Dated: September 29, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–26734 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 63, No. 193
Tuesday, October 6, 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

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1924

RIN 0575–AC11

Manufactured Housing Thermal Requirements

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), a part of the former Farmers Home Administration (FmHA), and now part of the Rural Development Mission Area of the U.S. Department of Agriculture, proposes to amend its regulations regarding the thermal requirements for manufactured homes. The intended effect is to make the references to thermal requirements for manufactured homes consistent with requirements for the U.S. Department of Housing and Urban Development (HUD) zones that correspond to the RHS climatic zones. Since HUD increased its energy requirements for manufactured homes, RHS has compared these new requirements with the RHS thermal requirements. Our analysis indicates that the thermal performance of a unit built to the HUD requirements is roughly comparable to the thermal performance of a unit built to the requirements of the RHS climatic zones. This will reduce the burden on the manufactured housing industry, RHS field personnel, and most importantly RHS customers.

DATES: Comments must be submitted on or before December 7, 1998.

ADDRESSES: Submit written comments via the U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Richard Gartman, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Ave., SW, Washington, DC 20250–0742. Submit written comments via Federal Express Mail, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Richard Gartman, USDA–Rural Development, 3rd Floor, 300 E Street, SW., Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to ''comments@rus.usda.gov'' and must contain ''thermal'' in the subject line. All comments will be available for public inspection during regular work hours at the 300 E Street, SW. address listed above.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, Stop 0761, Washington, DC 20250–0761, Telephone: (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the head of the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Manufacturers, large and small, will no longer have to conform with the energy requirements of two Federal agencies. As required by federal law, manufacturers will continue to follow the Federal Manufactured Housing Construction and Safety Standard (FMHCSS) requirements. Notwithstanding the above, a regulatory impact analysis was prepared and determined that no significant economic impact will occur on a substantial number of small entities. To the contrary, the rule will be of substantial benefit by reducing the number of regulations and different standards the industry must meet.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the issuing agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

This action affects the following programs as listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.415 Rural Rental Housing Loans

All of the affected programs, except 10.410 Very Low to Moderate Income Housing Loans, are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials prior to making individual loans.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12998, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule: and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR part 1924, subpart A. The assigned OMB number is 0575–0042. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA,

RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion

Subsection 502(e)(1) of the Housing Act of 1949, 42 U.S.C. 1472(e)(1), establishes standards for manufactured homes which will be financed with RHS single family housing loans under section 502 of the Housing Act of 1949. Subsection 502(e)(1)(c) provides that manufactured homes must meet the energy conservation requirements applicable to other non-manufactured housing financed by RHS single family housing loans until the agency established energy conserving requirements under section 502(e)(2). The purpose of this regulation is to establish energy conserving requirements specifically designed for manufactured homes pursuant to section 502(e)(2).

The section 502(e) criteria for energy conserving requirements for RHS financed manufactured housing require that the requirements: ''(A) reduce the operating costs for a borrower by maximizing the energy savings and be cost-effective over the life of the manufactured home or the term of the loan, whichever is shorter, taking into account variations in climate, types of energy used, the cost to modify the home to meet such requirements, and the estimated value of the energy saved over the term of the mortgage; and (B) be established so that the increase in the annual loan payment resulting from the added energy conserving requirements in excess of those required by the standards prescribed under title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 et seq.] shall not exceed the projected savings in annual energy costs.''

The agency is adopting the energy conserving standards established by HUD under title VI of the Housing and Community Development Act of 1974 and, as hereinafter discussed, has determined that these zoned standards maximize energy savings and are cost-effective to the borrower. Under this rule manufactured homes will no longer be required to meet the RHS thermal requirements applicable to non-manufactured single family housing financed by RHS. Exhibit D of 7 part 1924, subpart A, adopts the HUD thermal design zone requirements for the Federal Manufactured Home Construction and Safety Standards (FMHCCS) that correspond to the RHS climatic zones.

The existing RHS requirements for a manufactured unit are: (1) The unit must meet the Federal Manufactured Housing Constructions and Safety Standards, and (2) the unit must meet the same RHS thermal requirements as are applicable to other, non-manufactured single family housing, financed by RHS prior to the National Energy Policy Act of 1992. Since HUD increased its energy requirements for manufactured homes (58 FR 54975, Oct. 25, 1993, effective Oct. 25, 1994), RHS has compared these new requirements with the RHS thermal requirements to evaluate the differences.

Our analysis indicates that the thermal performance of a unit built to the HUD requirements is roughly comparable to the thermal performance of a unit built to the requirements of the corresponding RHS climatic zones. The table below lists the HUD zones that are roughly comparable to the RHS climatic zones.

RHS climate zone (degree-days)	HUD zones (state boundary)
0–1000	1
1001–2500	2
2501–4500	2
4501–6000	3
> 6000	3

The HUD increases in the thermal requirements of the building envelope are substantial. However, HUD's requirements are not based on climatic region; instead, they are based on state boundary. As an example, in the State of California there are 5 RHS climatic zones; whereas, HUD has identified the entire state as a single zone (HUD Zone 2). In California, the HUD-code home would be acceptable to RHS in climates with less than 4500 heating degree days. However, in colder climates of California, the HUD Zone 2 unit would not be adequate. The HUD Zone 3 requirements are roughly comparable to the RHS requirements for climatic zones greater than 4500 heating degree days. Similar comparisons can be made in other states.

On this basis, in order to simplify requirements we are proposing to amend our current energy requirements for manufactured housing to adopt the design requirements for the HUD zones that correspond to the RHS climatic zones.

There are many potential benefits to the manufactured housing industry, RHS, and most importantly, RHS customers:

1. Manufacturers will no longer have to conform with the energy requirements of two Federal agencies. As required by federal law, manufacturers will continue to follow the FMHCSS for non-thermal requirements.
2. Manufacturers will not have to retain qualified consultants to certify that designs conform with the existing RHS thermal requirements.
3. Manufacturers will no longer have to substantiate design conformance to RHS thermal standards.
4. Loan processing will be expedited since less paperwork will have to be reviewed by RHS loan approval officials.
5. RHS will reduce its regulatory requirements.
6. This will simplify on-site inspection by the RHS Community Development Managers (CDM). Since each local Office already knows their climatic zone, and since HUD requires the thermal zone for which a unit is built to be posted on a sticker in the unit, a CDM could quickly determine if a unit is acceptable by simply inspecting the HUD required sticker. RHS's current requirement for a separate certification sticker would be deleted.
7. The RHS customer will have a wider selection of manufactured homes to chose from.
8. The energy efficiency of the manufactured home will be roughly the same and in some cases exceed existing RHS thermal requirements.
9. The elimination of a separate energy efficiency requirement applicable only to RHS manufactured homes will make lending institutions more willing to guarantee RHS customer loans for manufactured homes.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction and repair, Construction management, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1989; 42 U.S.C 1480.

Subpart A—Planning and Performing Construction And Other Development

2. Exhibit D of subpart A is amended by adding paragraph IV. G to read as follows:

Exhibit D to subpart A—Thermal Performance Construction Standards

* * * * *

IV. Minimum Requirements

* * * * *

G. *New Manufactured Housing*

The Uo Value Zone indicated on the ''Heating Certificate'' for comfort heating shall be equal to or greater than the HUD Zone listed in the following table:

RHS climate zones (winter degree days)	FMHCCS (HUD code) Uo value zones
0–1000	1
1001–2500	2
2501–4500	2
4501–6000	3
>6000	3

Example: If a manufactured home is to be located in a geographic area having between 2501 and 4500 RHS winter degree days, the Agency will accept a Uo value Zone 2 unit or Zone 3 unit constructed to the HUD FMHCCS.

If a central air conditioning system is provided by the home manufacturer a ''Comfort Cooling Certificate'' must be permanently affixed to an interior surface of the unit that is readily visible. This certificate may be combined with the heating certificate on the data plate.

* * * * *

Dated: September 28, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–26761 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–243–FOR, #76]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Ohio rules pertaining to permitting requirements, bond release, and performance standards. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., [E.D.T.], October 21, 1998.

ADDRESSES: You should mail or hand deliver written comments to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@escgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (42 FR 34688). You can find later actions concerning the Ohio program at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated December 30, 1997 (Administrative Record No. OH–2174–05), Ohio submitted a proposed amendment to its program in accordance with SMCRA and 30 CFR 732.17(c). Ohio proposed to amend the provisions of the Ohio Administrative Code (OAC) at: OAC 1501:13–4–05—Permit Application Requirements, OAC 1501:13–4–12—Special Categories of Mining, OAC 1501:13–4–14—Underground Permit Application Requirements, OAC 1501:13–7–05—Release of Performance Bond, and OAC 1501:13–9–04—Performance Standards. We announced receipt of the amendment in the January 23, 1998, **Federal Register** (63 FR 3507).

During our review of the amendment, we identified concerns with Ohio's rules at OAC 1501 at subsections 13–4–12, 13–4–05, 13–4–14, and 13–9–04. We notified Ohio of our concerns via electronic mail on May 5, 1998 (Administrative Record No. OH–2174–11). By letter dated June 2, 1998 (Administrative Record No. OH–2174–12), Ohio submitted revisions at OAC:

1501:13–4–05(H)(1)(c), (H)(2)(c), (H)(6)
1501:13–4–14(H)(1)(c), (H)(2)(c), (H)(6)
1501:13–9–04(H)(1)(c)(ii), (H)(1)(d)

to reference the criteria in Natural Resources Conservation Service's Technical Release No. 60 (TR 60), ''Earth Dams and Reservoirs.''

During a conference call on July 16, 1998 (Administrative Record No. OH–2174–13), we informed Ohio that one issue remained at OAC 1501:13–4–12. On September 4, 1998, Ohio telefaxed us revisions to subsection 13–4–12(E) (Administrative Record No. OH–2174–16). The revised language is: ''The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining. Permanent water bodies, if any, to be constructed during mining and reclamation operations will be located within the post-reclamation non-prime farmland portions of the permit area. If the prime farmland acreage is to be restored in a location other than the premining location, the relocation must be approved by the Chief and the permittee must obtain the consent of all affected surface owner(s).''

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is approved, it will become part of the Ohio program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. We may not consider comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center in the final rulemaking or include them in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review) exempts this rule from review.

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the national Environmental Policy Act and 526DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*). The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis.

Regulatory Flexibility Act

The Department of the Interior determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 25, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–26701 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 98–217]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking (NPRM) to revise its rules to eliminate the Wireless Telecommunications Bureau's reference facility in Gettysburg, Pennsylvania. The demand to review application and licensing records will be met by the Commission's public access capabilities, particularly as the use of electronic filing increases. The NPRM also proposes to update the Commission's rules to accurately reflect the location and availability of license application information within the Wireless Telecommunications Bureau.

DATES: Comments are due November 5, 1998 and reply comments are due November 20, 1998.

ADDRESSES: Parties should file an original and five copies of all comments, reply comments, and supporting comments with the Office of the Secretary, 1919 M Street, NW, Suite 222, Washington, DC 20554. Parties submitting diskettes should send them to the Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 2100 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Boswell, 717–338–2601.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking. The full text of this NPRM is available for inspection and copying during normal business hours at the FCC Dockets Branch, Room 230, 1919 M Street NW, Washington, DC. The text of the NPRM may also be purchased by calling International Transcription Service at 202–857–3800.

Given the readily available electronic access to information concerning applications and licenses for wireless telecommunications services, this NPRM proposes to close the Commission's Gettysburg reference facility. Due to its location outside the Washington, DC area, the Gettysburg reference facility is not as well used as those at Commission headquarters. The demand to review materials will be easily met by the Commission's public access capabilities, particularly as the use of electronic filing expands to the point where the Commission receives little or no paper from applicants. The Wireless Telecommunications Bureau staff in Gettysburg will accept requests at their front counter to review paper documents, and the Commission's duplication services contractor will provide copies of applications upon request for their usual research and copying fees.

List of Subjects in 47 CFR Part 0

Public information and Inspection of records.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.453 is amended by revising the introductory text, paragraph (g) introductory text, paragraph (h) introductory text and adding new paragraph (o) to read as follows:

§ 0.453 Public reference rooms.

The Commission maintains the following public reference rooms at its offices in Washington, DC:

* * * * *

(g) *The Common Carrier Bureau, Network Services Division Public Reference Room.* The following documents, files and records are available for inspection at this location.

* * * * *

(h) *The Wireless Telecommunications Bureau, Commercial Mobile Services Reference Room.* The following documents, files and records are available for inspection at two different locations. The Legal Branch is the responsible custodian for both locations.

* * * * *

(o) Electronically stored application and licensing data for commercial radio operator applications and all authorizations in the Wireless Radio services are available for public inspection via the Commission's wide area network. Wireless Radio services include Commercial and Private Mobile Radio, Common Carrier and Private Operational Fixed Point-to-Point Microwave, Local Television Transmission Service (LTTS), Digital Electronic Message Service (DEMS), Aviation Ground and Marine Coast applications.

3. Section 0.455 is amended by revising paragraph (f) to read as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(f) *Wireless Telecommunications Bureau.* See § 0.453(o) of this chapter.

* * * * *

[FR Doc. 98–26642 Filed 10–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC13

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the San Xavier Talussnail (Sonorella eremita) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) withdraws a proposal to list the San Xavier talussnail (*Sonorella eremita*) as an endangered species under the Endangered Species Act of 1973, as amended. This species occurs on a hillside on private property in Pima County, Arizona. Following publication of the proposed rule, the Service gathered additional information on land ownership, and a conservation agreement was completed which reduces threats to the species to a level at which listing as threatened or endangered is not warranted.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

FOR FURTHER INFORMATION CONTACT: Debra Bills at the above address or telephone 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

The San Xavier talussnail (*Sonorella eremita*) is a land snail and was first described in 1910 by H.A. Pilsbry and L.E. Daniels (Pilsbry and Ferriss 1915). The species has a globose (globular) shell with as many as 4.5 whorls, a white to pinkish tint and a chestnut-brown shoulder band. It is approximately 19 millimeters (0.7 inches) in diameter. Its shell is very typical of desert *Sonorella* (Pilsbry and Ferriss 1915).

The San Xavier talussnail lives in a deep, northwestward facing, limestone rockslide in Pima County, Arizona. Its habitat is protected from drying effects of the sun by outcrops of limestone and decomposed granite to the northeast and southwest, and by the hill itself to the southeast (Pilsbry and Ferriss 1915, Hoffman 1990). The vegetation, slope of the hillside, and depth of the slide provide necessary moisture conditions. The talussnail is similar to other *Sonorella* species in that it feeds on fungus or decaying plant material (Hoffman 1990). The San Xavier talussnail is hermaphroditic (has both male and female reproductive organs) (Morton 1968, Hoffman 1990). After a rain, the snail will lay eggs, feed, and mate. Fertilization and production of eggs takes several days. If the rains are short-lived, the snails hold the eggs until the next rain. The species requires 3 or 4 years to mature, depending on rainfall frequency, and has a reproductive life of 4 to 6 years, depending on the number of days it remains active (Hoffman 1990).

Talussnails are sensitive to drying and sedimentation resulting from disturbance of the talus slope and associated vegetation. In general, desert snails are known to protect themselves from drying by crawling into deep, cool rockslides that are not filled with soil. The limestone rock or other talus that contains calcium carbonate is crucial to the species as it aids in shell deposition and neutralizes carbonic acid that is produced during estivation (period of inactivity) (Hoffman 1990). The San Xavier talussnail is known to estivate for up to three years and in most years is only active for three or four days (Hoffman 1990).

With the assistance of global positioning system units in February, 1998, the Service and the Arizona Game and Fish Department were able to obtain the exact location of the talus slope and identify the correct landowner. Discussions with this landowner led to a revised assessment of the threats faced by the San Xavier talussnail and the talus slope on which it resides.

Previous Federal Action

We included the San Xavier talussnail as a Category 2 candidate species in our May 22, 1984, notice of review of candidate invertebrates (49 FR 21664) and in our January 6, 1989, animal candidate Notice of Review (54 FR 554). Category 2 species were those taxa for which we had information indicating that listing may be warranted but for which the information was insufficient to support issuance of proposed listing rules. We included the San Xavier talussnail as a Category 1 candidate species in our November 21, 1991, animal candidate notice of review (56 FR 58804). Category 1 species were those taxa for which we had sufficient information to support issuance of listing proposals. We published a proposal to list this species in the **Federal Register** on March 23, 1994 (59 FR 21664). Publication of the proposal initiated a comment period which expired on May 23, 1994.

Processing of a final determination on the proposed rule to list the San Xavier

talussnail was delayed by the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6). Following lifting of the moratorium and restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Law on April 26, 1996, we developed listing priority guidance (May 16, 1996, 61 FR 24722) to clarify the order in which we would process rulemakings. We commenced work on resolving outstanding proposed listings in accordance with this listing priority guidance and following revised guidances (December 5, 1996, 61 FR 64475; October 23, 1997, 62 FR 55268; May 8, 1998, 63 FR 25502).

Processing of this withdrawal conforms with our current listing priority guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance gives 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 withdrawal is a Tier 2 action.

Because of the new information on landowner status, and in consideration of the length of time that had elapsed since issuance of the proposal on March 23, 1994, and expiration of the initial comment period on May 23, 1994, we opened a second public comment period from May 22, 1998, to July 21, 1998 (63 FR 28343). We sought comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, and other interested parties. We requested new information that may have developed in the intervening period since the proposal was first published and that would expand the current knowledge concerning the status, distribution, or security of the San Xavier talussnail or any factor affecting the species or its habitat. During this public comment period, discussions with the landowner led to the development of a draft conservation agreement for the species and its habitat. We then published another notice in the **Federal Register** on June 23, 1998 (63 FR 34142), announcing the availability of this draft conservation agreement for review and comment. We accepted comments on the draft conservation agreement until the July 21, 1998, closing of the second public comment period.

The parties to the conservation agreement, the Service, the Arizona Game and Fish Department, El Paso Natural Gas Company (EPNG), and the Arizona Electric Power Cooperative, Inc. (AEPCO), finalized and signed the conservation agreement on September 23 and 24, 1998. The conservation agreement provides the following protective measures:

1. An Advisory Committee will be established, consisting of a representative of each party to the conservation agreement, to evaluate the results of implementation of the conservation agreement and make recommendations for revisions.
2. The area encompassing and adjacent to the habitat of the snail (the ''Area of Concern'') will not be modified.
3. The Advisory Committee will agree upon and mark the corners of the Area of Concern and will include the area that drains into the talus slope.
4. Rock, soil, or construction material will not be placed in the Area of Concern.
5. The dirt road above the Area of Concern will not be widened.
6. Routine road maintenance will be conducted so as not to change the hydrology of the Area of Conern.
7. Herbicides will not be applied near the Area of Concern.
8. EPNG or AEPCO will notify the other parties to the agreement and take precautions when working on microwave facilities on the hilltop.
9. The Advisory Committee will review all plans for change in management and ensure sufficient mitigation measures are provided to maintain protection for the species.

Public Comments

In the March 23, 1994, proposed rule (59 FR 21664) and the associated notifications, we asked all interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate State agencies and representatives, scientific organizations, and other interested parties and requested comments. We published newspaper notices for the proposed listing and comment period, and the reopening of the public comment period in the Tucson Citizen and the Arizona Daily Star.

The proposed rule to list this species pre-dated our policy to seek independent peer review of listing actions (59 FR 34270, published July 1, 1994). However, during the open comment periods, we solicited the expert opinions of appropriate independent specialists regarding pertinent scientific or commercial data relating to the taxonomy and ecology of the San Xavier talussnail. However, we did not receive any responses from the reviewers.

In the following summary, we address the comments received during the two comment periods that indicate opposition to withdrawing the proposed rule. We grouped comments of a similar nature into one of nine general issues.

Issue 1: One commenter questioned what type of land use restrictions and enforcement actions might result from enactment of the conservation agreement.

Service Response: Because the current landowners have no plans to develop the habitat of the San Xavier talussnail, agreeing to protect the site by entering into the conservation agreement did not restrict any current or planned land use of the site. If the conservation agreement is not implemented, and if threats to the species are not addressed through other means, we will consider reinitiating the listing process for the species.

Issue 2: Certain threats to the San Xavier talussnail identified in the proposed rule, including new mining, expansion of a nearby large copper mine, use of herbicides, vandalism, excessive collection, and predation, continue to threaten the species.

Service Response: As described in detail in the ''Summary of Factors Affecting the Species'' section of this notice, we believe that new information, including protection offered by the conservation agreement, indicates that the threats to the San Xavier talussnail described in the proposed rule are substantially reduced.

During the past public comment period, we discovered that EPNG, which owns the talus slope and is a signatory to the conservation agreement, also owns all mining claims on the talus slope. The large mine nearby currently has no plan to expand in the area of the talus slope.

AEPCO, which owns a microwave facility at the top of the hill and maintains the road, has never applied herbicides to the road or anywhere near the talus slope. Although herbicides may be used upslope at the microwave facility, the application is confined to the microwave facility fenced area and consists of annual pre-emergent application between November and March. We have not documented any instances of adverse effects to the San Xavier talussnail from herbicide

application, and we do not anticipate any effects in the future.

The parties to the conservation agreement recognize the potential threat to the San Xavier talussnail from vandalism and excessive collection. Because both AEPCO and EPNG are also concerned about vandalism of the microwave facility, access to the site is restricted. The parties to the conservation agreement are evaluating the need for fencing, and replacing or adding ''No Trespassing'' signs at the site, particularly in areas used by dirt bikes.

Rodent predation is random and sporadic on the San Xavier talussnail (Hoffman 1990). We have no information indicating that rodent predation is above natural levels or that it poses a significant threat to the species.

Issue 3: Infiltration of sediment from the dirt road passing near the talus slope may continue to threaten the San Xavier talussnail.

Service Response: Access to the road is restricted by a locked gate. AEPCO's use of the road is primarily by microwave technicians who visit the microwave facility once every other month. An equipment problem may require daily visits until remedied, but this is rare. Information provided by AEPCO shows that since the construction of the road in 1978, maintenance has been conducted on the road on six occasions. The last time a grader worked the entire road was December 1990. We have not documented any adverse effects to the San Xavier talussnail resulting from past road maintenance.

As specified in the conservation agreement, AEPCO will coordinate future road maintenance with the Advisory Committee and will not conduct maintenance during the talussnail's active period except in emergencies. We believe these precautions adequately protect the species from road maintenance.

Issue 4: The 5-year time frame mentioned in the draft conservation agreement is insufficient to protect the talussnail.

Service Response: Although the draft conservation agreement specified a duration of five years with the possibility to be extended another five years, the final conservation agreement specifies a duration of ten years. In addition, the parties to the conservation agreement have committed to an annual review to ensure protection is sufficient. If, after the conservation agreement expires, threats to the species are not addressed by renewal of the conservation agreement or other means, we will evaluate the status of the species and consider reinitiating the listing process.

Issue 5: Because the San Xavier talussnail occurs only at a single, small site, a single catastrophic event could be devastating for the species.

Service Response: As far as we know, the talussnail has always been limited to this single, small site. Because the species has persisted under these natural conditions, we do not believe that natural catastrophic events pose a significant threat to the species. The potential human-caused catastrophic events include significant disturbance to the talus slope or upslope areas. We believe that the measures specified in the conservation agreement sufficiently reduce the likelihood that such human-caused catastrophic events will occur.

Issue 6: Vandalism and excessive collection remain a threat because the talus slope can be accessed easily from the bottom.

Service Response: Although no physical barriers exist to absolutely prevent access to the site, we believe that the conservation agreement adequately addresses the threats of vandalism and overcollection. The species is located on private land, and trespassing is prohibited. The parties to the agreement are evaluating the need for fencing or additional ''No Trespassing'' signs to further discourage trespassing. In addition, anyone collecting San Xavier talussnails or otherwise taking them would be guilty of violating State of Arizona wildlife regulations (see factor D of the ''Summary of Factors Affecting the Species'' section).

Issue 7: Emergency road work or other emergencies, which the conservation agreement exempts from review and approval by the Advisory Committee, poses a threat to the San Xavier talussnail.

Service Response: Major damage to the microwave tower, tower equipment, or control building resulting from fire, vandalism, or extreme weather conditions are considered emergencies requiring immediate repairs. Also, damage to the road causing it to be impassable would also be considered an emergency requiring immediate repairs. Routine maintenance to these facilities is not considered an emergency. AEPCO and EPNG have agreed to notify the other parties to the conservation agreement as soon as practicable after discovery of an emergency situation.

Issue 8: One commenter questioned the reference to ''reasonable precautions'' in the conservation agreement to prevent rock, soil, or construction material from being transported to the talus slope.

Service Response: Possible changes at the microwave site include construction of an additional tower, a larger control building, and additional fences. All of these activities have the potential to result in material being transported to the talus slope. In accordance with the conservation agreement, the Advisory Committee will review all plans for change and recommend mitigation measures. Mitigation measures could include removing excess materials and establishing temporary barriers, silt fences, or hay bales downhill from the construction area.

Issue 9: The ''No Surprises'' clause in the draft conservation agreement shows the inadequacy of existing regulatory mechanisms to protect the San Xavier talussnail.

Service Response: All references to ''No Surprises'' assurances have been omitted in the final conservation agreement.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species 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 our decision to withdraw the proposal to list the San Xavier talussnail are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The San Xavier talussnail is a very restricted endemic species and is vulnerable to any disturbance that would remove talus, increase interstitial (the spaces between the talus) sedimentation, or otherwise alter moisture conditions (e.g., road or trail expansion or alteration, mining exploration) (Hoffman 1990). We believe that new information received since the publication of the proposed rule, and the protections provided by the recently finalized conservation agreement, indicate that threats to the species' habitat are not as great as supposed or have been substantially reduced through adoption of the conservation agreement.

A large, active copper mine, as well as inactive mining prospects and mines, are located in the vicinity of the talus slope. During the past public comment period, we discovered that EPNG, which owns the talus slope and is a signatory to the conservation agreement, also

owns all mining claims on the talus slope. The large copper mine currently has no plan to expand in the area of the talus slope.

There are housing developments of small acreages to the north and to the southwest of the hill. However, the talus slope is too steep (30 to 40 percent slope) to permit housing construction.

A road leading to a microwave site on the hilltop passes near the talus slope. This road receives very little traffic; microwave technicians may visit the site once every other month, unless there is a problem on the ground which may require more frequent visits. Access to the road by the public is restricted by a locked gate. Information provided by AEPCO shows that since the construction of the road in 1978, maintenance has been conducted on the road on six occasions. The last time a grader worked the entire road was December 1990. We have not documented any adverse effects to the San Xavier talussnail resulting from past road maintenance. The conservation agreement specifies that future road maintenance will be coordinated with the Advisory Committee and will not occur during the talussnail's active period except in emergencies. We believe these precautions adequately protect the species from road maintenance.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although we do not have any information indicating that any significant collection of the San Xavier talussnail is occurring, the extremely restricted distribution of the species makes it vulnerable to overcollection during periods when the snails are active. Trespassing on the talus slope is prohibited, vehicle access to the site is restricted by a locked gate, and collection of the species is prohibited by Arizona State law (see factor D). Also, additional measures are being evaluated to further discourage trespassing and collection. For these reasons, we believe that the potential threat of overcollection of the species is small and not significant enough to warrant listing the species at this time.

C. Disease or Predation

We do not know of any diseases affecting the San Xavier talussnail. Rodent predation is random and sporadic on the species (Hoffman 1990). However, we do not have any evidence indicating that rodent predation is or may be a limiting factor for this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Arizona has placed the San Xavier talussnail on the 1998 Crustaceans and Mollusks Commission Order 42 and the list of sensitive elements that qualify for Heritage funding. This designation makes it illegal to collect or possess the species. The species occurs on private land, and trespassing is prohibited. In addition, the conservation agreement provides a framework for continued protection and management of the San Xavier talussnail and its habitat. We believe these provisions are adequate for the conservation of the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The very restricted range of the San Xavier talussnail makes it vulnerable to catastrophic events. As far as we know, the talussnail has always been limited to the single, small site where it currently exists. Because the species has persisted under these natural conditions, we do not believe that natural catastrophic events pose a significant threat to the species. Potential human-caused catastrophic events include significant disturbance, including vandalism, to the talus slope or upslope areas. We believe that the measures specified in the conservation agreement addressing construction activities, road maintenance, and trespassing sufficiently reduce the likelihood that such human-caused catastrophic events will occur.

Finding and Withdrawal

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the San Xavier talussnail. Population trend information is unavailable, but the species' habitat is secure. We no longer believe that the San Xavier talussnail is in danger of extinction throughout all or a significant portion of its range or is likely to become so in the foreseeable future. We therefore withdraw the proposed rule to list the San Xavier talussnail under the Endangered Species Act.

We will work to gather additional information on the status and ecology of the San Xavier talussnail. Also, we will participate with parties to the conservation agreement to ensure the long-term survival of this species. If new information becomes available indicating the presence of a new threat to the San Xavier talussnail or an increase in the severity of a threat, and if the threats are not adequately addressed through revision of the conservation agreement or other means, we will consider reinitiating the listing process for the species.

References Cited

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Morton, J.E. 1968. Molluscs. Hutchinson University Library. London. 244 pp.

Pilsbry, H.A. and J.A. Ferriss. 1915. Mollusca of the southwestern states. VII. The Dragoon, Mule, Santa Rita, Baboquivari and Tucson Ranges, Arizona. Proc. Acad. Nat. Sci. Phila. 67:363–418; Pls. 8–15.

Author: The primary author of this document is Debra Bills, Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–26737 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE51

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Oahu Elepaio from the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Oahu elepaio (*Chasiempis sandwichensis ibidis*). This bird is endemic to the island of Oahu, Hawaiian Islands, where it was formerly found in all forested areas on the island. It is currently found in greatly reduced numbers and range in six isolated populations occurring in mid-elevation forests in the southern Koolau Mountain Range and parts of the Waianae Mountain Range. The Oahu elepaio is now thought to occupy less than 80 square kilometers (sq km) (30 square miles (sq mi)) or 8 percent of its original, historic range. Sightings of Oahu elepaio during Christmas Bird

Counts have dropped by 75 percent since 1960. The most recent population estimate for this taxon indicates that between 200 and 500 birds remain. The Oahu elepaio has been affected in the past and will continue to be threatened by—habitat loss and degradation, including habitat loss from development, and habitat modification resulting from human activities; predation by introduced mammals; introduced avian disease; competition from introduced birds, and; the spread of certain alien plants which dramatically alter forest structure and/or diversity. The Oahu elepaio is also subject to an increased likelihood of extinction from naturally occurring events, such as hurricanes, etc.

DATES: Comments from all interested parties must be received by December 7, 1998. Public hearing requests must be received by November 20, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to Manager, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, P.O. Box 50088, Honolulu, Hawaii 96850. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pacific Islands Ecoregion Manager (see **ADDRESSES** section) (telephone 808/541–2749; facsimile 808/541–2756).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago is comprised of eight main islands, and the shoals and atolls of the northwest Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a crustal hot spot located near the southeast coast of the island of Hawaii (Stearns 1985).

The second oldest main island, Oahu, is 2.5 to 3.5 million years old, and is heavily weathered. Oahu has two principal mountain ranges—the Koolau and Waianae. The Koolau Mountains extend 60 km (37 mi) from southeast to northwest along the eastern half of the island. The windward (northeast) slope of these mountains is characterized by steep cliffs and short ridges less than 6 km (4 mi) long. Leeward ridges as long as 18 km (11 mi) parallel one another to the southwest and west; alternating with steep-sided stream valleys. The peak elevation in the Koolau Mountains occurs at Puu Konahua Nui (955 meters (m); 3,100 feet (ft)). The Waianae Mountains run from southeast to northwest in a 32 km (20 mi) arc along the western coast of Oahu. The steep cliffs of the Waianae Mountains are leeward facing (western slope); both windward and leeward ridges are less than 5 km (3 mi) in length. The peak elevation occurs at Kaala (1,230 m (4,000 ft)).

In general, native forest vegetation on Oahu presently only occurs above elevations of about 500 m (1,600 ft). By 1900, most lower elevation forests had been cleared for agricultural and commercial use or were heavily invaded by introduced vegetation. Current habitats for Oahu elepaio occur in the Waianae Mountains and in the southern Koolau Mountains on Oahu in a variety of wet and dry forests, including those dominated by either native or alien tree species.

The elepaio from the island of Oahu has been recognized as a distinct taxonomic entity since Stejneger first described the Oahu elepaio as *Chasiempis ibidis* in 1887. Wilson (1891) described the bird as *C. gayi*, but, as pointed out by Olson (1989), the epithet *ibidis* has priority over *gayi*. Various taxonomic treatments of the Hawaiian elepaio have described from one to six species and up to five subspecies (Sclater 1885, Stejneger 1887, Wilson and Evans 1890–1899, Wilson 1891, Rothschild 1892–1900, Henshaw 1902, Perkins 1903, MacCaughey 1919, Bryan and Greenway 1944, Pratt 1979 and 1980, Olson 1989, Olson and James 1991). The taxonomy used in this proposed rule follows Pyle (1992) and recognizes only a single species of elepaio in Hawaii (*Chasiempis sandwichensis*) with three subspecies, each of which is endemic to a different island. The three island-specific subspecies of elepaio are—Kauai elepaio (*C.s. sclateri* Ridgeway 1882), Oahu elepaio (*C.s. ibidis* Stejneger 1887), and Hawaii elepaio (*C. s. sandwichensis* Gmelin 1789 (as cited in Pyle 1992)). These subspecies differ considerably in plumage coloration and somewhat in vocalizations, but are quite similar in ecology and behavior (Conant 1977, Pratt 1980, VanderWerf 1993, and 1994).

The Oahu elepaio is a member of the Old-World insect-eater family of birds (Muscicapidae) and is most likely related to the genus *Monarcha* (Mayr 1943, Conant 1977). The ancestors that gave rise to elepaio were probably of Melanesian origin with colonization of Hawaii occurring through Polynesia or Micronesia.

The Oahu elepaio has long slender legs and a broad, soft bill, black in color and bordered with bristles. Body length is about 14.6 centimeters (cm) (6 inches (in)). Adults are rusty brown above, with a contrasting rufous-chestnut eyebrow and a whitish eye-ring. The chin is white and the throat black, with some rufous-chestnut streaking on the upper breast; the belly is white. Adult males and females are similar in appearance. Two distinctive field marks of adults are the white wing bars and white rump, both of which are easily seen when the bird is in flight. Immature birds lack both the white rump and the black throat and are relatively uniform rusty brown on the head and neck. The chest is tinged with buff and the belly is white. The whitish eye-ring and bold white, black, and chestnut markings of the adults are also absent in immature birds (Pratt 1980).

Comments by early naturalists indicate that the Oahu elepaio was once widespread in forested areas throughout Oahu at all elevations. Perkins (1903) remarked that ''the universal distribution over the islands they severally inhabit, from the lowest bounds to the uppermost edge of continuous forest, as well as their extreme abundance and obtrusive familiarity, has caused them to be noticed by many persons who have seen no other native bird.'' Bryan (1905) noted that the elepaio ''remains the most abundant Hawaiian species on the mountainside all the way from the sea to well up into the higher elevations,'' while MacCaughey (1919) wrote that ''the altitudinal range on Oahu is approximately from 800 feet to the highest summits.''

However, even the earliest described historical range was likely to have been somewhat modified by habitat destruction, as noted by MacCaughey (1919) ''[o]riginally, when the forests covered much more of the lowlands than at present, and extended down to the strand in many districts, the elepaio was abundant at the lower levels * * *''. In spite of the descriptions of reduced range, naturalists were optimistic about the elepaio's chances for survival. In 1902, Henshaw (1902) wrote ''it is probable that when most of the Hawaiian birds are extinct the elepaio will long continue to maintain itself in scarcely diminished numbers.'' MacCaughey (1919) wrote, ''[t]he one indigenous forest bird that appears to successfully withstand the devastating influences of ''civilization'' is the Hawaiian flycatcher elepaio.'' Munro (1944) was similarly optimistic about the elepaio, reporting that ''[i]t is holding its own well in the Oahu forests from which so many of the native birds have long disappeared.''

Early observations indicate that the Oahu elepaio was widely distributed and extremely abundant. Rothschild (1892) called the elepaio ''one of the

commonest, if not the commonest, of all the small native birds on Oahu.'' Similarly, Seale (1900) said the elepaio was ''the commonest native land bird to be found on the island.'' MacCaughey (1919) stated that it was ''the most abundant representative of the native woodland avifauna'' and ''abundant in all parts of its range,'' but Bryan (1905) found it to be ''much more frequently met with in the Waianae Mountains than in the Koolau range back of Honolulu,'' which may indicate that the species' optimum habitat is dry rather than wet forest.

Based on the above range descriptions, the Oahu elepaio was historically very general in its habitat requirements, and at least some populations occupied all types of forest at most elevations. Several authors noted that elepaio reached their greatest abundance in valleys at middle elevations. For example, Seale (1900) said that ''its usual haunt is the densely wooded canons at an elevation of from [sic] 800 to 1,300 feet.'' MacCaughey (1919) observed that the elepaio is ''a bird of the humid and mesophytic forests,'' and said it ''is most plentiful in the protected wooded ravines and on the valley slopes.''

The generalized habitat requirements of the Oahu elepaio are also shown by its ability to forage (as a generalized insectivore) and nest in a variety of different plant species, including areas with non-native vegetation. Perkins (1903) believed that ''to the changes wrought by civilization they are less susceptible than any other bird, and they may be seen feeding and even nesting in dense thickets of the introduced guava, or amongst masses of the prickly lantana, as contentedly as amongst the native vegetation.'' Conant (1977) studied a population that existed in a forest of entirely introduced plant species. The species shows extremely versatile foraging behavior and uses all available plant species and all heights in forests of native plant species (Conant 1981, VanderWerf 1993 and 1994).

More recent information indicates that the Oahu elepaio still inhabits various types of forest. The Oahu elepaio appears to be most common in areas of alien and mixed native/alien forest having a tall tree canopy and well developed subcanopy and understory structure that supports high density insect populations, and in valleys at middle elevations. The species is much less numerous in scrubby vegetation on higher-elevation ridges and slopes, and does not frequent forests lacking a subcanopy or comprised of monotypes. The apparent preference for alien or mixed alien-native forest may be a reflection of their continued affinity for mid-elevation valleys, where disturbance has been greater and the majority of plants are introduced. Virtually all forests below 500 m (1,600 ft) have been degraded to the point that they now consist almost entirely of introduced vegetation. During an intensive bird survey of the central Koolau Mountains on Oahu in 1978, Shallenberger and Vaughn (1978) found the greatest abundance of elepaio in alien forests, particularly areas with kukui (*Aleurites moluccana*) and guava (*Psidium guajava* and *P. cattleianum*) trees, and in mixed alien-native forest. The occurrence of elepaio was lower in forests of entirely native species, primarily ohia (*Metrosideros polymorpha*) and koa (*Acacia koa*). The lesser abundance in native forest found by Shallenberger and Vaughn (1978) is unlikely to be a sampling artifact because the greatest effort was spent in areas of native forest. It is likely due to a preference for certain elevations and diverse forest structure rather than for certain plant species. The results of the Oahu forest bird survey (Hawaii State Division of Forestry and Wildlife, 1991), indicate that the current habitat types occupied by the Oahu elepaio appear to be similar to what Shallenberger and Vaughn (1978) reported.

Conant (1995) has identified 598 separate observations of Oahu elepaio dating from 1883 through 1995. Many of these sightings occurred in the same location, but over a period of years. By consolidating observations made at the same location, it was possible to identify 83 site-specific locations where elepaio had been seen. Sixty-nine of these sites (84 percent) have been revisited between 1990 and 1995. Of these revisited sites, only 31 (45 percent) still had elepaio present. These 31 extant sites are distributed among six isolated populations in the southern Koolau Mountains and the central Waianae Mountains. Further analysis of both these data and the writings of early naturalists indicates that the elepaio originally inhabited 75 percent of Oahu's land mass. By 1960, only 30 percent of the original habitat was still occupied. Fifteen years later, in 1975, the distribution had declined to 14 percent of the original distribution. In 1990, the Oahu elepaio occupied an area of 80 sq km (30 sq mi). This represents less than 8 percent of its original range (Conant 1995).

While a collapse of the Oahu elepaio's range has clearly occurred, decline in population density in the remaining populations has been more difficult to determine. Williams (1987) examined the decline of Oahu elepaio using Christmas Bird Counts from 1944 through 1985. Using standardized data (one census per year with number of birds per hour of observation), he documented a clear downward trend in elepaio observations. The data show a sharp decline in Oahu elepaio observations beginning in the late 1950s and continuing through the 1960s, when observations were one or fewer birds per observer hour, dropping to approximately 0.5 birds per observer hour after 1974.

In their recent reports, Sherwood (1995) and Cowell (1995) called attention to the population estimate of 200 to 500 total Oahu elepaio made by the Hawaii Forest Bird Conservation Assessment and Management report (Ellis *et al.* 1992). This report stated that two subpopulations of Oahu elepaio exist, one in the Waianae Mountains and the other in the Koolau Mountains. However, more detailed data suggest that there are actually six smaller and geographically isolated populations, three in each of the mountain ranges. Ellis *et al.* (1992) estimated that 20 percent of the population was in the Waianae Mountains and 80 percent in the Koolau Mountains. In terms of the areal range, 40 percent of the range is in the Waianae Mountains and 60 percent in the Koolau Mountains. In 1994, at least 79 Oahu elepaio were seen (Conant 1995). A systematic range-wide count of Oahu elepaio has not been made and the population estimate of 200 to 500 birds by Ellis and others (1992) remains the only range-wide estimate of numbers.

The remaining six populations occur on lands owned by Federal, State, City and County of Honolulu, and private parties. Analysis of major land ownership patterns identify 48 percent of occupied elepaio areas in privately held lands, 25 percent federally owned or leased lands, 22 percent State-owned areas and 5 percent owned by city and county governments. Ownership patterns vary between the six populations. Two populations have greater than fifty percent private ownership within their ranges, three populations' ranges cover land primarily owned by the State, and one population has the majority of land under Federal ownership. Ninety-two percent of the current elepaio range occurs within State-designated Conservation Districts and 29 percent of the range occurs within additional protected areas, including State Forest Reserves, State Natural Area Reserves, and The Nature Conservancy's Honouliuli Preserve. Only 8 percent of the elepaio range falls outside the Conservation District and protected areas.

Previous Federal Action

The Service was petitioned by Mr. Vaughn Sherwood on March 22, 1994, to list the Oahu elepaio as an endangered or threatened species with critical habitat. The November 15, 1994, Animal Notice of Review (59 FR 58991) classified the Oahu elepaio (*C. s. gayi*) as a category 1 candidate. Category 1 candidates are those species for which the Service has sufficient data in its possession to support a listing proposal. On June 12, 1995 (60 FR 30827), the Service published a 90-day petition finding stating that the petition presented substantial information such that listing may be warranted. Because *C. s. gayi* is a synonym of *C. s. ibidis,* this proposed rule constitutes the final 12-month finding for the petitioned action.

As announced in a notice published in the February 28, 1996, **Federal Register** (61 FR 7596), the designation of multiple categories of candidates has been discontinued, and only former category 1 species are now recognized as candidates for listing purposes. The listing priority numbers for candidate taxa range from 1 (highest priority) to 12 (lowest priority) and are assigned by the Service based on the immediacy and magnitude of threats, as well as taxonomic status (48 FR 43098).

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. The Pacific Islands Ecoregion currently has no outstanding Tier 1 species; therefore, processing of Tier 2 activities is appropriate under the listing priority guidance. This rule has been updated by the Pacific Islands Ecosystem Office to reflect any changes in distribution, status and threats since the effective date of the listing moratorium.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of 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 Oahu elepaio are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Threats to the Oahu elepaio's habitat include habitat loss from development, habitat modification resulting from human activities, habitat damage by pigs and the spread of certain alien plants, such as the velvet tree (*Miconia calvescens*), which dramatically alter forest structure and/or diversity.

Alteration of areas covered by forests, including changes in forest composition and forest structure and the resulting habitat loss has impacted the Oahu elepaio. Early Hawaiians significantly altered the native vegetation of Oahu, particularly in valleys used for taro cultivation. In uncultivated areas, trees were cut for firewood and construction, and fire was used to encourage the growth of grasses used for thatch (Kirch 1982). Destruction of the low-elevation forest resulted in the extinctions of numerous birds and land snails on Oahu (Olson and James 1982, Kirch 1982). After European contact in 1778, habitat loss accelerated and began to occur at higher elevations. The sandalwood trade, which played a key role for Oahu, required firewood, which completely eliminated native forests in the vicinity of Honolulu (Cuddihy and Stone 1990). From 1840 to about 1920, vast areas of low- and mid-elevation forest in Hawaii were cleared for sugarcane cultivation. By the 1970's, more than 100,000 ha (274,000 acres) were under sugarcane cultivation. In contrast to early Hawaiian cultivation that was largely concentrated in mesic valleys and plains, sugarcane cultivation displaced native forest in dry leeward areas and wide ridges and slopes such as the Leilehua Plateau between the Koolau and Waianae Mountains on Oahu. Between 1900 and 1950, pineapple cultivation on Oahu also resulted in a significant loss of native forests (Cuddihy and Stone 1990). While some of the areas cleared of native forest have either been replanted with exotic trees or regrown in alien vegetation, Gagne (1988) estimated that less than 20 percent of the land area on Oahu is now covered by forest, and less than 20 percent of that forest is native vegetation.

Oahu is the population center of the Hawaiian Islands, with about 40 percent of the State's population residing in Honolulu alone. The fastest growing areas on Oahu, however, are suburban areas and ''second cities.'' Development can have significant impacts on Oahu elepaio habitat through modification of forest structure and diversity. Although the majority of lands within the elepaio's range are within Conservation Districts and State Forest reserves, designation as such offers varying degrees of protection and may allow activities, such as construction of individual houses, forestry-related activities, hunting and recreational uses, which can be detrimental to the elepaio. Other types of development can also eliminate habitat. A portion of the H–3 freeway completed in 1997 runs through Halawa Valley, the north ridge of which supports one population of the Oahu elepaio, and amenities such as golf courses may displace non-native forests used by the Oahu elepaio, particularly if the forest structure consists of tall canopy trees and dense, diverse understory vegetation.

Military activities and related impacts on federally owned and leased lands also affect the Ohau elepaio. Oahu elepaio presently occupy the upper slopes of Makua Valley in and adjacent to the U.S. Army's Makua Military Reservation. The lower section of Makua Valley is used as a live firing range and the facility has a history of ordnance-induced fires (Hawaii Heritage Program, 1994a). Prescribed burning occasionally results in large fires and along with construction of firebreaks, destroys elepaio habitat and potentially threatens the birds. A large part of the elepaio range in the eastern Waianae Mountains occurs on Schofield Barracks Military Reservation. Live firing also occurs in several areas of Schofield Barracks Military Reservation, and ordnance-induced fires pose a significant threat to the habitat of the Oahu elepaio (Hawaii Heritage Program, 1994b).

Sus scrofa (pigs), originally native to Europe, Africa, and Asia, were first introduced to Hawaii by the Polynesian ancestors of Hawaiians, and later by western immigrants. The Hawaiian strain of pig was comparatively small, and seems to have had a minimal impact on the native forests. The European strain of pig escaped domestication and invaded primarily wet and mesic forests on Kauai, Oahu, Molokai, Maui, and Hawaii. These pigs

are large animals that threaten the continued existence of native plants and animals within these forest habitats. While foraging, pigs root and trample the forest floor, which promotes the establishment of alien plants in the newly disturbed soil. Pigs also disperse alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985), which may subsequently alter the structure and diversity of the forest necessary for the survival of the Oahu elepaio. Both a forest canopy and a diverse understory are important habitat components for the elepaio.

Miconia calvescens (velvet tree) is a recently naturalized species native to tropical America. This species has become established on the islands of Hawaii, Maui, Oahu, and Kauai. This plant species has the potential to greatly disrupt forest canopy and understory structure and significantly alter biological diversity. *Miconia calvescens* is potentially the most invasive and damaging weed of rainforests of Pacific islands (Medeiros *et al.* 1997). In moist conditions, this plant grows rapidly (up to 15 m (49 ft) tall), tolerates shade, produces abundant seed that is effectively dispersed by birds and accumulates in a large, persistent seed-bank, and develops monospecific stands that eliminate understory plant species and subcanopy structure by shading and crowding (Medeiros *et al.* 1997). In Tahiti, it has become a dominant plant species in habitats similar to those of Hawaii (Almeda 1990; Cuddihy and Stone, 1990.) Medeiros *et al.* (1997) states that *Miconia calvescens* now dominates the forest composition in 65 percent of the island through the establishment of large, monospecific stands. This plant is now naturalized on Oahu at three locations in the southeastern Koolau Mountain range, including Manoa Valley (Medeiros *et al.* 1997), where one population of the Oahu elepaio is located.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to threaten the Oahu elepaio.

C. Disease and Predation

Disease and predation may have contributed to the decline of the Oahu elepaio (Sheila Conant, University of Hawaii, pers. comm., 1995). Although there is some indication that nests and eggs may be destroyed by rats (*Rattus exulans, R. norwegicus, R. rattus*) (Conant 1977), studies have yet to document the extent to which the Oahu elepaio is affected by predation by any of the small, ground-dwelling and/or arboreal predators, including the small Indian mongoose (*Herpestes auropunctatus*), feral cats (*Felis domesticus*), and rats. All of these predators were established long before the recent decline of the Oahu elepaio (Tomich 1986), but may have had a significant impact at the time of their initial introduction.

Avian diseases have had a devastating effect on many endemic Hawaiian forest birds that seem to have little or no resistance to disease. Avian pox (*Poxvirus avium*) causes lesions on the feet, legs, and bills, and is transmitted by physical contact or through mosquitoes. Avian malaria (*Plasmodium relictum capistranoae*) is transmitted by the southern house mosquito (*Culex quinquefasciatus*) and clearly limits the lower elevational distribution of many Hawaiian forest birds (U.S. Fish and Wildlife Service 1984, Atkinson *et al.* 1993). While the Oahu elepaio appears to be less affected than other species, the effect on this taxon could possibly contribute to the observed declines in range and abundance.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, the Oahu elepaio is protected from taking by both State (Hawaii Revised Statutes (HRS), Sect. 13–124–3A) and Federal law (Migratory Bird Treaty Act of 1918, 16 U.S.C 703–712, 40 Stat. 755, as amended). These regulations protect the taxon from capture and collection (without appropriate permits) of individuals, nests and eggs. However, these regulations afford no protection to the habitat of the taxon.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Naturally occurring events, such as hurricanes, may affect the continued existence of the Oahu elepaio. Because the subspecies now exists as six small isolated populations, rather than one large, continuous, interbreeding population, a population decline could be exacerbated by random genetic, environmental, and demographic events. Small population size can reduce reproductive rates, increase rates of inbreeding and may result in the expression of deleterious recessive genes occurring in the population (inbreeding depression) and less future plasticity. Loss of genetic variability through genetic drift reduces the ability of small populations to cope with ecological and environmental stresses such as habitat modification, and alien species. If disease is a factor in the decline of the Oahu elepaio, the reproduction of any genetically-resistant individuals could be important to the survival of this taxon.

If populations continue to decline and become extremely small, demographic events take on greater significance. For example, if weather events (e.g., El Niño episodes) cause reproductive failure for one or more years, and is followed by a period of high predation, a small population has less resiliency and may be extirpated. Another environmental factor that could cause large or total population loss is hurricanes, which may cause direct mortality, habitat destruction or modification, and promote the spread of invasive alien plants. Birds in the Hawaiian Islands have long endured hurricanes, but major hurricanes in concert with low population numbers and other factors could severely affect the Oahu elepaio.

Introduction of alien species of plants and animals into Hawaii is a major continuing threat to all native flora and fauna. Competition, predation, and disease associated with alien introductions could significantly and negatively affect the remaining populations of Oahu elepaio. The threat of the accidental introduction of the brown tree snake (*Boiga irregularis*) from Guam, Saipan, or the Solomon Islands is of particular concern. The brown tree snake is an aggressive predator of birds that has caused a significant decline in avifauna on Pacific islands where this snake has been introduced. In December 1994, a live brown tree snake was found in a Schofield Barracks warehouse on the island of Oahu. This snake was associated with a shipment of U.S. Army materials from Tinian via Guam.

A likely factor contributing to the decline of the Oahu elepaio is competition with recently introduced birds. The Japanese white-eye (*Zosterops japonicus*) was introduced to Hawaii in the 1930's. It was still expanding its range into remote areas within the last two decades and is now probably the most abundant bird in Hawaii (Pratt *et al.* 1987). Scott *et al.* (1986) demonstrated that the Japanese white-eye was the primary factor contributing to negative correlations between the distributions of native and introduced birds, including elepaio. Elepaio have frequently been known to defend territories against Japanese white-eye (Conant 1975). Japanese bush-warblers (*Cettia diphone*) were also introduced to Oahu in the 1930's (Pratt *et al.* 1987) but for many years were uncommon and restricted to the Waianae Mountains (Bob Pyle, Bishop

Museum, pers. comm., 1995). In recent decades, however, the Japanese bush-warbler has expanded its range to occupy most of Oahu's forested areas and is now very abundant. Thus, the expansion of the bush-warbler also roughly corresponds with the recent decline of the elepaio (Pyle, pers. comm., 1995). The bush warbler is also an insectivore that forages in the understory and is a likely competitor of the Oahu elepaio. The red-vented bulbul (*Pycnonotus cafer*) was introduced to Oahu in 1965, greatly increasing in numbers after 1970 (Williams 1987) and is now extremely abundant in forested habitats. While primarily a fruit-eater, red-vented bulbuls take insect prey (Sheila Conant, pers. comm., 1995) and are a particularly aggressive species, known to chase other birds (Berger 1981).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list the Oahu elepaio as endangered. The most recent estimates indicate that the Oahu elepaio numbers no more than 200 to 500 individuals, occurring in six small and geographically isolated populations (Ellis *et al.* 1992). This bird is threatened by—habitat degradation and loss, including habitat fragmentation due primarily to human impacts; competition with introduced birds; disease, including avian pox and malaria; and possible predation by non-indigenous mammals. Small total population size, limited distribution, and population fragmentation make this taxon particularly vulnerable to reduced reproductive vigor and the effects of naturally occurring events. Because the Oahu elepaio is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Therefore, the determination of endangered status for the Oahu elepaio is appropriate.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management 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. The Service finds that designation of critical habitat is not prudent for *C. s. ibidis.* Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for *C. s. ibidis* is not prudent due to lack of benefit. There are only 200–500 of these birds remaining, all of which are restricted to six geographically isolated populations occupying a total area of about 80 sq km (30 sq mi). As discussed in the ''Background'' section of this rule, within this restricted range, the Oahu elepaio has a preference for certain elevations and forest structure. These forest birds are located on one island with less than 20 percent of the land area now covered by forest, and less than 20 percent of that forest is comprised of native vegetation. Therefore, the destruction or adverse modification of habitat within the restricted range of the Oahu elepaio would cause further reduction in the area available for this bird to feed, nest, breed, and rear young. In light of these facts, any action that would adversely modify critical habitat also would be likely to jeopardize the continued existence of the the Oahu elepaio. The designation of critical habitat therefore would not provide additional benefit for the Oahu elepaio beyond the protection afforded by listing.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. Federal involvement is most likely in two situations—(1) where the species occurs on Federal lands and (2) when a Federal agency is involved in authorizing or funding actions on non-Federal lands. One quarter of the current range of the Oahu elepaios' range is Federally owned or leased. Furthermore, designation of critical habitat may affect non-Federal lands only where a Federal nexus exists. The designation of critical habitat on private or State lands provides no additional benefit for the Oahu elepaio over that provided as a result of listing when there are no Federal nexus actions taking place. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

All involved Federal, State, City, County and private landowners have been notified of the importance of protecting the habitat of the remaining populations of the Oahu elepaio. The Service believes that Federal involvement in the areas where this bird occurs can be identified without the designation of critical habitat. Where Oahu elepaio are found on Federal lands, the agencies are aware of the species and are addressing conservation efforts (see ''Available Conservation Measures'' section below). Non-Federal landowners have also been appraised of the population locations and importance of protecting the bird and its habitat. Protection of the Oahu elepaio will be addressed through the section 4 recovery process and the section 7 consultation process. For the reasons discussed above, the Service finds that the designation of critical habitat for the *C. s. ibidis* is not prudent.

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 public awareness and results in conservation actions by Federal, State and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies

and the prohibitions against certain activities involving listed animals 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 ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat if any is designated. 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.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph includes—military activities, such as military training, troop movements, or fire resulting from the military's use of live ammunition during training, which take place on federally owned or leased lands; the involvement of the Army Corps of Engineers in projects subject to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 such as the construction of roads, bridges, and dredging projects ; U.S. Environmental Protection Agency-authorized discharges under the National Pollutant Discharge Elimination System; U.S. Department of Agriculture/Natural Resources Conservation Service and U.S. Department of Housing and Urban Development projects; and other activities with a possible Federal nexus, such as golf course and firebreak construction.

Several of the remaining populations of this bird are located on State land leased by the Federal government and utilized for military training, particularly by the U.S. Army. In the Waianae Mountains, those populations are found in the following areas—Pahole to Makaha, including both leeward and windward sides; Schofield to Palehua, on the windward side. In the Koolau Mountains, only a fraction of one elepaio population area (Aiea ridge south to the Kahauiki Stream) is under military control. Therefore, section 7 consultation will be required before any military activities, such as military training, troop movements, or use of live ammunition during training, that may impact the Oahu elepaio may take place.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, 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, capture, or collect; or to attempt any of these), import or export, ship in interstate or commerce in the course of a 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 endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–6241; facsimile 503–231–6243).

At the time a species is proposed, it is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Likely activities that the Service believes could potentially result in a violation of section 9 of the Act include, but are not limited to, the following: Road or firebreak construction, military troop training or other activities that disturb the normal behavior (e.g., breeding, nesting, feeding) of Oahu elepaio, or damage habitat used by the species. Activities that the Service believes would not likely result in a violation of section 9 of the Act include, but are not limited to, non-destructive activities in areas occupied by Oahu elepaio such as hiking, collecting plants for cultural usage (e.g., hula halau), and hunting game animals. Activities that occur under a valid incidental take permit issued through a section 7 consultation or section 10 HCP permit would not violate section 9.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section).

If the Oahu elepaio were given Federal protection under the Act, the State of Hawaii Endangered Species Act (HRS, Sect. 195D–4(a)) would be automatically invoked, prohibiting taking and encouraging conservation by State government agencies. State regulations prohibit the removal, destruction, or damage of any federally listed animals found on State lands. Hawaii's Endangered Species Act states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Act shall be deemed to be a threatened species under the provisions of this chapter.'' Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements). Thus, the Federal protection afforded to the Oahu elepaio by listing as an endangered species will be reinforced and supplemented by protection under State law.

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. Comments are particularly sought concerning:

(1) biological, commercial, or other relevant data concerning any threat (or lack thereof) to this taxon;

(2) the location of any additional populations of this species and the reasons why habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of this species; and

(4) current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Pacific Islands Ecoregion Manager (see **ADDRESSES** section).

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with its clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this regulation easier to understand to: Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

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 Endangered Species Act of 1973, 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).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references and data cited herein, is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Loyal A. Mehrhoff, Pacific Islands Ecoregion (see **ADDRESSES** section). Recent data on the distribution and status of the Oahu elepaio were compiled by Dr. Sheila Conant of the University of Hawaii.

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 BIRDS, 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						
*	*	*	* *		*		*
BIRDS							
*	*	*	* *		*		*
Elepaio, Oahu	*Chasiempis sandwichensis ibidis.*	U.S.A.(HI)	Entire	E		NA	NA
*	*	*	* *		*		*

Dated: September 29, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–26736 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the Plants Astragalus lentiginosus var. micans (shining milk-vetch) and Astragalus lentiginosus var. sesquimetralis (Sodaville milk-vetch) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to list *Astragalus lentiginosus* var. *micans* (shining milk-vetch) and *Astragalus lentiginosus* var. *sesquimetralis* (Sodaville milk-vetch) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). These plants are two of seven desert *Astragalus* taxa from California and Nevada that were included in a proposed rule published on May 8, 1992 (57 FR 19844). Since the proposed rule was published, management of the lands which support one population of *A. lentiginosus* var. *sesquimetralis* and both locations where *A. lentiginosus* var. *micans* occurs, have been transferred to wilderness under management of the National Park Service at Death Valley National Park. Based on evaluation of this information and public comments, and reevaluation of existing data, the Service has determined that evidence of sufficient threat warranting the listing of *Astragalus lentiginosus* var. *micans* and *Astragalus lentiginosus* var. *sesquimetralis* is not present at this time. The Service will continue to monitor the status of these species and may reevaluate the need for their listing at any time in the future on the basis of new information and/or actual or potential habitat alteration detrimental to the plants' continued existence.

ADDRESSES: The complete files for these actions are available for inspection, by appointment, during normal business hours. For *Astragalus lentiginosus* var. *sesquimetralis* contact the Nevada State Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno, NV 89502. For *A. lentiginosus* var. *micans* contact the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Nevada State Office Supervisor, at the above address; telephone 702–861–6300 (for *Astragalus lentiginosus* var. *sesquimetralis*) or Ventura Field Supervisor, above address; telephone 805–644–1766 (for *Astragalus lentiginosus* var. *micans*).

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1992, the Service published a proposal in the **Federal Register** (57 FR 19844) to list as endangered or threatened seven desert plant taxa in the genus Astragalus which occur in California and Nevada. The proposed listing was followed by a 60-day comment period that closed on July 7, 1992. A final determination on the proposal was delayed by other listing priorities, a limited budget, and the Federal moratorium on final listing actions. After the proposed rule was published, changes in the management of desert lands occurred and new conservation activities were initiated in some of the areas where these taxa occur. Due to these changes and the amount of time that had elapsed since the original publication, the Service reopened a 45-day comment period for the proposed listing on September 3, 1996 (61 FR 46430).

The Service has considered all available information and withdraws its proposal to list these two taxa. The proposal for *Astragalus lentiginosus* var. *micans* is withdrawn because the Service lacks sufficient evidence to indicate that vehicle trespass, visitor use, and the presence of Russian thistle (*Salsola* sp.), an invasive, nonnative plant, currently subject this taxon to significant threat. The proposal for *A. lentiginosus* var. *sesquimetralis* is withdrawn because the Service lacks sufficient evidence to indicate that livestock and vehicle trespass, or development of its habitat are currently threatening this taxon.

Astragalus lentiginosus var. *micans* (shining milk-vetch) was described by Rupert Barneby (1956) based on two specimens (co-types) collected on the lower slopes of sand dunes at the southeast end of Eureka Valley, Inyo County, California in 1955. A flowering collection was made by Philip Munz and John Roos in April 1955 and a fruiting specimen was collected by Roos in May 1955. The plant is an erect white-silky perennial with a hardened base. The leaves range from 4.5 to 9.5 centimeters (cm) (1.8 to 3.7 inches (in.)) in length and consist of 11 to 17 leaflets. The flowers are cream to pale yellow with lavender or indigo distally, and are arranged in loose, 20-to 35-flowered racemes. The pods are stiffly papery, inflated, and often angled upward to a distinct beak (Barneby 1964).

Astragalus lentiginosus var. *micans* is restricted to sands of the lower slopes and base of dunes at two sites located about 6 kilometers (km) (4 miles (mi)) apart in the Eureka Valley. These two sites, the Eureka Dunes and the Saline Spur Dunes, represent the entire known historic and the current range of this taxon (Barneby 1956; Spellenberg 1993; Bruce Pavlik, Mills College, *in litt.* 1983 and 1996). Potential populations from Big Dune, Nevada, erroneously noted in the proposed rule as possibly being *A. lentiginosus* var. *micans* (57 FR 19845), had, in fact, already been identified from past collections as *A. lentiginosus* var. *variabilis* (Pavlik, *in litt.* 1980, 1996; R. Barneby, New York Botanical Garden, *in litt.* 1981).

Of the two sites in the Eureka Valley where this plant occurs, the Eureka Dunes, approximately 5 km (3 mi) long and up to 2.4 km (1.5 mi) in width, appears to support the most substantial population of *Astragalus lentiginosus* var. *micans.* As mapped (Bagley 1986), the distribution of this taxon on the Saline Spur Dunes, to the east, is more restricted. In the 1960s and 1970s, increasing off-highway vehicle (OHV) use on the Eureka Dunes destroyed vegetation over the northern end of the lower dunes and flats, an area that supports *A. lentiginosus* var. *micans* (Bureau of Land Management (BLM) 1976, Service 1982). Two other taxa endemic to dunes of the Eureka Valley, *Oenothera californica* ssp. *eurekensis* (Eureka Valley evening primrose, formerly *O. avita* ssp. *eurekensis*) and *Swallenia alexandre* (Eureka Valley dune grass), co-occur with *A. lentiginosus* var. *micans* and were federally listed as endangered in 1978 (43 FR 17910) as a result of this activity. The BLM closed the dunes to OHV use in 1976, although active enforcement of the closure wasn't effective until 1980. Since that time, botanists have noted that *A. lentiginosus* var. *micans* appears to be recolonizing the formerly disturbed areas (Pavlik 1979; Service 1982; Mark Skinner, California Native Plant Society (CNPS), *in litt.* 1995), although censuses before and after the closure are not available. The dunes were managed by the BLM until 1994, when passage of the California Desert Protection Act (CDPA) of 1994 transferred the area to the National Park

Service (NPS) at Death Valley National Park. Both sites are now included in wilderness areas within the park.

The primary threats to *Astragalus lentiginosus* var. *micans* identified in the proposed rule were illegal off-road vehicle activity at the Eureka Dunes and competition with Russian thistle. These issues are discussed within this document under factors A, D, and E of the ''Summary of Factors Affecting the Species'' section of this rule.

Astragalus lentiginosus var. *sesquimetralis* (Sodaville milk-vetch) was first collected by W.H. Shockley in 1882 near Sodaville, Mineral County, Nevada, and described by Per Axel Rydberg as *Cystium sesquimetrale* (Rydberg 1929). The segregate genus *Cystium*, however, is not recognized by other botanists, and in 1945, Barneby reclassified the plant as *Astragalus lentiginosus* var. *sesquimetralis*. The plant is a prostrate perennial with straw-colored stems up to 80 cm (31 in.) long and covered with silky hairs. The leaflets are 6 to 18 millimeters (mm) (0.2 to 0.7 in.) long. The light purple flowers have white silky calyces 7 to 8 mm (0.3 in.) long, arranged on 6-to 12-flowered racemes. The pod is moderately inflated, 1.6 to 2.6 cm (0.6 to 1.0 in.) long, with an upwardly curved beak.

Astragalus lentiginosus var. *sesquimetralis* occurs on powdery clay saline soils adjacent to springs. The taxon is known globally from three sites that are arrayed along a north-south line through a low topographic corridor of the western Great Basin, known as the Lahontan Trough. Those sites are Big Sand Spring, Death Valley National Park, Inyo County, California; Cold Springs, Nye County, Nevada; and Sodaville, Mineral County, Nevada (Morefield 1993).

The Big Sand Spring site of *Astragalus lentiginosus* var. *sesquimetralis*, like the Eureka Dunes and Saline Sand Spur localities of *A. lentiginosus* var. *micans*, was under BLM management until 1994. Passage of the CDPA transferred the site to NPS management by inclusion within a wilderness area of Death Valley National Park. The site was maintained within a cattle grazing allotment and a wild burro Herd Management Area by BLM, and it currently retains those designations under NPS management. Although a fenced exclosure was constructed around the Big Sand Spring site and adjacent spring habitat in 1986 as an effort to protect *A. lentiginosus* var. *sesquimetralis*, cattle and burros continued to access the site on occasion by breaking through the fence or by climbing over the fence from the dredge spoils just outside of the exclosure (California Department of Fish and Game (CDFG) *in litt.* 1988). In the fall of 1996, NPS tore down and replaced sections of the old fence (NPS, *in litt.* 1996). Population surveys at this location has not been completed annually or systematically and population size probably varies according to precipitation, as well as other environmental factors. Several hundred to a thousand individuals have been recorded at this site in the last decade (Constance Rutherford, BLM, *in litt.* 1989, James Morefield, Nevada Natural Heritage Program (NNHP), *in litt.* 1991).

The privately owned and maintained sites of *Astragalus lentiginosus* var. *sesquimetralis* at Cold Springs (10 hectares (ha) (25 acres (ac)) in Nye County) and Sodaville (10 ha (25 ac) in Mineral County), Nevada are adjacent to BLM grazing allotments. Although the sites are subject to cattle and burro trespass, the Service has no evidence of grazing or trampling damage on either site from cattle and burros (Morefield 1993). Because both sites are adjacent to highways, potential damage to the plants and their habitat by vehicular trespass, commercial development, and/or associated roadside activities has been suggested (Morefield 1993, 57 FR 19844). To date, however, no permit requests for development of either property site or the waters thereon have been filed with state or county permitting authorities, and no evidence of vehicular trespass has been recorded since 1978 (Morefield 1993). The Sodaville property is also the site of a refugia population of Railroad Valley Springfish (*Chrenichthys nevadae*), a federally threatened species that occupies adjacent springs (Mike Sevon, Nevada Division of Wildlife (NDOW), *in litt.* 1996). At the time of the last census of these sites in 1992, about 600 to 750 plants were known to exist at the Sodaville site (Morefield 1993) and about 500 plants at the Cold Springs site (Morefield 1993). No population trend data are available for these populations and their current population status is unknown. Threats to *A. lentiginosus* var. *sesquimetralis* identified in the proposed rule are discussed further under factors A and E of the ''Summary of Factors Affecting the Species'' section of this notice.

Public Comments on the Proposed Rule

During the two comment periods in 1992 and 1996, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, the Mexican government, local governments, scientific organizations, and other interested parties were notified and their comments solicited regarding the 1992 proposed rule and on any changes in management or threats that may have occurred since that time. Legal notices inviting general public comment were published in the appropriate California and Nevada local newspapers.

Comments specifically relevant to *Astragalus lentiginosus* var. *micans* or *A. lentiginosus* var. *sesquimetralis* are incorporated into this withdrawal notice where appropriate. The Service has not prepared a discussion or response to several additional comments that were received in support of withdrawal of *A. lentiginosus* var. *sesquimetralis* because these comments did not provide any additional relevant information concerning the species' biology, population size, numbers or distribution; threats or lack thereof; or conservation agreements or other protection instruments and their possible impacts to the species.

Of the parties specifically addressing *A. lentiginosus* var. *micans*, two expressed concern that NPS does not have adequate funds or staff to protect the Eureka Dunes from vehicle trespass, three expressed concern about the occurrence of Russian thistle at the base of the Dunes, one suggested that Indian rice grass (*Oryzopsis hymenoides*) might threaten *A. lentiginosus* var. *micans* in the future, and one requested that the final determination on this listing action be delayed until completion of the Northern and Eastern Mojave Ecosystem Management Plan (NEMO). The issues of vehicle trespass and the occurrence of Russian thistle are discussed under factors A, D, and E of the ''Summary of Factors Affecting the Species'' section of this notice. In regard to Indian rice grass, the Service is not aware of any information to suggest that this native species is currently a threat to this taxon. In response to the suggestion to delay the final determination of this listing action, the Service cannot delay action on a proposed rule, except in circumstances where there is substantial disagreement among knowledgeable scientists regarding the sufficiency or accuracy of data relevant to the determination (50 CFR 424.17).

Several comments received during the 1992 comment period questioned the varietal distinctiveness of *Astragalus lentiginosus* var. *micans*. In preparing this withdrawal notice, the Service has determined that the most recent taxonomic treatment of the genus (Spellenburg 1993) and information received from an expert on the species during the 1996 comment period

(Pavlik, *in litt.* 1996) treat the taxon as distinct at the varietal level.

Issue 1: Five commenters raised issues specifically relating to *Astragalus lentiginosus* var. *sesquimetralis.* The comment concerning a delayed determination of the proposed listing of this taxon was addressed in the above paragraph regarding *A. lentiginosus* var. *micans.* This commenter also expressed concern that competition from wild licorice (*Glycyrrhiza lepidota*) was an additional potential threat to the Death Valley population.

Service Response: The Service is not aware of any information suggesting that wild licorice poses a threat to *A. lentiginosus* var. *sesquimetralis.*

Issue 2: One comment expressed concern about livestock and burro trespass and the feasibility of burro-proof fencing at the Death Valley site.

Service Response: Livestock and burro trespass is addressed in factors A, B, and C of the ''Summary of Factors Affecting the Species'' section of this notice.

Issue 3: One comment challenged the appropriateness of listing plant varieties under the Act.

Service Response: Section 3(16) of the Act states that ''(t)he term ''species'' includes any subspecies of fish or wildlife or plants * * * which interbreeds when mature.'' The Service discussed in a **Federal Register** notice published on April 16, 1978 (43 FR 17912) the common use of the terms ''species'' and ''varieties'' by botanists and concluded that plants named as ''varieties'' are essentially subspecies and, therefore, ''species'' as defined in the Act.

Issue 4: One commenter stated that *Astragalus lentiginosus* var. *sesquimetralis* is a poisonous, narcotic plant that, as such, should not be protected by the Federal government. This commenter also expressed concern over Federal protection of a species that the State of Nevada referred to as ''locoweed'' and had gone so far as to ban its commerce under a Nevada Revised Statute (NRS).

Service Response: In response to the latter concern, no *Astragalus* fit the characteristics of noxious species as classified by the State of Nevada, and therefore, none are listed as noxious weeds under the NRS (NRS 555) (John O'Brien, Nevada Division of Agriculture, *in litt.* 1996). Because many plants are commonly called ''locoweeds,'' plant identities are often confused when common names are used in literature, and the commenter may have confused *Astragalus* with other locoweeds. *Astragalus lentiginosus* var. *sesquimetralis* does contain compounds that may cause toxic and/or narcotic reactions when eaten by animals, as do most *Astragalus* species and many other species of plants, including some that are common in human diets (e.g., the potato *Solanum tuberosum*) (Kingsbury 1964). That characteristic alone does not affect a listing decision under the Act.

Issue 5: A ''joking reference'' to vandalizing *A. lentiginosus* var. *sesquimetralis* on the private property where it exists was made at a local public meeting in Nye County, NV (*Pahrump Valley Times*, October 4, 1996).

Service Response: Because this comment was not made by the private property owner, nor was there any evidence that this threat was supported by the property owner, vandalism is not currently considered by the Service to be a threat to *A. lentiginosus* var. *sesquimetralis*, particularly since this species is being withdrawn from consideration for listing.

Summary of Factors Affecting the Species

The Act and implementing regulations found a 50 CFR 424.17(3) provide the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when it has not been found to be supported by available information. The five factors described in section 4(a)(1) of the Act, as they apply to the withdrawal of the proposed listing of *Astragalus lentiginosus* Dougl. var. *micans* Barneby (shining milk-vetch) and *Astragalus lentiginosus* Dougl. var. *sesquimetralis* (Rydb.) Barneby (Sodaville milk-vetch), are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Off highway vehicle use has been the primary threat to *Astragalus lentiginosus* var. *micans*. Beginning in the 1960s, the Eureka Dunes became a popular location to ride OHVs, including dune buggies (Service 1982). On Easter weekend in 1976, for example, almost 50 vehicles were reported at the Eureka Dunes (BLM 1976). The height of vehicle damage to the endemic plants of the Eureka Dunes probably occurred by the mid to late 1970s (Service 1982). Two other plant taxa endemic to the Eureka Valley were listed as endangered in 1978 (43 FR 17910) as a result of OHV activity.

Due, in part, to public concern over the declining condition of the dune's endemic flora, BLM officially closed the Eureka Dunes to OHV use in 1976. However, it was not until 1980 that BLM rangers and other personnel effectively enforced the closure (Service 1982). In the 1980s and early 1990s, BLM continued to maintain the closure and installed pipe barriers, wooden barriers, and signs around the northwest and central parking areas to block vehicle access to the dunes and to direct visitor use. During the past decade, the patrols and barriers have effectively prevented most vehicle trespass outside the confines of the parking area, although occasional trespass has still occurred (BLM, *in litt.* 1992; Glenn Harris, BLM, pers. comm. 1996). During transfer of the management of the Eureka Valley to NPS, the wooden barriers in the northwest parking area were stolen (G. Harris, pers. comm. 1996) and a few individual plants of *Astragalus lentiginosus* var. *micans* recolonizing the parking area were run over by vehicles (Renee Beymer, NPS, *in litt.* 1996; Diane Steeck, Service, pers. obs. 1996). In the fall of 1996, NPS installed temporary t-post barriers in the parking area, which they replaced with NPS wilderness markers a few months later. The Park is in the process of placing more permanent barriers and reducing the size of the parking area to allow the milk-vetch to recolonize an area at the dune base previously denuded by vehicles. The NPS reports that ranger patrols of the area occur at about the same level as before the Eureka Valley was transferred to its management (NPS, *in litt.* 1996).

The Service concludes that the BLM's earlier efforts to reduce vehicle trespass at the north end of the Eureka Dunes, combined with the current reduction in the size of the northwest parking area to allow *Astragalus lentiginosus* var. *micans* to continue recolonizing the sandy flats, and the continuation of enforcement patrols by NPS have reduced vehicle trespass into the population to the extent that vehicle trespass does not currently constitute a significant threat to the survival of this taxon. The Service is working with NPS to identify and implement additional conservation activities to manage visitor numbers and use patterns into the future.

The second location where *Astragalus lentiginosus* var. *micans* occurs, the Saline Spur Dunes, is also located within wilderness under NPS management. This location is fairly isolated, lacks road access, and receives little human visitation, consequently the Service believes threats to this location are minimal.

The alkaline spring-associated habitat of *Astragalus lentiginosus* var. *sesquimetralis* is vulnerable to surface developments, water diversions, vehicular traffic, and trampling by

domestic and wild herbivores. The Cold Spring and Sodaville populations of this taxon occur entirely on private land. Any development activities that result in surface disturbances or decreased spring flows could threaten these populations. While the owner of the Sodaville property has expressed future intent to develop a portion of the 64 ha (160 ac) surrounding the springs, his intention is not to disturb or threaten *A. lentiginosus* var. *sesquimetralis* or its habitat (Durk Pearson, HRH Resources, pers. comm. 1996). To date, neither property owner has filed for any of the State or county permits necessary for development of property or the waters thereon. The Service has no evidence of activity that would represent a substantial threat to *A. lentiginosus* var. *sesquimetralis* on private property at this time.

The Big Sand Spring site recently has passed from BLM authority to that of NPS by inclusion in Death Valley National Park through the CDPA of 1994. While under BLM authority, this site was managed as both an Area of Critical Environmental Concern and a Wild Horse and Burro Herd Management Area. As such, it was vulnerable to trampling by feral burros and livestock due to breaks in exclosure fencing and other means of access. As part of NPS's current management activities to mitigate or eliminate potential threats to this taxon (NPS, *in litt.* 1996), new fencing has been constructed around Big Sand Spring. The NPS has identified and implemented further conservation activities, such as monitoring and increased patrol efforts.

The Service concludes that development does not pose a threat to this taxon, and impacts from livestock have currently been reduced to the extent that they no longer pose a threat to this taxon.

B. Over Utilization for Commercial, Recreational, Scientific, or Educational Purposes

There are no known commercial values or purposes for these species.

C. Disease or Predation

Disease is not known to be a factor for these taxa. As discussed under Factor A of the ''Summary of Factors Affecting the Species'' section of this notice, *Astragalus lentiginosus* var. *sesquimetralis* may be subject to grazing by livestock and burros in the Big Sand Spring location, but trampling is more likely, due to toxicity of the plants (BLM, *in litt.* 1992). New fencing at the site has been constructed to prevent access by livestock and burros (C. Mullen, pers. obs. 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

The Endangered Species Act should provide protection to *Astragalus lentiginosus* var. *micans* at the Eureka Dunes and Saline Spur Dunes by virtue of the co-existence of this taxon with two other listed plant taxa, *Oenothera californica* ssp. *eurekensis* and *Swallenia alexandre.* Although they prefer somewhat different sand depths and stability, the majority of the mapped distribution of *A. lentiginosus* var. *micans* coincides with that of the *Oenothera* at the Eureka Dunes and with both taxa over much of the Saline Spur Dunes (BLM 1976, Bagley 1986). In 1982 the Service funded preparation of a Recovery Plan for the Eureka Valley Dunes. The two major tasks identified in the plan involved, (1) removing human threats to the Eureka Dunes and auxiliary dunes where these species occur, and (2) determining population and habitat conditions needed to ensure their survival, and then managing for those conditions. These tasks have been partially completed and have benefitted *A. lentiginosus* var. *micans* as well as the two listed taxa (Harris 1994 as cited in Noell 1994). The co-occurrence of *A. lentiginosus* var. *micans* with these listed plants should offer it substantial protection from visitor use and vehicle trespass, providing NPS enforces compliance and manages visitor use to adequately protect, and promote the recovery of, the listed taxa.

Long-term management actions to mitigate or eliminate potential threats to areas in the eastern Mojave Desert, including Park sites that support *Astragalus lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetralis* are currently being formulated by NPS for inclusion in the NEMO Plan (NPS, *in litt.* 1996), a joint effort of NPS, BLM, and the Service. This plan is still being formulated, however, and does not currently provide any additional protection to these species. NPS is developing a monitoring program for both *A. lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetralis* at the sites within Death Valley National Park where they occur.

Astragalus lentiginosus var. *sesquimetralis* is on the State of Nevada's list of critically endangered species in accordance with Nevada Revised Statute 527.270. Under the terms of State law, this statute provides that ''no member of its kind may be removed or destroyed at any time by any means except under special permit issued by the State Forester Firewarden'' (NRS 527.270). Private property development affecting the plant directly, or indirectly through habitat modification, would require a permit from the Nevada Division of Forestry prior to removal or destruction. The Sodaville site is also the location of a population of Railroad Valley Springfish, a federally listed threatened fish that is protected under the Act. Existing regulatory mechanisms, given the current status of the species, are adequate.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

A potential threat to *Astragalus lentiginosus* var. *micans* at the Eureka Dunes is the occurrence and spread of Russian thistle. Although Russian thistle was documented on the dunes in the 1970s and 1980s, it appears to have increased from the mid to late 1980s around the base of the main Eureka Dune, particularly along the dune's east side (Bagley, pers. comm. 1996). While there is substantial concern about the occurrence of Russian thistle around the dunes (Mary DeDecker, CNPS, *in litt.* 1996; Mark Bagley, CNPS, pers. comm. 1996, Mary Ann Henry, CNPS, *in litt.* 1996), its effect on *A. lentiginosus* var. *micans* is unknown. Pavlik (*in litt.* 1996) did not find that cover by Russian thistle affected reproduction or survivorship of *A. lentiginosus* var. *micans* when he conducted research on the dunes, although cover of thistle may have increased since that time (Bagley, pers. comm. 1996). However, the active growing season of *A. lentiginosus* var. *micans* and Russian thistle do not coincide. *Astragalus lentiginosus* var. *micans* exhibits most of its growth in the early spring, with flowering from March to June (Pavlik 1979), while the period of greatest growth for Russian thistle is late spring and summer, with flowering from August to October (The Nature Conservancy 1986; BLM, *in litt.* 1992; B. Pavlik, *in litt.* 1996). This reduces the likelihood of direct competition for water between these taxa (BLM, *in litt.* 1992; B. Pavlik, *in litt.* 1996). Although Russian thistle may not exhibit a direct, measurable, effect on *A. lentiginosus* var. *micans*, it may affect it indirectly, through its influence on other biota or on abiotic factors of the dune community (B. Pavlik, *in litt.* 1996). Nonetheless, based on the evidence available at this time, the Service concludes that Russian thistle does not substantially affect the long-term existence of this taxon in the Eureka Valley.

The possibility of destruction of plants, especially seedlings, of *Astragalus lentiginosus* var. *micans*

from trampling by dune visitors is also a concern (R. Beymer, pers. comm. 1996; B. Pavlik, *in litt.* 1996). The road leading out of the north end of Death Valley National Park, past the Eureka Dunes access road, has been improved in the last 2 years, and additional portions of it have been paved (R. Beymer, pers. comm. 1996). Although NPS has neither publicized nor planned any improvements in facilities at the Eureka Dunes, the area is likely to attract more visitors due to its recent inclusion within a National Park. The Service acknowledges the potential for trampling by visitors to affect *A. lentiginosus* var. *micans*, but concludes that evidence is insufficient to conclude that the Park cannot adequately manage visitor use to effectively protect this taxon and promote the recovery of the co-occurring listed taxa on the dunes.

The naturally limited global distribution and abundance of *Astragalus lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetralis* increase their vulnerability to extirpation or extinction by unforeseen catastrophic events, either natural (e.g., prolonged drought combined with disease outbreak) or human-caused. Pro-active recovery efforts to lessen the threat of such random events typically involves the establishment of additional populations. However, the Service has no evidence to suggest that these taxa have ever been found beyond the areas they currently occupy. Therefore, their conservation would not include increasing the number or distribution of populations beyond the dunes which they currently inhabit. Because of the low probability of an unforeseen catastrophic event(s), either natural (e.g., prolonged drought combined with disease outbreak) or human-caused, taking place and affecting entire populations or colonies of these taxa, the significance of threat from such an event is insufficient to warrant listing at this time.

The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice. After review and consideration of all information available regarding the past, present, and future threats, and past and current conservation efforts by BLM and NPS, the Service has determined that insufficient evidence of threat exists at this time to warrant listing of *Astragalus lentiginosus* var. *micans* and *Astragalus lentiginosus* var. *sesquimetralis* as threatened under the Act. The Service will continue to monitor data involving population status, visitor use, vehicle trespass, the presence of nonnative species (including livestock and feral burros) or other activities or habitat changes affecting these two taxa.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Field Office (see **ADDRESSES** section).

Authors: The primary authors of this withdrawal notice are Diane Steeck, Ventura Field Office and Christine Mullen, Nevada State Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 29, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–26735 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD74

Extension of Comment Period: Migratory Bird Hunting Regulations Regarding Baiting and Baited Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Service is extending the comment period on the **Federal Register** proposed rule published March 25, 1998 (63 FR 14415) and extended on May 22, 1998 (63 FR 28343) that invites public comments on proposed changes to the migratory bird hunting regulations regarding baiting and baited areas.

DATES: The deadline for postmark on comments will be extended from October 1, 1998, to October 22, 1998.

ADDRESSES: Comments regarding this proposed rulemaking should be addressed to: U.S. Fish and Wildlife Service, Post Office Box 3247, Arlington, Virginia 22203–3247, or sent via electronic mail to: R9LE__WWW@FWS.GOV. Comments may be hand-delivered to 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203. The public may inspect comments upon appointment during normal business hours at 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Kevin Adams, Chief, Office of Law Enforcement, telephone 703/358–1949.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) has authority (16 U.S.C. 712 and 16 U.S.C. 742a–j) to regulate activities involving the hunting and other taking of migratory game birds. The Service has promulgated regulations (50 CFR part 20) for the hunting of migratory game birds that includes sections for *Methods of Take* and *Definitions of Terms.*

In a **Federal Register** notice dated March 25, 1998, the Service proposed new regulatory language for: accidental scattering of agricultural crops or natural vegetation incidental to hunting, normal agricultural and soil stabilization practices, baited areas, baiting, manipulation, natural vegetation, and top-sowing of seeds. Proposed changes also included new guidance with respect to hunting over natural vegetation that has been manipulated. However, no change was proposed regarding application of strict liability to the migratory game bird baiting regulations.

At the request of a number of organizations, in a **Federal Register** notice dated May 22, 1998, the Service extended the comment period to October 1, 1998. In response to requests to again extend the comment period, and to invite careful consideration by all parties and facilitate substantive public review, the Service is extending the comment period through October 31, 1998.

Dated: October 1, 1998.

Jamie R. Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–26827 Filed 10–2–98; 11:48 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[I.D. 081098D]

Endangered and Threatened Species; Petition to Delist Pacific Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of petition finding.

SUMMARY: NMFS has received a petition to delist all west coast salmon (*Oncorhynchus* spp.) inhabiting the Pacific Basin, including all rivers and tributaries emptying into the Pacific Basin, from the endangered species list. NMFS has determined that the petition does not contain any new, substantial scientific or commercial information, indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on September 28, 1998.

ADDRESSES: Requests for information concerning this petition should be sent to Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910; telephone: (301)713–1401.

FOR FURTHER INFORMATION CONTACT: Lisa Lierheimer at (301)713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C *et seq.*), requires that NMFS make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. NMFS' standard for substantial information is stated at 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' This finding is to be based on all information available to NMFS at the time. 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 published promptly in the **Federal Register**. If the finding is positive, NMFS is also required to promptly commence a review of the status of the involved species.

NMFS has made a 90-day finding on a petition to delist all Pacific salmon (*Oncorhynchus* spp.). The petition, dated July 8, 1998, was submitted by Mr. Richard A. Gierak, Director of New Frontiers Institute, Inc., and was received by NMFS on July, 14, 1998. The petitioner requested that NMFS delist all west coast salmon inhabiting the entire Pacific Basin including all rivers and tributaries emptying into the Pacific Basin.

The petitioner submitted information from various documents from 1985 through 1998, including NMFS publications, reports, and **Federal Register** documents of salmon listings, and from personal communications on the primary causative factors in the decline of coho salmon in northern California rivers. The petitioner identifies two categories of major factors contributing to the decline of northern California coho: nature (i.e., floods, fire, drought, El Nino), and human activities (i.e., the Marine Mammal Protection Act and the overpopulation of salmonid predators, the removal of salmonid eggs for hatchery production, and the destruction of estuarine habitats along the coast).

Under section 4(a)(1) of the ESA and the listing regulations at 50 CFR 424.11(c), when a species is considered for listing, NMFS must determine whether the species is endangered or threatened due to any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanism; or (5) other natural or manmade factors affecting its continued existence.

Under 50 CFR 424.11(d), the factors considered in delisting a species are the same as those used to list a species. A species may be delisted only if the best scientific and commercial data indicates that the species is no longer threatened or endangered for the following reasons: (1) Extinction; (2) recovery (the point at which the purposes of the ESA are no longer required); (3) subsequent investigation reveals that the original data or the interpretation of that data used to list the species was in error.

For listed coho salmon, the present condition of the population is a result of long-standing, human-induced conditions (i.e., harvest, habitat degradation, and artificial propagation) that serve to exacerbate the negative effects of adverse environmental conditions (i.e., drought, poor ocean conditions). However, the present conditions of listed coho salmon and the information presented throughout the petition as factors directly attributable to the devastation of salmon populations correspond to the factors listed here, requiring NMFS to list a species under the ESA. Information demonstrating that listed salmon have recovered or that the threats to salmon no longer exist were not presented in the petition.

NMFS has reviewed the petition, the literature cited in the petition, and other available literature and information. NMFS finds that the petitioned action does not present substantial scientific or commercial information indicating that delisting Pacific salmon may be warranted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 28, 1998.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–26768 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980918242–8242–01; I.D. 090898B]

RIN 0648–AL87

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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

SUMMARY: The Pacific Fishery Management Council (Council) is considering whether there is a need to impose additional management measures to further limit harvest capacity or to allocate between or within the limited entry commercial and the recreational groundfish fisheries in the U.S. exclusive economic zone off the States of Washington, Oregon, and California. If the Council determines that additional management measures are needed, the Council will recommend a rulemaking to implement those measures. Possible measures include allocating harvest of particular groundfish species (rockfish and lingcod) between limited entry gear groups and between commercial and recreational fisheries and further limiting access to certain species within the Pacific Coast groundfish complex. The Council may proceed with some or all of these measures. In order to discourage fishers from intensifying their fishing efforts for the purpose of amassing catch history for any allocation or additional limited access program developed by the Council, the Council announced on April 9, 1998, that any program proposed would not include consideration of catch landed after that date. At present, the Council is planning to consider catch history

through the 1997 fishing season. Persons interested in the Pacific Coast groundfish fishery should contact the Council to stay up to date on the management of the fishery.

DATES: Comments must be submitted in writing by November 5, 1998.

ADDRESSES: Comments may be mailed to Jerry Mallet, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier at 206–526–6140; or Svein Fougner at 562–980–4000; or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and implementing regulations appear at 50 CFR 660.302 through 660.341. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the FMP. Amendment 6 and its implementing regulations established a license limitation program for the commercial groundfish fishery based on the issuance of gear-specific Federal limited entry permits. Limited entry permits are endorsed for one or more of three gear types (trawl, longline, and trap(or pot)). A vessel meeting specific minimum landing requirements with a particular gear during the qualifying ''window period'' (July 11, 1984 through August 1, 1988) received a transferable permit with an ''A'' endorsement for that gear.

Amendment 6 also divided the Pacific Coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery, consisting of vessels with limited entry permits endorsed for longline and/or trap (or pot) gear and all vessels using groundfish trawl gear. The second segment is the open access fishery, consisting of all vessels using all other gear, as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or pot) gear, but that make small landings with longline or trap (or pot) gear. Implementation of Amendment 6 included setting harvest allocations between limited entry and open access fishers at percentages equal to the percentages of groundfish species taken by those same fishers during the window period.

On June 27, 1997, NMFS published final regulations implementing Amendment 9 to the FMP (62 FR 34670). Amendment 9 and its implementing regulations established a sablefish endorsement requirement for limited entry permits endorsed for fixed gear (longline or trap). The sablefish endorsement limits participation in the limited entry, regular, and mop-up fisheries for sablefish taken with fixed gear to permits with a minimum sablefish landing requirement during any one year within a window period of January 1, 1984, through December 31, 1994.

The Council in meetings from September 1997 through June 1998 discussed a trawl permit buyback program under the authority of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act. During these discussions, the Council determined that a buyback program would only be acceptable to trawl endorsed limited entry permit holders if the trawl fleet could retain a specific share of the total limited entry catch. At the same time, declining stock levels of some of the more valuable species in the groundfish complex had led to lower harvest levels and to greater concerns about catch allocation between the commercial and recreational sectors of the groundfish fisheries. These combined events led the Council to begin discussions on a rockfish and lingcod endorsement program to limit catch of those species to permit holders with greater dependence upon those species. At its April 1998 meeting, the Council realized that it might be addressing several different allocation issues over the coming year and that announcing the end of the time frame for considering catch history for groundfish allocation or further access limitation might prevent speculative fishing during Council resolution of these issues. The Council also established an Allocation Committee to review these issues and report back to the Council. The Allocation Committee has held two public meetings and reported to the Council at its September 1998 meeting in Sacramento, CA. The Council discussed these issues at that meeting and will hold further discussions at future meetings.

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP and possibly of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**.

As the Council considers management options, some permit holders may decide to intensify their fishing effort for the sole purpose of establishing a record of making higher levels of commercial groundfish landings. When management authorities begin to consider limited access management regimes, this kind of speculative fishing is often responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants or effort expansion by current participants.

The Council began its formal discussion of management measures to allocate species or to limit participation or effort in the fishery on April 9, 1998. Groundfish harvest after that date may not be used as a basis for allocation or participation if a management program is developed using catch history as all or part of the basis for allocation or participation. Fishermen are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or intensity of participation in the fishery before or after Council discussions on these issues.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 30, 1998.

Andy Rosenberg,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 98–26769 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 193

Tuesday, October 6, 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

Agricultural Marketing Service

[Docket No. PY–98–007]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Regulations Governing the Voluntary Grading of Shell Eggs—7 CFR part 56.

DATES: Comments on this notice must be received by December 7, 1998.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20050–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Voluntary Grading of Shell eggs.

OMB Number: 0581–0128.

Expiration Date of Approval: May 31, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The regulations provide a voluntary program for grading shell eggs on the basis of U.S. standards, grades, and weight classes. In addition, the shell egg industry and users of the products have requested that other types of voluntary services be developed and provided under these regulations; e.g., contract and specification acceptance services and certification of quantity. This voluntary grading service is available on a resident basis or on an as-needed basis. A fee for service is paid by the user.

The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA directs and authorizes the Secretary of Agriculture to inspect, certify and identify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service.

Because this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that cost of service be assessed and collected, there is no alternative but to provide programs on a fee-for-service basis and to collect the information needed to establish the cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program. This information collection includes requesting, applying for, or terminating service; applying for a license to grade poultry products; maintaining the volume of poultry products received, processed, or graded; and requesting the approval of certification of specialized contract services.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information, and the secondary user is each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.234 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 643.

Estimated Number of Responses per Respondent: 37.14.

Estimated Total Annual Burden on Respondents: 5,602 hours.

Copies of this information collection can be obtained from Shields Jones, Standardization Branch, at (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) Whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, to: Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250–0259.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 1, 1998.

D. Michael Holbrook,

Deputy Administrator, Poultry Programs.

[FR Doc. 98–26762 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

AGENCY: Foreign Agricultural Service, DOA.

ACTION: Notice of Determination of Existence of Price Conditions Necessary for Imposition of Temporary Duty on Frozen Concentrated Orange Juice from Mexico.

SUMMARY: Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 (''NAFTA Implementation Act''), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was lower than the trigger price.

FOR FURTHER INFORMATION CONTACT: Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2974.

SUPPLEMENTARY INFORMATION: The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term ''daily price'' means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the ''Exchange''), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term ''business day'' means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term ''trigger price'' means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the **Federal Register** of the determination that the price conditions have ceased to exist shall be the lower of—(1) the column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term ''entered'' means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period September 10–16, 1998, the daily price for frozen concentrated orange juice was less than the trigger price.

Issued at Washington, DC the 25th day of September, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–26662 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Routt Divide Blowdown Analysis; Medicine Bow-Routt National Forest, Hahns Peak/Bears Ears Ranger District, Routt County, CO

September 28, 1998.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow-Routt National Forest will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects the Upper Elk River Access—Supplement to the North Fork Salvage Decision of a portion of the Routt Divide Blowdown outside the Mount Zirkel Wilderness Area on the Hahns Peak/Bears Ears Ranger District.

The purpose of this action is to implement the North Fork Salvage Analysis decision in a manner that meets the Land and Resource Management Plan for the Routt National Forest, minimizes environmental effects and is cost effective. The action proposed by the Forest Service is to gain permanent access to the Upper Elk River for forest management and recreational purposes and for private landowner access.

Preliminary issues identified concerning this proposal are: (1) Effects relating to building a bridge over the North Fork of the Elk River. (2) Maintaining scenic river character. (3) Status of Diamond Park Road (FDR 431) if a bridge should be built over the North Fork of the Elk Rier. (4) Cost of implementing the decision to rebuild Diamond Park Road (FDR 431). (5) Effects of reconstructing Diamond Park Road (FDR 431).

DATES: Public Scoping will begin with a mailing to people who expressed an interest in the North Fork Salvage Analysis, land owners within the Forest Service boundaries adjacent to the analysis area, and State, County, and local officials.

On October 7th and 19th, 1998 Forest Service specialists will host open houses for the public to discuss the South Fork Analysis at the Steamboat Springs, Colorado Forest Service Office, 925 Weiss Dr. from 2:00 pm until 6:00 pm.

A Draft Environmental Impact Statement is expected to be completed by December, 1998, After a 45 day comment period, a Final Environmental Impact Statement will be prepared for South Fork Analysis.

ADDRESSES: Public meetings on South Fork Analysis are scheduled for:

October 15, 1998, 5:00 pm, at the Steamboat Springs USDA Forest Service Office;

October 21, 1998, 5:00 pm, at the Saratoga, Wyoming USDA Forest Service Office;

October 27, 1998, 5:00 pm, at the Clark, Colorado Moon Hill School House;

October 28, 1998, 5:00 pm, at the USDA Forest Service Office in Walden, Colorado.

Responsible Official: Jerry E. Schmidt, Forest Supervisor, Medicine Bow—

Routt National Forest, 2468 Jackson Street, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Andy Cadenhead, Interdisciplinary Team Leader, Medicine Bow—Routt National Forest, 925 Weiss Dr., Steamboat Springs CO 80487, (970) 870–2220.

SUPPLEMENTARY INFORMATION: The analysis area location is approximately 24 miles north of Steamboat Springs, Colorado, in portions of the following sections:

T9N,R83W; Sections 3–5, 8–10. T9N,R84W; Sections 1,2,11
T10N,R83W; Sections 17, 20, 21, 27–29, 32–34
T10N,R84W; sections 1–4, 10–15, 22–27, 34–36. T11N,R84W; Sections 33–36

As set forth in law, the mission of the Forest Service is to achieve quality land management under the sustainable multiple use management concept. This concept is to meet the diverse needs of people. It includes advocating a conservation ethic in promoting the health, productivity, diversity and beauty of forests. It also includes public input and responding to diverse needs in resource decisions. Another part of our job is to help communities and states wisely use the forests to promote rural economic development and a quality rural environment. Also included in the mission is developing and providing scientific and technical knowledge aimed at improving our capability to protect, manage, and use forests and rangelands.

Jerry E. Schmidt,

Forest Supervisor, Medicine Bow—Routt National Forest.

[FR Doc. 98–26709 Filed 10–5–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in closed meetings on September 23, 1998 and September 28, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457. The public may obtain an electronic copy of the complete document-by-document determinations by contacting <Eileen__Sullivan@jfk-arrb.gov>.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C.__2107.9(c)(4)(A) (1992). On September 23, 1998, the Review Board made formal determinations on records its reviewed under the JFK Act.

Notice of Formal Determinations

1 Church Committee Document: Postponed in Part until 05/2001
31 Church Committee Documents: Postponed in Part until 10/2017
14 CIA Documents: Postponed in Part until 05/2001
36 CIA Documents: Postponed in Part until 10/1999
8 CIA Documents: Postponed in Part until 10/2003
1324 CIA Documents: Postponed in Part until 10/2017
1 FBI Document: Open in Full
2 FBI Documents: Postponed in Full until 10/2017
1 HSCA Document: Open in Full
1 HSCA Document: Postponed in Part until 05/2001
4 HSCA Documents: Postponed in Part until 10/1999
20 HSCA Documents: Postponed in Part until 10/2017
3 JCS Documents: Postponed in Part until 10/2017
3 LBJ Library Documents: Postponed in Part until 10/2017
1 NSA Document: Open in Full
13 NSA Documents: Postponed in Part until 10/2017
4 Office of the Secretary of Defense Documents: Postponed in Part until 10/2017
1 State Department Document: Postponed in Part until 10/2017
1 US Army (Califano) Document: Postponed in Part until 10/2017
136 US ARMY (IRR) Documents: Postponed in Part until 10/2017

The Review Board also determined that the following records are not believed relevant to the JFK assassination:

CIA Documents

104–10107–10132
104–10133–10207

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 4 Church Committee documents; 3 CIA documents; 71 HSCA documents; 1 JFK Library document; 17 LBJ Library documents; 2 Office of the Secretary of Defense documents; 30 U.S. Army (IRR) documents.

On September 28, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act.

Notice of Formal Determinations

1 Church Committee Document: Postponed in Part until 10/2017
2 CIA Documents: Postponed in Part until 05/2001
2 CIA Documents: Postponed in Part until 10/1999
110 CIA Documents: Postponed in Part until 10/2017
1 HSCA Document: Postponed in Part until 10/2017
2 LBJ Library Documents: Open in Full
1 LBJ Library Document: Postponed in Part until 10/2017
1 NSA Document: Postponed in Part until 10/2017

The Review Board also determined that the following record is not believed relevant to the JFK assassination.

US ARMY (IRR) Document

194–10010–10424

Notice of Other Releases

After consultation with appropriate Federal agencies, the Review Board announces that documents from the following agencies are now being opened in full: 3 Church Committee documents; 5 CIA documents; 52 LBJ Library documents.

Notice of Corrections

On September 9, 1998, the Review Board made formal determinations that were published in the **Federal Register**. For that Notice, please make the following corrections:

Previously Published

Notice of Formal Determinations

1 JFK Library Document: Postponed in Full until 10/2017

Notice of Other Releases

3 JFK Library documents

Corrected Data

Notice of Formal Determinations

1 JFK Library Document: Postponed in Full until 10/2017
1 JFK Library Document: Postponed in Part until 10/2017

Notice of Other Releases

4 JFK Library documents

In addition, the Review Board determined that the following record is

not believed relevant to the JFK Assassination:

CIA Documents

104–10213–10058

Dated: September 30, 1998.

Laura A. Denk,

Executive Director.

[FR Doc. 98–26698 Filed 10–5–98; 8:45 am]

BILLING CODE 6118–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–98]

Foreign-Trade Zone 170—Clark County, Indiana; Application for Foreign-Trade Subzone Status, Lexmark International, Inc. (Computer Printers and Related Products), Seymour, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 170, requesting special-purpose subzone status for the computer printer distribution and assembly facilities of Lexmark International, Inc. (Lexmark), located in Seymour, Indiana. The application was submitted pursuant to 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 September 28, 1998.

The Lexmark facility (1 bldg./588,00 square feet plus 266,500 sq. ft. expansion and a planned new 250,000 sq.ft. bldg. on 61.2 acres) is located at 1510 East Fourth Street in Seymour, Indiana (Jackson County), some 50 miles south of Indianapolis. The facility (200 employees) which began operations in June 1998 is used for the storage and distribution for import and export of computer printers, typewriters, and related supplies and some final stage assembly of computer printer products. The facility will be used for the distribution of most products manufactured at Lexmark's plant located at FTZ Subzone 29D in Lexington, Kentucky. In the future, the Indiana facility may also be used for full-scale manufacture of computer printers and subassemblies, typewriters and related products. A number of components may be purchased from abroad (an estimated 25–50% of value for some manufactured products), including ink and toner chemicals, plastic materials, sensors, printed circuit boards, capacitors, resistors, switches, fuses, relays, LEDs, fasteners and springs, electric motors, indicator panels, magnets, batteries, typewriter ribbons, ink cartridges, toner cartridges, power suppliers, cables, power cords, unfinished printers, printer parts, scanners, copiers, labels, plastic carrying cases, labels, printed materials, and packaging materials (1997 duty range: free-20%, with most ranging from duty-free to 6.9%).

Zone procedures would exempt Lexmark from Customs duty payments on foreign components used in export production. On its domestic sales, Lexmark would be able to choose the lower duty rate that applies to the finished products (free-0.5%, mostly duty-free) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 7, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 21, 1998.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

U.S. Department of Commerce, Export Assistance Center, 11405 N. Pennsylvania St., Suite 106, Carmel, Indiana 46032

Dated: September 29, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–26778 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of new shipper antidumping duty administrative review.

EFFECTIVE DATE: October 6, 1998.

SUMMARY: In response to a request by CO.R.EX. S.r.l, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order on certain pasta from Italy. The review covers sales during the period July 1, 1997 through December 31, 1997. We preliminarily determine that CO.R.EX. S.r.l. did not sell subject merchandise at less than normal value during the period of review.

Interested parties are invited to comment on these preliminary results. Parties who do so are requested to submit, along with each argument, (1) a statement of the issue, and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Constance Handley or John Brinkmann, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0631, or 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

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 regulations are to the regulations provided in 19 CFR Part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Case History

The Department of Commerce (the Department) published the antidumping duty order on certain pasta from Italy on July 24, 1996 (61 FR 38547). On January 16, 1998, CO.R.EX. S.r.l. (Corex) requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214.

On March 4, 1998, the Department published a notice of initiation of the new shipper review of Corex (63 FR 10590). On July 16, 1998, the Department published a notice postponing the preliminary results of this review until September 30, 1998 (63 FR 38371).

Scope of the Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, or by QC&I International Services.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The review covers one Italian producer/exporter, Corex, and the period July 1, 1997 through December 31, 1997.

Scope Rulings

On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of this proceeding. In addition, the Department issued a scope ruling on July 30, 1998, that multipacks consisting of six one-pound packages of pasta that are shrink wrapped into a single package are within the scope of the antidumping duty and countervailing duty orders. (*See* July 30, 1998 letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc.)

Treatment of Sales of Tolled Merchandise

Pursuant to section 351.401(h) of its regulations, the Department will not consider a toller or subcontractor to be a manufacturer or producer when the toller or subcontractor does not acquire ownership of the finished products and does not control the relevant sales of the subject merchandise and the foreign like product. In determining whether a company that uses a subcontractor in a tolling arrangement is a producer pursuant to 19 CFR 351.401(h), we examine all relevant facts surrounding a tolling agreement.

Corex claims that under the tolling arrangement with its unaffiliated subcontractor, Corex is the producer of the pasta at issue. In support of this claim, Corex reports that it: (1) purchases all of the inputs, (2) pays the subcontractor a processing fee, and (3) maintains ownership at all times of the inputs as well as the final product. Corex also notes that it conducts independent product testing and marketing research. Further, Corex claims that it is solely responsible for the marketing and sales of the product and any freight arrangements and that there is no contact between the subcontractor and Corex's customers. Based on this evidence, we preliminarily determine that Corex is the producer of the tolled merchandise, and hence the appropriate respondent.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section and sold in the comparison market during the period of review (POR), to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent.

Comparisons to Normal Value

To determine whether sales of subject merchandise by the respondent to the United States were made at less than normal value, we compared export price (EP) to normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation and the constructed export price methodology was not indicated by the facts of record.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for movement expenses, which included export customs duties and container loading fee.

Normal Value

Corex reported no home market sales during the POR. Therefore, in accordance with section 773(a)(1)(B)(ii) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the respondent's largest third-country market, Australia, which had an aggregate sales quantity greater than 5 percent of the aggregate quantity sold in the United States.

We made adjustments to NV for differences in packing in accordance with sections 773(a)(6)(A) and (B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong., at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. We examined information on the selling activities associated with each channel of trade in each of Corex's markets. Corex's Australian sales were all FOB Naples and its U.S. sales were ex-factory. Given that the only differences in selling activities between the two markets was the provision of freight services to the port for Australian sales, we determined that there was a single LOT in each market and that these LOTs were comparable.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, *e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review* (61 FR 8915, 8918, March 6, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Use of a Combination Rate

19 CFR 351.107 states that in the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Department ''may establish a combination cash deposit rate for each combination of exporter and its supplying producer(s).'' Although Corex, not its toller, is considered to be the producer within the meaning of 19 CFR 351.401(h), Corex's primary business is not that of a producer of the subject merchandise but rather it is a trading company, which buys and resells many types of food products. In the future, Corex may buy and resell pasta to the United States that is sourced from other manufacturers. In these cases, Corex would not be considered the producer of the subject merchandise and the rate assigned to Corex as a producer of tolled merchandise should not apply. As stated in the preamble to 19 CFR 351.107, ''Establishing a deposit rate for an exporter and, without regard to the identity of the supplier, applying that rate to all future exports by that exporter could lead to the application of that rate even if other suppliers sold to the exporter with knowledge of exportation to the United States. This would enable a producer with a relatively high deposit rate to avoid the application of its own rate by selling to the United States through an exporter with a low rate.'' See 62 FR 27303. Therefore, in view of Corex's primary business as a reseller, the rate determined in this review will be applicable only to subject merchandise produced and exported by Corex. Because it would be difficult for the Customs Service to distinguish between merchandise produced by Corex, and that which is simply being resold by Corex as a trading company, the strong possibility for circumvention exists in this situation. Accordingly, any entries of merchandise exported and produced by Corex must identify Corex as the producer in order that the deposit rate established in this review will apply. If Corex is not the producer, the deposit rate will be the rate for the identified producer. Otherwise, the ''all others'' rate will apply.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for Corex is 0.00 percent.

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 90 days after the date of publication of this notice.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act. The cash deposit rate for Corex will be the rate established in the final results of this administrative review (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.,* margins lower than 0.5 percent).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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: September 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–26779 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico: Amended Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review in accordance with decision upon remand

SUMMARY: On September 16, 1997, the United States Court of International Trade (the Court) vacated the final results rate for respondent Cinsa, S.A. de C.V., and affirmed the Department of Commerce's (the Department's) redetermination on remand regarding the Department's decision to rely on the transfer price of enamel frit submitted by Cinsa for purposes of constructed value for the administrative review covering the period December 1, 1989 through November 30, 1990 (fourth review). The Department has determined, in accordance with the instructions of the Court, the dumping margin for entries of porcelain-on-steel cooking ware from Mexico by Cinsa during that period to be 6.04 percent.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Richard Herring, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1993, the Department published in the **Federal Register** (58 FR 43,327) the final results of its fourth administrative review of the

antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covered the period December 1, 1989 through November 30, 1990.

Subsequent to the final results, Cinsa, one of two respondents, challenged the Department's determination before the Court on four issues. The Court issued a remand with respect to one issue only and directed the Department to determine whether the transfer price for enamel frit provided to the Department in that review constituted an arm's-length transaction as prescribed by the statute and previous practice. The Court agreed with the Department that the burden was on the respondent to ''establish that the transfer price for the purchase of raw material from the related party reflects an arm's-length price.'' However, it found that Cinsa had met its initial burden by supplying the Department with the requested explanation of how it determined the transfer price to be representative of a fair market price and of how it determined that transfer prices were above the cost of production. The Court found that Cinsa had effectively shifted the burden to the Department by explaining the discount in the transfer price, which was all the Department had requested of Cinsa during that review.

The Department filed its redetermination on July 2, 1997. Although the Department respectfully disagreed with the Court's conclusion that Cinsa fulfilled its burden of proving the arm's-length nature of the related party transfer price, the Department determined that, for purposes of the remand, it should use Cinsa's reported transfer price for enamel frit from its related supplier to calculate constructed value because, in that review, the Department did not request that Cinsa provide any documentation in support of its claim that the extent of differences between the transfer prices for frit and the prices at which frit was sold to unrelated firms were accounted for fully. On September 16, 1997, the Court vacated the final results rate for respondent Cinsa and affirmed the Department's redetermination. No party contested that Court decision.

Results of Remand

In accordance with the results of remand affirmed by the Court, we are amending the final results of review. The margin for Cinsa is reduced from 6.71 percent to 6.04 percent.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service. The above rate will not affect Cinsa's cash deposit requirements currently in effect, which will continue to be based on the margin found to exist in the most recently completed review.

This amendment to the final results of antidumping duty administrative review notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1989)).

Dated: September 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–26780 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–834–802, A–835–802, A–844–802]

Agreement Suspending the Antidumping Investigation on Uranium From Kazakhstan, Kyrgyzstan and Uzbekistan.

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of price determination on Uranium from Kazakhstan, Kyrgyzstan and Uzbekistan.

SUMMARY: Pursuant to Section IV.C.1. of the agreements suspending the antidumping investigation on uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan, as amended, (antidumping suspension agreement on uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan), the Department of Commerce (the Department) calculated a price for uranium of $10.85/pound of U_3O_8 for the relevant period, as appropriate. Under Section IV.A, exports from Kazakhstan to the United States are subject to quotas determined based on price levels as outlined in Appendix A. On the basis of this price and Appendix A of the suspension agreement with Kazakhstan, there is no quota for uranium from Kazakhstan for the period October 1, 1998, through March 30, 1999. This price will also be used, as appropriate, according to Section IV.A. of the Uzbek agreement. The quota for the current relevant period for Uzbekistan, October 13, 1998–October 12, 1999, has been announced in the *Notice of Price Determination on Uranium from Kazakhstan, Kyrgyzstan,* and *Uzbekistan*, separately, due to the fact that this quota is now based on a production-tied quota, in accordance with Section IV.A. of that agreement.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Letitia Kress, Office of Antidumping Countervailing Duty Enforcement—Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6412.

Price Calculation

Background

Section IV.C.1. of the antidumping suspension agreements on uranium from Kazakhstan, Kyrgyzstan, and Uzbekistan specifies that the Department will issue its determined market price on October 1, 1998, and use it to determine the quota applicable to imports from Kazakhstan during the period October 1, 1998, to March 30, 1999, and Uzbekistan during the period of October 13, 1998 to October 12, 1999. Consistent with the February 22, 1993 letter of interpretation, the Department provided interested parties with the preliminary price determination on September 21, 1998.

Calculation Summary

Section IV.C.1. of these agreements specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the weighted-average long-term price as determined by the Department on the basis of information provided by market participants and a simple average of the UPIS U.S. Base Price for the months in which there were new contracts reported.

The Department's letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 1.51 percent, which was derived from a rolling

average of the annual Gross Domestic Product Implicit Price Deflator index from the past four years. The Department then calculated weight-averaged annual prices according to the specified nominal delivery volumes for each year to arrive at the long-term contract price. The Department then calculated a simple average of the UPIS U.S. Base Price and the long-term contract price as determined by the Department.

Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA), to weight the spot and long-term components of the observed price. In this instance, we have used purchase data from the period 1994–1997. During this period, the spot market accounted for 77.66 percent of total purchases, and the long-term market for 22.34 percent.

As in previous determinations, the Department used the Energy Information Administration's (EIA) *Uranium Industry Annual* to determine the available average spot- and long-term volumes of U.S. utility purchases. We have updated the data to reflect the period 1994 through 1997. The EIA has withheld certain business proprietary contract data from the public versions of the *Uranium Industry Annual 1994, Uranium Industry Annual 1995, Uranium Industry Annual 1996* and the *Uranium Industry Annual 1997*. The EIA, however, provided all business proprietary data to the Department and the Department has used it to update its weighting calculation.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $10.85. This reflects an average spot market price of $10.71, weighted at 77.66 percent, and an average long-term contract price of $11.30, weighted at 22.34 percent. Since this price is below $12.00–$13.99 as defined in Appendix A of the suspension agreement with Kazakhstan, Kazakhstan does not receive an Appendix A quota for the period October 1, 1998, to March 30, 1999. This price will also be used, as appropriate, according to Section IV.A. of the Uzbek agreement.

Comments

Consistent with the February 22, 1993, letter of interpretation, the Department provided interested parties the preliminary price determination for this period on September 21, 1998. No interested party submitted comments.

Dated: September 29, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, for Antidumping Countervailing Duty—Group III.

[FR Doc. 98–26777 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the ''Committee'') advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on October 15, 1998 from 10:30 a.m. to 3:00 p.m. at the U.S. Department of Commerce in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Room 4036, Washington, DC 20230, telephone: (202) 482–1418.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on September 11, 1998, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: September 28, 1998.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 98–26740 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Textiles Trade Mission to Turkey; Correction

October 1, 1998.

In the **Federal Register** document published on September 30, 1998; on page 52243, column 3, delete ''October 14, 1998'' and insert the date of the event December 7–11, 1998 and closing date October 14, 1998.

Tom Nisbet,

Director, Office of Trade Promotion Coordination.

[FR Doc. 98–26729 Filed 10–5–98; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of Fort Chaffee, Arkansas

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's Council on Environmental Quality, the Army has prepared a DEIS for the disposal and reuse of Fort Chaffee, Arkansas. The approved 1995 base closure and realignment actions required by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance with this law, mandated the closure of Fort Chaffee. It is Department of Defense (DOD) policy to dispose of property no longer needed by DOD.

Consequently, as a result of the mandated closure of Fort Chaffee, the Army is disposing of excess property at Fort Chaffee.

DATES: The public comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the Environmental Protection Agency (EPA).

ADDRESSES: Questions and/or written comments regarding the DEIS or a request for a copy of the document may be directed to Mr. Jim Ellis at the Little Rock District, U.S. Army Corps of Engineers (ATTN: CESWL–PL–A), PO Box 867, Little Rock, AR 72203.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Ellis at (501) 325–5033 or telefax at (501) 324–5605.

SUPPLEMENTARY INFORMATION: The DEIS analyzes three disposal alternatives: (1) The no action alternative, which entails maintaining the property in caretaker status after closure; (2) the encumbered disposal alternative, which entails transferring the property to future owners with Army-imposed limitations or encumbrances on the future use of the property; and (3) the unencumbered disposal alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in this DEIS is encumbered disposal of excess property at Fort Chaffee. Based upon the analysis contained in the DEIS, encumbrances and deed restrictions associated with the Army's disposal actions for Fort Chaffee will be mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community established the Fort Chaffee Redeveloping Authority (FCRA) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FCRA reuse plan. The Army has not selected one of these three reuse alternatives as the preferred action. Selection of the preferred reuse plan is a decision that will be made by the FCRA.

Copies of the DEIS have been forwarded to the EPA, other Federal, state, and local agencies; public officials; and organizations and individuals who previously provided substantive comments in the EIS scoping process. Copies of the DEIS are available for review at the following libraries: Arkansas River Valley Regional Library, 501 N. Front Street, Dardenelle, Arkansas 72834; Charleston Public Library, 501 Main Street, Charleston, Arkansas 72933; Clarksville Public Library, 2 Taylor Circle, Clarksville, Arkansas 72830; Franklin County Library, 407 W. Market, Ozark, Arkansas 72949; Fort Smith Public Library, 61 S. 8th Street, Fort Smith, Arkansas 72901; Gattis—Logan County Library, 100 E. Academy, Paris, Arkansas 72855; Logan County Library, 419 N. Kennedy Street, Booneville, Arkansas 72927; Sebastion County Library, 18 North Adair, Greenwood, Arkansas 72936; Van Buren Public Library, 111 N. 12th Street, Van Buren, Arkansas 72956; Yell County Library, 901 Atlanta Street, Danville, Arkansas 72833; and Little Rock District, U.S. Army Corps of Engineers, 700 West Capitol, Little Rock, Arkansas 72201.

A public meeting will be held during the 45-day DEIS comment period, to afford the public the opportunity to provide oral and written comments on the DEIS. The location and time of the meeting will be announced in local newspaper at least 15 days prior to the meeting. Verbal comments made at the public meeting and written comments received during the comment period will be used in the preparation of the FEIS and ROD.

Dated: September 30, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–26755 Filed 10–5–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy:

Patent Application Serial No. 08/985,430 entitled ''BIOREPELLANT MATRIX COATING;'' Patent Application Serial No. 08/926,854 entitled ''COMPUTER CONTROLLED THREE-DIMENSIONAL VOLUMETRIC DISPLAY;'' Patent Application Serial No. 08/726,305 entitled ''COMPUTER PROGRAM FOR A THREE-DIMENSIONAL VOLUMETRIC DISPLAY;'' Patent Application Serial No. 08/687,091 entitled ''LASER BASED 3D VOLUMETRIC DISPLAY SYSTEM;'' and U. S. Patent No. 5,595,635 entitled ''APPARATUS FOR MEASURING LEAD CONTENT IN WATER.''

ADDRESSES: Requests for copies of the patent and patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the Patent Application Serial Number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 29, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–26743 Filed 10–5–98; 8:45 am]

BILLING CODE 3810–FF–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendations 98–1]

Integrated Safety Management and the Department of Energy (DOE) Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice recommendations.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning integrated safety management and the Department of Energy (DOE) facilities.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 5, 1998.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 208–6400.

Dated: October 1, 1998.

John T. Conway,

Chairman.

[Recommendation 98–1]

Integrated Safety Management and the Department of Energy (DOE) Facilities

Dated: September 28, 1998.

On October 11, 1995, the Defense Nuclear Facilities Safety Board (Board) issued to the Secretary of Energy its Recommendation 95–2, entitled *Safety Management.* The Recommendation proposed adoption by the Department of Energy (DOE) of a concept termed ''Integrated Safety Management'' (ISM) as a means of improving assurance of safety at DOE's defense nuclear facilities. The Secretary of Energy provided an implementation plan for the Recommendation on April 18, 1996, which the Board accepted in turn. In accordance with the implementation plan, DOE issued its Policy Statement 450.4 to be the basis for initiation and conduct of ISM at its facilities.

DOE and its contractors are making good progress in implementing the concept of ISM at defense nuclear facilities. One of the central functions of ISM called out both in the Recommendation and the implementation plan is ''feedback and improvement.'' That function is exercised both in planning work and establishing safety controls at the outset, and in subsequent assessment of the diligence in application and the success in achievement of safety.

DOE has established through its directives system its expectation of actions by both the federal work force and contractor management in assessing the effectiveness of its safety management programs as they are practiced. Such safety assessments include both observance of work and determination of long term trends. They are accomplished principally through two major kinds of assessments for feedback and improvement.

- Self-assessment by the contractor of site/facility/activity programs responsive to DOE Policy 450.5, and parallel oversight by DOE line managers and facility representatives responsible for the missions and contractor performance. This is assessment by line management.
- Corporate level assessments by DOE safety specialists (ES&H), independent of the line, responsible for capturing and sharing lessons learned, preparing trend analyses, performing special investigations and otherwise performing corporate-level reviews in support of the Secretarial Offices. This is independent assessment.

These assessments and the corrective actions taken in response to them are important elements of the internal safety management program of DOE.

In the course of its oversight of DOE's safety management program, the Board has noted considerable variability in implementation and effectiveness of the feedback and improvement function as performed by the numerous federal and contractor entities. There appears to be much collection of data (about 30 DOE directives drive the process) but less evidence of follow-up. To facilitate a closer examination of the matter, the Board in a March 20, 1998, letter stated its observations, and requested a report on how the function was being performed at defense nuclear facilities. DOE, by letter dated June 3, 1998, provided such report. The report and the matter in general were the subject of discussions with representatives of DOE and its contractors at a public meeting held by the Board in Washington, DC, on June 24, 1998.

The outcome of these exchanges to date has been a mutual understanding of a number of improvements that are merited. An action plan presented to the Board in DOE's letter of June 3, 1998, proposes to focus on four areas:

- Accelerating implementation of DOE Policy 450.5,
- Improving DOE's tracking and follow-on processes,
- Improving DOE's lessons Learned processes, and
- Improving implementation of the Functions, Responsibilities, Accountability Manual (FRAM) relative to feedback and improvement.

The Board commends DOE for these initiatives. As worthy as they are, however, they are not, in the Board's view, sufficient to cover all aspects of DOE's feedback and improvement of its safety management programs. The Board has noted that the initiatives for improvement, particularly DOE's actions on findings, are limited to results of oversight by line operations. They do not address deficiencies in feedback and improvement based on results of independent oversight by the Office of the Assistant Secretary for Environment, Health and Safety (EH)—more specifically that of the Deputy Assistant Secretary for Oversight (EH–2). The purpose of this recommendation is to address that matter.

For many years, it has been commonplace for DOE's Headquarters to conduct independent assessments of safety management by the field offices and their contractors, in relation to performance of DOE's hazardous work. This parallels a normal practice of headquarters of commercial hazardous industries which have multiple product lines and facilities and which therefore delegate primary responsibility for doing work safely to officials of a facility or a product line. But assessment of safety is not sufficient. To be effective, the constructive criticisms must be brought to the attention of corporate management. There they must be evaluated, and course corrections must be directed, if the benefits of assessment are to be achieved. This is especially true where resource issues are involved and allocation or re-allocation of funds is required.

Recognizing that at times there is a need for Secretarial involvement at levels above the program offices and the corporate role of the independent assessors, in September 1989 Secretary Watkins established the Office of Nuclear Safety (ONS), reporting directly to him as described in SEN–6E–92. That led to Secretarial review of all findings of ONS, and an opportunity for response at the Secretarial level if necessary. With the change in Administration in 1994, this Office was assigned to report to the Assistant Secretary for ES&H, and it was redesignated as EH–2 with direction by a Deputy Assistant Secretary. In that capacity, EH–2, according to the DOE Manual of Safety Management Functions, Responsibilities, and Authorities (DOE M411.1–1), performs corporate level assessments, independent of the safety management programs as implemented by DOE program offices and associated contractors.

Evaluations are provided to the Secretary of Energy, Congress, Cognizant Secretarial Offices, Field Managers and Contractors. However, under this organizational arrangement, most of the assessments and findings by EH–2 are treated largely as advisories. Such follow-up actions as are taken are no longer subjected to a deliberative process involving, when appropriate, the Office of the Secretary of Energy (Secretary, Deputy Secretary, Under Secretary). Rather, they become discretionary to lower levels of DOE line management (such as cognizant Secretarial Officers and Field Managers). An exception to this general discretionary pattern occurs when an accident results in death or serious injury of workers, or threatens the public. For example, Type A accident investigations require, among other things, corrective action plans (CAPs), approval of the CAPs by the cognizant secretarial officer, and completion of corrective actions subject to independent verification. These requirements, in DOE Order 225.1A, *Accident Investigations*, November 26, 1997, and supporting guidance effectively close the loop on accident investigations.

EH–2 does make a practice of requesting a CAP after submission of a report on other types of investigation, and usually receives one from the cognizant party. Proposed corrective actions in these CAPs are frequently incomplete and are sometimes only loosely related to findings in the oversight report. Some CAPs are no more than commitments to provide a CAP in the future. The Department of Energy has not identified criteria for adequate CAPs, nor has DOE authorized EH–2 to require adequate CAPs which are responsive to evaluation reports. As a result, problems identified as accident precursors are not handled with the same rigor as accidents themselves. The end effect is that corrective action under the current system is reactive rather than proactive.

Nothing prevents EH–2 from elevating safety issues via its management (Assistant Secretary for ES&H), but the process of evaluation is now ad hoc, not institutionalized and protocol driven. There is a natural tension between those charged with doing work safely and those tasked by management to monitor and evaluate how well the doers perform. There is also a natural resistance to having to reallocate resources when deficiencies are found. Such factors cause outcomes to depend highly on the forcefulness of the personalities involved. It is precisely at this interface between the Secretarial Program offices and the independent reviewers of safety performance (EH–2) that DOE's safety management program merits additional attention. The need for an institutionalized protocol for content and treatment of a CAP, and for

addressing and resolving differences are the central points of issue.

The Board is of the opinion that the Department of Energy should take additional action with respect to its program for improvement of feedback and safety for defense nuclear facilities by establishing clearer lines of authority and responsibility for resolution of safety findings of its internal, independent safety organization. Towards such end, the Board recommends that the Department of Energy:

1. Establish by policy statement, directives, or other protocols, the manner in which the Secretary expects Cognizant Program Secretarial Officers (Assistant Secretaries) and Field managers to address and resolve findings of its independent internal corporate safety organization (Assistant Secretary for ES&H). In so doing, consideration should be given to direction and guidance for the following:

- Establishing authority and responsibility for conducting and responding to independent oversight, preparing and approving corrective action plans, reporting on progress toward timely and adequate closure of findings, and subsequent closure, including independent verification of closure.
- Elevating cases of inadequate or untimely response to findings to the Office of the Secretary for resolution.
- Describing the purpose and content of corrective action plans responsive to oversight findings (e.g., cause identification, actions, to correct immediate problem, lessons learned, actions to prevent recurrence).

Scheduling the time frames within which the evaluation and process activities must occur.

- Periodically reporting the status of corrective actions by the responsible entity.
- Tracking findings and corrective actions to closure with a system accessible to DOE line management and the independent oversight organization.

2. Make explicit the Secretarial Officer or designee assigned the resolution function.

John T. Conway,

Chairman.

September 28, 1998.

The Honorable Bill Richardson,
Secretary of Energy,
1000 Independence Avenue, SW,
Washington, DC 20585–1000

Dear Secretary Richardson: On September 28, 1998, the Defense Nuclear Facilities Safety Board (Board), in accordance with 42 U.S.C. § 2286a(a)(5), unanimously approved Recommendation 98–1, which is enclosed for your consideration. Recommendation 98–1 deals with Integrated Safety Management and the Department of Energy (DOE) facilities.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in DOE's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register.**

Sincerely,

John T. Conway,

Chairman.

c: Mr. Mark B. Whitaker, Jr..

[FR Doc. 98–26753 Filed 10–5–98; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 5, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: October 2, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Consolidated State Performance Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.

Burden Hours: 202,354.

Abstract: The reauthorized Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. Yet while nearly all States receive ESEA formula grant program funding on the basis of consolidated plans, until now the Department has still required states to report on program performance and beneficiaries on a program-by-program basis. Continuing to do so sends an inconsistent message about the value of consolidated planning and program integration as tools for increasing student achievement. This consolidated state reporting instrument would replace individual program reporting under ESEA programs and Goals 2000 for all entities that submit ESEA consolidated plans (and be an optional reporting vehicle for the other states). It

will allow state and local officials and educators to see, at one time, the full scope of their reporting (and corresponding data collection) responsibilities, and promote the Department's interest in (1) receiving essential information on how states have implemented their approved consolidated state plans and (2) promoting the Department's ability to provide assistance to states on how they may be able to use federal funds most effectively. In addition, the state consolidated performance report is intended as an initial step toward an optimal design to track indicators of program performance, including those the Department is required to develop under the Government Performance and Results Act. It is expected that reporting in future consolidated instruments will change as the U.S. Department of Education and the states develop their capacities to elicit and use accurate and reliable information for monitoring, reporting, and improvement.

[FR Doc. 98–26868 Filed 10–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to section 101–6.1029, title 41, Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel at (202) 586–3279.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of the elements of EIA information collection and analysis programs and the provision of recommendations;
2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs;
3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Issued in Washington, D.C. on September 30, 1998.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 98–26759 Filed 10–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–98–F]

Application To Amend Electricity Export Authorization; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Western Systems Power Pool (''WSPP'') has filed an application on behalf of its members to amend its electricity export authorization issued September 5, 1996, in Order EA–98–C. The application requests that five new members of WSPP be authorized to export electricity to Canada. The application also reflects name changes for six WSPP members already authorized to export electricity.

DATES: Comments, protests or requests to intervene must be submitted on or before November 5, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Coal & Power, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. Sec. 824a(e)).

On September 5, 1996, in Docket EA–98–C, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized 42 members of the WSPP to export electric energy to Canada. On March 24, 1997, and again on May 5, 1997, FE amended the authorization issued to WSPP to add additional members. The facilities utilized for these exports are the international transmission facilities owned and operated by the Bonneville Power Administration (BPA), also a WSPP member. The facilities consist of two 500-kV transmission lines at Blaine, Washington, and one 230-kV transmission line at Nelway, British Columbia, that interconnect with facilities of BC Hydro, and one 230-kV line, also at Nelway, connecting to West Kootenay Power, Limited. The construction and operation of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively.

On September 11, 1998, WSPP submitted an application to amend the export authorization by adding five new member companies to the list of authorized electricity exporters. The new members are: Avista Energy, Inc. (Avista), El Paso Electric Company (El Paso), MIECO, Inc. (MIECO), Pacific Northwest Generating Cooperative (PNGC), and PP&L, Inc. In addition, the following companies currently authorized to export electric energy to Canada as part of the WSPP authorization have undergone changes in company name: (1) Citizens Power Sales, formerly Citizens Lehman Power Sales, (2) Engage Energy US, L.P., formerly Coastal Electric Service Company, (3) Koch Energy Trading, Inc., formerly Koch Power Services, Inc., (4) PanCanadian Energy Services Inc., formerly National Gas & Electric L.P., (5) Puget Sound Energy, Inc., formerly Puget Sound Power & Light Company, and (6) TransAlta Energy marketing (U.S.), Inc., formerly TransAlta Enterprises Corporation.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with Secs. 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Additional copies are to be filed directly with: Michael E. Small, Esq., Wright & Talisman, P.C., 1200 G Street, Suite 600, Washington, D.C. 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, D.C., on September 30, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–26760 Filed 10–5–98; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–537–001 FERC–537]

Information Collection Submitted for Review and Request for Comments

September 30, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued July 15, 1998, 63 FR 39082, July 21, 1998.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before November 5, 1998.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.millerferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–537 ''Gas Pipeline Certificates: Construction, Acquisition, and Abandonment''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0060. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing requirements of this information collection. This information collection will be the subject of two proposed rules to be issued shortly by the Commission calling for the modification of these requirements. The Commission will provide separate submissions for each proposed rule for OMB review. This is a mandatory information collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) and the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301–3432). Under the NGA, natural gas pipeline companies must obtain Commission authorization to undertake the construction or extension of any facilities or extension of any facilities, or to acquire or operate any such facilities or extensions in accordance with Section 7(c) of the NGA. A natural gas company must also obtain Commission approval under Section 7(b) of the NGA prior to abandoning any jurisdictional facility or service. Under the NGPA Interstate and intrastate pipelines must also obtain authorization for certain transportation arrangements.

The information collected is necessary to certificate interstate pipelines engaged in the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used for those activities, to authorize the abandonment of facilities and services and to authorize certain NGPA transportations. If a certificate is granted, the natural gas company can construct, acquire, or operate facilities plus engage in interstate transportation or sale of natural gas. Conversely, approval of an abandonment application permits the pipeline to cease service and discontinue the operation of such facilities. Authorization under NGPA Section 311(a) allows the interstate or intrastate pipeline applicants to render certain transportation services.

The data required to be submitted consists of identification of the company and responsible officials, factors considered in the location of the facilities and the impact on the area for environmental considerations. Also to be submitted are flow diagrams showing design capacity of engineering design verification and safety determination, and gas reserves data for appraisal of the feasibility of the project. Market data presenting the economic basis for the proposed action are included when appropriate as cost of proposed facilities, plans for refinancing, and estimated revenues and expenses related to the proposed facility for financial and accounting evaluation. The Commission implements these information collection requirements in the Code of Federal Regulations (CFR) under 18 Sections 2.69; 157.5–11; 157.13–.21; 157.102–103; 157.106; 157.201–208; 157.210–218; 284.8–9; 284.11; 284.126; 284.221; 284.223–224; part 284, subpart H.

5. *Respondent Description:* The respondent universe currently comprises on average, 50 respondents subject to the Commission's jurisdiction.

6. *Estimated Burden:* 146.160 total burden hours, 50 respondents, 11.6 responses annually, 252 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 146,160 hours ÷ 2,088 hours per x $109,889 per year=$7,692,230.

Statutory Authority: Sections 7(b) and (c) of the Natural Gas Act (NGA), 15 U.S.C. 717–717w and Section 311(a) of the Natural Gas Policy Act (15 U.S.C. 3301–3432).

David P. Boergers,

Secretary.

[FR Doc. 98–26667 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2555–001, 2557–004, 2556–004, 2559–003]

Kennebec Water District, Central Maine Power Company, Maine; Notice of Technical Conference

September 30, 1998.

Take notice that on Wednesday, October 14, at 9:00 a.m., the Commission staff will convene a technical conference in the above captioned docket at the offices of Central Maine Power, 41 Anthony Avenue, Augusta, Maine. Any party, as defined in a 18 CFR 385.102(c) and any

participant, as defined in 18 CFR 385.102(b) is invited to attend.

The purpose of the conference is to discuss minimum flow recommendations made by the U.S. Department of the Interior prior to issuing new project licenses.

For further information, contact Nan Allen (202) 219–2938 or David Dunlap (202) 208–2138.

David P. Boergers,

Secretary.

[FR Doc. 98–26671 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–162–006]

High Island Offshore System; Notice of Motion for Extension of Time

September 30, 1998.

Take notice that on September 18, 1998, High Island Offshore System (HIOS), pursuant to Rules 212 and 2008 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.212 and 385.2008, tendered for filing a request for an extension of time for the filing of its next general rate case pursuant to Section 4(e) of the Natural Gas Act.

HIOS states that by Letter Order issued September 11, 1995, the Commission approved an uncontested settlement in the captioned rate proceeding. Article V of the uncontested settlement provided that HIOS would file its next general rate case under Section 4(e) ''by the end of three (3) years of the date of a final, non-appealable Commission order approving the Agreement without conditions unacceptable to HIOS''.

HIOS requests that the deadline in the captioned proceeding by which it must file its next general rate case under Section 4(e) of the Act be extended to no later than January 1, 2003, and that the time period for filing answers to the uncontested motion be shortened to the maximum extent possible.

Any person desiring to file an answer to this filing should file an answer with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.213 of the Commission's Rules and Regulations. All such answers must be filed within 15 days after HIOS' motion was filed. Answers will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make persons who file answers parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–26674 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–418–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

September 30, 1998.

Take notice that on September 28, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective September 7, 1998.

Fourth Revised Sheet No. 304
Fifth Revised Sheet No. 1500
Seventh Revised Sheet No. 1501

Koch states that it is filing the above mentioned tariff sheets to incorporate all tariff changes previously approved in Docket Nos. RP97–373 and RP98–274.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–26676 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–799–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

September 30, 1998.

Take notice that on September 24, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–799–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade its Richland ''Y'' Meter Station in Benton County, Washington, to better accommodate existing firm service delivery obligations to Cascade Natural Gas Corporation (Cascade), under Northwest's blanket certificate issued in Docket No. CP82-433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that the facilities at the Richland ''Y'' Meter Station are obsolete and undersized and need to be replaced. Therefore, Northwest proposes to remove the two existing 1-inch regulators, the existing 3-inch positive displacement meter, the existing relief valve, the existing line heater and appurtenances and install upgraded replacement facilities consisting of two new 1-inch regulators with 35 percent trim, a new 3-inch turbine meter, a new 2-inch × 3-inch full bore relief valve, an a new 250,000 Btu per hour line heater and appurtenances. Northwest states that as a result of this proposed upgrade, the maximum design capacity of the meter station will increase from approximately 350 Dth per day at 150 psig to approximately 1,550 Dth per day at 150 psig, as limited by the regulators.

Northwest further states that the total cost of the proposed facility upgrade is estimated to be approximately $101,404, including the cost of removing the old facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–26668 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–417–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 30, 1998.

Take notice that on September 25, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twentythird Revised Sheet No. 4.

PG&E GT–NW states that this tariff sheets is filed to modify the rate for service under Rate Schedule FTS–1(E–2) (WWP) in accordance with the negotiated rate formula for that service as specified in PG&E GT–NW's tariff. PG&E GT–NW requests that the above-referenced tariff sheets become effective November 1, 1998.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be fled in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–26675 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 135, 2195]

Portland General Electric Company, Portland, Oregon; Notice of Portland General Electric Company's Request To Use Alternative Procedures in Filing a License Application

September 30, 1998.

By letter dated September 1, 1998, Portland General Electric Company (PGE) of Portland, Oregon asked to use an alternative procedure in filing an application for a new license for its Oak Grove Project No. 135 and North Fork Project No. 2195.[1] PGE has demonstrated that they made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process may communicate with each other. PGE has also submitted evidence of support for their proposal, and it appears that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite any additional comments on PGE's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to file a Third Party Contractor prepared Environmental Impact Statement (TPC–EIS) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the particular project under consideration.

TPC–EIS Process and the Oak Grove and North Fork Projects Schedule

PGE has begun working collaboratively with the various interested entities to identify issues that will need to be addressed and studies that will need to be conducted in relicensing the project. An initial information package will be disseminated to all interested parties in February 1999. Site visits of the project will be conducted in May 1999. Identification of issues and issuance of Scoping Document 1 will occur in December 1999. A Public Scoping Meeting will be held January 2000. Notice of the scoping meeting will be published at least 30 days prior to the meeting.

Studies will be conducted beginning April 1999, and continue through 2003. Opportunities for requesting additional studies will be noticed at least 30 days prior to any study request deadline. A draft license application with preliminary EIS would be distributed for comment in August 2003. The final license application and EIS must be filed with the Commission on or before August 31, 2004, two years before the expiration date on the existing license. A more detailed schedule and project description was distributed by PGE on September 1, 1998, to all parties expressing interest in the proceeding. Copies of the schedule and project description may be obtained from Portland General Electric, Hydro Licensing and Water Rights Office, 121

[1] The 44-megawatt Oak Grove project consists of a 100-foot-high dam at the lower end of Timothy Lake, and a 68-foot-high diversion dam below Lake Harriet—both on the Oak Grove Fork of the Clackamas River. The Powerhouse is located on the Clackamas River. The Oak Grove project is located on U.S. Forest Service land. The 121-megawatt North Fork Project is comprised of three developments on the Clackamas River: a 206-foot-high dam with the powerhouse located at the lower end of North Fork Reservoir; a 47-foot-high dam with the powerhouse located at the lower end of Faraday Lake; and a 85-foot-high dam with powerhouse located at the lower end of Estacada Lake. The North Fork project is located on U.S. Forest Service land and Bureau of Land Management land.

[2] 81 FERC 61,103 (1997).

S.W. Salmon Street, Portland, OR 97204.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on PGE's proposal to use the alternative procedures to file an application for the Oak Grove and North Fork Hydroelectric Projects.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project names and numbers (Oak Grove hydroelectric Project No. 135 and North Fork Hydroelectric Project No. 2195). For further information, please contact John Blair at (202) 219–2845.

David P. Boergers,

Secretary.

[FR Doc. 98–26669 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 477]

Portland General Electric Company, Portland, Oregon; Notice of Portland General Electric Company's Request to Use Alternative Procedures in Filing a License Application

September 30, 1998.

By letter dated September 1, 1998, Portland General Electric Company (PGE) of Portland, Oregon asked to use an alternative procedure in filing an application for a new license for its Bull Run Project No. 477.[1] PGE has demonstrated that they made a reasonable effort to contact the resource agencies, Indian tribes, non-governmental organizations (NGOs), and others who may be affected by their proposal, and has submitted a communication protocol governing how participants in the proposed process may communicate with each other. PGE has also submitted evidence of support for their proposal, and it appears that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite any additional comments on PGE's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to file a Third Party Contractor prepared Environmental Impact Statement (TPC–EIS) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedure is intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedure can be tailored to the particular project under consideration.

TPC–EIS Process and the Bull Run Project Schedule

PGE has begun working collaboratively with the various interested entities to identify issues that will need to be addressed and studies that will need to be conducted in relicensing the project. An initial information package will be disseminated to all interested parties in December 1998. Site visits of the project will be conducted in March 1999. Identification of issues and issuance of Scoping Document 1 will occur December 1999. A Public Scoping Meeting will be held January 2000. Notice of the scoping meeting will be published at least 30 days prior to the meeting.

Studies will be conducted beginning April 1999, and continue through 2001. Opportunities for requesting additional studies will be noticed at least 30 days prior to any study request deadline. A draft license application with preliminary EIS would be distributed for comment in November 2001. The final license application and EIS must be filed with the Commission on or before November 16, 2002, two years before the expiration date of the existing license. A more detailed schedule and project description was distributed by PGE on September 1, 1998, to all parties expressing interest in the proceeding. Copies of the schedule and project description may be obtained from Portland General Electric, Hydro Licensing and Water Rights Office, 121 SW Salmon Street, Portland, OR 97204.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on PGE's proposal to use the alternative procedures to file an application for the Bull Run Hydroelectric Project.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Bull Run Hydroelectric Project No. 477). For further information, please contact John Blair at (202) 219–2845.

David P. Boergers,

Secretary.

[FR Doc. 98–26670 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–161–007]

U–T Offshore System; Notice of Motion for Extension of Time

September 30, 1998.

Take notice that on September 18, 1998, U–T Offshore System (U–TOS), pursuant to Rules 212 and 2008 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.212 and 385.2008, tendered for filing a request for an extension of time for the filing of its next general rate case pursuant to Section 4(e) of the Natural Gas Act.

U–TOS states that by Letter Order issued September 11, 1995, the Commission approved an uncontested settlement in the captioned rate

[1] The 22-megawatt Bull Run project consists of a 57-foot-high diversion dam on the Sandy River and a 18-foot-high diversion dam on the Little Sandy River. A powerhouse is located on the Bull Run River near the confluence with the Sandy River. The Bull Run project is located on U.S. Forest Service land and Bureau of Land Management land.

[2] 81 FERC 61,103 (1997).

proceeding. Article V of the uncontested settlement provided that U–TOS would file its next general rate case under Section 4(e) ''by the end of three (3) years of the date of a final, non-appealable Commission order approving the Agreement without conditions unacceptable to U–TOS''.

U–TOS requests that the deadline in the captioned proceeding by which it must file its next general rate case under Section 4(e) of the Act be extended to no later than January 1, 2003, and that the time period for filing answers to the uncontested motion be shortened to the maximum extent possible.

Any person desiring to file an answer to this filing should file an answer with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.213 of the Commission's Rules and Regulations. All such answers must be filed within 15 days after U–TOS' motion was filed. Answers will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make persons who file answers parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–26673 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–334]

Duke Power Company; Notice of Availability of Environmental Assessment

September 30, 1998.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of allowing Duke Power Company, licensee for the Catawba-Wateree Project, P–2232–334, to authorize the Charlotte-Mecklenburg Utility District to construct additional facilities at the Catawba River Pumping Station to increase the water withdrawal from Mountain Island Lake for municipal water supply. The EA concludes the proposed action would not constitute a major federal action significantly affecting the quality of the human environment. The Catawba-Wateree Project is on the Catawba and Wateree rivers in North and South Carolina.

A draft EA was noticed on June 25, 1998, and interested entities were provided the opportunity to comment. No comments were received in response to the draft EA. The EA has not been modified from the draft.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

David P. Boergers,

Secretary.

[FR Doc. 98–26672 Filed 10–5–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–5]

Proposed Settlement Agreement; Carbon Monoxide Nonattainment Areas; Carbon Monoxide SIP for Denver, Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (Act), as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (EPA) by Citizens for Balanced Transportation (CBT). The lawsuit concerns EPA's approval under the Clean Air Act of the State of Colorado's nonattainment area state implementation plan (SIP) for the Denver carbon monoxide (CO) nonattainment area.

EPA approved the Denver CO nonattainment area SIP on March 10, 1997 (62 FR 10690) and, on May 9, 1997, CBT sought review of that approval in the United States Court of Appeals for the 10th Circuit. Among other things, CBT challenged the air quality monitoring and modeling that supported the Denver CO SIP's attainment demonstration.

Under the proposed settlement agreement, CBT has agreed to dismiss its lawsuit if EPA operates a continuous CO monitor from November 1998 through February 1999 near the intersection of Broadway and Colfax in Denver, and, before March 31, 1999, the State of Colorado (1) establishes a comprehensive meteorological site on the Auraria College campus in Denver, (2) establishes a routine meteorological site near the intersection of Speer and Auraria in Denver, and (3) obtains enhanced traffic data for the Speer and Auraria intersection. Although the State is not a party to the litigation or the settlement agreement, the State participated in negotiations and intends to perform these actions.

If the State and/or EPA fail to complete one or more of these actions by March 31, 1999, CBT's sole remedy is to proceed to the merits of the case. It is anticipated that the litigation will be stayed until May 30, 1999 to allow the parties to confirm that the State and EPA actions have been completed.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, (202) 260–7606. Written comments should be sent to Howard J. Hoffman at the above address and must be submitted on or before November 5, 1998.

Dated: September 28, 1998.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 98–26787 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6173–1]

Draft Toxicological Review of Benzene (Noncancer Effects): In Support of Summary Information on the Integrated Risk Information System

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer-Review Panel Meeting and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an external peer-review panel meeting and a 45-day public comment period to review the external review draft document entitled, Toxicological Review of Benzene (Noncancer Effects): (NCEA–S–0455). The peer-review panel meeting will be organized, convened, and conducted by the American

Institute of Biological Sciences, contractor to the EPA for this external scientific peer consultation. The document was prepared by the EPA's National Center for Environmental Assessment-Washington Office (NCEA–W) of the Office of Research and Development. EPA will use comments and recommendations from the meeting to assist in revising the document.

DATES: The peer-review panel meeting will begin on Wednesday, October 28, 1998, at 9:00 a.m. and end at 5:30 p.m. Members of the public may attend as observers, and there will be a limited time for comments from the public in the afternoon. The 45-day public comment period begins October 9, and ends November 24, 1998.

ADDRESSES: The external peer-review panel meeting will be held at the American Society of Association Executives, 1575 I Street, NW, Washington, DC. The American Institute of Biological Sciences, an EPA contractor, is organizing, convening, and conducting the peer-review panel meeting. To attend the meeting, register by October 23, 1998, by calling the American Institute of Biological Sciences, 107 Carpenter Drive, Suite 100, Sterling, Virginia 20164, at 703–834–0812, ext. 100, or fax to 703–834–1160. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public in the afternoon of the meeting. Please let the American Institute of Biological Sciences know if you wish to make a brief statement.

The document is available on the Internet at http://www.epa.gov/ncea under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W, telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title and number, Draft Toxicological Review of Benzene (Noncancer Effects): (NCEA–S–0455). Copies are not available from the American Institute of Biological Sciences.

Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW, 5th Floor, Washington, DC 20074; telephone number: 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and must be postmarked by November 15, 1998. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be sent to benzene.new@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact Kevin Rowan, American Institute for Biological Sciences, 107 Carpenter Drive, Suite 100, Sterling, Virginia 20164; telephone: 703–834–0812, ext. 100; facsimile: 703–834-1160.

For information on the public comment period, contact Bob Sonawane (202–564–3292) or David Bayliss, (202–564–3294); mailing address: NCEA–W (8623D), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; facsimile: 202–565–0078; e-mail: benzene.new@epa.gov.

SUPPLEMENTARY INFORMATION: This draft report provides the scientific basis for deriving an oral reference dose (RfD) and inhalation reference concentration (RfC) for the noncancer health risk from exposure to benzene.

Dated: September 29, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–26791 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–6]

National Advisory Council for Environmental Policy and Technology, Title VI Implementation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notification of a three-day meeting of the Title VI Implementation Advisory Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities.

The Title VI Implementation Advisory Committee will provide advice to the Administrator and Deputy Administrator of EPA on techniques that may be used by EPA funding recipients to operate environmental permitting programs in compliance with Title VI.

This meeting is being held to provide the EPA with perspectives from representatives of state and local governments, industry, the academic community, tribal and indigenous organizations, and grassroots environmental and other non-governmental organizations.

DATES: The three-day public meeting will be held at the Double Tree Hotel at Reid Park, 445 South Alvernon Way, Tucson, Arizona. The meeting will take place on Sunday, October 18, 1998 from 12:30 pm to 6:00 pm, Monday, October 19, 1998 from 1:30 pm to 5:30 pm, and Tuesday, October 20, 1998 from 8:30 am to 5:00 pm. The public comment session will be held on October 19 from 6:00 p.m. to 8:00 p.m. Seating will be limited and available on a first-come, first-served basis.

Members of the public who wish to make brief oral presentations should contact Jannell Young at 202–260–1888 by October 14, 1998 to reserve time during the public comment session. The Committee is particularly interested in receiving public comments on the elements of an ideal or optimal Title VI program, especially as it concerns how the program should function in response to Title VI complaints. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: Materials or written comments may be sent to Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA (1601–F), Office of Cooperative Environmental Management, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–2695.

Dated: September 29, 1998.

Gordan Schisler,

Acting Designated Federal Officer, NACEPT Title VI Implementation Advisory Committee.

[FR Doc. 98–26792 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30434A; FRL–6026–2]

Kemira Agro Oy; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Primastop Biofungicide Powder, containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902 W48, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 22202, (703) 308–8077, e-mail: cerrelli.susanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of May 23, 1997 (62 FR 28478)(FRL–5714–9), which announced that Kemira Agro Oy, had submitted an application to register the pesticide product Primastop Biofungicide (EPA File Symbol 64137–I), containing the active ingredient *Gliocladium catenulatum* strain J1446, an active ingredient not included in any previously registered product. The current address for Kemira Agro Oy is Porkkalankatu 3, P.O. Box 330, 00101 Helsinki, Finland. The current address of their U.S. agent is c/o E. Butts International, Inc., P.O. Box 764, Fairfield CT 06430.

This application was approved on July 2, 1998, as Primastop Biofungicide Powder, for greenhouse and indoor use only (EPA Registration Number 64137–8).

Primastop contains living *Gliocladium catenulatum* strain J1446 as the active ingredient a naturally-occurring saprophytic fungus, which is widespread in the environment.

The Agency has considered all required data on risks associated with the proposed use of *Gliocladium catenulatum* strain J1446, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Gliocladium catenulatum* strain J1446 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in the EPA Pesticide Fact Sheet on *Gliocladium catenulatum* strain J1446.

A copy of the fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 28, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–26784 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–837; FRL–6033–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions 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–837, must be received on or before November 5, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (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 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. 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: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Edith Minor	Rm. 229, CM #2, 703–305–7390, e-mail:minor.edith@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Joanne Miller	Rm. 229, PM #23, 703–306–6224, e-mail: miller.joanne@epamail.epa.gov.	
Joseph Tavano	Rm. 214, 703–305–6411, e-mail:tavano.joseph@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions 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 these petitions contain 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–837] (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. Comments 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 (insert docket number) and appropriate petition number. Electronic comments on 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: September 29, 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. Griffin Corporation

PP 7F4837

EPA has received a pesticide petition (PP 7F4837) from Griffin Corporation, P.O. Box 1847, Valdosta, GA 31603-1847, 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 propazine 2-chloro-4,6-bis(isopropylamine)-s-triazine and its two chloro metabolites, 2-amino-4-chloro, 6-isopropylamino-s-triazine (G-30033) and 2,4-diamino-6-chloro-s-triazine (G-28273) in or on the raw agricultural commodities sorghum, stover, forage, and grain at 0.25 parts per million (ppm). 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*. In sorghum, metabolism occurs by the three following reactions: N-dealkylation of the side-chains, hydrolytic dehalogenation or nucleophilic displacement of the 2-chloro group with glutathione (GSH). The dehalogenation and formation of GSH conjugates are the two predominant pathways and only small amounts of the chloro residues were found in forage and stover. No chloro residues were detected in sorghum grain in two propazine metabolism studies that were conducted. Griffin believes the metabolism is well characterized in plants and animals and the pathways of metabolism are very similar to those defined for other triazines. The metabolism profile supports the use of an analytical enforcement method that accounts for parent propazine and its two chloro metabolites, 2-amino-chloro-6-isopropyl-amino-s-triazine (G-30033) and 2-chloro-4,6-di-amino-s-triazine (G-28273) in the raw agricultural commodity (RAC's) of grain sorghum and further supports the current tolerance of 0.25 ppm to include the two chloro metabolites.

2. *Analytical method*. A practical analytical method has been submitted. as a part of the sorghum residue study. The method involves extraction, evaporation solid phase clean-up column and quantitation by high performance liquid chromotography (HPLC) equipped with a ultraviolet ray (UV) detector. One aliquot is used for assaying for propazine and G-30033 and another aliquot is used for quantitating G-27283. The limit of quanitation (LOQ) for propazine and each of its chloro metabolites in each raw agricultural commodities (RAC) and each chloro residue is 0.05 ppm.

3. *Magnitude of residues*. A total of 13 sorghum field residue trails were conducted in the major sorghum growing areas of the United States. No quantifiable residues of parent or the two chloro metabolites were detected in the RAC's of the 13 field residue studies when treated at the 1x rate. Only four samples for sorghum forage contained residues of G-28273 which were quantifiable and residues ranged from 0.05 ppm to 0.087 ppm. The treatment rate for these studies exceeded the maximum proposed use rate and the extrapolated range of residues for the four samples was 0.024 to 0.069 ppm.

The RAC's of sorghum are only used as feed for cattle and poultry. Only the grain is fed to chickens and there were no chloro residues present in grain; therefore no chloro residues would be expected in eggs and poultry products. The level of chloro residues in forage

and fodder are sufficiently low in the metabolism and residue studies to demonstrate that any potential transfer of propazine and its chloro metabolites to milk and meat is not expected.

For rotational crops, no chloro residues were present in root and grain crops when planted more than 129 days after treatment. Chloro residues were present in leafy vegetables grown in soils with pH values above 7 and under inclimate growing conditions. One field sample of wheat forage contained low levels of parent propazine but this sample was taken at an interval shorter than will be proposed on the label for plant back and, in addition, the pH of the soil was above 7.

An amendment of the current tolerance of 0.25 ppm to include parent propazine and its two chloro metabolites, G-30033 and G-28273, is proposed for each of the RAC's of grain sorghum. The metabolism and field residue results show that chloro residues of propazine should not exceed 0.25 ppm in any of the RAC's. Potential transfer of propazine and its two chloro metabolites to milk and meat is not expected. Therefore, tolerances in milk, meat, poultry and eggs are not required. The data show that root and grain crops can be rotated with sorghum treated with propazine, but leafy vegetable crops should not be rotated with sorghum in soils with pH values above 7.

B. Toxicological Profile

1. *Acute toxicity*. A complete battery of acute toxicity studies for propazine technical was completed. The acute oral toxicity study resulted in a LD_{50} of greater than 5,050 milligram kilogram (mg/kg) for both sexes. The acute dermal toxicity in rabbits resulted in an LD_{50} in either sex of greater than 5,050 mg/kg. The acute inhalation study in rats resulted in an LC_{50} of greater than 1.22 mg/l. Propazine was non-irritating to the skin of rabbits in the primary dermal irritation study. In the primary eye irritation study in rabbits, no irritation was noted. The dermal sensitization study in guinea pigs indicated that propazine is not a sensitizer. Based on these results, propazine technical is placed in toxicity Category III.

2. *Reproductive and developmental toxicity*. The potential maternal and developmental toxicity of propazine were evaluated in rabbits. Propazine technical was suspended in corn oil and administered orally by gavage to three groups of 20 artificially inseminated New Zealand White rabbits as a single daily dose from gestation days 6-18. In the range-finding study, rabbits were dosed at levels of 0, 10, 50, 100, 200, and 400 milligram kilogram day (mg/kg/day). Maternal toxicity was exhibited by decreased defecation, body weight losses and decreased food consumption during the treatment period at 50, 100, 200 and 400 mg/kg/day. Abortions also occurred at levels of 200 and 400 mg/kg/day. Dose levels of 0, 2, 10, and 50 mg/kg/day were selected based on the results of this study. In the definitive study, no test article related deaths occurred at any dose level tested. The only clinical sign observed was decreased defecation in the 50 mg/kg/day group. Inhibition of body weight gain occurred during the first 6 days of dosing and inhibition of food consumption occurred throughout the treatment period in the 50 mg/kg/day group. No other treatment related findings were noted in the dams at any dose level. Intrauterine parameters were unaffected by treatment. There were no treatment related effects on fetal malformations or developmental variations.

The data from the developmental toxicity studies on propazine show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The no observed adverse effect level (NOAEL) for maternal toxicity in rabbits was 10 mg/kg/day and the NOAEL for developmental toxicity was 50 mg/kg/day.

3. *Subchronic toxicity*.. No test article related deaths occurred at any dose level. Very minimal dermal irritation was noted in the 100 and 1,000 mg/kg/day females. Body weight gain was slightly inhibited in the high dose group during weeks 0-1 (both sexes) and 2-3 (males only). There were no treatment related effects on the clinical observations, food consumption, hematology and serum chemistry parameters or organ weights were observed at any dose level. Macroscopic and microscopic examinations revealed no treatment related lesions at any dose level.

Based on the 21 day dermal study in rats, the NOAEL for systemic toxicity was 100 mg/kg/day due to reduced body weight gain at 1,000 mg/kg/day.

4. *Chronic toxicity*. Griffin conclude that the body weight gain and survival data clearly indicate that the high dose female rats exceeded the maximum tolerance dose (MTD), and therefore the high dose female group should be excluded from any risk assessment or weight-of-evidence arguments concerning this study. Additionally, the incidence of mammary gland tumors in all doses in this study were within the range of current laboratory historical control incidences and those reported by the breeder, Charles River. No adverse treatment related effects were observed at levels below the MTD.

5. *Animal metabolism*. The absorption, distribution, excretion, and metabolism of propazine (ring-UL-^{14}C propazine) was investigated in Sprague-Dawley CD rats. One group of rats was administered a single oral dose at 1.0 mg/kg (low dose), one group was administered a single oral dose at 100 mg/kg (high dose), and a third group was administered fourteen consecutive oral daily doses of non-radioactive propazine at 1.0 mg/kg, followed by a single oral dose of ^{14}C-propazine at 1.0 mg/kg (consecutive dose group). A fourth group of animals (3 rats/sex) was administered a single oral dose of the vehicle only (corn oil), and served as controls. Since propazine is not soluble in water, it was not possible to include an intravenous dose group.

Excretion patterns were very similar in all dose groups. Nearly all of the radioactivity administered was recovered in the excreta within 24 to 48 hours after dosing. The majority of the administered radioactivity was excreted in the urine (66.2 - 70.5%), and this finding shows that the majority of the administered dose was bioavailable and rapidly absorbed from the gastrointestinal tract. High performance liquid chromotography (HPLC) analysis of the urine indicated a similar profile among all dose groups and both sexes. The excretion of radioactivity in the feces was significantly lower than in the urine (range: 19.9 -28.6%) in all dose groups and both sexes. Analysis of this radioactivity demonstrated a relatively consistent pattern among the various dose groups with females containing a quantitatively higher level of the parent compound. The recovery of expired radioactivity was shown in a pilot study to be negligible (<0.1%), indicating little or no $^{14}CO_2$ production during the metabolism of propazine.

7 days post-treatment all animals were sacrificed and the total radioactive residue was quantified in bone, brain, fat (visceral), gastrointestinal tract (including contents), heart, kidney, liver, lung, muscle (thigh), ovary, plasma, red blood cells (RBC), skin, spleen, testis, thyroid, uterus, and residual carcass. Highest concentrations were found in the RBCs of all dose groups (0.472 - 0.577 ppm parent equivalents at 1.0 mg/kg and 44.649 - 55.287 ppm at 100 mg/kg). Residue concentration in the remaining tissues ranged from 0.007 to 0.468 ppm at the low and consecutive dose groups, and from 0.859 to 13.246 ppm at the high dose. Mean body burdens for the low,

high, and consecutive dose groups accounted for 10.3, 5.9 and 7.1% of the dose, respectively. Material balances were quantitative and accounted for 102.5, 101.1 and 96.3% of the dose, respectively.

Metabolite characterization of excreta indicated a biotransformation pathway consistent with historical metabolism of alkylated s-triazines. Confirmed metabolite identification showed that propazine was metabolized via N-dealkylation mechanisms and excreted in urine primarily as the G-27283 metabolite (approximately 27% of the total dose). Unmetabolized parent propazine was the predominant identified compound in the feces (13.8% in the high dose male group). The fact that a greater percentage of administered ^{14}C-propazine was found in the feces of the high dose group probably indicated some degree of saturation of the absorption mechanism.

Propazine technical is not metabolized to breakdown products which accumulate in sufficient quantities that can be reasonably expected to present any chronic dietary risk.

6. *Metabolite toxicology*. The hydroxy metabolite of atrazine, an analog of propazine has been shown not to exhibit carcinogenic effects.

7. *Endocrine disruption*. There is no evidence that propazine has endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, subchronic and chronic studies.

C. Aggregate Exposure

1. *Dietary exposure—Food*. A dietary risk exposure study dietary risk evaluation system (DRES) for Griffin for the purpose of estimating dietary exposure to propazine residues. Grain sorghum is the only proposed food or food use of propazine. Therefore, there exists no potential for human consumption of crops treated with propazine. Sorghum (grain, forage and stover) is, however, fed to livestock. Grain is the only sorghum commodity fed to poultry. There are no chloro residues, the residues of toxicological concern, in the grain. In turn, there is no potential for poultry to be exposed to propazine or related residues. Beef and dairy cattle are fed all sorghum commodities: grain, forage, stover, and aspirated grain fractions. Therefore, in evaluating potential human dietary exposure to propazine, the potential exposure via secondary residues in meat and milk must be considered. The total chloro residues for a goat dosed at 9.9 ppm in a metabolism study were low. Specifically, the highest total residue was observed in milk (0.162 ppm), while the lowest residue of <0.002 ppm was observed in kidney.

These tissue to feed ratios can then be combined with the worst-case diets derived from a sorghum only ration which includes propazine residues at the tolerance level of 0.25 ppm. (It should be noted that this worst-case diet is not a ration that would be fed to cattle). The results of this indicate that even under theoretically worst-case conditions all meat and milk residues are extremely low (all less than 0.01 ppm; the LOQ in plant matrices is 0.05 ppm). In turn, there is no potential for dietary exposure to propazine via secondary residues in meat and milk. Therefore, tolerances for meat and milk are not required for propazine.

2. *Drinking water*. Griffin conclude that environmental fate and behavior studies, including aerobic soil metabolism, field lysimeter, and long term soil dissipation, indicate little potential for propazine to reach surface or groundwater from its proposed use on grain sorghum. Griffin concludes that there is little potential for dietary exposure to propazine residues in water exists.

3. *Non-dietary exposure*. There are no residential uses for propazine in the U.S. therefore, there is no potential for residential exposure.

4. *Non-occupational*. A registration application is pending for use of propazine in greenhouses on certain ornamental plants. The container sizes in which the product is to be distributed and channel of distribution make it unlikely that this use would result in any non-occupational exposure.

D. Cumulative Effects

Because of the benefits of propazine, most of the propazine use on sorghum will be substituted for other triazines and since the proposed use rate is lower than the other triazines the cumulative will not increase and could possibly be reduced as a result of registering propazine for use on grain sorghum.

E. Safety Determination

The reference dose (RfD) is based on the rat chronic study. Using the NOAEL of 5 mg/kg/day in this study and an uncertainty factor (UF) of 300, an RfD of 0.02 mg/kg/day was established as the chronic dietary endpoint.

1. *U.S. population—General U.S. population*. In the DRES analysis referenced above, it was determined that there is no potential exposure to propazine via dietary, water, or non-occupational routes.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of propazine, the available developmental toxicity study and the potential for endocrine modulation by propazine were considered. The data from the developmental toxicity studies on propazine show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The developmental no observed adverse effect levels (NOAELs) and LOAELs were at higher dose levels (less toxic), indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that propazine poses no additional risk for infants and children and no additional uncertainty factor is warranted.

Federal food, drug and cosmetic act (FFDCA) section 408 provides that an additional safety factor for infants and children may be applied in the case of threshold effects. Since, as discussed in the previous section, the toxicology studies do not indicate that young animals are any more susceptible than adult animals and the fact that the current RfD calculated from the NOAEL from the rat chronic study already incorporates a 300x uncertainty factor, Griffin believes that an adequate margin of safety is therefore provided by the RfD established by EPA.

There is no evidence that propazine has endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, subchronic, and chronic studies.

There is no potential exposure to propazine via dietary, water, or non-occupational routes based on the proposed use on grain sorghum. No additional uncertainty factor for infants and children is warranted based on the completeness and reliability of the database, the demonstrated lack of increased risk to developing organisms, and the lack of endocrine-modulating effects.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of propazine and its chloro metabolites in or on raw agricultural commodities.

2. K-1 Chemical U.S.A., Inc.

PP 7F4821

EPA has received an amendment to pesticide petition (PP 7F4821) from K-I Chemical U.S.A., Inc., 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 establishing a tolerance for residues of herbicide and harvest aid fluthiacet-methyl in or on the raw agricultural commodities cottonseed at 0.02 parts per million (ppm) and cotton, gin by-products at 0.5 ppm. 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.

On April 14, 1997, EPA announced receipt of a pesticide petition (PP 7F4821) from K-1 Chemical U.S.A., Inc., 11 Martine Avenue, 9th Floor, White Plains, NY 10606, 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 establishing a tolerance for residues of the herbicide fluthiacet-methyl: Acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1H,3H-[1,3,4]thiadiazolo[3,4-a] pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester in or on the raw agricultural commodities field corn grain and sweet corn grain (K + CWHIR) at 0.02 ppm and corn forage and fodder at 0.05 ppm.

On September 4, 1997 K-I Chemical, U.S.A., Inc., amended PP 7F4821 to include a proposed tolerance for popcorn grain at 0.02 ppm.

On August 14, 1998 K-I Chemical U.S.A., Inc. amended PP 7F4821 to include proposed tolerances for cottonseed at 0.02 ppm and for cotton, gin by-products at 0.5 ppm. EPA has determined that the amended 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 nature of the residues in corn is adequately understood following application of fluthiacet-methyl. Residue levels and the metabolic pathway are consistent with those in soybeans. Parent fluthiacet-methyl was the primary component of the residue seen in corn grain, forage, fodder and silage. Results of these studies have been submitted to the EPA.

2. *Analytical method*. K-I Chemical has submitted practical analytical methods (AG-603B and AG-624) for detecting and measuring the level of fluthiacet-methyl in or on corn, corn commodities, cotton, cotton commodities, and in animal tissues with a limit of detection that allows monitoring residues at or above the levels set for the proposed tolerance. The limit of quantitation of the crop method is 0.01 ppm in corn, corn commodities, cotton, and cotton commodities, 0.05 ppm in animal tissues and 0.01 ppm in milk. The crop method involves extraction, filtration, and solid phase clean up. Residue levels of fluthiacet-methyl are determined by gas chromatographic analysis utilizing a nitrogen phosphorus detector and a fused-silica column. The animal tissue method involves extraction, filtration, and partition. Determination of residue levels in animal tissues is by high performance liquid chromotography (HPLC) with ultraviolet ray (UV) detection via column switching using C1 and C18 columns. The analyte of interest in animal tissues and milk is the major animal metabolite CGA-300403. Residues of fluthiacet-methyl in corn are determined by gas chromatography.

3. *Magnitude of residues*. The residue of concern in corn is fluthiacet-methyl per se. Twenty-one field residue studies were conducted with corn grown in nineteen States. Fifteen of the studies were on field corn and six on sweet corn. No studies were conducted with popcorn, however K-I believes that the data on field and sweet corn support a tolerance in popcorn as well. Because the proposed use rate and pattern is the same for popcorn, it is reasonable to conclude that residues in popcorn grain will not exceed the proposed tolerance of 0.02 ppm. Residues in field and sweet corn forage after the day of application were less than the proposed tolerance of 0.05 ppm. Popcorn forage is not a fed commodity. Nonetheless, residues in popcorn forage or fodder are not expected to exceed the proposed tolerance of 0.05 ppm. The proposed tolerances of 0.02 ppm in field corn, sweet corn, and popcorn grain and 0.05 ppm in field corn and sweet corn forage and fodder are adequate to cover residues likely to occur when Action herbicide is applied to corn as directed.

This position is based on 180.34(d) of the CFR which states that ''If the pesticide chemical is not absorbed into the living plant or animal when applied (is not systemic), it may be possible to make a reliable estimate of the residues to be expected on each commodity in a group of related commodities on the basis of less data than would be required for each commodity in the group, considered separately''. And, 180.34(e) states that ''each of the following groups of crops lists raw agricultural commodities that are considered to be related for the purpose of paragraph (d) of this section; field corn, popcorn, sweet corn (each in grain form)''.

Residues of fluthiacet-methyl in treated field and sweet corn grain and sweet corn ears were less than the method limit of quanitation (LOQ) (<0.01 ppm). Because the proposed use rate and pattern is the same for popcorn, it is reasonable to conclude that residues in popcorn grain will not exceed the proposed tolerance of 0.02 ppm. Residues in field, and sweet corn forage -after the day of application were less than the proposed tolerance of 0.05 ppm. Popcorn forage is not a feed commodity. Nonetheless, residues in popcorn forage or fodder are not expected to exceed the proposed tolerance of 0.05 ppm. The proposed tolerances of 0.02 ppm in field corn, sweet corn, and popcorn grain and 0.05 ppm in field corn, sweet corn forage, and fodder are adequate to cover residues likely to occur when fluthiacet-methyl herbicide is applied to corn as directed.

Twelve cotton field residue trials were conducted in which fluthiacet-methyl 4.75% Wettable Powder (WP) was applied as two broadcast foliar sprays, 7 days apart. No residues were detected (<0.01ppm) in undelinted seed, delinted seed, hulls, meal, or refined oil nor was there concentration of residues in processed fractions, even at 3x and 5x rates in 3 day PHI (preharvest interval) samples. Fluthiacet-methyl residues were present in field trash at 0.32 and 0.11ppm at 3 and 8 day PHIs, respectively, and in gin trash at 0.1 0 and .086 ppm at 4 and 7 day PHIs, respectively, in the 1x treatment rate. Results were similar in two additional trials in which the magnitude of residues was compared following application of the 4.75% WP and 10.3% emulsifiable concentrate (EC) formulations of fluthiacet-methyl. Residues from the proposed use of fluthiacet-methyl on cotton will not exceed the proposed tolerances of 0.02 ppm and 0.5 ppm for fluthiacet-methyl residues in/on the raw agricultural commodities cottonseed and cotton, gin by-products.

B. Toxicological Profile

1. *Acute toxicity*—i. A rat acute oral study with an LD_{50} > 50,000 milligram/kilogram (mg/kg).

ii. A rabbit acute dermal study with an LD_{50} > 2,000 mg/kg.

iii. A rat inhalation study with an LC_{50} > 5.05 mg/liter.

iv. A primary eye irritation study in the rabbit showing moderate eye irritation.

v. A primary dermal irritation study in the rabbit showing no skin irritation.

vi. A primary dermal sensitization study in the Guinea pig showing no sensitization.

2. *Acute neurotoxicity study in rats*. Neurotoxic effects were not observed. The no observed adverse effect level (NOAEL) was 2,000 mg/kg.

3. *Genotoxicty*. *In vitro* gene mutation tests: Ames test -negative; Chinese hamster V79 test - negative; rat hepatocyte DNA repair test - negative; *E. Coli* lethal DNA damage test - negative. *In vitro* chromosomal aberration tests: Chinese hamster ovary -positive at cytotoxic doses; Chinese hamster lung - positive at cytotoxic doses; human lymphocytes - positive at cytotoxic doses. *In vivo* chromosome aberration tests: Micronucleus assays in rat liver - negative; mouse bone marrow test - negative.

4. *Reproductive and developmental toxicity*. Teratology study in rats with a maternal and developmental NOAEL equal to or greater than 1,000 milligram/kilogram/day (mg/kg/day). Teratology study in rabbits with a maternal NOAEL greater than or equal to 1,000 mg/kg/day and a fetal NOAEL of 300 mg/kg based on a slight delay in fetal maturation. 2-generation reproduction study in rats with a NOAEL of 36 mg/kg/day, based on liver lesions in parental animals and slightly reduced body weight development in parental animals and pups. The treatment had no effect on reproduction or fertility.

5. *Subchronic toxicity*. 90-day subchronic neurotoxicity study in rats. The NOAEL was 0.5 mg/kg/day based on reduced body/weight/gain (bwt/gain). No clinical or morphological signs of neurotoxicity were detected at any dose level. 28 day dermal toxicity study in rats with a NOAEL equal to or higher than the limit dose of 1,000 mg/kg.

6 week dietary toxicity study in dogs with a NOAEL of 162 milligram/kilogram/day (mg/kg/day) in males and 50 mg/kg/day in females based on decreased body weight gain and modest hematological changes.

90 day subchronic dietary toxicity study in rats with a NOAEL of 6.2 mg/kg/day based on liver changes and hematological effects.

6. *Chronic toxicity*. 24 month combined chronic toxicity/carcinogenicity study in rats with a NOAEL of 2.1 mg/kg/day. Based on reduced bwt development and changes in bone marrow, liver, pancreas and uterus the MTD was exceeded at 130 mg/kg/day. A positive trend of adenomas of the pancreas in male rats treated at 130 mg/kg/day and above may be attributable to the increased survival of the rats treated at high doses. 18 month oncogenicity study in mice with a NOAEL of 0. 14 mg/kg/day. Based on liver changes, the MTD was reached at 1.2 mg/kg/day. The incidence of hepatocellular tumors was increased in males treated at 12 and 37 mg/kg/day.

7. *Animal metabolism*. The results from hen and goat metabolism studies, wherein fluthiacet-methyl was fed at exaggerated rates, showed that the transfer of fluthiacet-methyl residues from feed to tissues, milk and eggs is extremely low. No detectable residues of fluthiacet-methyl (or metabolite CGA-300403) would be expected in meat, milk, poultry, or eggs after feeding the maximum allowable amount of treated corn and soybeans. This conclusion is based on residue data from the corn and soybean metabolism and field residue chemistry studies coupled with the residue transfer from feed to tissues, milk and eggs obtained in the goat and hen metabolism studies.

8. *Endocrine disruption*. Based on the results of short-term, chronic, and reproductive toxicity studies there is no indication that fluthiacet-methyl might interfere with the endocrine system. Considering further the low environmental concentrations and the lack of bioaccumulation, there is no risk of endocrine disruption in humans or wildlife.

C. Aggregate Exposure

Aggregate exposure includes exposure from dietary exposure from food and drinking water; and non-dietary exposure from non-dietary uses of pesticides products containing the active ingredient, fluthiacet-methyl.

1. *Dietary exposure*. Dietary exposure consists of exposures from food and drinking water.

2. *Food*. In this assessment, K-1 Chemical has conservatively assumed that 100% of all soybeans and corn used for human consumption would contain residues of fluthiacet-methyl and all residues would be at the level of the proposed tolerances. The potential dietary exposure to fluthiacet-methyl was calculated on the basis of the proposed tolerance which is based on an limit of quantitation (LOQ) of 0.01 ppm in soybeans and 0.02 ppm in corn (2x LOQ). The anticipated residues in milk, meat and eggs resulting from feeding the maximum allowable amount of soybean and corn commodities to cattle and poultry were calculated, and the resulting quantities were well below the analytical method LOQ. Therefore, tolerances for milk, meat and eggs are not required. Assuming 100% crop treated values, the chronic dietary exposure of the general U.S. population to fluthiacet-methyl would correspond to 2.3% of the Reference dose (RfD).

3. *Drinking water*. Although fluthiacet-methyl has a slight to medium leaching potential; the risk of the parent compound to leach to deeper soil layers is negligible under practical conditions in view of the fast degradation of the product. For example, the soil metabolism half-life was extremely short, ranging from 1.1 days under aerobic conditions to 1.6 days under anaerobic conditions. Even in the event of very heavy rainfalls immediately after application, which could lead to a certain downward movement of the parent compound, parent fluthiacet-methyl continues to be degraded during the transport into deeper soil zones. Considering the low application rate of fluthiacet-methyl, the strong soil binding characteristics of fluthiacet-methyl and its degradates, and the rapid degradation of fluthiacet-methyl in the soil, there is no risk of ground water contamination with fluthiacet-methyl or its metabolites. Thus, aggregate risk of exposure to fluthiacet-methyl does not include drinking water.

4. *Non-dietary exposure*. Fluthiacet-methyl is not registered for any other use and is only proposed for use on agricultural crops. Thus, there is no potential for non-occupational exposure other than consumption of treated commodities containing fluthiacet-methyl residue.

D. Cumulative Effects

A cumulative exposure assessment is not appropriate at this time because there is no information available to indicate that effects of fluthiacet-methyl in mammals would be cumulative with those of another chemical compound.

E. Safety Determination

1. *U.S. population*. Using very conservative exposure assumptions coupled with toxicity data for fluthiacet-methyl, K-1 Chemical calculated that aggregate, chronic exposure to fluthiacet-methyl will utilize no more than 1.42% of the RfD for the U.S. population, 2.47% for nursing infants less than 1 year old, 5.09% for non-nursing infants greater than 1 year, and 3.5% for children ages 1-6 years. Because the actual anticipated residues are well below tolerance levels and the percent crop treated with fluthiacet-methyl is expected to be less than 100% of planted corn, cotton or soybeans, a more realistic estimate is that dietary exposure will be many times less than the conservative estimate previously

noted (the margins of exposure (MOE) will be accordingly higher). Exposures below 100% of the RfD are generally not of concern 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. K-1 Chemical concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to residues of fluthiacet-methyl.

Also the acute dietary risk to consumers will be far below any significant level; the lowest NOAEL from a short term exposure scenario comes from the teratology study in rabbits with a NOAEL of 300 mg/kg. This NOAEL is 2,000-fold higher than the chronic NOAEL which provides the basis for the RfD (see above). Acute dietary exposure estimates which are based on a combined food survey from 1989 to 1992 predict MOE of at least one million for 99.9% of the general population and for women of child bearing age. MOE of 100 or more are generally considered satisfactory. Therefore, K-1 Chemical concludes that there is a reasonable certainty that no harm will result from acute aggregate exposure to fluthiacet-methyl residues

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of fluthiacet-methyl, K-1 Chemical considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. A slight delay in fetal maturation was observed in a teratology study in rabbits at a daily dose of 1,000 mg/kg. In a 2-generation reproduction study fluthiacet-methyl did not affect the reproductive performance of the parental animals or the physiological development of the pups. The NOAEL was 500 ppm for maternal animals and their offspring, which is 50,000 fold higher than the RfD.

F. International Tolerances

No international tolerances have been established under CODEX for fluthiacet-methyl.

3. Rohm and Haas Company

PP 8F5004 and 8F5006

EPA has received pesticide petitions (PP 8F5004 and 8F5006) from Rohm and Haas Company, 100 Independence Mall West., 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 establishing a tolerance for residues of methoxyfenozide[benzoic acid, 3-methoxy-2-methyl-,2-(3,5-dimethylbenzoyl)-2-91,1-dimethylethyl) hydrazide in or on the raw agricultural commodity cottonseed at 2.0 parts per million (ppm), cotton gin trash at 25 ppm, pome fruit at 1.25 ppm, meat, kidney, meat by-products and milk of cattle, goats, sheep, and hogs at 0.02 ppm and in fat and liver at 0.1 ppm. The tolerance expression for kidney and liver includes the glucuronide conjugate of methoxyfenozide (RH-1518). 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 ofthe petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of methoxyfenozide in plants (apples,cotton, and grapes) is adequately understood for the purposes of these tolerances. The metabolism of methoxyfenozide in all crops was similar and involves cleavage of the methoxyl side chain to the free phenol, RH-117236,or oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10 of the total dosage.

2. *Analytical method*. High performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) or mass selective (MS) detection have been validated for cottonseed, cotton gin trash, cottonseed processed fractions, pome fruit, apple processed fractions and meat, kidney, liver, fat and milk. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) is 0.01 parts per million (ppm) for cottonseed processed fractions (meal, hulls and oil), 0.025 ppm for cottonseed, 0.05 ppm for gin trash, 0.01 ppm for pome fruit and apple processed fractions (wet pomace and juice), 0.01 ppm for meat, kidney, liver, fat and milk. For residues of the gluronide conjugate metabolite of methoxyfenozide (RH-1518), the limit of quantitation in liver and kidney is 0.02 ppm.

3. *Magnitude of residues*. A total of twelve cotton residue trials were conducted in the U.S. with the 80WP formulation of INTREPID at a maximum seasonal rate of 2.0 lb. a.i./A (i.e., 5 applications at 0.4 lb. a.i./A). The label pre-harvest interval (PHI) is 14 days. In all cases, cotton was harvested at 14-16 days after the last application. Methoxyfenozide residues in cottonseed ranged from 0.1-1.75 ppm. The average residue from all GAP trials is 0.5 ±0.40 ppm. Residues of methoxyfenozide in gin trash ranged from 3.84 to 22.3 ppm with an average of 12.1 ±6.35 ppm. Residues did not concentrate in meal, hulls and refined oil.

4. *Pome fruit*. Six pears and twelve apples trials were conducted in 1996 and 1997 with INTREPID 80WP at an application rate of 0.3 lb. AI/acre for a total of six applications. Samples of fruit collected 14-15 days after the last application. Residues of methoxyfenozide in apples ranged from 0.16 to 1.18 ppm and in pears from 0.26 to 0.93 ppm. The average residue in apples is 0.53 ±0.28 ppm and in pears is 0.43 ±0.24 ppm. The combined apple and pear residue average is 0.50 ±0.26 ppm. Residues of methoxyfenozide did not concentrated in apple juice but did concentrate in wet apple pomace.

5. *Cattle feeding study*. A 28 day feeding study was conducted in which dairy cows were fed daily doses of 0, 15, 45 and 150 ppm methoxyfenozide. Tissues and milk samples were collected analyzed using validated analytical methods. The analytes of concern included parent methoxyfenozide in all matrices and its metabolite, RH-1518, the glucuronic acid conjugate of the free phenol in kidney and liver. Overall, average methoxyfenozide residues (or sum of methoxyfenozide and RH-1518 residues for kidney and liver) were < 0.05 ppm in the tissues (fat, muscle and kidney) from the 45 ppm dose level except in liver (0.066 ppm). In milk, methoxyfenozide average residues were less than the LOQ, 0.01 ppm, at the 45 ppm dose levels.

B. Toxicological Profile

1. *Acute toxicity—methoxyfenozide has low acute toxicity*. Methoxyfenozide was practically non-toxic by ingestion of a single oral dose in rats and mice (LD_{50} < 5,000 milligram/kilogram (mg/kg)) and was practically non-toxic by dermal application (LD_{50} < 5,000 mg/kg). Methoxyfenozide was not significantly toxic to rats after a 4 hours inhalation exposure with an LC_{50} value of > 4.3 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects with a No

observed adverse effect level (NOAEL) > 2,000 mg/kg.

2. *Genotoxicty*. Methoxyfenozide tested negative (non-mutagenic, non-genotoxic) in a battery of *in vitro* and *in vivo* assays, which included an Ames assay with and without metabolic activation, a CHO/HGPRT assay, an *in vitro* chromosome aberration assay in CHO cells with and without a metabolic activation, an *in vivo* micronucleus assay in mouse bone marrow cells.

3. *Reproductive and developmental toxicity*. NOAEL for developmental and maternal toxicity to methoxyfenozide were established at 1,000 milligrams/kilogram/day (mg/kg/day) highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

In a 2-generation reproduction study in the rat, the reproductive/developmental toxicity NOAEL of 1,552 mg/kg/day was 100-fold higher than the parental (systemic) toxicity NOAEL of 200 ppm (15.5 mg/kg/day).

4. *Subchronic toxicity*. The NOAEL in a 90-day rat feeding study was 1,000 ppm (69.3 mg/kg/day for males, 72.4 mg/kg/day for females). The lowest-observed-effect-level (LOAEL) was 5,000 ppm (353 mg/kg/day for males, 379 mg/kg/day for females). Increased liver weight and liver histopathology were observed at the LOAEL of 5,000 ppm. Methoxyfenozide did not produce neurotoxic or neuropathologic effects when administered in the diets of rats for 3 months at concentrations up to and including the limit dose of 20,000 ppm (NOAEL = 1,318 mg/kg/day for males, 1,577 mg/kg/day for females).

i. In a 90-day feeding study with mice, the NOAEL was 2,500 ppm (428 and 589 mg/kg/day for males and females, respectively). The LOAEL was 7,000 ppm (1,149 and 1,742 mg/kg/day for males and females, respectively). Decreases in body weight gain (bwt/gain) were noted in both sexes of mice at the LOAEL of 7,000 ppm.

ii. A 90 day dog feeding study gave a NOAEL of 3,000 ppm, the highest dose tested (HDT) (198 and 209 mg/kg/day for males and females, respectively). Extension of treatment of the low dose animals for 6 weeks at 15,000 ppm (422 and 460 mg/kg/day for males and females, respectively) produced no signs of systemic toxicity.

Methoxyfenozide did not produce toxicity in the rat when administered dermally for 4 weeks at doses up to and including the limit dose of 1,000 mg/kg/day. These findings correlate with the low dermal penetration observed with ^{14}C-methoxyfenozide, formulated as the wettable powder, (i.e., after 24 hours 1-3% of the administered dose was systemically absorbed).

5. *Chronic toxicity*—i. The NOAEL in a 1 year feeding study in dogs was 300 ppm (9.8 and 12.6 mg/kg/day for male and females, respectively). The LOAEL was 3,000 ppm (106 and 111 mg/kg/day for male and females, respectively) based on minimal hematological effects.

ii. An 18 month mouse carcinogenicity study showed no signs of carcinogenicity at dosage levels up to and including 7,000 ppm (1,020 and 1,354 mg/kg/day for male and females, respectively), HDT.

iii. In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 200 ppm (10.2 and 11.9 mg/kg/day for males and females, respectively) and the LOAEL was 8,000 ppm (411 and 491 mg/kg/day for males and females, respectively). No carcinogenicity was observed at the dosage levels up to 20,000 ppm (1,045 and 1,248 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. In toxicokinetic and metabolism studies in the rat, methoxyfenozide was rapidly absorbed following oral exposure with peak plasma levels occurring within 0.5 hour of administration. Methoxyfenozide does not bioaccumulate in that the compound is rapidly and almost completely eliminated within 24 hours. Methoxyfenozide was extensively metabolized in rats. Including parent compound, 32 metabolites, of which 26 were identified, were isolated from the rat urine and feces. The primary pathway of methoxyfenozide metabolism involves demethylation of the A-ring methoxyl moiety to form the corresponding A-ring phenol, RH-117,236, which is readily conjugated with glucuronic acid to RH-1518. Hydroxylation on the B-ring methyl moieties is also an important metabolic pathway.

7. *Metabolite toxicology*. Common metabolic pathways for methoxyfenozide have been identified in both plants (apple, cotton and grape), and animals (,goat, hen, rat). Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet. The rapid metabolism and excretion of methoxyfenozide in part accounts for the compound's overall low toxicity profile in animals. The main metabolite of methoxyfenozide in plants and animals, the A-ring phenol, RH-117,236, produced no toxicity in mice (LD_{50} > 5,000 mg/kg) and was negative when tested in the Ames mutagenic assay. Other metabolites of methoxyfenozide (e.g., glucuronides) would be expected to produce minimal to no toxicity given structure activity considerations.

8. *Endocrine disruption*. Based on structure-activity information as well as the lack of developmental and reproductive toxicity, methoxyfenozide is unlikely to exhibit estrogenic activity. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Methoxyfenozide is within a class of chemistry (diacylhydrazines) that is not known to bind to mammalian steroid receptors. Overall, the weight of evidence provides no indication that methoxyfenozide has endocrine activity in vertebrates.

C. Aggregate Exposure

1. *Dietary exposure*. Tolerances are proposed for the residues of methoxyfenozide in or cottonseed, cotton gin trash, pome fruit, apple pomace, and livestock commodities. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from methoxyfenozide as follows:

2. *Acute exposure and risk*. No acute endpoint of concern was identified for methoxyfenozide and no acute risk assessment is required.

3. *Chronic exposure and risk*. For chronic dietary risk assessment, the proposed tolerance values and anticipated (average) residues are used and the assumption that 100% of all cotton and pome fruit will contain residues of methoxyfenozide at the tolerance or anticipated residue levels. The Reference dose (RfD) used for the chronic dietary analysis is 0.1 mg/kg/day based on the NOAEL of 9.8-10.0 mg/kg/day from the rat and dogs chronic studies. Potential chronic exposures were estimated using NOVIGEN'S Dietary Exposure Evaluation Model (DEEM Version 5.03b) which uses USDA food consumption data from the 1989-1992 survey. With the proposed tolerances and anticipated residue levels for methoxyfenozide, the percentage of the RfD utilized is as follows:

Population Subgroups	Tolerance Levels	Anticipated Residues
	Total % RfD	Total %RfD
U.S. Population - 48 States	1.7	0.3
Nursing Infants < 1 year old	1.5.7	0.7
Non-Nursing Infants < 1 year old[2]	19.0	1.7
Children 1-6 years old	6.8	1.3
Children 7-12 years old	.2.7	0.7

The chronic dietary risks from these uses do not exceed EPA's level of concern.

4. *Drinking water.* Submitted environmental fate studies suggest that methoxyfenozide is moderately persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. However, in terrestrial field dissipation and orchard dissipation studies, residues of methoxyfenozide showed minimal mobility and remained associated with the upper layers of soil. Foliar interception (up to 70% of the total dosage applied) by target crops reduces the ground level residues of methoxyfenozide.

Acute and chronic exposures to methoxyfenozide in drinking water were estimated using the GEENEC V1.2 and SCI-GROW models, as directed in OPP's Interim Approach for Addressing Drinking Water Exposure. GEENEC is a highly conservative model used to estimate residue concentrations in surface water. SCI-GROW is an equally conservative model used to estimate residue concentrations in shallow, highly vulnerable ground water (i.e., sites with sandy soils and depth to ground water of 10 to 20 feet). As indicated in EPA's drinking water exposure guidance, a very small percentage of people in the U.S. would derive their drinking water from such sources. GEENEC (56 Day average) and SCI-GROW water exposure values for methoxyfenozide utilize 1% or less of the RfD for adults and children.

There is no established Maximum Concentration Level (MCL) for residues of methoxyfenozide in drinking water. No drinking water health advisory levels have been established for methoxyfenozide. There is no entry for methoxyfenozide in the ''Pesticides in Groundwater Database'' (EPA 734-12-92-001, September 1992).

5. *Chronic exposure and risk.* There are insufficient water-related exposure data to complete a comprehensive drinking water assessment for methoxyfenozide at this time. However, in order to mitigate the potential for methoxyfenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the proposed product label. Also, to the best of our knowledge, previous experience at EPA with more persistent and mobile pesticides for which there were available data to perform quantitative risk assessments demonstrated that drinking water exposure was typically a small percentage of the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Considering the precautionary language on the label and our knowledge of previous experience with persistent chemicals, no risk from residues of methoxyfenozide in drinking water is anticipated.

6. *Non-dietary exposure.* Methoxyfenozide is not currently registered for any indoor or outdoor residential uses; therefore, no non-dietary residential exposure is anticipated.

D. Cumulative Effects

Cumulative exposure to substances with common mechanism of toxicity: The methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way are not available at this time. 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 for 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).

At this time, no data are available to determine whether methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] has a common mechanism of toxicity with other substances. Thus, it is not appropriate 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, methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] does not produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, methoxyfenozide [benzoic acid, 3-methoxy-2-methyl-, 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide] is assumed not to have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population—Acute exposure and risk.* Since no acute endpoint of concern has been identified for methoxyfenozide, no acute risk assessment is required.

2. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of methoxyfenozide from the proposed tolerances is 1.7% (tolerance levels) and 0.3% (anticipated residues) for the U.S. population. Aggregate exposure (food and water) are not expected to exceed 100%. 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. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues to the U.S. population.

3. *Infants and children— Safety factor for infants and children*— i. *In general*. The potential for additional sensitivity of infants and children to residues of methoxyfenozide are assessed using data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies 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.

ii. *Developmental toxicity studies—Rats*. In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 1,000 mg/kg/day HDT. The developmental (pup) NOAEL was > 1,000 mg/kg/day HDT).

iii. *Rabbits*. In a developmental toxicity study in rats, the maternal (systemic) NOAEL was 1,000 mg/kg/day HDT. The developmental (pup) NOAEL was > 1,000 mg/kg/day HDT.

iv. *Reproductive toxicity study rats*. In a multigeneration reproductive toxicity study in rats, the parental (systemic) NOAEL was 15.5 mg/kg/day, based on liver effects at the LOAEL of 153 mg/kg/day. The reproductive (pup) NOAEL was 1,552 mg/kg/day HDT. No adverse reproductive effects were observed.

v. *Pre- and post-natal sensitivity—Pre-natal sensitivity*. The developmental NOAELs of >1,000 mg/kg/day HDT from the developmental toxicity studies in rats and rabbits demonstrate that there is no developmental (prenatal) toxicity present for methoxyfenozide. Additionally, these developmental NOAELs are greater than 100-fold higher than the NOAEL of 9.8-10.0 mg/kg/day from the rat and dogs chronic studies which are the basis of the RfD.

vi. *Post-natal sensitivity*. In the reproductive toxicity study in rats, the reproductive NOAEL (1,552 mg/kg/day) is about 100-fold higher than the parental NOAEL (15.5 mg/kg/day). These developmental and reproductive studies indicate that methoxyfenozide does not have additional pre- and post-natal sensitivity for infants and children in comparison to other exposed groups.

vii. *Acute exposure and risk*. No acute endpoint was identified for methoxyfenozide, and therefore no acute risk assessment is required.

viii. *Chronic exposure and risk*. For chronic dietary risk assessment, tolerances and anticipated residue values are used and the assumption that 100% of all cotton and pome fruit will contain residues at the tolerance or anticipated residue levels. The percentage RfD utilized from the proposed tolerances and anticipated residues is calculated using the Dietary Exposure Evaluation Model (Version 5.03b, licensed by Novigen Sciences Inc.) which uses USDA food consumption data from the 1989-1992 survey.

With the proposed tolerances and anticipated residues for methoxyfenozide, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of methoxyfenozide is 9.0% (tolerance levels) and 1.7% (anticipated residues) for non-nursing infants less than 1 year old. Aggregate exposure (food and water) are not expected to exceed 100%. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to methoxyfenozide residues to non-nursing infants.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for methoxyfenozide in cottonseed, gin trash, pome fruit, apple pomace, or livestock commodities so no harmonization issues are required for this action.

4. Valent U.S.A. Company

PP 8F5022

EPA has received a pesticide petition (PP 8F5022) from Valent U.S.A. Company, 1333 North California Boulevard, Suite 600, Walnut Creek, CA 94596-8025., 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 establishing a tolerance for residues of pyriproxyfen, 2-[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine in or on the raw agricultural commodity almond hulls at 2.0 parts per million (ppm), citrus fruits (crop group 10) at0.3 ppm, fruiting vegetables (crop group 8) at 0.1 ppm, tree nuts (crop group 14) at 0.02 ppm, and in the processed commodities citrus oil at 20 ppm and dried citrus pulp at 1.5 ppm. 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— Nature of the residues in food, feed and secondary residues*. Metabolism of ^{14}C-pyriproxyfen labelled in the phenoxyphenyl ring and in the pyridyl ring has been studied in cotton, apples, tomatoes, lactating goats, and laying hens (and rats). The major metabolic pathways in plants is aryl hydroxylation and cleavage of the ether linkage, followed by further metabolism into more polar products by further oxidation and/or conjugation reactions. However, the bulk of the radiochemical residue on RAC samples remained as parent. Comparing metabolites detected and quantified from apple, cotton, tomato, goat and hen (and rat) shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. The residue of concern is best defined as the parent, pyriproxyfen. Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 2% of the administered dose, and were less than 1 parts per million (ppm) in all cases. In poultry, total ^{14}C residues in eggs, muscle and tissues accounted for about 2.7% of the administered dose, and were less than 1 ppm in all cases except for gizzard.

2. *Analytical method—Priproxyfen and metabolites*. Practical analytical methods for detecting and measuring residue levels of pyriproxyfen (and relevant metabolites) have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The extraction methodology has been validated using aged radiochemical residue samples from metabolism studies. The methods have been validated in cottonseed, apples, soil, and oranges at independent laboratories. EPA has successfully validated the analytical method for analysis of cottonseed raw agricultural commodity. The limit of detection of pyriproxyfen in the methods is 0.01 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues*—i. *Almonds*. Data from six field trials in almonds all conducted in 1997 in California showed that at the proposed maximum

application rate there were no detectable residues in nutmeats (>0.01 ppm pyriproxyfen). In a single sample at twice the maximum rate, pyriproxyfen was measured just at the limit of detection (0.01 ppm). Almond hulls are exposed to application and are used as ruminant feed. In/on almond hulls, the average measured residue was 0.78 ppm ($n = 12, \sigma_{n-1} = 0.41$ ppm) pyriproxyfen. A tolerance of 0.02 ppm in/on tree nutmeats and 2.0 in/on almond hulls is proposed. The proposed nutmeat tolerance, twice the limit of detection, is completely consistent with previously submitted data on walnut nutmeats, and supports the proposed tree nut crop group tolerance.

ii. *Citrus*. Thirteen field trials in oranges were conducted in 1996 through 1998. Similarly, six field trials were conducted for lemons, and seven field trials were conducted for grapefruit. The proposed use pattern for the three citrus crops is identical. The analytical data show that the average measured residue in/on orange samples was 0.155 ppm ($n = 26, \sigma_{n-1} = 0.045$ ppm) pyriproxyfen. Similarly, the analytical data show that the average measured residue in/on lemon samples was 0.128 ppm ($n = 12, \sigma_{n-1} = 0.073$ ppm), and in/on grapefruit samples was 0.123 ppm ($n = 14, \sigma_{n-1} = 0.025$ ppm), pyriproxyfen. In one unfrozen sample of oranges, peel was analyzed separately from pulp demonstrating that the residue of pyriproxyfen is on the exterior of the citrus fruit. A processing study in oranges demonstrated that pyriproxyfen concentrated in orange oil (74-fold) and in dried orange pulp (6.3-fold) but did not concentrate in orange juice (>0.03-fold). The highest average residue (HAR) from field trials was 0.22 ppm. All these data support proposed tolerances for pyriproxyfen in/on citrus fruit crop group at 0.3 ppm, citrus oil at 20 ppm, and dried citrus pulp at 1.5 ppm

iii. *Peppers*. Data from ten field trials in bell and non-bell peppers conducted in 1997 showed that the average measured residue was 0.025 ppm ($n = 20, \sigma_{n-1} = 0.24$ ppm) pyriproxyfen. These data along with tomato data support a proposed fruiting vegetable crop group tolerance of 0.1 ppm.

iv. *Tomatoes*. Data from thirteen field trials in tomatoes conducted in 1996 and 1997 showed that the average measured residue was 0.016 ppm ($n = 26, \sigma_{n-1} = 0.010$ ppm) pyriproxyfen. The proposed use pattern is identical to that proposed for peppers and allows a maximum seasonal application totaling 0.176 lb. ai/acre (80 grams ai./acre), with a maximum single application rate of 0.066 lb. ai./acre (30 grams ai./acre), at a minimum 7 days interval between applications, and with the last application no less than 14 days before harvest. A processing study demonstrated that pyriproxyfen did not concentrate in tomato puree or tomato paste and no processed product tolerances are necessary. These data along with pepper data support a proposed fruiting vegetable crop group tolerance of 0.1 ppm.

v. *Secondary residues*. Using proposed tolerances to calculate the maximum feed exposure to fed animals, and using the very low potential for residue transfer documented in the milk cow feeding residue study, finite, detectable secondary residues in animal tissues, milk, and eggs are not expected. Therefore, tolerances are not proposed for these commodities.

vi. *Rotational crops*. The results of a confined rotational crops accumulation study indicate that no rotational crop planting restrictions or rotational crop tolerances are required.

B. Toxicological Profile

1. *Acute toxicity*. The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicty*—pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells, and *in vitro* chromosomal aberration with and without S9 in Chinese hamster ovary cells.

3. *Reproductive and developmental toxicity*. Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multigenerational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligram kilogram body weight day (mg/kg/bwt/day) during gestation days 7-17. Maternal toxicity (mortality, decreased body weight gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg/bwt/day and greater. The maternal no observed adverse effect level (NOAEL) was 100 mg/kg/bwt/day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg/bwt/day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg/bwt/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg/bwt/day. The NOAEL for postnatal developmental toxicity was 300 mg/kg/bwt/day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg/bwt/day during gestation days 6-18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg bw/day or higher. The maternal NOEL was 100 mg/kg bw/day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was 1,000 mg/kg/bwt/day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through 2-generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg/bwt/day in males, 498 mg/kg/bwt/day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg/bwt/day in males, 96 mg/kg/bwt/day in females). No effects on reproduction were produced at 5,000 ppm, the highest dose tested (HDT).

4. *Subchronic toxicity*. Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg/bwt/day for males, 27.7 mg/kg/bwt/day for females) in rats, 1,000 ppm (149.4 mg/kg/bwt/day for males, 196.5 mg/kg/bwt/day for females) in mice, and 100 mg/kg/bwt/day in dogs.

In a 4 week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased

water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21 day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg/bwt/day, the HDT. In a 21 day dermal study conducted with KNACK. Insect Growth Regulator the test material produced a NOAEL of 1,000 mg/kg/bwt/day (HDT) for systemic effects, and a NOAEL for skin irritation of 100 mg/kg/bwt/day.

5. *Chronic toxicity*. Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg/bwt/day, based on the NOAEL in female rats from the 2 year chronic/oncogenicity study. Effects cited by EPA in the RfD Tracking Report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm:nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2 year chronic feeding/oncogenicity study or in a 78 week study on mice. The oncogenicity classification of pyriproxyfen is ''E'' (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300 and 1,000 mg/kg/bwt/day for 1 year. Dogs exposed to dose levels of 300 mg/kg/bwt/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg/bwt/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600 and 3,000 ppm in diet for 78 weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg/bwt/day in males, 109.5 mg/kg/bwt/day in females), and a lowest observed adverse effect level (LOAEL) of 3,000 ppm (420 mg/kg/bwt/day in males, 547 mg/kg/bwt/day in females) was established based on an increase in kidney lesions.

In a 2 year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg/bwt/day in males, 35.1 mg/kg/bwt/day in females). A LOAEL of 3,000 ppm (138 mg/kg/bwt/day in males, 182.7 mg/kg/bwt/day in females) was established based on a depression in body weight gainin females.

6. *Animal metabolism*. The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg/bwt (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg/bwt (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg/bwt of unlabelled material. For all dose groups, most (88-96%) of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92-98% of the administered dose was excreted within 7 days. 7 days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were the higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology*. Metabolism studies of pyriproxyfen in rats, goats and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88-96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92-98% of the administered dose was excreted within 7 days. Tissue residues were low 7 days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from in situ formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micro-grams per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg/bwt. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg/bwt, and 1,105 (male) and 1,000 (female) mg/kg/bwt, respectively.

8. *Endocrine disruption*. Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and other some arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure*. An evaluation of acute and chronic dietary exposure to include drinking water has been performed for the U.S. population and various sub-populations including infants and children. Because of the lack of identified toxic endpoints of concern for acute dietary exposure, the results of the acute evaluations are not reported in this analysis.

2. *Food*. Chronic dietary exposure to pyriproxyfen residues was calculated for the U.S. population and 26 population subgroups assuming tolerance level residues and 100% of the crop treated. The results from several representative subgroups are listed below. Chronic dietary exposure was at or below 0.22 % of the reference dose with pome fruits, fruiting vegetables and citrus the commodities contributing the most to chronic exposure. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than 100% of the RfD.

Tier I Calculated Chronic Dietary Exposures to the total U.S. Population and Selected Sub-Populations to Pyriproxyfen Residues in Food

Population Subgroup	Exposure	Percent of
	(mg/kg/bw/day)	RfD
Total U.S. Population (all seasons)	0.000237	0.067
Females (13+/Nursing)	0.000310	0.089
Females (20+ years, not preg. or nursing	0.000188	0.054
Children (1-6 Years)	0.000544	0.154
All Infants (<1 Year Old)	0.000629	0.180
Non-Nursing Infants (<1 Year Old)	0.000771	0.220
Nursing Infants (<1 Year Old)	0.000293	0.084

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 the result of a 1 day or single exposure. No acute dietary endpoint and dose was identified in the toxicology data base for pyriproxyfen, therefore the Agency has concluded that there is a reasonable certainty of no harm from acute dietary exposure.

3. *Drinking water.* Since pyriproxyfen is applied outdoors to growing agricultural crops, the potential exists for pyriproxyfen or its metabolites to reach ground or surface water that may be used for drinking water. Because of the physical properties of pyriproxyfen, it is unlikely that pyriproxyfen or its metabolites can leach to potable groundwater. To quantify potential exposure from drinking water, surface water concentrations for pyriproxyfen were estimated using GENEEC 1.3. The average 56 day concentration predicted in the simulated pond water was 0.16 ppb. Using standard assumptions about body weight and water consumption, the chronic exposure to pyriproxyfen from this drinking water would be 4.57 x 10^{-6} and 1.6 x 10^{-5} mg/kg/bwt/day for adults and children, respectively; 0.0046 percent of the RfD (0.35 mg/Kg/day) for children. Based on this worse case analysis, the contribution of water to the dietary risk is negligible.

4. *Non-dietary exposure.* Pyriproxyfen is the active ingredient in numerous registered products for household use -- primarily for indoor, non-food applications by consumers. The consumer uses of pyriproxyfen typically do not involve chronic exposure. Instead, consumers are exposed intermittently to a particular product (e.g., pet care pump spray) containing pyriproxyfen. Since pyriproxyfen has a relatively short elimination half-life, cumulative toxicological effects resulting from bioaccumulation are not plausible following short-term, intermittent exposures. Further, pyriproxyfen is short-lived in the environment and this indoor domestic use of pyriproxyfen provides only relatively short-term reservoirs. Thus, consumer use of these products results in acute and short term intermittent exposures. No acute dermal, or inhalation dose or endpoint was identified in the toxicity data for pyriproxyfen. Similarly, doses and endpoints were not identified for short and intermediate term dermal or inhalation exposure to pyriproxyfen. The Agency has concluded that there are reasonable certainties of no harm from acute, short term, and intermediate term dermal and inhalation occupational and residential exposures due to the lack of significant toxicological effects observed. Thus, no detailed exposure and risk analyses for non-dietary exposures to pyriproxyfen are necessary.

D Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity''. Available information in this context 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.

There are no other pesticidal compounds that are structurally related to pyriproxyfen and have similar effects on animals. In consideration of potential cumulative effects of pyriproxyfen and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by pyriproxyfen would be cumulative with those of other chemical compounds. Thus, only the potential risks of pyriproxyfen have been considered in this assessment of aggregate exposure and effects.

Valent will submit information for EPA to consider concerning potential cumulative effects of pyriproxyfen consistent with the schedule established by EPA at 62 FR 42020 (Aug. 4, 1997) and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population—Chronic dietary exposure and risk— Adult sub-populations.* Using the Tier I dietary exposure assessment procedures described above for pyriproxyfen, calculated chronic dietary exposure resulting from residue exposure from existing and proposed uses of pyriproxyfen is minimal. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is from 0.000175 to 0.000310 mg/kg/bwt/day, 0.05 to 0.089% of the RfD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by only 4.57 x 10^{-6} mg/kg/bwt/day and does not change the maximum occupancy of the RfD significantly. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the RfD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population and many non-child/infant subgroups from aggregate, chronic exposure to pyriproxyfen residues.

2. *Acute dietary exposure and risk— Adult sub-populations.* An acute dietary dose and endpoint was not identified. Thus, the risk from acute aggregate exposure is considered to be negligible. Non-Dietary Exposure and Aggregate Risk -- Adult Sub-Populations: Acute, short term, and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed.

3. *Infants and children*—i. *Safety factor for infants and children.* In

assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating pre- and post-natal toxicity for pyriproxyfen is complete with respect to current data requirements. There are no special pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for pyriproxyfen to be further protective of infants and children.

ii. *Chronic dietary exposure and risk— Infants and children*. Using the conservative Tier I exposure assumptions described above, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of pyriproxyfen ranges from 0.000293 mg/kg/bwt/day for Nursing Infants (<1 year old), up to 0.000771 mg/kg/bwt/day for Non-Nursing Infants (<1 year old), 0.084 to 0.220% of the RfD, respectively. Adding the worse case potential incremental exposure to infants and children from pyriproxyfen in drinking water (1.6×10^{-5} mg/kg/bwt/day) does not materially increase the aggregate, chronic dietary exposure and only increases the occupancy of the RfD by 0.0046% to 0.225% for Non-Nursing Infants (<1 year 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. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to pyriproxyfen residues.

iii. *Acute dietary exposure and risk— Infants and children*. An acute dietary dose and endpoint was not identified. Thus, the risk from acute aggregate exposure is considered to be negligible. Non-Dietary Exposure and Aggregate Risk -- Infants and Children: Acute, short term, and intermediate term dermal and inhalation risk assessments for residential exposure are not required due to the lack of significant toxicological effects observed.

F. International Tolerances

Pyriproxyfen is a New Compound scheduled for Toxicological and Residue evaluations at the 1999 JMPR. Therefore, there are no presently existing Codex MRLs for pyriproxyfen.

[FR Doc. 98–26782 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6172–7]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Bonne Terre Superfund Site, St. Francois County, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the Bonne Terre Superfund Site, located in St. Francois County, Missouri, was executed by the Agency on June 24, 1998, and concurred upon by the United States Department of Justice on September 10, 1998. This agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), against the City of Bonne Terre, Missouri, the prospective purchasers (''the purchasers'').

The settlement would require the purchasers to eliminate any threat of direct exposure to the mine tailings by providing and maintaining a permanent clean cover over the entire property; level and grade the property so as to minimize the potential for erosion; agree to deed restrictions prohibiting residential use of the property or any other use that might attract children; properly handle any excavation of highly contaminated soils; and provide the EPA access to the Site.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement.

DATES: Comments must be submitted on or before November 5, 1998.

ADDRESSES: Comments should reference the ''Bonne Terre Superfund Site Prospective Purchaser Agreement'' and should be forwarded to Jack Generaux, Remedial Project Manager, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Eileen Gendreau, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7736.

FOR FURTHER INFORMATION CONTACT: David Cozad, Senior Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7587.

Dated: September 25, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–26788 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 8, 1998, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make

arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. *Approval of Minutes*
—September 17, 1998 (Open and Closed)
B. *New Business*
1. *Regulation*
—Customer Choice Rule (Proposed) [12 CFR Parts 611, 614, and 618]
2. *Other*
—FY 1999 Revised Budget
—FY 2000 Proposed Budget

**CLOSED SESSION*

C. *Report*
—OSMO Report

Dated: October 2, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–26922 Filed 10–2–98; 3:54 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 30, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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.

DATES: Persons wishing to comment on this information collection should submit comments December 7, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0184.
Title: Section 73.1740, Minimum Operating Schedule.
Form Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 350.
Estimated Time Per Response: 0.5 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 175 hours.
Estimated Cost to Respondents: $0.
Needs and Uses: Section 73.1740 requires licensees of commercial broadcast stations to notify the FCC in Washington, DC, when events beyond their control make it impossible to continue operation or to adhere to the required operating schedules set forth in this section. In addition, the FCC must be notified when normal operation is resumed. No further authority is needed for limited operation or discontinued operation for a period not exceeding 30 days. Should events beyond the licensees control make it impossible for compliance within the required 30-day time period, an informal written request shall be submitted to the FCC requesting the amount of additional time that the licensee deems necessary. The data are used by FCC staff to authorize temporarily a limited operation or a discontinuance of operation.

OMB Number: 3060–0449.
Title: Section 1.65(c) Substantial and Significant Changes in Information Furnished by Applicants to the Commission.
Form Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 6.
Estimated Time per Response: 1 hour 30 minutes.
Frequency of Response: Annually.
Total Annual Burden: 9 hours.
Estimated Cost to Respondents: $0.
Needs and Uses: Section 1.65(c) requires broadcast permittees and licensees to report annually any finding or adverse final action that involves conduct bearing on their character qualifications. This information enables the Commission to determine whether broadcast permittees and licensees maintain the requisite character qualifications to be a broadcast permittee or licensee during their license term.

OMB Number: 3060–0180.
Title: Section 73.1610, Equipment Tests.
Form Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entitites.
Number of Respondents: 550.
Estimated Time per Response: 0.5 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 275 hours.
Estimated Cost to Respondents: $0.
Needs and Uses: This information collection requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. The data are used by FCC staff to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–26641 Filed 10–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–1996]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 1, 1998, the Commission released a public notice announcing the October 20 and October 21, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418–2330 or via the Internet at lsimms@fcc.gov. The

address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 1, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, October 20, from 8:30 a.m., until 5:00 p.m., and on Wednesday, October 21, 1998, from 8:30 a.m., until at least 12 noon, but no later than 5:00 p.m. The meeting will be held at the Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C., on October 20. The October 21, meeting will be held at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, N.W., Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The proposed agenda for the October 20–21, 1998, meeting is as follows:

1. Approval of meeting minutes.
2. Industry Numbering Council (INC) NANPA Expansion Report.
3. Numbering Resource Optimization (NRO) Working Group Report. Review of updated report and recommendation regarding numbering optimization methods.

Wednesday, October 21, 1998

4. Cost Recovery Working Group Report.
5. Local Number Portability Administration (LNPA) Working Group Report.
6. NANPA Oversight Working Group Report.
7. COCUS and Proposed Line Number Utilization Survey. Further discussion on integrated recommendation on possible enforcement mechanism; audits; forecasts from resellers; appeals and confidentiality issues.
8. Definition of Reserved Telephone Numbers. Discussion of consolidated view from contributions previously submitted.
9. Steering Group Report.
10. Other Business.

Federal Communications Commission.

Anna Gomez,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–26840 Filed 10–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–14]

Shipping Restrictions, Requirements and Practices of the People's Republic of China

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry; extension of comment period.

SUMMARY: The time for comments in response to the Notice of Inquiry in this matter is extended.

DATES: Comments due on or before October 23, 1998.

ADDRESSES: Send comments (original and twenty copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission on August 18, 1998, (63 FR 44259) published a Notice of Inquiry to obtain information from shippers, transportation intermediaries, vessel operators and other interested parties about issues and restrictions they face in China, and the effects of those restrictions on their business practices. Simultaneously, Information Demand Orders were served on China Ocean Shipping (Group) Co., China National Foreign Trade Transportation (Group) Corp. (''Sinotrans''), American President Lines, Ltd. (''APL''), and Sea-land Service, Inc. (''Sea-Land''). Those Information Demand Orders required submission of information about a variety of matters affecting the U.S. oceanborne trade with China.

Sinotrans has requested enlargement of time to respond to Information Demand Order. APL and Sea-Land oppose Sinotrans' request, but ask that, should any extension be granted, the same extension be granted for APL and Sea-Land to respond to the Information Demand Order, and for comments in response to the Notice of Inquiry. Sinotrans requests a 45-day enlargement, citing time-consuming internal communication and consultation procedures, resulting in only recent appointment of counsel, and the subsequent difficulty of establishing reliable communications procedures between U.S. Counsel and responsible representatives of Sinotrans. Sinotrans has been granted a 21-day extension, as have APL and Sea-Land. Likewise, the time for submitting comments to this Notice of Inquiry is extended 21 days.

Joseph C. Polking,

Secretary.

[FR Doc. 98–26758 Filed 10–5–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Marvin Fisher Family Limited Partnership, Spencer, New York; to retain voting shares of TSB Services, Inc., Spencer, New York, and thereby indirectly retain voting shares of Tioga State Bank, Spencer, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Michael M. Jensen, Centralia, Illinois; to retain voting shares of First Sandoval Bancorp, Inc., Sandoval, Illinois, and thereby indirectly retain

voting shares of First National Bank of Sandoval, Sandoval, Illinois 62882.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Jeffrey A. Fisher, Bigfork, Minnesota; to acquire voting shares of Kelliher Bancshares, Inc., Kelliher, Minnesota, and thereby indirectly acquire voting shares of Citizens Sate Bank of Kelliher, Kelliher, Minnesota.

Board of Governors of the Federal Reserve System, September 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26665 Filed 10–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Amundson Family Limited Partnership, Sioux Falls, South Dakota, and Beulah Bancorporation, Inc., Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of Robinson Bank Holding Company, Robinson, North Dakota, and thereby indirectly acquire Security State Bank of Robinson, Robinson, North Dakota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Terry and Kathy Barrett Family Limited Partnership, Breckenridge, Colorado; to become a bank holding company by acquiring 39 percent of the voting shares of Quinter Insurance Services, Inc., Quinter, Kansas, and thereby indirectly acquire First National Bank, Quinter, Kansas.

2. Valley View Bancshares, Inc., Overland Park, Kansas; to acquire 100 percent of the voting shares of Paola-Citizens Bancshares, Inc., Paola, Kansas, and thereby indirectly acquire Citizens State Bank, Paola, Kansas.

Board of Governors of the Federal Reserve System, September 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26666 Filed 10–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Mutual Bancorp of the Berkshires, and United Financial Group, Inc., both of Pittsfield, Massachusetts; to acquire Class B preferred stock and 50 percent of the common stock ownership interest through Lenox Financial Services, Lenox, Massachusetts, and its subsidiary, Lenox Savings Bank, Lenox, Massachusetts, and thereby indirectly acquire Trust Company of the Berkshires, N.A., Pittsfield, Massachusetts, and engage thereby in certain trust activities, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, September 30, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26666 Filed 10–5–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0260]

Submission for OMB Review; Comment Request Entitled Questionnaire: Catalog of Federal Domestic Assistance

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0260).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement entitled Questionnaire: Catalog of Federal Domestic Assistance.

DATES: *Comment Due Date:* December 7, 1998.

ADDRESSES: Additional comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and to Marjorie Ashby, General Services Administration

(MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jackie Garrett, Governmentwide Information Systems Division on (202) 401–8336.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0260, concerning Questionnaire: Catalog of Federal Domestic Assistance. Catalog users are not required to respond to the questionnaire. The questionnaire is voluntary to solicit customer satisfaction and opinions on ways to improve the Catalog.

B. Annual Reporting Burden

Respondents: 200, annual responses: 200; average hours per response: .10; burden hours: 20.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: September 24, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–26699 Filed 10–5–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting Notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 2:00 p.m. to 5:00 p.m. on Monday, October 19, 1998, and from 9:00 a.m. to Noon on Tuesday, October 20, 1998, at the Chicago Cultural Center ''Claudia Cassidy Theatre,'' 78 East Washington Street, Chicago, IL, 60602.

Purpose: The meeting is called to update members on committee operations and activities. Commission members will address known events or celebrations of women (past or present) in their local community and/or nationally. Participants may wish to make a statement covering personal interests in the history of women in America or share thoughts on appropriate commemorative events.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to martha.davis@gsa.gov.

Dated: September 29, 1998.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 98–26718 Filed 10–5–98; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Performance Review Board; Membership; Senior Executive Service

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gail T. Lovelace, Chief People Officer, General Services Administration, 1800 F Street, NW, Washington, DC 20405, (202) 501–0398.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Performance Review Board are:

1. Thurman M. Davis, Sr., Deputy Administrator (Chairperson).
2. Nelson B. Alcalde, Regional Administrator, National Capital Region.
3. Thomas R. Bloom, Chief Financial Officer.
4. Paul E. Chistolini, Deputy Commissioner, Public Buildings Service.
5. Robert J. Dunfey, Jr., Regional Administrator, New England Region.
6. Bond R. Faulwell, Deputy Regional Administrator, Heartland Region.
7. Dennis J. Fischer, Commissioner, Federal Technology Service.
8. Martha N. Johnson, Chief of Staff.
9. Robert A. Peck, Commissioner, Public Buildings Service.
10. Frank P. Pugliese, Commissioner, Federal Supply Service.
11. G. Martin Wagner, Associate Administrator for Governmentwide Policy.
12. W. Leighton Waters, Assistant Regional Administrator, Public Buildings Service, Greater Southwest Region.

Dated: September 29, 1998.

Gail T. Lovelace,

Chief People Officer.

[FR Doc. 98–26717 Filed 10–5–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the Assistant CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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 for other forms of information technology. Send comments to Seleda M. Perryman, Assistant CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Projects

1. The National Health and Nutrition Examination Survey (NHANES)—(0920–0237)—Revision—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National

Center for Health Statistics, CDC. The NHANES will begin again in February 1999 and will be conducted on a continuous, rather than periodic, basis from that point on. The plan is to sample about 5,000 persons annually. They will receive an interview and a physical examination. A dress rehearsal of 555 sample persons is needed to test computer-assisted personal interviews (including translations into Spanish), examination protocols, automated computer systems and quality control procedures. Participation in the dress rehearsal and main survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. Approval was received on 5/29/98 for only a pilot test of the revised survey—without the genetic research component. This submission is time-sensitive and requests emergency approval just so the dress rehearsal and the start of the survey will not be delayed. Another submission requesting three year approval for the dress rehearsal and the full survey will be filed on a normal, non-emergency schedule.

The survey description, contents, and uses are the same as those in the **Federal Register** notice for the pilot test. The total cost to respondents for the period covered by this notice and the related request for OMB approval (from 2/99–1/02) is estimated at $1,889,440.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
1. Screening interview only	40,401	1	0.167	6,747
2. Screener and household interviews only	2,130	1	0.434	924
3. Screener, household, and SP interviews only	3,198	1	1.100	3,518
4. Screener, household, and SP interviews and primary MEC exam only	15,771	1	6.613	104,294
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	789	1	11.613	9,163
6. Screener, household, and SP interviews, MEC exam and dietary replicate interview only (5% + optional 15%)	3,156	1	8.363	26,394
7. Home exam	213	1	2.700	575
8. Telephone followup of elderly-option	3,501	1	0.750	2,626
Total				154,240

Charles Gollmar,

Deputy Director for Policy Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–26710 Filed 10–5–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Allotment Percentages for Child Welfare Services State Grants

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the Title IV–B subpart 1, Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

DATES: Effective for Fiscal Years 2000 and 2001.

FOR FURTHER INFORMATION CONTACT: Joanne Moore, Division of Formula, Entitlement and Block Grants, Office of Financial Services, Administration for Children and Families, 370 L'Enfant Promenade, SW, Washington DC 20447.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. The allotment percentage for each State is as follows:

State	*Allotment percentage*
Alabama	58.86
Alaska	48.32
Arizona	56.49
Arkansas	61.23
California	48.11
Colorado	47.56
Connecticut	30.50
Delaware	43.70
District of Columbia	30.00
Florida	50.48
Georgia	53.07
Hawaii	46.55
Idaho	59.04
Illinois	45.23
Indiana	53.43
Iowa	54.82
Kansas	52.99
Kentucky	59.58
Louisiana	59.37
Maine	56.68
Maryland	43.06
Massachusetts	39.41
Michigan	49.40
Minnesota	48.04
Mississippi	64.10

State	Allotment percentage
Missouri	53.09
Montana	60.28
Nebraska	53.65
Nevada	46.86
New Hampshire	45.14
New Jersey	35.85
New Mexico	61.22
New York	40.37
North Carolina	54.63
North Dakota	59.12
Ohio	51.83
Oklahoma	59.71
Oregon	53.10
Pennsylvania	49.26
Rhode Island	49.39
South Carolina	59.24
South Dakota	58.25
Tennessee	54.60
Texas	54.23
Utah	60.77
Vermont	53.91
Virginia	48.05
Washington	48.52
West Virginia	62.25
Wisconsin	52.11
Wyoming	55.30
American Samoa	70.00
Guam	70.00
Northern Marianas	70.00
Puerto Rico	70.00
Virgin Islands	70.00

Dated: September 29, 1998.

James A. Harrell,

Deputy Commissioner, Administration for Children, Youth and Families.

[FR Doc. 98–26663 Filed 10–5–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0721]

Agency Information Collection Activities: Proposed Collection; Comment Request; Premarket Approval of Medical Devices

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 reinstatement of an existing information collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for premarket approval applications (PMA's).

DATES: Submit written comments on the collection of information by December 7, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

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 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.

I. Premarket Approval of Medical Devices—21 CFR Part 814 and FDAMA Sections 201, 202, 205, 207, 208, 209, 216, 217, and 403 (OMB Control Number 0910–0231—Extension)

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a PMA for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices. The regulations will facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval. The regulations will also ensure the disapproval of PMA's for devices that have not been show to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety effectiveness, and reliability, and display in the labeling and advertising of certain warnings. Other potential post approval requirements include the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable FDA to determine whether there is

reasonable assurance of the device's continued safety and effectiveness. Section 814.84 specifies the contents of periodic reports.

II. FDA Modernization Act of 1997

The Food and Drug Administration Modernization Act of 1997 (FDAMA), enacted on November 21, 1997, to implement revisions to the act, streamlines the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several provisions of this act which affect the PMA process and impact collection of information have been or will be implemented by FDA and are discussed as follows.

Section 201(b) of FDAMA amends section 515(d) of the act to allow submission of data from investigations of earlier versions of a device, in support of a safety and effectiveness determination for a PMA. The data is valid if modifications to earlier versions of the investigational device, whether made during or after the investigation, do not constitute a significant change that would invalidate the relevance of the data. This section also allows for the submission of data or information relating to an approved device that are relevant to the design and intended use of a device for which an application is pending, provided the data are available for use under the act (i.e., available by right of reference or in the public domain).

Section 202 of FDAMA amends section 515(d) of the act to state that FDA will provide special review, which can include expedited processing of a PMA application, for certain devices intended to treat or diagnose life threatening or irreversibly debilitating diseases or conditions.

Section 205(a) of FDAMA amends section 513(a)(3) of the act to allow sponsors planning to submit a PMA to submit a written request to FDA for a meeting to determine the type of information (valid scientific evidence) necessary to support the effectiveness of their device. FDA must meet with the requester and communicate in writing the agency's determination of the type of data that will be necessary to demonstrate effectiveness within 30 days after the meeting.

Section 205(c) of FDAMA amends section 515(d) of the act to state that PMA supplements are required for all changes that affect safety or effectiveness, unless such change involves modifications in a manufacturing procedure or method of manufacturing. Clearance for this information collection, included within a proposed rule, has already been sought by FDA in an earlier document (63 FR 20558, April 27, 1998).

Section 205(c) of FDAMA amends section 515(d) of the act to allow for approval of incremental changes in design affecting safety and effectiveness based on nonclinical data that demonstrate the change creates the intended additional capacity, function, or performance of the device; and clinical data included in the original PMA application or any supplement to that application that provides reasonable assurance of safety and effectiveness. If needed, FDA may require a sponsor to submit new clinical data to demonstrate safety and effectiveness.

Section 207 of FDAMA amends section 513 of the act to allow an applicant who submits a premarket notification submission [510(k)] and receives a not substantially equivalent (NSE) determination, placing the device into a Class III category, to request FDA to classify the product into Class I or II. The request must be in writing and sent within 30 days from the receipt of the NSE determination. Within 60 days from the date the written request is submitted to FDA, the agency must classify the device by written order.

If FDA classifies the device into Class I or II, this device can be used as a predicate device for other 510(k)s. However, if FDA determines that the device will remain in Class III, the device cannot be distributed until the applicant has obtained an approved PMA or an approved investigational device exemption (IDE).

Section 208 of FDAMA amends section 513 of the act to allow PMA applicants to have the same access as FDA to data and information submitted by FDA to a classification panel, except data not available for public disclosure; the opportunity to submit information based on the PMA, through FDA, to the panel; and the same opportunity as FDA to participate in panel meetings.

Section 209(b) of FDAMA amends section 515(d) of the act to state that FDA must, upon the written request of the applicant, meet with that party within 100 days of receipt of the filed PMA application to discuss the review status of the application. With the concurrence of the applicant, a different schedule may be established. Prior to this meeting, FDA must inform the applicant in writing of any identified deficiencies and what information is required to correct those deficiencies. FDA must also promptly notify the applicant if FDA identifies additional deficiencies or of any additional information required to complete agency review.

FDA estimates the burden of this collection of information is 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
814.15, 814.20, and 814.37	52	1	52	837.28	43,539
814.82	37	1	37	134.68	4,983
814.84	37	1	37	10	370
Total					48,892

[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
814.82(a)(5) and (a)(6)	814	1	814	16.7	13,594
Total					13,594

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Reporting/Disclosure

The reporting burden can be broken out by certain sections of the PMA regulation.

§ 814.15—*Research conducted outside the United States*

§ 814.20—*Application*

§ 814.37—*PMA amendments and resubmitted PMA's*

The bulk of the burden is due to the previous three requirements. Included in these three requirements are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimate of the hours per response (837.28) was derived through FDA's experience and consultation with industry and trade associations. Included in these three requirements are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates, based on the 1985 study, that these requirements account for the bulk of the burden identified by manufacturers.

IV. § 814.39—PMA Supplements

Clearance for this information collection, included within a proposed rule, has already been sought by FDA in an earlier document (63 FR 20558).

V. § 814.82–Postapproval Requirements

Postapproval requirements concern approved PMA's for devices that were not reclassified and require an annual report. In the last decade (1988 to 1997), the range of PMA's which fit this category averaged approximately 37 per year (70 percent of the 52 annual submissions). Most approved PMA's have been subject to some restriction. Approximately half of the average submitted PMA's (26) require associated post approval information (i.e. clinical trials or additional preclinical information) that is labor-intensive to compile and complete, and the other PMA's require minimal information. Based on its experience and on consultation with industry, FDA estimates that preparation of reports and information required by this section requires 4,983 hours (134.68 hours per respondent).

VI. § 814.84

Postapproval requirements described in § 814.82 require a periodic report. FDA has determined respondents meeting the criteria of § 814.84 will submit reports on an annual basis. A stated previously, the range of PMA's fitting this category averaged approximately 37 per year. These reports have minimal information requirements. FDA estimates that respondents will construct their report and meet their requirements in approximately 10 hours. This estimate is based on FDA's experience and on consultation with industry. FDA estimates that the periodic reporting required by this section take 370 hours.

VII. Recordkeeping

The recordkeeping burden in this section involves the maintenance of records to trace patients and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These requirements are to be performed only by those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMA's are eventually approved and close to 100 percent of those have original clinical trial data. Therefore, about 37 PMA's a year (52 annual submissions times 70 percent) would be subject to these requirements. Also, because the requirements apply to all active PMA's, all holders of active PMA applications must maintain these records. PMA's have been required since 1976, so there are around 814 active PMA's that could be subject to these requirements (22 years x 37 per year). Each study has approximately 200 subjects, and, at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 16.7 hours. The aggregate burden for all 814 holders of approved original PMA's, therefore, is 13,594 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practice (CGMP)/quality systems (QS) regulation (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions to approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application with the Secretary of Health and Human Services for approval of a Class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

Dated: September 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–26649 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0364]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reporting and Recordkeeping for Electronic Products: Specific Product Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by November 5, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reporting and Recordkeeping for Electronic Products: Specific Product Requirements (21 CFR Parts 1020, 1030, 1040, and 1050) (OMB Control Number 0910–0213)—Reinstatement

Under sections 532 to 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii to 360ss), FDA has the responsibility to protect the public from unnecessary exposure to

radiation from electronic products. Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program designed to protect the public health and safety from electronic radiation by, among other things, developing and administering performance standards for electronic products. Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and assure correction of, radiation defects or noncompliance with performance standards. The agency's authority to require records and reports is contained in section 537(b) and (c) of the act.

Under this authority, FDA issued regulations detailing product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records that are maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

The consequence of not obtaining the required information is that the public unknowingly may be exposed to unnecessary radiation hazards presented by electronic products. Without this information, FDA could not adequately make rational decisions and take appropriate actions to protect the public from these hazards as called for in the act.

Respondents to this collection of information are manufacturers, importers, and assemblers of electronic products. Not all of the requirements are placed on all of these groups.

In the **Federal Register** of June 22, 1998 (63 FR 33933), the agency requested comments on the proposed collections of information. No significant comments were received.

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
1020.20(c)(4)	1	1	1	1	1
1020.30(g)	200	1.33	265	35	9,275
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)[2]	200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)[2]	9	1.00	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)	8	1.00	8	40	320
1030.10(c)(4)	41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)[2]	41	1.61	66	20	1,320
1040.10(h)(1)(i) through (h)(1)(iv)	805	1.00	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)[2]	100	1.00	100	8	800
1040.11(a)(2)[2]	190	1.00	190	10	1,900
1040.20(d)(1), (d)(2), (e)(1), and (e)(2)	110	1.00	110	10	1,100
1040.30(c)(1)	1	1.00	1	1	1
1040.30(c)(2)	7	1	7	1	7
1050.10(f)(1) and (f)(2)(i) through (f)(2)(iii)	10	1.00	10	56	560
Disclosure Subtotal	1,176		1,186		32,679
1020.30(d)(1) and (d)(2) and Form FDA 2579	2,345	8.96	21,000	.30	6,300
1030.10(c)(6)(iii)	1	1.00	1	1	1
1030.10(c)(6)(iv)	1	1.00	1	1	1
1040.10(a)(3)(i)	83	1.00	83	3	249
1040.10(i)—burden in 1002.10 (0910–0025)	0		0	0	0
Reports Subtotal	2,430		21,085		6,551
Total Annual Reporting Burden	3,606	6.37	22,981	1.71	39,230

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The total number of respondents in the reporting burden, table 1, include respondents who have already been included as a subset of another group in the table. The number of firms marked by this superscript have been included and counted as a subset of the total firms subject to reporting burden. Therefore, the number of firms represented by this superscript have not been added to the total number of respondents on the entry for ''Disclosure Subtotal,'' and are not included in the total listed on the last entry of the reporting burden table entitled ''Total Annual Reporting Burden.'' However, any hours of burden generated by these firms were added to the total reporting burden hours on both the disclosure subtotal and total lines of the reporting burden table.

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
1020.30(g)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1	83
Total Annual Recordkeeping Burden					94

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Due to a typographical error, 21 CFR 1040.30(c)(2) was incorrectly placed in table 2 of FDA's previous notice seeking comment on this collection of information (63 FR 33933, June 22, 1998). The citation has been place in table 1 of this notice and the burden adjusted accordingly.

Certain labeling requirements included in these regulations are either exempt from the definition of ''collection of information'' under 5 CFR 1320.3(c)(2) because they are ''public disclosure[s] of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' or have negligible burden. For example, 21 CFR 1040.10(g) states that ''in addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph.'' The provision goes on to require several cautionary statements in the labeling of laser products approved under this regulation, and further specifies the wording, placement, and label design of the required labeling.

Labeling requirements which are exempt from OMB are 21 CFR 1040.30(c)(1), 1050.10(d)(1) through (d)(5), and 1020.10(c)(4).

The burden hour and cost estimates were derived by consultation with FDA and industry personnel. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the ''Estimated Annual Reporting Burden'' table .

Dated: September 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–26647 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0824]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of anthra(2,1,9-def:6,5,10-d′e′f′)diisoquinoline-1,3,8,10(2H,9H)-tetrone (C.I. Pigment Violet 29) as a colorant for polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4626) has been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of anthra(2,1,9-def:6,5,10-d′e′f′)diisoquinoline-1,3,8,10(2H,9H)-tetrone (C.I. Pigment Violet 29) as a colorant for polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: September 23, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–26651 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0825]

Dover Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dover Chemical Corp. has filed a petition proposing that the food additive regulations be amended to expand the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl)phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane, which may contain not more than 2 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4627) has been filed by Dover Chemical Corp., 3676 Davis Rd. NW., Dover, OH 44622. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to expand the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl)phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5] undecane, which may contain not more than 2 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer for polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 23, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–26644 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0823]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4628) has been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposes to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of 1-octene as an optional monomer in the preparation of polymers for use as resins in adhesives for articles used in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the 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.

Dated: September 23, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–26644 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 2, 1998, 9 a.m. to 6 p.m., and November 3, 1998, 8 a.m. to 5 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12397. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 2, 1998, the committee will discuss the compliance draft guidance entitled ''The Mammography Quality Standards Act Final Regulations.'' Single copies of the draft guidance document are available to the public by calling 1–800–899–0381 or 301–827–0111, and requesting Fact-on-Demand number 1259, or on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cdrh/dmqrp.html). On November 3, 1998, the committee will receive updates on the issues of States as certifying bodies under the Mammography Quality Standards Act (the MQSA), congressional reauthorization of the MQSA, and Voluntary Stereotactic Accreditation Programs.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 5, 1998. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on November 2, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 5, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 28, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–26645 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirements for opportunity for public comment on proposed data collection projects (section 3506(c) (2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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.

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms, OMB No. 0915–0126: Extension

The National Practitioner Data Bank (Data Bank) was established through Title IV of Pub. L. 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final Regulations governing the Data Bank are codified at 45 CFR Part 60. Responsibility for Data Bank implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (DHHS). The Data Bank began operation on September 1, 1990.

The intent of Title IV of Pub. L. 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior;

and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of the practitioners' previous damaging or incompetent performance.

The Data Bank acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, and adverse professional society actions is collected from, and disseminated to eligible entities. It is intended that Data Bank information should be considered with other relevant information in evaluating a practitioner's credentials.

This request is for an extension of reporting and querying forms previously approved in February 1996. The reporting forms and the request for information forms (query forms) may be accessed, completed, and submitted to the Data Bank electronically through the use of a program designated QPRAC 4 which is provided by the DHHS. The DHHS has developed a separate query form for practitioners making self-queries. This request also includes several administrative forms which have been developed since the last clearance.

The following estimates of burden are based on actual Data Bank operational experience:

Type of Activity—45 CFR 60.0	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Reporting:				
Reports Correcting Errors and Omissions—60.6(a)	1,600	1.06 .	25	424
Reports of Revision to Actions Previously Reported—60.6(b)	390	1.04	.75	304
Report of Medical Malpractice Payments—60.7(b)	525	27.3285	.75	14,347
Reports of Adverse Actions by State Medical and Dental Boards—60.8(b)	125	32.56	.75	3,053
Reports of Adverse Action Regarding Clinical Privileges and Professional Society Memberships—60.9(a)	3975	1.03	.75	753
Entity Hearings:				
Requests for Hearing by Entities—60.9(c)	[1] 1	1	8.0	8
Requests for Information Disclosure (Query):				
Queries by Hospitals for Practitioner Applications—60.10(a)(1)	6,000	40	[4] .083	19,920
Queries by Hospitals—Two Year Cycle—60.10(a)(2)	6,000	160	.083	79,680
Queries by Hospitals—Peer Review—60.11(a)(1)	[2]			
Queries by Practitioners (Self-Query)—60.11(a)(2)	60,000	1	.50	30,000
Queries by Licensure Boards—60.11(a)(3)	125	120	.083	1,245
Queries by Non-Hospital Health Care Entities—60.11(a)(4)	3,250	690	.083	186,128
Queries by Plaintiff's Attorneys—60.11(a)(5)	([3]) 1	1	.30	.5
Queries by Non-Hospital Health Care Entities—Peer Review—60.11(a)(6)	([3])			
Requests by Researchers for Aggregate Information—60.11(a)(7)	100	1	.50	50
Disputes:				
Practitioner Places a Dispute in His/Her Data Bank Report—60.14(b)	1,200	1	.5	600
Practitioner Places a Statement in His/Her Data Bank Report—60.14(b)	1,350	1	1.0	1,350
Practitioner Requests Review of the Disputed Report by The Secretary DHHS—60.14(b)	135	1	8.0	1,080
ADMINISTRATIVE FORMS USED IN OPERATING THE NATIONAL PRACTITIONER DATA BANK				
Entity Registration Form	150	1	1.0	150
Entity Registration Update Form	100	1	.25	25
Authorized Agent Designation Form	25	1	.25	6.25
Authorized Agent Designation Update	5	1	.083	.42
Account Discrepancy Report	200	1	.25	50
Electronic Transfer of Funds Authorization	25	1	.25	6.25
Entity Reactivation	50	1	.25	12.5
Total				339,193

[1] There have been no hearing requests from reporting entities since the opening of the Data Bank.
[2] We are unable to distinguish between these and other types of queries made by hospitals and other health care entities.
[3] There have been approximately 12 attorney requests since the opening of the Data Bank; of these, one has been granted.
[4] 5 minutes.

Send comments to Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1129; Written comments should be received within 60 days of this notice.

Dated: September 30, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–26738 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Progress Reports for Continuation Training Grants—0915–0061—Extension and Revision (Former Title "HRSA Noncompeting Training Grant Application")

The HRSA Noncompeting Training Grant Application (HRSA Form 6025–2) has been used in the past for the preparation and submission of continuation applications for Title VII and VIII health professions and nursing education and training programs. These continuation applications included general grantee information, a detailed budget and justification for the current budget year, a progress report, and other related information.

The HRSA Bureau of Health Professions has recently done a comprehensive review of grants management processes and made changes to streamline the processes for both grantees and Bureau staff. One of the changes resulted in replacing the requirement for submission of the continuation application with submission of a progress report with measurable objectives and outcome measures. Other information that was included in the application is either repetitious of information already contained in grants files or is not needed.

The progress report is needed to determine whether progress has been sufficient under the original project objectives to warrant continuation support. Grantees must demonstrate satisfactory progress or continuation awards cannot be made. Progress will be measured based on the objectives of the grant project, and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

The estimate of burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Grantees	625	1	20	12,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 30, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–26739 Filed 10–5–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, "Cardiovascular Health Study-Morbidity and Mortality Follow-up".

Date: October 26, 1998.

Time: 3:00 pm to 6:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A. Hunter, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Center, II, 6701 Rockledge Drive, Suite 7192, Bethesda, MD 20892–7924, (301) 435–0287.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Research Career Development Review.

Date: October 27, 1998.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Rockledge Building, II, 6701 Rockledge Drive, Suite 7204, Bethesda, MD C 7956, (301) 435–0299.

(Catalogue of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research; 93.233, National Center for Sleep Disorders Research, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26685 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name: National Heart, Lung, and Blood Institute Special Emphasis Panel, Open Artery Trial (OAT).

Date: October 26, 1998.

Time: 1:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: C. James Scheirer, PHD, Chief, Review Branch, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, (301) 435–0266.

(Catalogue of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research: 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research; 93.233, National Center for Sleep Disorders Research, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26686 Filed 10–5 –98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Genes, Aneuploidy and Mammalian Development.

Date: October 7–8, 1998.

Time: 8:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Omni Inner Harbor Hotel, 101 West Fayette Street, Baltimore, MD.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26681 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel

Date: October 22–23, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: New Hampshire Suites Hotel, 1121 New Hampshire Avenue, NW, Washington, DC 20037.

Contact Person: Alan Willard, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26682 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

Name of Committee: Naional Institute of Allergy and Infectious Diseases Special Emphasis Panel, Multicenter AIDS Cohort Study.

Date: October 15, 1998.

Time: 8:00 am to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Kevin W. Ryan, Phd, Scientific Review Program, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, room 4C12, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8694.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 1998.

LaVerne Y. Springfield,

Committee Management Officer, HIH.

[FR Doc. 98–26683 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Family and Child Well-Being Research Network.

Date: November 8–9, 1998.

Time: 6:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development National Institutes of Health, 6100 Executive Blvd., Room 5E01 Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26684 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8 J2.

Date: November 23–25, 1998.

Time: November 23, 1998, 7:00 pm to adjournment.

Agenda: To review and evaluate grant applications.

Place: Copley Marriott, 110 Huntington Avenue, Boston, MA 02116.

Contact Person: Roberta J. Haber, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26687 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB5–C2.

Date: November 9, 1998.

Time: 8:00 am to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Francisco O. Calvo, Phd, Chief, S.E.P Section, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, room 6AS–37E, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB6–J1.

Date: November 19–20, 1998.

Time: November 19, 1998, 8:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Neal A. Musto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26688 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nat Inst of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed in the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.
Date: October 22, 1998.
Closed: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Open: 5:30 pm to Adjournment.
Agenda: Grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Contact Person: Dan Matsumoto, Phd, Division of Extramural Affairs, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.
Date: October 22–23, 1998.
Open: October 22, 1998, 5:30 pm to Adjournment.
Agenda: Grant applications.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: October 23, 1998, 8:00 am to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.
Date: October 22–23, 1998.
Open: October 22, 1998, 5:30 pm to Adjournment.
Agenda: Grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Closed: October 23, 1998, 8:00 am to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.
Contact Person: Ann Hagan, Phd, Health Scientist Administrator, Health Scientist Administrator, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26689 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Ambient Particles & Cardiac Vulnerability in Humans.
Date: October 28–30, 1998.
Time: October 28, 1998, 7:00 pm to 10:00 pm.
Agenda: To review and evaluate grant applications.
Place: Fairmont Copley Plaza, 138 St James Avenue, Boston, MA 02116.
Time: October 29, 1998, 8:30 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Fairmont Copley Plaza, 138 St James Avenue, Boston, MA 02116.
Time: October 30, 1998, 8:30 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: Fairmont Copley Plaza, 138 St James Avenue, Boston, MA 02116.
Contact Person: David Brown, MPH, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26690 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Structure-Function Relationships of Environmentally Relevant Genetic Variants (RFA 98–007).
Date: October 18–20, 1998.
Time: October 18, 1998, 7:00 PM to 9:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIEHS, South Campus, Bldg 101, Conference Room-A, Research Triangle Park, NC 27709.
Time: October 19, 1998, 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIEHS, South Campus, Bldg 101, Conference Room-A, Research Triangle Park, NC 27709.
Time: October 20, 1998, 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIEHS, South Campus, Bldg 101, Conference Room-A, Research Triangle Park, NC 27709.
Contact Person: Patrick J Mastin, PHD, Scientific Review Administrator, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures, National Institutes of Health, HHS)

Dated: September 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–26691 Filed 10–5–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–17]

Notice of Proposed Information Collection: Comment Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: December 7, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Veronica Lewis, Office of Multifamily Housing Programs, telephone number (202) 708–0624, this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Statement of Profit and Loss.

OMB Control Number, if applicable: 2502–0052.

Description of the need for the information and proposed use: This form is used to collect information to calculate net profit and loss from operations on multifamily insured and Secretary- held projects. The Statement is submitted annually as a part of the audited financial statements.

Agency form numbers, if applicable: HUD–92410.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 16,296, frequency of responses is 1, and the hours of response is 1 hour per response.

Status of the proposed information collection: Reinstatement of previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 29, 1998.

Ira G. Peppercorn,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 98–26656 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–18]

Notice of Proposed Information Collection: Comment Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: December 7, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Natalia Yee, Single Family Insurance Operations Branch, telephone number (202) 708–2438, extension 3500 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Single Family Premium Collection Subsystem—Periodic (SFPCS–P).

OMB Control Number, if applicable:

Description of the need for the information and proposed use: The Mortgage Insurance Premium (MIP) detail is needed to determine if FHA has collected the required MIP for insured cases and to comply with the Credit Reform Act.

Agency form numbers, if applicable: None.

Members of affected public: Servicing Mortgagees.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 1,800, frequency of response is monthly, and the hours of response are 1–2 per response monthly.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 29, 1998.

Ira G. Peppercorn,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 98–26657 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–19]

Notice of Proposed Information Collection: Comment Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: December 7, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty Belin, Office of Accounting and Analysis Operations Center, telephone number (202) 401–2168, extension 2807 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Statement of Taxes.

OMB Control Number, if applicable: 2502–0418.

Description of the need for the information and proposed use: This form captures the required information HUD needs to create the mortgagor's real estate tax records. During the claims audit for insurance benefits, this form is used to verify the last taxes paid.

Agency form numbers, if applicable: HUD–434.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 250, frequency of responses is annually, and the hours of response is ½ hour per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 29, 1998.

Ira G. Peppercorn,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 98–26658 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–10]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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: December 7, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department of Housing and Urban Development (HUD) will submit to OMB the information collection requirements for the Base Closure Community Redevelopment and Homeless Assistance (Base Reuse Program), previously approved under OMB Control Number 2506–0154. The Base Closure Community Development and Homeless Assistance Act of 1994 (October 25, 1994), as amended by Pub. L. 104–106, February 10, 1996, created the Base Reuse Program to expand the supply of homeless assistance resources at base closure and realignment sites. Interim rules implementing the Act were published by both the Department of Defense (DoD) and HUD on August 8, 1995 and August 17, 1995 respectively and both Agencies published final rules on July 1, 1997 and July 11, 1997 respectively. Paperwork requirements for HUD's responsibilities were

approved under OMB Control Number 2506–0154. This notice is being submitted for an extension of the current OMB approved collection.

Title of Proposal: Base Closure Community Redevelopment and Homeless Assistance Program.

OMB Control Number, if applicable: 2506–0154.

Description of the need for the information and proposed use: The Base Reuse Program instituted a community-based process for assessing and addressing the needs of the homeless at base closure and redevelopment sites. In this process, Local Redevelopment Authorities (LRA's) assess community-wide needs and opportunities, conduct an outreach process to solicit and identify interest from homeless providers as well as State and local entities in obtaining a no cost public benefit conveyance of installation property and develop a base redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development must review the LRA's plan to assess the adequacy of the homeless assistance providers outreach process, and that an appropriate balance in meeting the needs of the homeless with other community development needs is achieved.

The base reuse planning process culminates in the submission of the officially approved base reuse plan to HUD which is composed of three elements: 1. the base redevelopment plan, 2) the homeless assistance component, and 3, the legally binding agreements which implement the no cost homeless assistance property conveyances.

It is for the purposes of making the statutory determinations, as indicated above, that a base redevelopment plan (composed of the three elements above) is required to be submitted by each LRA to HUD for review and approval. LRA's may not move further along in the base redevelopment process until HUD reviews and grants approval of the base redevelopment plan and homeless assistance component by officially transmitting that approval to both the appropriate Military Department (Army, Navy, Air Force or Marines) having jurisdiction over that particular installation and to the DoD's, Office of Economic Adjustment.

In the event that the HUD review determines that the LRA's application fails to meet the regulatory review criteria at 24 CFR 586.35(d)(1), the LRA will be advised of the deficiencies in it's application and will be required to revise and resubmit it's application within a specified time period.

We estimate that the recordkeeping and reporting burden hours for each individual respondent will remain largely unchanged from the previous OMB approval. While both the Act and HUD regulations implementing the base reuse act require that LRA's develop and submit a base redevelopment plan, HUD does not prescribe the format for the plan, as that is left up to the LRA's. HUD does, however, require that all the statutory and regulatory items be specifically addressed within the LRA's base redevelopment submission (base redevelopment plan, homeless assistance component and Legally Binding Agreements). Consistent with this, HUD does not require a specific format, or the use of specific HUD forms, for the submission of the base redevelopment plans. This paperwork burden request therefore omits any reference to forms or formats.

Agency form numbers, if applicable: None.

Members of affected public: States, units of local government, private nonprofit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of military installations that were covered under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act (BRAC 1995 and earlier years) was initially set at 102. During the intervening period a number of installations have submitted base redevelopment plans and have received approval. At this point approximately 45 installations have not completed their base redevelopment plan submissions. Our estimate of the total paperwork burden, in number of hours to prepare a base reuse plan submission, is 440 hours per installation.

Burden Hours per Each Complete Base Redevelopment Plan:

	Responses	Frequency	Hours per response	Burden hours
Notice of Interest (NOI's)	5	1	16	80
Section 586.20©(2) LRA Application	1	1	360	360
Total				440
Section 586.20©(5) LRA's Resubmission (two resubmissions estimated)	2	1	60	120
Total				120

The submission burden hours for all remaining installations is 45 × 440 = 19,800 hours. Plus the two resubmissions is 19,800 + 120 = 19,920 Total burden hours.

Upon completion of approval of these remaining 45 base redevelopment plans, we will have completed HUD's responsibility under this legislation and both the Act and HUD's regulations will reach sunset and the process will be concluded.

Status of the proposed information collection: Extension of Currently Approved Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 30, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–26748 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4361–N–03]

Super Notice of Funding Availability for National Competition Programs (National SuperNOFA); Technical Correction to Funding Competition for National Lead Hazard Awareness Campaign

AGENCY: Office of the Secretary, HUD.

ACTION: National SuperNOFA; Technical correction to funding competition for

National Lead Hazard Awareness Campaign.

SUMMARY: The purpose of this notice is to remove reference in the National Lead Hazard Awareness Campaign section of the National SuperNOFA to a minimum score of 80 points. This provision is not applicable to the National Lead Hazard Awareness Campaign and should have been omitted.

DATES: *Application Due Dates:* The application due date for the National Lead Hazard Awareness Campaign was July 7, 1998. There is no reopening of the competition as a result of this technical correction. No other changes are made to the funding competition for the National Lead Hazard Awareness Campaign.

FOR FURTHER INFORMATION CONTACT: For information concerning the National Lead Hazard Awareness Campaign, you may contact Dolline Hatchett, Community Outreach Officer, Office of Lead Hazard Control ((202) 755–1785) this is not a toll-free number). Individuals with speech and hearing impairments may access this telephone number via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 30, 1998 (63 FR 15490), HUD published its National SuperNOFA announcing the availability of approximately $5,050,000 in HUD National Competition Programs operated and managed by the following HUD Offices: Fair Housing and Equal Opportunity (FHEO), Housing, and Lead Hazard Control [FR–4361–N–01]. The purpose of this notice is to remove reference in the National Lead Hazard Awareness Campaign section of the National SuperNOFA to a minimum score of 80 points. The application period for the National Lead Hazard Awareness Campaign Program closed on July 7, 1998, and is not being reopened.

Section II(K) of the National Lead Hazard Awareness Campaign (NLHAC) section of the National SuperNOFA provided that for applicants to be funded they must have a score of 80 points or better (see 63 FR 23984, middle column). The minimum score criterion was inserted in an earlier draft of the NLHAC section of the National SuperNOFA and the intention of the section was to allow unsuccessful applicants to reapply under a reapplication process. The other two funding programs contained in the National SuperNOFA did not include a minimum score criterion nor a reapplication process. To promote consistency among the three programs included in the National SuperNOFA, the minimum score criterion was intended to be removed from the NLHAC section of the National SuperNOFA. The reapplication process was removed but the minimum score criterion was inadvertently retained.

Accordingly, this notice removes Section II(K) from the NLHAC section of the National SuperNOFA, and Section II(L), titled ''Definitions,'' is redesignated Section II(K).

Dated: September 30, 1998.

David E. Jacobs,

Director of the Office of Lead Hazard Control.

[FR Doc. 98–26749 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4400–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of Change in Debenture Interest Rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 1998, is 6¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 1998, is 6⅛ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, S.W., Room 6164, Washington, DC 20410. Telephone 708–1220 extension 2612, or TTY (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1998, is 6⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6⅛ percent for the 6-month period beginning July 1, 1998. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) with an insurance commitment or endorsement date (as applicable) within the last 6 months of 1998.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.

Effective interest rate	On or after	Prior to
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	Jan. 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	Jan. 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	Jan. 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	Jan. 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	July 1, 1995	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.

Section 221 (g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term *going Federal rate* is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 1998, is 6 1/4 percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1999.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: September 30, 1998.

Ira G. Peppercorn,

General Deputy Assistant Secretary for Housing.

[FR Doc. 98–26751 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4400–N–02]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Room B133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–7510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 204(c) and 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures, with a coupon rate of 6 percent or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, ''outstanding'' as of September 30, 1998. The date of the call is January 1, 1999.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgages for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1998. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1999, will be made automatically to the registered holder.

Dated: September 30, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing.

[FR Doc. 98–26750 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR–4298–N–03]

RIN 2502–AH09

Announcement of OMB Approval Number for Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market) and Renewal of Expiring Section 8 Project-Based Assistance Contracts

AGENCY: Office of the Secretary, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market) and the Renewal of Expiring Section 8 Project-Based Assistance Contracts.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 220410, telephone (202) 708–0574. This is not a toll-free number. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–80–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market) and the Renewal of Expiring Section 8 Project-Based Assistance Contracts. See 63 FR 48925, published on September 11, 1998, specifically 24 CFR 401.101, 401.102, 401.200, 401.202, 401.302. 401.403, 401.404, 401.405, 401.410, 401.421, 401.473, 401.480, 401.481, 401.500, 401.450, 401.451, 401.601, 401.602, 401.603, 401.651, 402.4 and 402.6.

The OMB approval number for this information collection is 2502–0537, which expired on February 28, 1998.

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.

Dated: September 30, 1998.

Camille E. Acevedo,

Assistance General Counsel for Regulations.

[FR Doc. 98–26654 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–31–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–09]

Loan Guarantee Recovery Fund Announcement of OMB Approval Number and Withdrawal of Request for Comment on Notice of Information Collection

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice announces the OMB approval number for HUD's Loan Guarantee Recovery Fund and withdraws a September 1, 1998 notice requesting public comments on information collection requirements for the Loan Guarantee Recovery Fund. The September 1, 1998 notice was published in error.

FOR FURTHER INFORMATION CONTACT: Tony Johnston, Deputy Director, Financial Management Division, Office of Block Grant Assistance, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1871. (This is not a toll-free number.) Hearing or speech impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 1, 1998 (63 FR 36253), HUD published a notice of proposed information collection requesting public comments for a period of 60 days on the information collection requirements for HUD's Loan Guarantee Recovery Fund. This notice was published in error. The solicitation of public comments on the information collection requirements for the Loan Guarantee Recovery Fund commenced with a notice published on April 4, 1997 (62 FR 16175).

This notice therefore withdraws the September 1, 1998 notice and also announces the OMB approval number for the Loan Guarantee Recovery Fund.

The OMB approval number for the Loan Guarantee Recovery Fund is 2506–0159, which expires on September 30, 2001.

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.

Dated: September 30, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–26655 Filed 10–5–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act

Notice of Intent to Negotiate a Contract Between the Central Utah Water Conservancy District and Department of the Interior for Prepayment of Costs Allocated to Municipal and Industrial Water From the Bonneville Unit of the Central Utah Project, UT

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Central Utah Water Conservancy District (CUWCD) and Department of the Interior (DOI) for prepayment of costs allocated to municipal and industrial water from the Bonneville Unit of the Central Utah Project , Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 210, as amended through Public Law 104–286, stipulates that: ''The Secretary shall allow for prepayment of the repayment contract between the United States and the Central Utah Water Conservancy District dated December 28, 1965, and supplemented on November 26, 1985, providing for repayment of municipal and industrial water delivery facilities for which repayment is provided pursuant to such contract, under terms and conditions similar to those contained in the supplemental contract that provided for the prepayment of the Jordan Aqueduct dated October 28, 1993. The prepayment may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid and may not be adjusted on the basis of the type of prepayment financing utilized by the District.'' In accordance with the above referenced legislation CUWCD intends to prepay the costs obligated under repayment contract No. 14–06–400–4286, as supplemented. This contract will provide for the second installment in a series of prepayments. The terms of the prepayment are to be publicly negotiated between CUWCD and DOI.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed R. Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov.

Dated: September 22, 1998.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 98–26680 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species Task Force's Ruffe Control Committee. The meeting is open to the public. Meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Ruffe Control Committee will meet from 1:00 p.m. on Wednesday, October 28, 1998, through noon on Thursday, October 29, 1998.

ADDRESSES: The meeting will be held at the Canal Park Inn Duluth—Lakeshore, 250 Canal Park Drive (at Lake Avenue and I–35), Duluth, Minnesota.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Chairman, Ruffe Control Committee, at 715–682–6185, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a public meeting of the Ruffe Control Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered will include: the status of existing ruffe populations, results of the 1998 ruffe surveillance

and the experimental ruffe population reduction in Chequamegon Bay; updates on the ballast water management initiatives, the Chicago ship and sanitary canal dispersal barrier, the bait fish management initiatives, public education activities, and ruffe research projects; and a discussion of the resilience fish communities to ruffe invasions.

Minutes of the meeting will be maintained by the Chair, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806–2427, and Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. They will be available for public inspection at these locations during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: September 18, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director—Fisheries.

[FR Doc. 98–26679 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 310 1310 03–2410]; OMB Approval Number 1004–0034

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On July 7, 1998, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (63 FR 36708) requesting comments on the collection. The comment period ended September 8, 1998. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0160), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW, Room 401 LS Bldg., Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Lease Transfers by Assignment or Operating Rights (Sublease).

OMB Approval Number: 1004–0034.

Abstract: Respondents supply information on forms, which are submitted by an applicant wishing to assign/transfer an interest in an oil and gas or geothermal lease.

Form Numbers: 3003–3 and 3000–3a.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: ½ hour each form.

Annual Responses: 60,000.

Annual Burden Hours: 30,000.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Dated: September 17, 1998.

Carole Smith,

Bureau Clearance Officer.

[FR Doc. 98–26741 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–00]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. On June 26, 1998, BLM published a notice in the **Federal Register** (63 FR 34918) requesting comments on this proposed collection. The comment period closed on August 25, 1998. BLM received no comments from the public in response to that notice.

OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made directly within 30 days to the Office of Management and Budget, Interior Desk Officer (1004–0133), Office of Information and Regulatory Affairs, Washington, DC 20403. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), Bureau of Land Management, 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments Requested: We specifically request your comments in the following areas:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Permit Fee Envelope, 36 CFR 71.

OMB Approval Number: 1004–0133.

Abstract: Respondents supply identifying information and data on the campsite number, dates camping, number in party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the BLM to determine if all users have paid the required fee, the number of users, and their State or origin.

Bureau Form Number: 1370–36.

Frequency: Once per campground visit.

Description of Respondents: Individuals desiring to use the campground.

Estimated Completion Time: 3 minutes per form.

Estimated Annual Responses: 190,000.

Annual Burden Hours: 9,500.
Bureau Clearance Officer: Carole Smith 202–452–0367.

Dated: August 25, 1998.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 98–26742 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication AA–9292, AA–9270 and AA–9296 Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation. The lands involved are in the vicinity of Nunivak, Alaska.

Serial No.	Approximate land description	Acreage
AA–9292	T. 1 S., R. 105 W.	146.2
AA–9270	T. 5 S., R. 98 W.	42.2
AA–9296	T. 1 S., R. 104 W.	63.6

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until November 5, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–26706 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P, AA–9239]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for approximately 29.7 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 1 S., R. 96 W.,
Sec. 25 and Sec. 26.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 5, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–26708 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–11774]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Koniag, Inc., Regional Native Corporation for approximately 2.5 acres. The lands involved are in the vicinity of Nakchamik Island, Alaska.

Seward Meridian, Alaska

T. 44 S., R. 54 W.,
Sec. 29.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 5, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–26707 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–1430–00; IDI–32740]

Mineral Interest Application, Idaho

AGENCY: Bureau of Land Management, Idaho.

ACTION: Application to purchase mineral interests owned by the United States, Bingham County, Idaho.

NOTICE: Notice is hereby given that an application to purchase the mineral interests owned by the United States on the following described lands was received by the Bureau of Land Management on July 30, 1998.

T. 1 S., R. 39 E., Boise Meridian
Section 18: NW¼SE¼.

40.00 Acres.

Publication of this notice segregates the mineral interests owned by the United States on the above described lands from appropriation under the

public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application, or two years from the date of filing the application, which ever occurs first.

Dated: September 25, 1998.

Jeff S. Steele,

Pocatello Area Manager.

[FR Doc. 98–26744 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Spruce Creek Access Proposal and Draft Environmental Impact Statement, Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice of Extension for the Spruce Creek Access Proposal, Draft Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) is preparing an environmental impact statement (EIS) to evaluate an application for access to a private inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve, as announced in the **Federal Register**/Vol. 63, No. 53/ Thursday, March 19, 1998. The owner of the inholding submitted an application for the right-of-way pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Title XI, Section 1110(b) and the implementing regulations at 43 CFR Part 36. The application states that the right-of-way would provide access in the form of a road and airstrip for the inholder to construct and operate a remote backcountry lodge. On January 7, 1998, the NPS accepted the application for access to a 20-acre parcel on Spruce Creek. The applicant amended the request for access on January 26, 1998, and is still submitting information required to process the right-of-way request.

Regulations at 43 CFR § 36.6(a)(2) require the lead agency to publish notification of an extension with reasons for the extension of a nine-month period to complete the draft EIS. The NPS conducted field surveys from June 1 to September 10, 1998, of wetlands and other environmental parameters to assist with descriptions and analyses of environmental consequences of the access request and a reasonable range of alternatives. Because of the project amendment, additional information needs and additional time needed to evaluate that information, the NPS is providing notice that an additional three months is required to complete the draft EIS.

DATES: The draft EIS will be available for public review by January 26, 1999. Three public scoping meetings were held as announced in the **Federal Register** of March 19, 1998. Public hearings on the draft EIS will be scheduled in the McKinley Park/Healy area, Fairbanks, and Anchorage, Alaska, and Washington, D.C. in February/ March of 1999.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755. Telephone (907) 683–2294.

Judith Gottlieb,

Acting Regional Director, Alaska Region.

[FR Doc. 98–26694 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili o Kaloko Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 10:00 a.m. to 2:00 p.m., October 24, 1998, at the ‘Aiopio area of Kaloko-Honokohau National Historical Park, Kailua-Kona, Hawaii. ‘Aiopio is located just north of Honokohau Boat Harbor.

Topics of discussion:

- Committee reports
- New trails
- Kaloko fish pond wall

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after November 15, 1998. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: September 21, 1998.

Thomas E. Fake,

Acting Superintendent, Pacific Islands Support Office.

[FR Doc. 98–26693 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on October 18–20, 1998, at The Westin Canal Place, 100 Rue Iberville, New Orleans, Louisiana. On October 18 and 19, the Board will tour units of the Jean Lafitte National Historical Park and Preserve.

On October 20, 1998, the Board meeting will convene at 9:00 a.m., and will adjourn at approximately 4:30 p.m. Following remarks by the Chairman, the Board will be addressed by the Deputy Director of the National Park Service, Denise Galvin. The Board will deliberate issues relating to natural resource management and the future growth of the National Park System. The Board will review National Historic Landmark nominations during the morning session.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda with the allotted time.

Any one who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Loran Fraser, Office of Policy, National Park Service, 1849 C Street, N.W. Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: September 24, 1998.

Robert Stanton,

Director, National Park Service.

[FR Doc. 98–26696 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 26, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 21, 1998.

Beth Savage,

Acting, Keeper of the National Register.

CALIFORNIA

Napa County

Scramsberg Vineyard, 1400 Scramsberg Rd., Calistoga vicinity, 98001251

San Diego County

Torrey Pines Park Road, Roughly the North/South Rd. within Torrey Pines State Reserve, San Diego vicinity, 98001248

COLORADO

Arapahoe County

Arapahoe Acres, Roughly bounded by W. Bates and Dartmouth Aves., and S. Marion and Franklin Sts., Englewood, 98001249

El Paso County

Eastholme, 4445 Haggerman Ave., Cascade, 98001250

FLORIDA

Hernando County

Jennings, William Sherman, House, 48 Olive St., Brooksville, 98001252

Okaloosa County

Camp Pinchot Historic District, Eglin Air Force Base, roughly E bank Garnier's Bayou, approx. 0.5 mi. N of Fort Walton Beach, Fort Walton Beach vicinity, 98001255

Eglin Field Historic District, Eglin Air Force Base, roughly bounded by Barranca, Choctawhatchee, Fourth, and ''F'' Aves., Fort Walton Beach vicinity, 98001254

Operation Crossbow Site, Address Restricted, Eglin Air Force Base, 98001256

Volusia County

City Island Ball Park (Daytona Beach MPS), City Island, across from Daytona Beach Business District, Daytona Beach, 98001253

ILLINOIS

Hardin County

Battery Rock (Caught in the Middle: The Civil War on the Lower Ohio River MPS), West Bank, River Mile 860, Ohio R., Cave-in-Rock vicinity, 98001257

IOWA

Black Hawk County

Marsh—Place Building, 627 Sycamore St., Waterloo, 98001272

Marshall County

Watson's Grocery, 106 Main St., State Center, 98001271

Polk County

Ainsworth, William W. and Elizabeth J., House (Towards a Greater Des Moines MPS) 1310 7th St., Des Moines, 98001275

Bartlett, Walter M., Double House (Towards a Greater Des Moines MPS), 1416–1418 6th Ave., Des Moines, 98001279

Burnstein—Malin Grocery (Towards a Greater Des Moines MPS), 1241 6th Ave., Des Moines, 98001277

Chaffee—Hunter House (Towards a Greater Des Moines MPS), 1821 8th St., Des Moines, 98001274

Goode, Lowry W., and Hattie N., First North Des Moines House (Towards a Greater Des Moines), 1813 7th St., Des Moines, 98001280

Haley, F.E., Double House (Towards a Greater Des Moines MPS), 1233–1235 7th St., Des Moines, 98001278

Home of Marshall's Horseradish (Towards a Greater Des Moines MPS), 1546 2nd Place, Des Moines, 98001285

Sargent's Garage (Towards a Greater Des Moines MPS), 510 College Ave., Des Moines, 98001276

Scheibe, Julius, Cottage (Towards a Greater Des Moines MPS), 815 College Ave., Des Moines, 98001281

Turner, Susie P., Double House (Towards a Greater Des Moines MPS), 1420–1422 8th St., Des Moines, 98001284

Weitz, Charles H. and Lena May, House (Towards a Greater Des Moines MPS), 1424 5th Ave., Des Moines, 98001282

Wherry Block (Towards a Greater Des Moines MPS), 1600–1602 6th Ave., Des Moines, 98001283

Scott County

Hotel Mississippi—RKO Orpheum Theater (Davenport MRA), 106 E. Third St., Davenport, 98001273

LOUISIANA

Concordia Parish

DePrato Mounds, Address Restricted, Ferriday vicinity, 98001258

MARYLAND

Carroll County

Mt. Pleasant, 200 W. Locust St., Union Bridge vicinity, 98001260

Shaffer, Jacob F., Farm, 4758 Schalk Road One, Millers vicinity, 98001259

Frederick County

Highland Ldge, 5519 Old National Pike, Frederick vicinity, 98001262

Prince George's County

Bowie Railroad Buildings, 8614 Chestnut Ave., Bowie, 98001261

Baltimore Independent City

Bagby Furniture Company Building, 509 S. Exeter St., Baltimore, 98001263

MISSOURI

St. Louis Independent City

Boatmen's Bank Building, 300 North Broadway, St. Louis, 98001265

NORTH CAROLINA

Perquimans County

Hertford Historic District, Roughly bounded by Perquimans R., W. Academy St., Hyde St., and Dobbs St., Hertford, 98001264

Wayne County

Mount Olive High School (Former), 100 Wooten St., Mount Olive, 98001266

VERMONT

Chittenden County

General Butler (shipwreck), Burlington Bay, Burlington, 98001269

O.J. WALKER (shipwreck), Burlington Bay, Burlington, 98001270

PHOENIX (Shipwreck), Colchester Shoal, Cochester Reef, Colchester, 98001268

Washington County

Socialist Labor Party Hall, 46 Granite St., Barre City, 98001267

A Request for a MOVE has been made for the following resources:

TEXAS

Galveston County

Breakers, The, TX 87 W. Of Gilchrist, Caplan, 98001225

[FR Doc. 98–26711 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Wild and Scenic Rivers System; Notice of Approval

SUMMARY: Pursuant to the authority granted the Secretary of the Interior by Section 2 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273), and upon proper application of the Governor of the State of North Carolina, an 81-mile segment of the Lumber River is hereby designated as a State-administered component of the National Wild and Scenic Rivers System. This action is based on the designation of the river by the State of North Carolina and the protection offered this river and its immediate environment by and

pursuant to applicable State laws and regulations.

FOR FURTHER INFORMATION CONTACT: Wallace Brittain, National Park Service, Southeast Region, Atlanta Federal Center, 1924 Building, 100 Alabama Street, S.W., Atlanta, Georgia, 30303; or telephone 404–562–3175.

SUPPLEMENTARY INFORMATION: On April 15, 1996, North Carolina Governor James Hunt petitioned the Secretary of the Interior to add a segment of the Lumber River to the National Wild and Scenic Rivers System. Section 2(a)(ii) of the Wild and Scenic Rivers Act allows a Governor to request that rivers already protected in a State System be included in the National System. In his application, Governor Hunt requested that 115 miles of the Lumber River be designated.

The responsibility for making determinations of eligibility has been delegated to the National Park Service. Requirements for the National Environmental Policy Act, Wild and Scenic Rivers Act, Clean Water Act, Endangered Species Act, Migratory Bird Conservation Act, National Preservation Act, all NPS directives, and all applicable executive orders were followed throughout this study. All existing and proposed river management plans have likewise complied with all provisions of relevant statutes, regulations, and executive orders.

A draft of the National Park Service's eligibility report and environmental assessment was released for a 45-day public review period beginning on April 6, 1998. The review period was extended 21 days; all comments postmarked by June 12, 1998, were considered timely. Twenty-three comments were received; all letters supported designation, none opposed.

The National Park Service found that 81 miles met the four criteria that a state-managed river must meet under the Act. These criteria are: (1) designation of the river into a State river protection system; (2) management of the river by a political subdivision of the State; (3) possession of eligibility criteria common to all national wild and scenic rivers, that is, the river is free-flowing and possesses one or more outstandingly remarkable values; (4) the existence of effective mechanisms and regulations to protect the Lumber River without Federal management.

Based on the recommendations of the National Park Service and a review of all relevant documents, I have determined that 81 miles of the Lumber River, from State Route 1412/1203 (River Mile 0) to the Scotland/Robeson County lines at the end of the Maxton Airport Swamp (approximately River Mile 22) and the reach of the Lumber River including the city of Lumberton (River Mile 56) to the North Carolina/South Carolina border (River Mile 115), be designated as parts of the National Wild and Scenic Rivers System. The portions of the 81 miles that flow through the city of Lumberton and the town of Fair Bluff are classified as Recreational; the rest is classified as Scenic.

Dated: September 25, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–26695 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Proposed Land Exchange: Alexandria Waterfront, Alexandria, Virginia

SUMMARY: Notice is hereby given that the National Park Service (NPS) is proposing to conduct an exchange of land interests with , a Delaware corporation, WATERFRONT I CORPORATION, A Delaware corporation, CORNERSTONE 99 CANAL, L.L.C., a Delaware limited liability company and CORNERSTONE 11 CANAL, L.O.C., a Delaware limited liability company, the owners of the TransPotomac Canal Center office park located in Alexandria, Virginia, (owners).

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: Public Law 90–401, enacted July 15, 1968, authorizes the Secretary of the Interior to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, and in exchange therefor he may convey to the grantor of such property or interest any Federally-owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal and which is located in the same State as the non-Federal property to be acquired. Such an exchange of land or interests therein must be conducted in accordance with all NPS Land Exchange Guidelines and provide the appropriate Congressional committees a 30-day period in which to examine the exchange proposal.

By virtue of a Deed dated April 18, 1983, and recorded among the Land Records of the City of Alexandria, Virginia, in Deed Book 1111, Page 1351, the United States acquired certain interests in real property located adjacent to the shoreline of the Potomac River in Alexandria, Virginia. The property is more particularly described as ''Parcel B'' in the aforementioned Deed, and is currently improved by four (4) commercial buildings which comprise the TransPotomac Canal Center office park located at Canal Center Plaza, Alexandria, Virginia. The interests in real property acquired by the United States restrict the future use of portions of the above referenced property. A particular restriction placed upon the property by the United States requires that 30,000 square feet of floor space within specified portions of the TransPotomac Canal Center office part be devoted to non-office uses. In requiring a portion of the property to be dedicated to non-office uses, the United States intended to create a lively and vibrant waterfront through the establishment of commercial enterprises that would attract the public to this segment of the waterfront.

However, throughout the ten (10) year history of the TransPortomac Canal Center office park, the owners have been unable to attain a profitable occupancy rate of that portion of their development which is subject to the use restrictions implemented by the United States. The local market conditions which have hampered the owners' efforts to attract and sustain non-office users to the TransPotomac Canal Center have also hindered the creation of a lively and vibrant waterfront to this portion of the Alexandria Waterfront as envisioned by the implementation of the Deed restrictions. Thus, until market conditions for attracting non-office users to the TransPotomac Canal Center improve, the owners are desirous of the United States relinquishing for a period of ten (10) years, its interests in restricting the use of 30,000 square feet of floor space to non-office uses. In return for the United States releasing the owners from the non-office use restriction for a period of ten (10) years, the owners have agreed to provide the United States with a leasehold interest for a term of ten (10) years, to run concurrently with the term for which the United States will relinquish its interests in restricting the use of a portion of the owners development, for the use and occupancy of approximately 3,300 square feet of retail/office space in 44 Canal Center Plaza, Alexandria, Virginia, together with reserved parking

for six (6) vehicles within the TransPotomac Canal Center parking garage.

The NPS has concluded that the proposed exchange of land interests will have no impact either directly or indirectly on natural or cultural resources associated with the waterfront of Alexandria, Virginia. Due to the nature of the land interests to be exchanged, the NPS concluded that a survey to determine the presence of contamination was not required. The NPS has also determined that the 10-year leasehold interest the owners will convey to the United States in addition to the owners' agreement to provide continued support to promote a lively and vibrant waterfront through the sponsorship of certain public events and to actively engage in marketing the designated non-office space for lease by non-office users are approximately equal in value to that of the United States' 10-year relinquishment of certain restrictions currently imposed upon a portion of the owners property and as such will not require an appraisal of the interests in land to be exchange.

Detailed information concerning this proposed exchange is available from the Land Resources program Center National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

For a period of 45 calender days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the NPS.

Dated: September 28, 1998.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 98–26697 Filed 10–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; COPS MORE '96 28 CFR Part 23 Certification.

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. The 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 June 2, 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 November 5, 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. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. 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/or 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 previously approved collection.

(2) *The title of the form/collection:* Survey Protocol: COPS MORE '96 28 CFR Part 23 Certification.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* COPS 25/01. Office of Community Oriented Policing Services, United States 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 Government.

Other: none. This information collection is necessary to establish that each grantee that has received funding under the COPS MORE '96 grant program is either in compliance with the operating principles set forth in 28 CFR 23.20 or that the regulation is not applicable.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 1,100 respondents to complete the surveys is 5 hours and 10 minutes per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete application for the COPS MORE '96 28 CFR part 23 Certification is 5,518 annual burden hours.

If additional information is required contact: Ms. Brenda 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: September 30, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26652 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Universal Hiring Grant Program application.

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 1994. The Office of Management and Budget approval is being sought for the information collection listed below. This proposal information collection was previously published in the **Federal Register** on June 19, 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 November 5, 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. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. 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/or 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:* Reinstatement without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Universal Hiring Grant Program application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: none. Office of Community Oriented Policing Services, United States 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 Government,

Other: none. Universal Hiring Grant Program will support local law enforcement agencies in providing funding for new community police officers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 3,200 respondents at 5.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,600 annual burden hours.

Public comment on the proposed information collection is strongly encouraged. If additional information is required contact: Ms. Brenda 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: September 30, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26719 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency extension of existing collection; Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995 to provide for the required period of public review and comment and the subsequent 30-day time period for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 29, 1999.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 7, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Telephone Verification System (TVS), Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. SAVE Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information will be used by the INS to determine the number of non-citizen employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone Verification System are various employers throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 276,000 queries at approximately 7 minutes per response; and 1,000 employers responding to MOU at approximately 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,516 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact

Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, 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: September 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26730 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Emergency Extension of Existing Collection; Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995 to provide for the required period of public review and comment and the subsequent 30-day time period for OMB's review and final action. To ensure that the review process is conducted in accordance with the procedures specified in 5 CFR 1320.10, the INS is also requesting an extension of the current OMB approval period until January 29, 1999.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 7, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Telephone Verification System (TVS), Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) *Agency form number, if any, and the application component of the Department of Justice sponsoring the collection:* No Agency Form Number. SAVE Branch, Immigration and Naturalization Service.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This information will be used by the INS to determine the number of non-citizen employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone Verification System are various employers throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 276,000 queries at approximately 7 minutes per response; and 1,000 employers responding to MOU at approximately 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 33,516 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, 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: September 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26757 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Canadian Border Boat Landing Permit.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to he Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40318, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items 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: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Canadian Border Boat Landing Permit.

(3) *Agency form number, if any, and the applicable component to the Department of Justice sponsoring the collection:* Form I–68. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 235 of the INA provides for the inspection of persons entering the United States from Canada by small craft to be inspected only once during the navigational season, rather than each time they enter.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 68,000 responses at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,288 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(as) contained in this notice, especially regarding the estimated public burden and associated response tome may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United Stats Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26731 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Certification by Designated School Official.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 29, 1998 at 63 FR 40544, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items 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: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–538. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the INS to collection information from non-immigrant students applying for an extension for the length of time of their legal status in the United States as a non-immigrant student while transferring from one school to another and permission to accept or continue employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 165,000 responses at 4 minutes (.066) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,890 annual burden hours.

In you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW,

Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, 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: September 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26732 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Alien Crewman Landing Permit.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40318, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items 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: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Alien Crewman Landing Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–95 A&B, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the INS in compliance with Sections 251 and 252 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433,000 responses at 5 minutes (.083) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,939 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, 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: September 30, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–26733 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Alien Change of Address Card.

The Department of Justice Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** in July 9, 1998 at 63 FR 37143, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 5, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items 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: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Alien Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form AR–11. Records Operations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 265 of the Immigration and Nationality Act requires aliens in the United States to inform the Immigration and Naturalization Service of any change of address. This form provides a standardized format for compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 5 minutes (.083) hours per response.

(6) *An estimate of the total burden (in hours) associated with the collection:* 20,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. 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: September 30, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26756 Filed 10–5–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94–409)

I, Michael J. Gaines, Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately nine-thirty a.m. on Thursday, October 1, 1998, at 5550 Friendship Boulevard, Chevy chase, Maryland 20815. The purpose of the meeting was to decide four appeals from the National Commissioners' decisions pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Michael J. Gaines, Edward F. Reilly, Jr., and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 1, 1998.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 98–26839 Filed 10–2–98; 11:01 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Pension Benefit Guaranty Corporation; Submission for OMB Review; Comment Request

The Department of Labor (DOL) and the Pension Benefit Guaranty Corporation (PBGC) have submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Todd R. Owen at (202) 219–5096, ext. 143 or by E-Mail at Owen-Todd@dol.gov. Individuals who use a telecommunication device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern Time, Monday–Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Desk Officer for Pension and Welfare Benefits Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316) within 30 days of the date of this publication in the **Federal Register**.

OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Description: Under part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) Title IV of ERISA, and the Internal Revenue Code of 1986, as amended, administrators of pension and welfare benefit plans (collectively employee benefit plans) subject to those provisions, and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, are required to file returns/reports annually concerning the financial condition and operations of the plans. These reporting requirements are satisfied generally by filing the Form 5500 Series in accordance with its instructions and the related regulations. This ICR is for the 1998 Form 5500

Series, which does not differ materially from the 1997 Form 5500 Series. The ICR for the existing Form 5500 Series is approved under OMB Number 1210–0016 (PWBA). PBGC's ICR for the Form 5500 Series was previously approved under OMB Number 1212–0026. The International Revenue Service's (IRS) approval for the existing Form 5500 Series (OMB Number 1545–0710) does not expire until December 31, 1998 and the IRS's request for extension of its approval for the existing Form 5500 Series will be made separately. The Agencies have developed a revised Form 5500 for use beginning with plan years commencing in 1999. The 1999 Form 5500 has been approved under OMB numbers 1210–0110 (PWBA), 1545–1610 (IRS) and 1212–0057 (PBGC). Accordingly, the 1998 Form 5500 Series will be the last year for which the existing Form 5500 Series is used.

Agencies: Department of Labor, Pension and Welfare Benefits Administration; Pension Benefit Guaranty Corporation.

Title: Form 5500 Series.

Form Number: Form 5500, Form 5500–C/R and Schedules.

OMB Number: 1210–0016; 1212–0026.

Frequency: Annually.

Affected Public: Individuals or households; business or other for-profit; Not-for profit institutions.

Total Respondents: 816,709 (PWBA); 45,000 (PBGC).

Total Responses: 816,709 (PWBA); 45,000 (PBGC).

In a previous Notice published in the **Federal Register** on September 3, 1997, the Agencies requested comments on the burden hour estimates and the methodologies used to estimate burden for preparing and filing the Form 5500, and received comments generally indicating that the estimates were too low. In response to those comments the Agencies are conducting a study of the burden estimation methodologies for the purpose of developing a revised methodology. This ICR includes revised burden estimates, based on the preliminary results of that study, for PWBA's share and PBGC's share of the total 1998 Form 5500 burden. A description of the study and the revised burden estimates is included in the ICR submitted to OMB.

Estimated Burden Hours, Total Annual Burden: 1,752,874 hours (PWBA); 5,600 hours (PBGC).

Total annual cost (operating and maintenance): $459 million (PWBA); $3 million (PBGC).

Dated: October 1, 1998.

Todd R. Owen,

Departmental Clearance Officer, Department of Labor.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–26797 Filed 10–5–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10288, et al.]

Proposed Exemptions; Salomon Brothers Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Salomon Brothers Inc., Located in New York, New York

[Application No. D–10288]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, including options on securities, between certain affiliates of Salomon Brothers Inc. (Salomon Bros.) which are foreign broker-dealers or banks (the Foreign

Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings)[1] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least;

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent

[1] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (S.E.C.) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E to determine whether the conditions of the exemption have been met, except that —

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period;

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph (d) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) the Department, the Internal Revenue Service, or the S.E.C.; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''affiliate'' of another person shall include: (1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term ''Foreign Affiliate'' shall mean an affiliate of Salomon Brothers Inc. that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; or (4) the Ministry of Finance and the Tokyo Stock Exchange in Japan;

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of June 7, 1996.

Summary of Facts and Representations

1. Salomon Bros., a broker-dealer registered with the S.E.C., is a full-line investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Salomon Bros. is one of the largest investment services firms in the United States. Salomon Inc., the parent corporation of Salomon Bros., had approximately $194.88 billion in assets and $4.86 billion in stockholders' equity, as of December 31, 1996.

On November 28, 1997, Salomon Inc., merged with a wholly owned subsidiary of Travelers Group Inc. (Travelers). Travelers, a diversified financial services holding company, had approximately $387 billion in assets and $21 billion in stockholders' equity at the time of the merger. Salomon Inc. was the surviving corporation of this merger and was renamed Salomon Smith Barney Holdings Inc. (Salomon Smith Barney). Immediately thereafter, Smith Barney Holdings Inc., another wholly owned subsidiary of Travelers, was merged into Salomon Smith Barney.

Salomon Bros., which will be merged in the future with another Smith Barney affiliate of Travelers, has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (i.e., the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) Salomon Bros. Canada Inc., located in Toronto, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization.

(b) Salomon Bros. U.K. Limited, Salomon Bros. U.K. Equity Limited, and Salomon Bros. International Limited, all located in London, are subject to

regulation in the United Kingdom by the Securities and Futures Authority.

(c) Salomon Bros. AG, located in Frankfurt, is subject to regulation in Germany by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (i.e., the BAK).

(d) Salomon Bros. Asia Limited branch, located in Tokyo, is subject to regulation in Japan by the Ministry of Finance and the Tokyo Stock Exchange.

Salomon Bros. requests an individual exemption to permit the Foreign Affiliates identified above, as well as those others who, in the future, may be subject to governmental regulation in Canada, the United Kingdom, Germany, or Japan, to engage in the securities transactions described below with employee benefit plans (i.e., the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

2. Salomon Bros. represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country. Salomon Bros. further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the S.E.C. under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the S.E.C. share a common objective: the protection of the investor by the regulation of securities markets.

Canada, the United Kingdom, and Japan all have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Salomon Bros. AG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Salomon Bros. AG, and its branches in Tokyo and Milan, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Salomon Bros. AG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

Salomon Bros. represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Paragraph 6, below), and S.E.C. interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Salomon Bros. represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Salomon Bros. represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Salomon Bros. requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75–1 (PTCE 75–1, 40 FR 50845, October 31, 1975), Part II.[2] Salomon Bros. states that because PTCE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at issue would fall outside the scope of relief provided by PTCE 75–1.[3]

4. Salomon Bros. represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTCE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Salomon Bros. represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration

[2] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I in the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[3] PTCE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''U.S. major institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million. Salomon Bros. represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Salomon Bros. represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the S.E.C. or a self-regulatory organization;

(b) Provide the S.E.C. with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the S.E.C. requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major institutional investors are effected, among other things, for:

(1) effecting the transactions, other than negotiating their terms;

(2) issuing all required confirmations and statements;

(3) as between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[4]

(5) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act; and

(6) Participating in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor, other than a U.S. major institutional investor.

Extensions of Credit

7. Salomon Bros. represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Salomon Bros. requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTCE 75–1, Part V, only for transactions between plans and U.S. registered broker-dealers and U.S. banks.[5]

8. Under the conditions of this proposed exemption, as in PTCE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTCE 75–1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Salomon Bros. requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 81–6 (PTCE 81–6, 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987).[6] Because PTCE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTCE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Salomon Bros. represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of

[4] Salomon Bros. represents that all such requirements relating to record-keeping of principal transactions would be applicable to any Foreign Affiliate in a transaction that would be covered by this proposed exemption.

[5] PTCE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

[6] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to U.S. registered broker-dealers and U.S. banks that are parties in interest with respect to such plans.

return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate as determined in accordance with an independent market source. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act[7] and the regulations promulgated under 29 CFR 2550.404(b)–1.

20. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign

[7] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTCE 75–1 and PTCE 81–6.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Citizens Bank New Hampshire Located in Manchester, New Hampshire

[Application No. D–10352]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfers of CIF Assets

If this exemption is granted, the restrictions of sections 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective October 11, 1996, to the past in-kind transfer of assets of employee benefit plans (the Client Plans) for which Citizens Bank New Hampshire (the Bank) serves as fiduciary, other than plans established and maintained by the Bank, that are held in a portfolio of a collective investment fund maintained by the Bank (the CIF), in exchange for shares of the Berger/BIAM International Institutional Fund (the B/B Fund), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), the investment adviser and investment sub-adviser of which are BBOI Worldwide LLC (BBOI) and Bank of Ireland Asset Management Limited (BIAM), respectively, which are related to the Bank; provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions or other fees were paid by the Client Plans in connection with the purchase of B/B Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) Each Client Plan received shares of the B/B Fund which had a total net asset value that is equal to the value of the Client Plans' pro rata share of the assets of the CIF on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day, using an independent source in accordance with Rule 17a–7(b) issued by the Securities and Exchange Commission under the 1940 Act and the procedures established by the B/B Fund pursuant to Rule 17a–7(b) for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on the current market value of the assets of the CIF, as objectively determined by an independent principal pricing service (the Principal Pricing Service).

(C) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) received advance written notice of the in-kind transfer of assets of the CIF and full written disclosure of information concerning the B/B Fund and, on the basis of such information, authorized in writing the in-kind transfer of the Client Plan's CIF assets to the B/B Fund in exchange for shares of the B/B Fund. The full written disclosure referred to in this paragraph (C) of Section I included the following information:

(1) A current prospectus for the B/B Fund;

(2) A description of the fees for investment advisory or similar services that are to be paid (directly or indirectly) by the B/B Fund to BBOI and BIAM, the fees paid to the Bank for Secondary Services, as defined in Section IV below, and all other fees to be charged to or paid by the Client Plan and the B/B Fund directly or indirectly to BBOI, BIAM, the Bank, or unrelated third parties, including the nature and extent of any differential between the rates of the fees;

(3) The reasons for the Bank's determination that the Client Plan's investment in the B/B Fund is appropriate;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of the Client Plan may be invested in the B/B Fund and, if so, the nature of such limitations;

(D) On the basis of the information described in paragraph (C) of this Section III, the Second Fiduciary authorized in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by the Advisers in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary is consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(D) The Bank sent by regular mail to the Second Fiduciary no later than 150 days after the completion of the transfer a written confirmation that contained the following information:

(a) the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(b) the price of each such security involved in the transaction;

(c) the identity of the pricing service consulted in determining the value of such securities;

(d) the number of CIF units held by the Client Plan immediately before the transfer, the related per-unit value, and the total dollar amount of such CIF units; and

(e) the numbers of shares in the B/B Fund that are held by the Client Plan following the transfer, the related per-share net asset value, and the total dollar amount of such shares.

(E) The Bank did not and will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(F) On an ongoing basis, for the duration of a Client Plan's investment in the B/B Fund, the Bank provides the Second Fiduciary with the following information:

(1) At least annually, a copy of an updated prospectus of the B/B Fund; and

(2) Upon request, a report or statement containing a description of all fees paid to the Bank, BBOI, BIAM, and their affiliates by the B/B Fund and the Berger/BIAM International Portfolio, the master fund with respect to the B/B Fund pursuant to a ''master/feeder'' structure.

(G) Neither the Bank nor the Advisers nor any affiliate thereof, including any officer or director thereof, purchases shares of the B/B Fund from any of the Client Plans for its own account or sells shares of the B/B Fund to any of the Client Plans from its own account.

(H) The requirements of Section II of this exemption are met with respect to all arrangements under which investment advisory fees are paid by Client Plans to the Bank and any other party in interest with respect to the Client Plans in connection with Client Plan assets invested in the B/B Fund.

Section II—Exemption for Receipt of Fees from Funds

The restrictions of section 406(a) of the Act and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code, shall not apply, effective October 11, 1996, to the receipt of fees from the B/B Fund and/or the B/B Portfolio by the Bank, BBOI Worldwide LLC (BBOI) and Bank of Ireland Asset Management (U.S.) Limited (BIAM; collectively, the Advisers) for acting as the investment adviser, subadviser, custodian, subadministrator, or provider of other services which are not investment advisory services (Secondary Services) for the B/B Fund in connection with the investment in the B/B Fund by employee benefit plans (the Client Plans) for which the Bank acts as a fiduciary, provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the B/B Fund and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) The price paid or received by the Client Plans for shares in the B/B Fund is the net asset value per share, as defined in paragraph (E) of Section IV, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time;

(C) Neither the Advisers nor the Bank nor an affiliate thereof, including any officer or director thereof, purchases from or sells to any of the Client Plans shares of the B/B Fund or the B/B Portfolio;

(D) As to each individual Plan, the combined total of all fees received by the Advisers for the provision of services to the Plan, and in connection with the provision of services to the B/B Fund and the B/B Portfolio with respect to the Plan's investment in the B/B Fund, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act;

(E) The Advisers do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions;

(F) The Client Plans are not sponsored by the Advisers;

(G) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Advisers, as defined in paragraph (H) of Section IV below, receives in advance of the investment by the Plan in the B/B Fund a full and detailed written disclosure of information concerning the B/B Fund (including, but not limited to, a current prospectus for the B/B Fund in which such Plan's assets will be invested and a statement describing the fee structure and, upon request by the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents become available);

(H) On the basis of the information described in paragraph (G) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by the Advisers in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(I) The authorization described in paragraph (H) of this Section II is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption;

(J) Client Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of the B/B Fund. This condition does not preclude the payment of investment advisory fees or similar fees by the B/B Fund or the B/B Portfolio to the Advisers under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act or other agreement between the Advisers and the B/B Fund or the B/B Portfolio;

(K) In the event of an increase in the rate of any fees paid by the B/B Fund or the B/B Portfolio to any of the Advisers regarding any investment management services, investment advisory services, or fees for other services that any of the Advisers provide to the B/B Fund or the B/B Portfolio over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (H) of this Section II, the Second Fiduciary is provided, at least 30 days in advance of the implementation of such increase, a written notice (which may take the form of a proxy statement, letter or similar communication that is separate from the prospectus of the B/B Fund and which explains the nature and amount of the increase in fees), and approves in writing the continued holding of B/B Fund shares acquired prior to such change (Such approval may be limited solely to the investment advisory and other fees paid by the BB/Fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment);

(L) With respect to the B/B Fund, the Bank will provide the Second Fiduciary of each Plan:

(a) At least annually with a copy of an updated prospectus of the B/B Fund and the B/B Portfolio; and

(b) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the B/B Fund and the B/B Portfolio to the Advisers;

(M) All dealings between the Client Plans and the B/B Fund are on a basis no less favorable to such Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

Section III—General Conditions

(A) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (B) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (B) below.

(B)(1) Except as provided in paragraph (B)(2) and notwithstanding

any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (A) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the B/B Fund owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (B)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Advisers, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(A)(1) The term ''Bank'' means Citizens Bank New Hampshire;

(2) The term ''BIAM'' means Bank of Ireland Asset Management;

(3) The term ''BBOI'' means BBOI Worldwide LLC;

(B) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(C) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(D)(1) The terms ''Fund'' and ''B/B Fund'' mean the Berger/BIAM International Institutional Fund, an open-end investment company registered under the 1940 Act, one of a series of investment portfolios which are distinct investment vehicles referred to as ''feeder'' funds, with respect to which BBOI and BIAM may provide Secondary Services.

(2) The terms ''Portfolio'' and ''B/B Portfolio'' mean the Berger/BIAM International Portfolio, an open-end investment company registered under the 1940 Act, the master fund with respect to the B/B Fund pursuant to a ''master/feeder'' arrangement, with respect to which BBOI and BIAM serve as investment adviser and investment sub-adviser, respectively.

(E) The term ''net asset value'' means the amount for purposes of pricing all purchases, sales and redemptions of shares of the Berger/BIAM International Institutional Fund (the B/B Fund) calculated by dividing the total value of such Fund's assets, determined by a method set forth in the B/B Fund's prospectus and statement of additional information, less the liabilities chargeable to the B/B Fund, by the number of outstanding shares.

(F) The term ''Principal Pricing Service'' means an independent, recognized pricing service that has determined the aggregate dollar value of marketable securities involved in the transfer of CIF assets.

(G) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(H) The term ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to the Bank, BIAM and BBOI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank, BIAM and BBOI if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank, BIAM or BBOI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner or employee of the Bank, BIAM or BBOI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner or employee of the Bank, BIAM or BBOI (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of a Plan's investment adviser, the approval of any such purchase or sale between a Plan and the B/B Fund, the approval of any change of fees charged to or paid by the Plan, the B/B Fund or the B/B Portfolio, and the transactions described in Sections I and II above, then paragraph (H)(2) of this section shall not apply.

(I) The term ''Secondary Service'' means a service, other than investment advisory or similar service, which is provided by the Bank, BIAM or BBOI to the B/B Fund.

EFFECTIVE DATE: This exemption, if granted, will be effective as of October 11, 1996.

Summary of Facts and Representations

1. The Bank, formerly named First NH Bank and the successor by merger to First NH Investment Services Corp., is a New Hampshire guaranty savings bank with its principal offices in Manchester, New Hampshire. The Bank is wholly owned by Citizens Financial Group, Inc., which is 23½ percent owned by the Bank of Ireland (BI), a publicly traded, diversified financial services group managing assets in excess of $16 billion worldwide. The Bank represents that it serves a number of employee benefit plan clients (the Plans) in the capacity of trustee, investment adviser, and/or custodian. At least a portion of the assets of the Plans are invested in the NH Pooled Employee Benefit Trust (the CIF), a collective investment fund organized as a group trust pursuant to Internal Revenue Service Revenue Ruling 81–100 (1981–1 C.B. 326) established and trusteed by the Bank. One of the investment portfolios of the CIF is the First International Equity Fund (the FIEF Portfolio), which is the subject of this proposed exemption. As of August 31, 1996, the Bank had approximately $6 million of Plans assets under management in the FIEF Portfolio. The Bank is the investment adviser of the FIEF Portfolio, and the sub-adviser is Bank of Ireland Asset Management (U.S.) Limited (BIAM), which is a second-tier subsidiary of BI.

2. The Bank represents that in some cases it has full or joint investment discretion over the assets of a Plan, and in other cases the Plan's participants direct the Bank as to which portfolios in the CIF their accounts are to be invested in. With respect to some Plans for which the Bank holds investment discretion, the Bank has chosen to invest a portion of such Plans' assets in the FIEF Portfolio. With respect to Plans providing for participant-directed investment of individual accounts, some participants in the Plans have chosen to direct the Bank to invest a portion of their accounts in the FIEF Portfolio. The Bank states that in either case it is more than merely a nondiscretionary fiduciary of the Plan since it has responsibility for the management of the Plan's assets that are invested in the FIEF Portfolio (hereinafter, Plans with assets invested in the FIEF Portfolio are referred to as Client Plans). As investment sub-adviser to the FIEF

Portfolio, BIAM is also a fiduciary with respect to Client Plans.

3. The B/B Fund is the Berger/BIAM International Institutional Fund, a no-load, open-end management investment company organized as a diversified series of a trust known as the Berger/BIAM Worldwide Funds Trust. The B/B Fund invests all of its assets which are available for investment in the Berger/BIAM International Portfolio (the B/B Portfolio) as part of a so-called ''master-feeder'' structure, under which the B/B Portfolio is the master fund and the B/B Fund is the feeder fund. The B/B Portfolio is an open-end management investment company organized as a diversified series of a trust known as the Berger/BIAM Worldwide Portfolios Trust. The investment adviser of the B/B Portfolio is BBOI Worldwide LLC, which is 50 percent owned by a wholly-owned subsidiary of BI. The investment sub-adviser of the B/B Portfolio is Bank of Ireland Asset Management (BIAM), a wholly-owned subsidiary of BI.[8]

4. The Bank represents that it determined in 1996 to convert the FIEF Portfolio into shares of the B/B Fund. In this regard, on October 11, 1996, the Bank accomplished this conversion by means of the in-kind transfer of Client Plans' assets to the B/B Fund in exchange for the Client Plans' receipt of shares of the B/B Fund. The Bank represents that it determined to cause the Client Plans to transfer securities to the B/B Fund, rather than cash, in order to avoid the additional costs and risks to the Client Plans of disposing of and reacquiring securities through the open securities markets. For this past in-kind transfer of Client Plans' assets to the B/B Fund in exchange for shares of the B/B Fund, the Bank is requesting an exemption under the terms and conditions described herein.

5. The Bank represents that the Client Plans consist of pension and profit-sharing plans, including plans with cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986, as amended (the Code), and that some of the Client Plans are participant-directed individual account plans. The Bank states that as a custodian or participant-directed trustee of a plan, it has custody of the plan's assets and is responsible for collecting all income, performing bookkeeping and accounting, generating periodic statements of account activity and other reports, and making payments or distributions from the plan as directed. When serving as a custodian or directed trustee, the Bank represents that it has no investment discretion over the assets involved and no duty to review investments or make investment recommendations, acting only as directed by plan participants. However, some participants in such plans have directed the Bank to invest at least a portion of their accounts in the FIEF Portfolio. With respect to these Client Plans, the Bank is a fiduciary with investment discretion over plan assets to the extent the Bank is investment adviser of the FIEF Portfolio. With respect to plans for which the Bank serves as a discretionary trustee or investment manager, the Bank represents that it generally invests the assets of such plans in the CIF, and within the CIF, the Bank invests some of the assets of such plans in the FIEF Portfolio.

6. The Bank represents that it determined that it would be in the best interests and protective of the participants and beneficiaries of the Client Plans to convert such Plans' interests in the FIEF Portfolio entirely to shares of the B/B Fund for the following reasons:

(a) As an open-end investment management company, the B/B Fund's registration with the SEC requires greater participant disclosure than that required by bank regulators and provides an enhanced mechanism for review of disclosure documentation;

(b) Sponsors and directing participants of Client Plans will be able to monitor more easily the performance of their investment since it is anticipated that information concerning the investment performance of the B/B Fund will be available in daily newspapers of general circulation, upon the achievement of certain size requirements;

(c) The B/B Fund will be valued on a daily basis, whereas the FIEF Portfolio has been valued only monthly. The daily valuation permits (i) immediate investment of Plan contributions in the B/B Fund, (ii) greater flexibility in transferring assets from the B/B Fund to another type of investment, and (iii) daily redemption of investments in the B/B Fund for purposes of making distributions; and

(d) Unlike investments in the FIEF Portfolio, shares of the B/B Fund can be given directly to plan participants in benefit distributions, thus avoiding the expense and delay of liquidating plan investments and facilitating rollovers into individual retirement accounts.

7. The Bank represents that the securities held in the FIEF Portfolio on behalf of the Client Plans were transferred to the B/B Fund in kind in order to preserve the values of the Client Plans' interests in the FIEF Portfolio and to avoid potentially large transaction costs and market risks that would be incurred by the Client Plans in a total liquidation of the securities and by the B/B Fund in reacquisition of the securities in the open market. The Bank states that the conversion of the FIEF Portfolio occurred as follows: After receipt of the appropriate approvals, discussed below, the Bank transferred the FIEF Portfolio assets to the B/B Fund, pursuant to an asset transfer procedure discussed below, and, in exchange, the B/B Fund transferred to the FIEF Portfolio an appropriate number of shares of the B/B Fund. The Bank represents that these B/B Fund shares had an aggregate value equal to the aggregate value of the assets of the FIEF Portfolio that were transferred. After the transfer, the Bank dissolved the FIEF Portfolio and distributed the newly-acquired B/B Fund shares pro rata to the Client Plans.

8. Prior to the conversion of the FIEF Portfolio into shares of the B/B Fund, the Bank obtained the affirmative written approval of an independent second fiduciary of each Invested Plan (the Second Fiduciary), who generally was the Plan's named fiduciary, trustee (other than the Bank), or sponsoring employer. The Bank provided each Second Fiduciary with a prospectus for the B/B Fund and a written statement giving full disclosure of the information required under Prohibited Transaction Class Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977), including an explanation of why the Bank believed that the investment of a portion of the assets of the Plan in the B/B Fund was appropriate. On the basis of such information, the proposed conversion of the Plan's investment in the FIEF Portfolio to investment in the B/B Fund

[8] The Bank represents that a master-feeder structure is a two-tiered fund structure in which all the assets of two or more feeder funds are invested in a single master fund, which has an identical investment objective and identical policies and limitations as the investing feeder funds. Shares of the feeder funds are offered to investors in the target market for which the feeder fund and its fee structure are designed (for example, the retail market or the institutional market). Interests in the master fund are sold only to feeder funds. Feeder funds may be mutual funds, bank collective trusts or common trusts, or other types of investing entities. Advisory services are rendered at the master level, while shareholder services and administrative services are rendered largely at the feeder level. In this regard, the Bank represents that the fees paid at the master fund and feeder fund levels are paid for separate, specific services provided to the respective fund, and that any such payment does not result in the double payment of fee for the same service by any shareholder. The Bank represents that the master-feeder structure is aimed at achieving economies of scale and lower overall expense ratios not generally achievable in a traditional, single-tier structure.

was submitted for approval by the Second Fiduciary.

9. Asset transfer procedure: After the Second Fiduciary of each Invested Plan approved the Invested Plan's participation in the conversion of the FIEF Portfolio to shares in the B/B Fund, the asset transfer procedure began. The transfer occurred on October 11, 1996, and the following steps constituted the procedure utilized by the Bank in effecting the conversion:

(A) Shortly prior to the transfer, the assets of the FIEF Portfolio were reviewed to determine whether they were appropriate investments for the B/B Fund, consistent with the B/B Fund's investment objective and policies and the applicable requirements under the Investment Company Act of 1940 (the 1940 Act) and the Code. Assets that were not appropriate investments for the B/B Fund were liquidated prior to the transfer date in the open market, without the involvement of any broker affiliated with the Bank.

(B) For purposes of the transfer, the values of the FIEF Portfolio assets were determined on the basis of market values as of the close of business on the day of the transfer. Values were determined in a single valuation using the valuation procedures described in Rule 17a–7(b) under the Investment Company Act (17 CFR § 270.17a–7(b)), as such rule has been interpreted by the Securities and Exchange Commission. Specifically, the securities in the FIEF Portfolio were valued as follows:

(1) The securities valued were ones for which market quotations are readily available.

(2) The values of the securities were the ''independent current market prices'' of the securities, as required by Rule 17a–7(b), as of close of business on the day of the transfer, which was a Friday. The Bank states that Rule 17a–7(b) specifically defines ''current market price'' for different types of securities that were in the FIEF Portfolio:

(a) If the security was a ''reported security'' as defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the 1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system for that day, or the average of the highest independent bid and lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act) as of the close of business on that day if there are no reported transactions in the consolidated system on that day; or

(b) If the security was not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on that day or the average of the highest independent bid and lowest independent offer on such exchange as of the close of business on that day if there are no reported transactions on such exchange on that day; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business on that day;[9] or

(d) For all other securities, the average of the highest independent bid and lowest independent offer, as of the close of business on the same day, determined on the basis of reasonable inquiry from at least three sources that are either broker-dealers or pricing services independent of the Bank.

(C) After approval by the Second Fiduciaries of the transfer and conversion, the securities and cash in the FIEF Portfolio were transferred to the B/B Fund in exchange for shares of the B/B Fund. The FIEF Portfolio assets transferred to the B/B Fund were in turn transferred by the B/B Fund, as a feeder fund, to the B/B Portfolio master fund. The Bank represents that the in-kind purchase of B/B Fund shares was effected in accordance with the procedures described in the prospectus for the B/B Fund, which provide that the securities being transferred to the B/B Fund need to be eligible for purchase by the B/B Portfolio (consistent with the investment policies and restrictions of the B/B Fund and the B/B Portfolio) and must have a readily ascertainable market value.

(D) The Bank represents that the securities received by the B/B Fund were valued by the B/B Fund for purposes of the transfer transaction in the same manner as the assets were valued by the FIEF Portfolio, and the per-share value of the B/B Fund shares issued were based on the B/B Fund's then-current net asset value. Accordingly, the Bank states that the value of a Plan's investment in the B/B Fund as of the start of business on the Monday following the Friday transfer was the same as the value of its investment in the FIEF Portfolio as of the close of business on the Friday of the transfer.

No brokerage commission or other fee or expense was charged to the FIEF Portfolio or the B/B Fund in the transfer of assets from the FIEF Portfolio to the B/B Fund. The Bank represents that the transfer transactions were in fact ministerial actions, performed in accordance with prescribed, objective procedures. The Bank represents that the pricing of the securities transferred was accomplished by reference to independent sources, and the Client Plans, following the transfer transactions, hold B/B Fund shares of value equal to that of their former units in the FIEF Portfolio.

10. Paragraph (D) of Section I of the exemption describes certain information which the Bank provided to the Second Fiduciary of each Client Plan no later than 150 days after the completion of the transfer transactions. The Bank represents, however, that prior to the Bank's provision of these detailed disclosures, each Second Fiduciary was notified shortly after the October 11, 1996 conversion that the transfer transactions had occurred, with a statement indicating the transaction, the account(s) affected, the date of the trade, the dollar amount of the transaction, the B/B Fund share price, and the total number of shares acquired. The Bank states that this confirmation notice was sent to the Client Plans at various times, depending on the particular plan's reporting cycle: Some of the Client Plans received the confirmation as early as seven to ten days after the end of October 1996, some seven to ten days after the end of November 1996, and others seven to ten days after the end of December 1996.

11. Fee arrangements: The Client Plans pay fees to the Bank in accordance with fee schedules negotiated with the Bank. The Bank represents that individual schedules vary depending on the particular arrangements between the Bank and the Plan fiduciary, the competitive forces in the market and the desires of the Plan sponsor. The Bank states that the annual charge for accounts for which Plan assets are invested in the CIF is based on a percentage of the aggregate market value of the Plan's assets. All fees are charged at least annually, and may be billed as frequently as monthly or quarterly.

BBOI charges an investment advisory fee to the B/B Portfolio in accordance with an investment advisory agreement between the B/B Portfolio and BBOI. This fee is borne indirectly by the B/B Fund as a feeder fund in the master/feeder structure. BBOI in turn contracts with BIAM for investment sub-advisory

[9] The applicant represents that Level 1 of NASDAQ provides the best bid-and-ask quotations for each NASDAQ security that has a minimum of two registered market makers providing quotations. Level 2 provides the current bid-and-ask prices for each market maker in any available NASDAQ security, not only the best prices. Level 3 allows for market makers instantaneously to insert new quotations into the system, and is generally only used by market makers and traders.

services.[10] BBOI has also entered into an administrative services agreement with the B/B Fund under which it is responsible for administering all aspects of the B/B Fund's day-to-day operations. Accordingly, BBOI is responsible for furnishing all administrative services reasonably necessary for the operation of the B/B Fund, including recordkeeping and pricing services, custodian services, transfer agency and dividend distribution services, tax and audit services, legal services, insurance, communications, and other administrative and recordkeeping services.

The Bank has entered into an administrative services agreement with the Berger/BIAM Worldwide Funds Trust and BBOI, as administrator of the B/B Fund, under which the Bank will perform various administrative services for the B/B Fund in return for a fee payable by BBOI. Those services will include providing necessary personnel and facilities to establish and maintain certain shareholder accounts and records; assisting in processing purchase and redemption requests from Client Plans or their participants; aggregating and processing purchase and redemption requests from Client Plans or their participants and placing net purchase and redemption orders with the B/B Fund's transfer agent; transmitting and receiving funds in connection with Plan orders to purchase or redeem shares; providing information periodically to Client Plans or their participants indicating their balance in shares of the B/B Fund, share prices, dividends paid, and/or dividend payment dates; responding to inquiries from the Plans or their participants relating to the B/B Fund, the services performed by the Bank, or the account balances of the Client Plans or their participants; providing subaccounting with respect to shares of the B/B Fund beneficially owned by Client Plans or their participants; forwarding shareholder communications from the B/B Fund (such as proxies, shareholder reports, annual and semi-annual financial statements and dividend and distributions notices) to Client Plans or their participants; and providing such other similar services as BBOI or the Berger/BIAM Worldwide Funds Trust may reasonably request, in accordance with applicable statutes, rules and regulations.

The Bank states that it receives a bundled fee from the Plans for its administrative and investment management services to the Plans. The Bank represents that it has determined, and that the Second Fiduciary of each Invested Plan has agreed, that one-third of this bundled fee is attributable to the investment management services provided by the Bank. The Bank has amended it bundled fee arrangement so that with respect to the Plan assets invested in the B/B Fund shares, one-third of the bundled fee will not be charged. Accordingly, the Bank represents that pursuant to the requirements of PTE 77–4, the Bank will not receive any investment management fee for the portion of a Plan's assets that are invested in the B/B Fund.

12. In summary, the Bank represents that the in-kind transfer transaction described herein satisfies the criteria of section 408(a) of the Act for the following reasons:

(a) On behalf of each Client Plan a Second Fiduciary authorized in writing such in-kind transfer prior to the transaction and only after such Second Fiduciary received full written disclosure of information concerning the B/B Fund.

(b) Each Client Plan received shares of the B/B Fund in connection with the in-kind transfer of assets from the FIEF Portfolio to the B/B Fund which were equal in value to the Plan's allocable share of assets that had been invested in the FIEF Portfolio on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the B/B Fund which complied with Rule 17a–7(b) of the 1940 Act, as amended, and the procedures established by the B/B Fund pursuant to Rule 17a–7 for the valuation of such assets.

(c) Following the completion of the in-kind transfer transaction, the Bank provided the Second Fiduciary of each Client Plan with written confirmation containing (1) the identity of the security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the 1940 Act, (2) the price of the security involved in the transaction; (3) the identity of the pricing service consulted in determining the value of such securities; (4) the number of FIEF Portfolio units held by the Plan immediately before the transfer, and the related per unit value and total dollar amount of such FIEF Portfolio units; and (5) the number of shares in the B/B Fund held by the Plan following the purchase and the liquidation of the FIEF Portfolio, and the related per share net asset value and total dollar amount of such shares.

(d) As to each Invested Plan, no investment management fee is or will be paid to the Bank with respect to Plan assets invested in shares of the B/B Fund.

(e) No sales commissions were paid by an Invested Plan in connection with the acquisition of shares in the B/B Fund.

(f) With respect to investments in the B/B Fund by the Client Plans, each Second Fiduciary received full and detailed written disclosure of information concerning the B/B Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary authorized, in writing, the investment of the Plan's assets in the B/B Fund and the fees payable to the Bank; and

(g) The Bank will provide ongoing disclosures to Second Fiduciaries of Client Plans to verify the fees charged to the Bank by the B/B Fund.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Barclays Bank PLC (Barclays) Located in London, England

[Application No. D–10486]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[11]

Section I. Covered Transactions

A. The restrictions of section 406(a)(1)) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to any purchase or sale of a security between Barclays or any affiliate of Barclays which is a bank or a broker-dealer subject to British law (the Foreign Affiliate), and employee

[10] The Bank represents that because BI, the parent corporation of BBOI and BIAM, has only a 23.3% ownership interest in the Bank, BBOI and BIAM do not appear to be ''affiliates'' of the Bank for purposes of Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977) and, accordingly, the exemption provided by PTE 77–4 does not appear to be available with respect to fees paid by the B/B Fund to BBOI and BIAM. For this reason, the Bank has requested that the exemption proposed herein include exemptive relief for the payment of investment advisory fees, as well as fees for any Secondary Service, to BBOI and BIAM for such services to the B/B Fund, under conditions which are virtually identical to those contained in PTE 77–4.

[11] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

benefit plans (the Plans) with respect to which Barclays or the Foreign Affiliate is a party in interest, including options on securities written by the Plan, Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) Barclays or the Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party.

(3) Neither Barclays, the Foreign Affiliate, nor any of their affiliates thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets, and Barclays or the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, Barclays or the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1) (A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective July 31, 1997, to any extension of credit to a Plan by Barclays or the Foreign Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts or the purchase or sale of securities, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Barclays or the Foreign Affiliate is not a fiduciary with respect to any Plan assets, unless no interest or other consideration is received by Barclays, the Foreign Affiliate, or any of their affiliates in connection with such extension of credit.

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable and would be lawful under applicable foreign law.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to the lending of securities that are assets of a Plan to Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither Barclays, the Foreign Affiliate nor any of their affiliates thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets.

(2) The Plan receives from Barclays or the Foreign Affiliate, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to Barclays or the Foreign Affiliate, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by persons other than Barclays or the Foreign Affiliate (or any of their affiliates), or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. (The collateral referred to in this Section I(c)(2) must be in U.S. dollars or dollar-denominated securities or United States bank letters of credit and must be held in the United States.)

(3) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

(4) In return for lending securities, the Plan either (i) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (ii) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to Barclays or the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party.

(5) The Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings) [12] had it remained the record owner of such securities.

(6) If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of trading on that day, Barclays or the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to Barclays or the Foreign Affiliate if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities.

(7) Prior to the making of any securities loan, Barclays or the Foreign Affiliate furnishes to the independent fiduciary for the Plan who is making decisions on behalf of the Plan with respect to the lending of securities: (i) the most recently available audited and unaudited statements of its financial condition; and (ii) a representation by Barclays or the Foreign Affiliate that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary.

(8) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon Barclays or the Foreign Affiliate delivers certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (i) the customary delivery period for such securities; (ii) five business days; or (iii) the time negotiated for such

[12] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that Barclays or the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

delivery by the Plan and Barclays (or the Plan and the Foreign Affiliate), whichever is lesser, or, alternatively such period as permitted by Prohibited Transaction Exemption (PTE) 81–6 (43 FR 7527, January 23, 1981) as it may be amended.

(9) In the event that the loan is terminated and Barclays or the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of Barclays or the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. Barclays or the Foreign Affiliate shall indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate.

(10) The Plan maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, Barclays or the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)–1.

If Barclays or the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of Barclays or the Foreign Affiliate to comply with the conditions of the exemption.

Section II. General Conditions

(a) Barclays is subject to regulation by the Bank of England.

(b) The Foreign Affiliate—

(1) Is subject to regulation by the Bank of England, or

(2) Is a registered broker-dealer subject to regulation by the Securities and Futures Authority of the United Kingdom (the UK SFA) and is in compliance with all applicable rules and regulations thereof.

(c) Barclays and the Foreign Affiliate are in compliance with all requirements of Rule 15a–6 (17 CFR 240.15a–6), which provides foreign broker-dealers a limited exemption from U.S. broker-dealer registration requirements, and Securities and Exchange Commission (the SEC) interpretations and amendments thereof to Rule 15a–6 under the 1934 Act, to the extent applicable.

(d) Prior to the transaction, Barclays or the Foreign Affiliate enters into a written agreement with the Plan in which Barclays or the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

(e) Barclays or the Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this Section II to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than Barclays or the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (e) of this Section II; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Barclays or the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period.

(f) Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, Barclays or the Foreign Affiliate makes the records referred to above in paragraph (e) of this Section II, unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a participating Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan. However, none of the persons described above in paragraphs (f)(2)–(f)(5) of this Section II shall be authorized to examine trade secrets of Barclays or the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

(g) Prior to any Plan's approval of any transaction with Barclays or the Foreign Affiliate, the Plan is provided copies of the proposed and final exemptions covering the exemptive relief described herein.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Barclays,'' means ''Barclays Bank PLC'' which is subject to regulation by the Bank of England.

(b) The term ''Foreign Affiliate'' means any affiliate of Barclays which is subject to regulation by the Bank of England or the UK SFA.

(c) The term ''affiliate'' of another person shall include:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(d) The term ''security'' includes equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of July 31, 1997.

Summary of Facts and Representations

1. Barclays, one of the largest full-line investment service firms in the world, is an authorized institution under the Banking Act of 1987 of the United Kingdom and is regulated by the Bank of England. As of June 30, 1998, Barclays had approximately £249 billion ($405.9 billion) in assets and £7.9 billion ($12.9 billion) in stockholder's equity.[13]

2. Barclays Capital Securities Limited (BCSL) is a foreign broker-dealer

[13] A conversion ratio of $1.63 per British Pound Sterling was used to determine the applicable dollar amounts.

affiliate of Barclays. Located in London, BCSL is subject to regulation in the United Kingdom by the UK SFA. As of December 31, 1997, BCSL had total assets of $36.5 billion.

3. Barclays requests exemptive relief from the Department to permit it and any Foreign Affiliate that is subject to British law, to engage in (a) purchases and sales of securities and (b) extensions of credit in connection with such purchases and sales. Such transactions are currently being executed between a Plan and Barclays or a Plan and the Foreign Affiliate in transactions which generally meet the applicable requirements of PTE 75–1, Part II (involving Principal Transactions) and Part V (involving Extensions of Credit) (40 FR 50845, October 31, 1975). However, unlike PTE 75–1, the parties in interest involved in the Principal Transactions that are described herein are not broker-dealers registered under the 1934 Act, reporting dealers which make primary markets in securities of the United States Government and report daily to the Federal Reserve Bank its positions with respect to Government securities and borrowings thereon, or banks supervised by the United States or a State. Similarly, with respect to Extensions of Credit Transactions that are described herein, the parties in interest involved in this proposed exemption are not brokers or dealers registered under the 1934 Act.

Further, Barclays requests exemptive relief with respect to the lending of securities that are assets of a Plan to it or to the Foreign Affiliate. While such transactions would generally meet the applicable requirements of PTE 81–6, as amended, supplemented or superseded, in the present case, again the parties in interest involved herein are not broker-dealers registered under the 1934 Act or exempted from registration under section 15(a)(1) of the 1934 Act as dealers in exempted Government securities, as defined in section 3(a)(12) of the 1934 Act or U.S. banks.

Finally, Barclays requests that the exemptive relief described above apply to its other Foreign Affiliates which, may in the future, be subject to similar regulation by the Bank of England or the UK SFA.

If granted, the exemption will be effective as of July 31, 1997.

4. Barclays represents that it is regulated by the Bank of England whose powers include licensing banks in the United Kingdom, issuing directives to address violations by or irregularities involving such banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. Barclays also states that the Bank of England ensures that it has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. Barclays further states that it is required to provide the Bank of England on a recurring basis with information regarding capital adequacy, country risk exposure and foreign exchange exposures as well as periodic, consolidated financial reports on the financial condition of Barclays and its affiliates.

5. Barclays represents that although the Foreign Affiliate will not be registered with the SEC, its activities are governed by the rules, regulations and membership requirements of the UK SFA. In this regard, Barclays states that the Foreign Affiliate is subject to the UK SFA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. Barclays represents that the rules and regulations set forth by the UK SFA and the SEC share a common objective: the protection of the investor by the regulation of the securities industry. Barclays notes that the UK SFA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the UK SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, Barclays states that the UK SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements. In this regard, required records must be produced at the request of the UK SFA at any time. Barclays further states that the rules and regulations of the UK SFA for broker-dealers are backed up by potential fines and penalties as well as rules which establish a comprehensive disciplinary system.

6. Barclays represents that in addition to the protections afforded by the Bank of England and the UK SFA, compliance by it and the Foreign Affiliate with the requirements of Rule 15a–6 (and the amendments and interpretations thereof) will offer further protections to Plans.[14] Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor,'' provided that the foreign broker dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term ''U.S. major institutional investor'' is defined as a person that is a U.S. institutional investor that has total assets in excess of $100 million or accounts managed by an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[15] Barclays represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities

[14] According to Barclays, section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, Barclays is willing to represent that it will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[15] See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, expanding the definition of ''Major U.S. Institutional Investor'' (the April 9, 1997 No-Action Letter).

transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Barclays represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 [16] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [17] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major institutional investors. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. (See April 9, 1997 SEC No-Action Letter.)

[16] If it is determined that applicable regulation under the 1934 Act does not require Barclays or the Foreign Affiliate to comply with Rule 15a–6, both entities will, nevertheless, comply with paragraphs (a) and (b) above.

[17] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Barclays or between a Plan and the Foreign Affiliate. Barclays notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

7. In addition to the protections cited above, Barclays represents that prior to a transaction described herein, it or the Foreign Affiliate will enter into a written agreement with the Plan whereby it or the Foreign Affiliate will consent to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of such transaction. Further, Barclays or the Foreign Affiliate will maintain, or cause to be maintained, within the United States for a period of six years, from the date of a transaction such records as are necessary to enable the Department and others to determine whether the conditions of the exemption have been met.

Principal Transactions

8. Barclays represents that both it and the Foreign Affiliate operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business and engage in purchases and sales of securities, including options on securities written by the Plan, Barclays or the Foreign Affiliate with their clients. Such trades are referred to as principal transactions. Barclays states that the role of a bank or a broker-dealer engaged in a principal transaction in the subject foreign countries is virtually identical to that of a bank or a broker-dealer engaged in a principal transaction in the United States. Therefore as noted above, Barclays requests an individual exemption, effective July 31, 1997, to permit it and Foreign Affiliate to engage in principal transactions with the Plans under the terms and conditions equivalent to those of Part II of PTE 75–1. As previously stated, because PTE 75–1 provides an exemption for U.S. registered broker-dealers and U.S. banks, the principal transactions may fall outside the scope of relief provided therein.

9. Barclays represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including foreign government securities. Thus, Barclays notes that Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with it or the Foreign Affiliate.

10. Barclays represents that the terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm' length transaction with an unrelated party. In addition, Barclays states that neither it, the Foreign Affiliate nor any of their affiliates thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction or render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets. Further, Barclays represents that it or the Foreign Affiliate will be a party in interest with respect to those Plan involved in a principal transaction by reason of providing services to a Plan under section 3(14) of the Act or by reason of a relationship to such service provider. However, Barclays maintains that it or the Foreign Affiliate will not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

Extensions of Credit

11. Barclays represents that a normal part of the execution of securities transactions by broker-dealers on behalf of customers, including Plans, is the extension of credit to customers so as to permit the settlement of transactions in the customary settlement period. Such extensions of credit are customary in connection with the buying and writing of option contracts. Therefore, Barclays requests, effective July 31, 1997, exemptive relief for extensions of credit between it and a Plan or between the Foreign Affiliate and a Plan in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis. Although an exemption for such extensions of credit is provided under Part V of PTE 75–1 for U.S. registered broker-dealers, it is not available for Barclays or for the Foreign Affiliate which are or will be domiciled in the United Kingdom.

12. As in PTE 75–1, Barclays or the Foreign Affiliate may not be a fiduciary with respect to Plan assets involved in the transaction unless no interest or other consideration is received by Barclays, the Foreign Affiliate or any of their affiliates thereof, in connection with any extension of credit. The extension of credit also must be lawful under applicable foreign law.

Securities Lending

13. In addition to exemptive relief for principal transactions and extensions of credit in connection with the purchase or sale of securities, Barclays requests exemptive relief, effective July 31, 1997, for the lending of securities, equivalent to that provided under the terms and conditions of PTE 81–6, a class exemption to permit certain loans of

securities by employee benefit plans. Under such circumstances, Barclays or the Foreign Affiliate, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities from institutions, including employee benefit plans. Because PTE 81–6 provides an exemption for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue herein may, as briefly noted above, fall outside the scope of relief provided by PTE 81–6.

14. It is represented that Barclays and the Foreign Affiliate utilize borrowed securities to satisfy their own trading requirements or to re-lend to other affiliates and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that Barclays or the Foreign Affiliate is required to deliver. Barclays also represents that foreign broker-dealers are the most likely entities that seek to borrow foreign securities. Thus, the exemption will increase the lending demand for such securities and provide the Plans with increased securities lending opportunities.

15. It is represented that an institutional investor, such as a pension plan, lends securities in its portfolio to Barclays or the Foreign Affiliate in order to earn a fee while continuing to enjoy the benefits of owning securities (e.g., from the receipt of any interest, dividends or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized and the collateral usually is in the form of U.S. currency, irrevocable U.S. bank letters of credit issued by a bank other than Barclays, or high-quality liquid securities such as U.S. Government or Federal Agency obligations. When cash is the collateral, the lender invests the cash and rebates a previously-agreed upon amount to Barclays or the Foreign Affiliate. The ''fee'' received by the lender as compensation for the loan of its securities then consists of the excess, if any, of the earnings on the collateral over the amount of the rebate. When the collateral consists of obligations other than cash, Barclays or the Foreign Affiliate pays a fee directly to the lender.

16. Neither Barclays, the Foreign Affiliate nor any of their affiliates thereof will have discretionary authority or control with respect to the investment of Plan assets involved in the transaction or render investment advice, within the meaning of 29 CFR 2510.3–21(c) with respect to those assets.

17. By the close of business on the day the loaned securities are delivered to Barclays or the Foreign Affiliate, the Plan will receive, from Barclays or the Foreign Affiliate, (by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable U.S. bank letters of credit issued by persons other than Barclays, the Foreign Affiliate, or any of their affiliates, or any combination thereof, having, as of the close of trading on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same). All collateral posted by Barclays or the Foreign Affiliate will be in U.S. dollars or dollar-denominated securities or U.S. bank irrevocable letters of credit and will be held in the United States.

18. The loan will be made pursuant to a written Loan Agreement which may be in the form of a master agreement covering a series of securities lending transactions. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Barclays or the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

19. In return for lending securities, the Plan will either (a) receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to Barclays or the Foreign Affiliate if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Under this fee arrangement, earnings generated by non-cash collateral will be returned to Barclays or the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings) had it remained the record owner of such securities.

20. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, Barclays or the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. Notwithstanding the foregoing, part of the collateral may be returned to Barclays or the Foreign Affiliate if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities. Matters relating to the return of the collateral, the substitution of collateral or the termination of loans, will be determined by applicable provisions of the Loan Agreement.

21. Before entering a Loan Agreement, Barclays or the Foreign Affiliate will furnish to the Plan the most recently available audited and unaudited statements of such entity's financial condition. In addition, Barclays or the Foreign Affiliate will represent that as of each time such entity borrows securities there has been no material change in the financial condition of such entity since the date of the most recently-furnished financial statement that has not been disclosed to the Plan.

22. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon Barclays or the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of a reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within the time period specified by PTE 81–6 as it may be amended. In the event that Barclays or the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of Barclays or the Foreign Affiliate under the Loan Agreement and any expenses associated with replacing the borrowed securities. Barclays or the Foreign Affiliate will indemnify the Plan with respect to the difference, if any, between the

replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate. If replacement securities are not available, Barclays or the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan plus (b) all the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

23. The Plan will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, Barclays or the Foreign Affiliate will not be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)–1.

24. In summary, it is represented that the proposed transactions have satisfied and will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to principal transactions effected by Barclays or the Foreign Affiliate, the exemption has enabled and will enable Plans to realize the same benefits of efficiency and convenience which derive from principal transactions executed pursuant to Part II of PTE 75–1 by U.S. registered broker-dealers and U.S. banks.

(b) With respect to extensions of credit by Barclays and the Foreign Affiliate in connection with purchases or sales of securities, the exemption has enabled and will enable the Plans and Barclays or the Plans and the Foreign Affiliate to extend credit in the ordinary course of Barclays's or the Foreign Affiliate's business so as to effect the transactions within the customary settlement period or in connection with the buying and writing of options contracts or in connection with short sales, as permitted by Part V of PTE 75–1, for U.S. registered broker-dealers.

(c) With respect to securities lending transactions effected by Barclays or the Foreign Affiliate, the exemption has enabled and will enable Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTE 81–6 by U.S. registered broker-dealers and U.S. banks.

(d) The proposed exemption will provide Plans with virtually the same protections and benefits as those provided by PTE 75–1 and PTE 81–6.

Notice to Interested Persons

The applicant represents that because those Plans that will be potentially interested in the transactions cannot be identified at this time, the only practical means of notifying Plan fiduciaries is by the publication of the notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the date of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Millcraft Industries Salaried Employees Pension Plan (the Salaried Plan) and The Millcraft Products, Inc. Hourly Employees Pension Plan and Trust Agreement (the Hourly Plan) (collectively, the Plans) Located in Canonsburg, PA

[Exemption Application Numbers D–10608 and D–10609]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to three cash sales (the Sales) of certain shares of stock (the Stock) by the Plans to Millcraft Industries, Inc. (Millcraft Industries), a party in interest and disqualified person with respect to the Plans, provided the following conditions were met:

(a) The terms of the Sales were at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sales were one-time transactions for cash;

(c) The Plans paid no commissions or expenses relating to the Sales; and

(d) The Sales were for no less than the fair market value of the Stock as determined by a qualified, independent appraiser.

Effective Date: If granted, the proposed exemption will be effective as of November 15, 1996.

Summary of Facts and Representations

1. The applicant describes the Plans as follows:

a. The Salaried Plan was originally established by Millcraft Industries on August 28, 1972 and has since been amended and restated effective November 1, 1989. At the time of the transactions, the Salaried Plan had 86 participants and held assets valued at approximately $1.8 million.

b. The Hourly Plan was originally established by Millcraft Products, Inc. (Millcraft Products) on November 1, 1963 and has since been amended and restated effective November 1, 1989. At the time of the transactions, the Hourly Plan had 216 participants and held assets valued at approximately $1.95 million.

At all times relevant to the transactions in question, Jack B. Piatt, Jack B. Piatt, II, Rodney L. Piatt, and Charles D. Boehm served as trustees (the Trustees) for the Plans, and Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill Lynch) served as broker for both Plans.

2. Millcraft Industries, the sponsor and administrator of the Salaried Plan, is a Pennsylvania corporation located at 400 Southpointe Boulevard, Suite 400, Canonsburg, Pennsylvania. Millcraft Industries is a holding and management corporation engaged, through subsidiaries, in the manufacturing and marketing of specialized equipment for the steel-making industry and the development of real estate.

Millcraft Products, sponsor and administrator of the Hourly Plan, is a wholly-owned subsidiary of Millcraft Industries that is also located in Pennsylvania. Millcraft Products is a manufacturing, continuous caster repair, machinery, and fabricating company that provides parts, services, and equipment for the steel-making industry.

3. Among the assets of the Plans are certain shares of Stock in the Community Bank, NA, (the Bank) a publicly traded corporation located in Pennsylvania. Except for approximately 3.3% of the outstanding Stock of the Bank held by the Plans and approximately 4.4% of the outstanding Stock of the Bank held by Millcraft Industries at the time of the transaction, the Bank was otherwise unrelated to Millcraft Industries, Millcraft Products and the Plans.

The Stock is a thinly-traded security with quotes available only via the National Quotation Bureau's ''pink

sheets.'' From 1985 through 1989, the Hourly Plan purchased 2,926 shares of the Stock from the Bank. The purchase price of these shares varied between $53 and $65 per share. As the result of a two-for-one stock split on April 10, 1986, and a four-for-one stock split on May 1, 1994, the Hourly Plan obtained an additional 12,778 shares of the Stock.

From 1988 through 1993, the Salaried Plan purchased 2,300 shares of the Stock from the Bank. The purchase price of these shares varied between $47 and $53 per share. The Salaried Plan obtained an additional 6,900 shares of Stock as a result of the May 1, 1994 stock split.

4. According to the applicant, the Trustees originally purchased the Stock on behalf of the Plans in the mid-1980's in response to the increasing number of bank mergers in western Pennsylvania and in anticipation that this trend would continue.

However, in the months preceding the consummation of the transactions, the Trustees concluded that the period of speculation on local bank mergers had ended. The Trustees decided that the assets of the Plans would have greater long-term profit potential if they were placed with a professional asset management company.

When Millcraft Industries expressed interest in purchasing the Stock, the Trustees decided to sell the shares at the prevailing market value. Accordingly, on November 15, 1996, the Trustees authorized Merrill Lynch to sell 1,200 shares of the Stock from the Salaried Plan to Millcraft Industries for $30,900, or $25.75 per share. Then, on November 20, 1996, the Trustees authorized Merrill Lynch to sell an additional 8,000 shares of the Stock to Millcraft Industries from the Salaried Plan for $206,000, or $25.75 per share. Finally, also on November 20, 1996 the Trustees authorized Merrill Lynch to sell 15,704 shares of the Stock to Millcraft Industries from the Hourly Plan for $404,378, or $25.75 per share.

As of November 20, 1996, the Plans had sold a total of 24,904 shares of the Stock to Millcraft Industries at $25.75 per share. According to the applicant, the Salaried Plan earned a profit of $116,800, or an average of $12.70 per share, and the Hourly Plan earned a profit of $237,300, or an average of $15.11 per share. In addition, the applicant represents that the Plans incurred no brokerage commissions or other charges as a result of the above transactions.

5. The applicant requests retroactive relief for the aforementioned transactions involving the Sales of stock from the Plans. The applicant represents that at the time of the transactions, the Trustees and Millcraft Industries were not aware that the transactions were prohibited under ERISA and the Code and that they would not have engaged in these transactions had they been aware of this fact.

6. Prior to executing these transactions, Millcraft Industries employed Parker/Hunter, Inc. (Parker/Hunter), a market maker in the Stock, to ascertain the fair market value of the shares. Parker/Hunter, a member of the New York Stock Exchange and the Securities Investors Protection Corporation, is a full service brokerage and investment banking firm headquartered in Pittsburgh, Pennsylvania with 300 employees in 21 offices throughout Pennsylvania, Ohio and West Virginia. The firm is independent of the Plans, Millcraft Industries and Millcraft Products. In providing the pricing information to Millcraft Industries, Parker/Hunter used data from the most recent sales of the Stock to determine that the fair market value of the Stock on November 15, 1996 and November 20, 1996 was $25.75 per share.

7. Upon discovering in August 1997 that its purchases of the Stock from the Plans were prohibited, Millcraft Industries promptly sought legal advice as to the steps needed to correct these violations. On October 31, 1997, Millcraft Industries represents that it reversed the transactions in accordance with 26 CFR 53.4941(e)–1(c) of the Treasury Department Regulations by instructing Merrill Lynch to transfer 9,200 shares of the Stock to the Salaried Plan and transfer 15,704 shares of Stock to the Hourly Plan.[18] At the same time, the Trustees instructed the Plans' broker to transfer $236,900, or $25.75 per share, from the Salaried Plan to Millcraft Industries and $404,378, or $25.75 per share, from the Hourly Plan to Millcraft Industries.[19] The applicant represents that no commissions were charged with respect to the correction.[20]

8. The applicant represents that the Sales were administratively feasible in that each involved a one-time transaction for cash. Furthermore, the applicant states that the transactions were in the interests of the Plans and their participants and beneficiaries because the Stock was sold in an attempt to facilitate investment in assets achieving a higher a rate of return, and were conducted in such a manner as to ensure that the Plans received a return on the Stock in excess of their original investment. Finally, the applicant represents that the transactions were protective of the rights of the participants and beneficiaries because the Plans received the fair market value of the Stock as determined by a qualified, independent appraiser.

9. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons: (a) The terms of the Sales were at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (b) The Sales were one-time transactions for cash; (c) The Plans paid no commissions or expenses relating to the Sales; and (d) The Sales were for no less than the fair market value of the Stock as determined by a qualified, independent appraiser.

Notice to Interested persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier of the Department, telephone (202) 219–8881 (this is not a toll-free number).

[18] The Department expresses no opinion regarding whether the corrective actions taken by the applicant were done in accordance with 26 CFR 53.4941(e)–1(c) of the Treasury Regulations.

[19] Prior to reversing the transactions, Millcraft consulted Parker/Hunter to determine the fair market value of the Stock. Parker/Hunter determined that the fair market value of the Stock as of October 31, 1997 would be in excess of $25.75 per share. Merrill Lynch account statements for October 1997 confirm that the estimated market price of the Stock was $31.50 per share at the time of the reversal transaction.

[20] The applicant also wishes to note that while holding the Stock, Millcraft Industries received $12,950.08 in dividends. Pursuant to 26 CFR 53.4941(e)–1(c)(2) of the Treasury Regulations, a disqualified person must pay to the plan any income derived by him from the property he received from the original prohibited sale to the extent such income exceeds the income derived by the plan from the cash which the disqualified person originally paid to the plan. The applicant represents that the Plans invested the $641,278 received from Millcraft Industries in the transactions, and on these various investments earned an estimated $125,000. Because this amount substantially exceeds the $12.950.08 in dividends received by Millcraft Industries while in possession of the Stock, Millcraft Industries determined that it was not required to remit an amount equal to the dividends to the Plans.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of September, 1998.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–26621 Filed 10–5–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–46; Exemption Application No. D–10503, et al.]

Grant of Individual Exemptions; Sanwa Bank California, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Sanwa Bank California (Sanwa Bank), Located in Los Angeles, CA

[Prohibited Transaction Exemption 98–46; Exemption Application No. D–10503]

Exemption

Section I. Exemption for the In-Kind Transfers of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) shall not apply, effective October 31, 1997, to the purchase, by an employee benefit plan established and maintained by parties other than Sanwa Bank (the Client Plan) or by Sanwa Bank (the Bank Plan) [1] of shares of one or more open-end management investment companies (the Fund or Funds), registered under the Investment Company Act of 1940, as amended (the 1940 Act), in exchange for assets of the Plan transferred in-kind to the Fund by a collective investment fund (the CIF) maintained by Sanwa Bank, where Sanwa Bank is the investment adviser and may provide other services to the Fund (the Secondary Services), as defined in Section III(i), and where Sanwa Bank is also a fiduciary of the Plan.

This exemption is subject to the following conditions:

(a) A fiduciary (the Second Fiduciary), as defined in Section III(h), which is acting on behalf of each affected Plan and which is independent of and unrelated to Sanwa Bank, receives advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds and full written disclosures of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund in which the Client Plan may invest;

[1] Unless otherwise noted, the Client Plans and the Bank Plans are collectively referred to as the Plans.

(2) A statement describing the fees for investment advisory or other similar services, any fees for Secondary Services, as defined in Section III(i), and all other fees to be charged to or paid by the Client Plan and by such Funds to Sanwa Bank, including the nature and extent of any differential between the rates of such fees;

(3) A statement of the reasons why Sanwa Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement of whether there are any limitations applicable to Sanwa Bank with respect to which assets of a Client Plan may be invested in Fund shares, and, if so, the nature of such limitations; and

(5) A copy of the proposed exemption and/or a copy of the final exemption upon the request of the Second Fiduciary.

(b) On the basis of the foregoing information, the Second Fiduciary gives prior approval in writing for each purchase of Fund shares in exchange for the Plan's assets transferred from the CIF, consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act. In addition, the Second Fiduciary gives prior approval in writing of the receipt of confirmation statements described in Section I(g) by facsimile or electronic mail if the Second Fiduciary elects to receive such statements in that form.

(c) No sales commissions or other fees are paid by the Plan in connection with the purchase of Fund shares.

(d) All transferred assets are securities for which market quotations are readily available, or cash.

(e) The transferred assets constitute a *pro rata* portion of all assets of a Plan held in the CIF immediately prior to the transfer. Notwithstanding the foregoing, the allocation of fixed-income securities held by a CIF among Plans on the basis of each Plan's *pro rata* share of the aggregate value of such securities will not fail to meet the requirements of this subsection if:

(1) The aggregate value of such securities does not exceed one (1) percent of the total value of the assets held by the CIF immediately prior to the transfer; and

(2) Such securities have the same coupon rate and maturity, and at the time of the transfer, the same credit ratings from nationally recognized statistical rating agencies.

(f) Each Plan receives Fund shares that have a total net asset value equal to the value of the Plan's transferred assets on the date of the transfer, as determined with respect to securities in a single valuation performed in the same manner and at the close of business on the same day in accordance with Securities and Exchange Commission (SEC) Rule 17a–7 under the 1940 Act, as amended (Rule 17a–7), (using sources independent of Sanwa Bank and the Fund) and the procedures established by the Funds pursuant to Rule 17a–7.

(g) Sanwa Bank sends by regular mail or, if applicable, by facsimile or electronic mail, to the Second Fiduciary of each affected Plan that purchases Fund shares in connection with the in-kind transfer, the following information:

(1) No later than 30 days after the completion of the purchase, a written confirmation which contains—

(A) The identity of each transferred security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(B) The current market price, as of the date of the in-kind transfer, of each such security involved in the transaction; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such securities.

(2) No later than 105 days after the completion of each purchase, a written confirmation which contains—

(A) The number of CIF units held by each affected Plan immediately before the in-kind transfer, the related per unit value, and the total dollar amount of such CIF units; and

(B) The number of shares in the Funds that are held by each affected Plan immediately following the in-kind transfer, the related per share net asset value and the total dollar amount of such shares.

(h) The conditions set forth in Sections II(d), (e), (n)(1), (o), (p) and (q) are satisfied.

Section II. Exemption for the Receipt of Fees from the Funds

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply, effective October 31, 1997, to (1) the receipt of fees by Sanwa Bank from the Funds for investment advisory services provided to the Funds; and (2) the receipt or retention of fees by Sanwa Bank from the Funds for acting as a custodian or shareholder serving agent to the Funds, as well as for providing any other services to the Funds which are not investment advisory services (i.e., the Secondary Services), as defined in Section III(i), in connection with the investment of shares in the Funds by the Client Plans for which Sanwa Bank acts as a fiduciary, provided that the following conditions are met:

(a) No sales commissions are paid by the Client Plans in connection with purchases or redemptions of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction and is the same price which would have been paid or received for the shares of the same class by any other investor at that time.

(c) Sanwa Bank, any of its affiliates or their officers or directors do not purchase from or sell to any of the Client Plans shares of any of the Funds.

(d) For each Client Plan, the combined total of all fees received by Sanwa Bank for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which the Client Plans may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Sanwa Bank does not receive any fees payable, pursuant to Rule 12b–1 (the 12b–1 Fees) under the 1940 Act in connection with the transactions involving the Funds.

(f) A Second Fiduciary with respect to a Client Plan receives in advance of the investment by the Client Plan in any of the Funds, a full and detailed written disclosure of information concerning such Fund including, but not limited to the disclosures described above in Section I(a).

(g) On the basis of the foregoing information, the Second Fiduciary authorizes in writing—

(1) The investment of assets of the Client Plan in shares of the Fund;

(2) The Funds in which the assets of the Client Plan may be invested; and

(3) The fees received by Sanwa Bank in connection with investment advisory services and Secondary Services provided to the Funds, such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(h) The authorization, described in Section II(g) is terminable at will by the Second Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by Sanwa Bank redeeming the shares of the Funds held by the affected Client Plan within one business day following receipt by Sanwa Bank, either by mail, hand delivery, facsimile, or other available means at the option of the

Second Fiduciary, of written notice of termination (the Termination Form), as defined in Section III(j); provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption cannot be executed within one business day, Sanwa Bank shall have one additional business day to complete such redemption.

(i) The Client Plans do not pay any Plan-level investment advisory fees to Sanwa Bank with respect to any of the assets of such Client Plans which are invested in shares of the Funds. This condition does not preclude the payment of investment advisory fees by the Funds to Sanwa Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act or other agreement between Sanwa Bank and the Funds or the retention by Sanwa Bank of fees for Secondary Services paid to Sanwa Bank by the Funds.

(j) In the event of an increase in the rate of any fees paid by the Funds to Sanwa Bank regarding investment advisory services that Sanwa Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary of a Client Plan, in accordance with Section II(g), Sanwa Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in Section III(j).

(k) In the event of an (1) addition of a Secondary Service, as defined in Section III(i), provided by Sanwa Bank to the Funds for which a fee is charged or (2) an increase in the rate of any fee paid by the Funds to Sanwa Bank for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Sanwa Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Secondary Fiduciary in accordance with Section II(g), Sanwa Bank will, at least 30 days in advance of the implementation of such Secondary Service or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Funds and which explains the nature and amount of the additional Secondary Service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in Section III(j).

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in Sections II(j),(k) and (m), which expressly provides an election to terminate the authorization, described above Section II(g), with instructions regarding the use of such Termination Form including statements that—

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by Sanwa Bank redeeming shares of the Funds held by the Client Plans requesting termination on the date established by the Client Plan on the Termination Form or, if the Client Plan does not specify a date, not later than one business day following receipt by Sanwa Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption of shares of such Client Plan cannot be executed on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date, Sanwa Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of the Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or an increase in the rate of any fees and will result in the continuation of the authorization, as described in Section II(g), of Sanwa Bank to engage in the transactions on behalf of the Client Plan;

(m) The Second Fiduciary is supplied with a Termination Form at least once in each calendar year, beginning with the calendar year that begins after the grant of this exemption is published in the Federal Register and continuing for each calendar year thereafter, provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to this paragraph, sooner than six months after such Termination Form is supplied pursuant to Sections II(j) and (k), except to the extent required by Sections II(j) and (k) to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Client Plan invests, Sanwa Bank will provide the Second Fiduciary of such Plan the following information:

(A) At least annually, a copy of an updated prospectus of such Fund; and

(B) Upon the request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to Sanwa Bank.

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Sanwa Bank, Sanwa Bank will provide the Second Fiduciary of such Client Plan at least annually with a statement specifying—

(A) The total, expressed in dollars, brokerage commissions of each Fund that are paid to Sanwa Bank by such Fund;

(B) The total, expressed in dollars, brokerage commissions of each Fund that are paid by such Fund to brokerage firms unrelated to Sanwa Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to Sanwa Bank by each Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each Fund to brokerage firms unrelated to Sanwa Bank.

(o) All dealings between the Client Plans and any of the Funds are on a basis no less favorable to such Client Plans than dealings between the Funds and other non-Plan shareholders holding the same class of shares as the Client Plans.

(p) Sanwa Bank maintains for a period of 6 years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, described in Section II(q), to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Sanwa Bank, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than Sanwa Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section II(q).

(q)(1) Except as provided in paragraph (q)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in

Section II(p) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the SEC;

(B) Any fiduciary of each of the Client Plans who has authority to acquire or dispose of shares of any of the Funds owned by such Client Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (q)(1)(B) and (q)(1)(C) of Section II shall be authorized to examine trade secrets of Sanwa Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) The term ''Sanwa Bank'' means Sanwa Bank California and any affiliate of Sanwa Bank, as defined in Section III(b).

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The terms ''Fund'' or ''Funds'' mean any open-end management investment company or companies registered under the 1940 Act for which Sanwa Bank serves as investment adviser and may also provide custodial or other services, such as Secondary Services, as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and redemptions calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''Plan'' means a welfare plan described in 29 CFR 2510.3–1, as amended; a pension plan described in 29 CFR 2510.3–2, as amended; a plan described in section 4975(e)(1) of the Code; and a retirement plan qualified under section 401(a) of the Code with respect to which Sanwa Bank serves or will serve as trustee, investment manager or custodian, and which constitutes an ''employee benefit plan'' under section 3(3) of the Act. The term ''Client Plan'' includes a Plan maintained by an entity other than Sanwa Bank. The term ''Bank Plan'' includes a Plan maintained by Sanwa Bank, including, but not limited to, the Sanwa Bank California Retirement Plan and the Sanwa Bank California Premiere Savings Plan.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to Sanwa Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Sanwa Bank if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by or is under common control with Sanwa Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee or relative of such Second Fiduciary is an officer, director, partner or employee of Sanwa Bank (or is a relative of such persons); and

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; provided, however, that, with respect to the Bank Plans, the Second Fiduciary may receive compensation from Sanwa Bank in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in the transactions and may not exceed 5 percent of such Second Fiduciary's gross annual revenues.

With respect to the Client Plans, if an officer, director, partner, or employee of Sanwa Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of the Plan's investment manager/adviser, the approval of any purchase or redemption by the Plan of shares of the Funds, and the approval of any increase of fees, in connection with any of the transactions described in Sections I and II, then Section III(h)(2) shall not apply.

(i) The term ''Secondary Service'' means a service, other than an investment advisory or similar service, which is provided by Sanwa Bank to the Funds, including but not limited to, accounting, administrative, brokerage or custodial services.

(j) The term ''Termination Form'' means the form supplied to the Second Fiduciary of a Client Plan, at the times specified in Section II(j), (k), and (m), which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in Section II(g). Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Client Plan and to notify Sanwa Bank in writing to effect such termination by redeeming shares of the Fund held by the Plans requesting termination on the date established by the Client Plan on the Termination Form or, if the Client Plan does not specify a date, not later than one business day following receipt by Sanwa Bank of written notice, either by mail, hand delivery, facsimile or other available means at the option of the Second Fiduciary, of such request for termination; provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption cannot be executed on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date, Sanwa Bank shall have one additional business day to complete such redemption.

(k) The term ''fixed-income security'' means any interest-bearing or discounted government or corporate security with a face amount of $1,000 or more that obligates the issuer to pay the holder a specified sum of money, at specific intervals, and to repay the principal amount of the loan at maturity.

(l) The term ''security'' shall have the same meaning as defined in section 2(36) of the 1940 Act, as amended, 15 USC 80a–2(36) (1996).

(m) The term ''business day'' means a banking day as defined by federal or state banking regulations.

EFFECTIVE DATE: This exemption is effective as of October 31, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on May 29, 1998 at 63 FR 29443.

Written Comments

The Department received two written comments with respect to the Notice and no requests for a public hearing. The first comment was submitted by an educational association (the Association) whose retirement plan (the Association Plan) is administered by Sanwa Bank as directed trustee. The comment raised numerous concerns, many of which did not relate to the investment in the Funds by the Association Plan and recommended that the exemption be denied. The second comment, which was submitted by Sanwa Bank, suggested modifications to the Notice and the Summary of Facts and Representations (the Summary) in several areas.

Following is a discussion of the comments received, including Sanwa Bank's responses to the Association's comment as well as the Department's responses to the modifications to the proposed exemption suggested by Sanwa Bank.

The Association's Comment

In its comment, the Association requests that the exemption be denied primarily because the notice of proposed exemption provided by Sanwa Bank to its clients ''did not consist of a complete disclosure of the nature of the relationship between Sanwa Bank and the Eureka Funds,'' specifically with respect to the fees. The Association states that documents provided to the Association Plan were ''automatically completed'' by Sanwa Bank to show the conversion of the Funds. As a result, the Association represents that it did not give its informed consent to Sanwa Bank.

In addition, the Association states that it is not clear whether there has been a reduction in both the trust and custodial administrative charges resulting from ''duplicative'' management fees. If there has been a fee offset, the Association believes that it has been in Sanwa Bank's favor as the Plan-level trust fund fee is 6 basis points and the Fund-level fee is in the neighborhood of 100 basis points.

Further, the Association finds the ''negative consent'' procedure described in the Notice problematic because it is not clear whether the fees would be offset fairly and equally. The Association represents that there may also be pressure by a Plan to consent to the negative consent procedure. If a Plan refused to use the Funds, the Association believes that Sanwa Bank may decline to act as trustee or custodian of other client funds.

In response to the Association's comment, Sanwa Bank notes at the outset that it did not receive any objections from any other Plans participating in the conversion transactions and that the comment is the first indication it has received about the Association concerns, despite the fact that investments by the Association Plan in the Funds have been reported in periodic statements provided to the Association by Sanwa Bank since the conversion transactions. In Sanwa Bank's view, the Association's comment reflects misunderstandings regarding the procedures that were followed in connection with the conversion transactions as well as the purposes and scope of the proposed exemption.

As directed trustee of the Association Plan, Sanwa Bank represents that it has been subject to investment directions of an independent investment manager appointed by the Association. However, prior to the conversion transactions, Sanwa Bank explains that the investment manager authorized and directed the investment of the cash balances of the Association Plan in one of its CIFs, the ITS Money Market Investment Fund (the Money Market CIF). In August–September 1997, the Sanwa Bank states that it provided the investment manager written notices (a) announcing the termination and conversion of the Money Market CIF and Sanwa Bank's other CIFs, (b) explaining that the Money Market CIF would be converted to the Eureka Prime Money Market Fund (the Prime Fund), (c) describing the nature and extent of Sanwa Bank's relationship with the Prime Fund and other Funds (and containing disclosures required by the proposed exemption), and (d) asking the investment manager to choose a new cash management vehicle for the Association Plan from among four separate alternatives which included, in addition to the Prime Fund, the Eureka U.S. Treasury Obligations Fund, a money market mutual fund advised by a party unrelated to Sanwa Bank and an insured deposit at Sanwa Bank. By letter dated October 14, 1997, Sanwa Bank explains that the investment manager gave it standing authorization to invest cash balances of the Association Plan in the Prime Fund. Sanwa Bank states that it has informed the investment manager that if the use of the Prime Fund is not satisfactory to either the Association or the investment manager, it is prepared to carry out authorized directions regarding an alternative disposition of cash balances of the Association Plan.

In response to the Association's assertion that notices provided by Sanwa Bank regarding the conversion transactions did not ''consist of a complete disclosure of the nature of the relationship between Sanwa Bank and the Funds,'' Sanwa Bank states that it provided written notice to the investment manager prior to the conversion transactions disclosing that Sanwa Bank was to serve as investment adviser to the Funds as well as the rate of compensation it was to receive from each of the Funds for its services as investment adviser.

In response to the Association's comment suggesting that trust and custodial administration charges be reduced or offset, Sanwa Bank explains that these fees are, in no way, duplicative of the fees it receives from the Funds for performing investment advisory services. This is reflected in the proposed exemption which requires that no investment management or similar fees be charged to a Client Plan with respect to Plan assets invested in the Funds. Further, Sanwa Bank points out that the proposed exemption does not require, and was never intended to require, the reduction or offsetting of trust or custodial administration fees that Sanwa Bank receives from Client Plans for trust and custodial administrative services.[2]

In regard to the Association's concern that the ''negative consent'' procedure places implicit pressure on a Plan to agree to the procedure or face the consequence that Sanwa Bank might decline to act as trustee or custodian, Sanwa Bank states that consistent with other individual exemptions granted by the Department, the proposed exemption allows the Second Fiduciary to decide whether or not to accept a fee increase. In this regard, Sanwa Bank explains that the Second Fiduciary is free to accept a fee increase by failing to object to such increase or may object to the increase and request the redemption of Fund shares held by the Plan. Therefore, Sanwa Bank represents that it sees no reason to alter the basic principle established in several other exemptions that the negative consent procedure is appropriate and is protective of the rights of affected plans.

In conclusion, Sanwa Bank does not believe the Association's comment justifies denying the exemption or otherwise changing it. Further, Sanwa Bank notes that a Plan is free to terminate its relationship with a Fund at any time without penalty. Therefore,

[2] Sanwa Bank notes that the Association was in error in stating that Fund-level fees paid to Sanwa Bank were in the neighborhood of 100 basis points. Sanwa Bank explains that the Prime Fund prospectus indicates that the total expenses of that Fund, including Sanwa Bank's compensation (after voluntary waivers) and expenses and fees paid to third parties unrelated to Sanwa Bank, only amount to 55 basis points per annum.

Sanwa Bank requests that the Department grant the exemption.

Sanwa Bank's Comment

1. Section I of the Notice

Sanwa Bank states that language at the end of the introductory paragraph of Section I of the Notice provides that the exemption will apply to transactions that occur ''in connection with the termination of the CIFs'' and that similar language appears in Section I(e)(1) of the Notice. Sanwa Bank represents that the although the CIFs involved in the conversion transactions that occurred on October 31, 1997 did, in fact, terminate, it specifically requested that the exemption extend not only to conversion transactions in which the affected CIFs terminate but to conversion transactions where the CIFs do not terminate. Sanwa Bank explains that this is the rationale for including the procedures set forth in Section I(e). For example, assets transferred in-kind from a non-terminating CIF to a Fund would consist of the *pro rata* share of the CIF's assets attributable to those Plans electing to participate in the conversion transaction if not all of the Plans elected to participate. Sanwa Bank notes that such transfers from non-terminating CIFs are permitted in prior individual exemptions and in Prohibited Transaction Exemption (PTE) 97–41, the Department's class exemption for Collective Investment Fund Conversion Transactions (62 FR 42830, August 8, 1997). Therefore, Sanwa Bank requests that the clause ''in connection with the termination of such CIFs'' be deleted entirely from the introductory paragraph of Section I and Section I(e)(1) of the Notice.

In addition, Sanwa Bank requests that the first sentence of Section I(e) of the Notice be amended to read as follows:

> The transferred assets constitute all or a *pro rata* portion of all assets of a Plan held in the CIF immediately prior to the transfer.

The Department does not concur with the requested clarification and has not made the change suggested by Sanwa Bank. The Department notes that when a Plan elects to transfer assets from a non-terminating CIF to a Fund, the Plan's proportionate share of all of its assets in the CIF must be transferred to the Fund such that none of the Plan's assets must remain in the CIF. Therefore, the Department has left the condition, as originally proposed, intact.

2. Footnote 12 of the Summary

Sanwa Bank states that the last sentence of Footnote 12 of the Summary should be revised to read as follows:

> Specifically, the procedures relate to the methods of communicating the confirmations described above by personal delivery, facsimile or electronic mail (see Section I(b)and (g) of this proposed exemption) and to *pro rata* allocations of CIF assets where the CIF making an in-kind transfer does not terminate in connection with the transaction (see section I(e) of this proposed exemption).

In response to this comment, the Department has decided not to make the requested revision for the reasons cited above in Item 1.

3. Section I(f) of the Notice

Sanwa Bank suggests that the initial reference to Rule 17a–7 in Section I(f) be amended to read as follows: ''Securities and Exchange Commission (SEC) Rule 17a–7 under the 1940 Act, as amended (Rule 17a–7). In response, the Department concurs with this revision and has amended the Notice, accordingly.

Sanwa Bank also states that Section I(f) of the Notice provides that the assets transferred to a Fund are to be valued using sources independent of Sanwa Bank in accordance with Rule 17a–7 and procedures established by the Fund pursuant to Rule 17a–7. Specifically, Sanwa Bank represents that the last sentence of Section I(f) states that ''such procedures must require'' that securities for which there is no market price must be valued pursuant to certain specified procedures. Sanwa Bank notes that although this language has appeared in prior individual exemptions but not in PTE 97–41, it does not contemplate the possibility of future amendments or modifications of the Rule. Sanwa Bank further notes that in adopting PTE 97–41, the Department noted that the requirement that valuations be determined in accordance with Rule 17a–7 was ''designed to provide flexibility for future transactions.'' Thus, for example, if Rule 17a–7 is subsequently amended by the SEC to accommodate new pricing systems, banks or plan advisers could take advantage of the amended Rule without having to request an amendment to the class exemption. Therefore, Sanwa Bank requests that the last sentence of Section I(f) be deleted.

In response, the Department concurs with this clarification and has made the requested change.

4. Section II(b) of the Notice

Sanwa Bank states that the Funds' prospectus and prior correspondence to the Department indicate that the Funds issue more than one class of shares. The existence of separate share classes is also reflected in Section II(o) of the Notice and in paragraph (d) of Representation 24 of the Summary. Accordingly, Sanwa Bank requests that Section II(b) of the Notice be modified to read as follows:

> The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction and is the same price which would have been paid or received for shares of the same class by any other investor at that time.

In addition, Sanwa Bank requests that paragraph (e) of Representation 25 of the Summary be revised to read as follows:

> The price that has been or will be paid or received by a Plan for shares of the Funds is the net asset value per share at the time of the transaction and is the same price for shares of the same class which will be paid or received by any other investor at that time.

The Department concurs with the revisions and has made the requested changes.

5. Section II(l) of the Notice

Section II(l) of the Notice provides that, if a Second Fiduciary terminates a prior authorization to invest in the Funds, Sanwa Bank must redeem the Client Plan's shares ''within the period of time specified by the Client Plan, but not later than one business day following receipt by Sanwa Bank from the Second Fiduciary of the Termination Form * * *.'' Sanwa Bank believes this provision is intended to give Client Plans the flexibility to choose a redemption that best suits the Plan's needs and circumstances and precludes a Client Plan from specifying a redemption date beyond one business day after receipt of the Termination Form.

To provide Client Plans who wish to have the flexibility to choose another redemption date, Sanwa Bank suggests that the second sentence of Section II(l) be amended to read as follows (bracketed word and comma deleted; underlined words added):

> The termination will be effected by Sanwa Bank redeeming shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan [,but] *or, if the Client Plan does not specify a date,* not later than one business day following receipt by Sanwa Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption of shares of such Client Plan cannot be executed within one business day, Sanwa Bank shall have one additional business day to complete such redemption; and

In connection with the foregoing change, Sanwa Bank also suggests that the second sentence of Section III(j)

(definition of ''Termination Form'') be amended to read as follows (underlined words added):

Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Client Plan and to notify Sanwa Bank in writing to effect such termination by redeeming shares of the Fund held by the Plans requesting termination *within the time period specified by the Client Plan or, if the Client Plan does not specify a date,* not later than one business day following receipt by Sanwa Bank of written notice, either by mail, hand delivery, facsimile or other available means at the option of the Second Fiduciary, of such request for termination; provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption cannot be executed within one business day, Sanwa Bank shall have one additional business day to complete such redemption.

The Department does not completely concur with the requested modifications made by Sanwa Bank and believes that they could be more accurately constructed. With respect to Section II(l) of the Notice, the Department has decided to delete the phrase ''within the time frame specified by the Client Plan'' and substitute the phrase ''on the date established by the Client Plan on the Termination Form.'' For purposes of consistency, the Department has also added the clause ''on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date'' after the word ''executed.'' As revised, Section II(l) would read as follows:

The termination will be effected by Sanwa Bank redeeming shares of the Funds held by the Client Plans requesting termination on the date established by the Client Plan on the Termination Form or, if the Client Plan does not specify a date, not later than one business day following receipt by Sanwa Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption of shares of such Client Plan cannot be executed on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date, Sanwa Bank shall have one additional business day to complete such redemption; and

Similarly, the Department has revised Section III(j) of the Notice to read as follows:

Such termination will be effected by Sanwa Bank redeeming the shares of the Funds held by the affected Client Plan within one business day following receipt by Sanwa Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination (the Termination Form), as defined in Section III(j); provided that if, due to circumstances beyond the control of Sanwa Bank, the redemption cannot be executed on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date, Sanwa Bank shall have one additional business day to complete such redemption.

Finally, the Department has modified the first sentence in the second paragraph of Representation 19 by deleting the word ''by'' and adding the clause ''on the date established by the Client Plan on the Termination Form, or if the Client Plan does not specify a date not later than * * *'' after the word ''Plan.'' In addition, the Department has revised the last sentence of Representation 19 to read as follows:

If, due to circumstances beyond the control of Sanwa Bank, the redemption cannot be effected on the date specified by the Client Plan or within one business day when the Client Plan does not specify a date, Sanwa Bank will have one additional business day to complete such redemption.

6. Section II(q)(1) of the Notice

Section II(q)(1) of the Notice provides that the records required to be maintained in connection with the exemption must be available for examination by duly authorized representatives of the SEC, as well as the Department and the Service. Sanwa Bank notes that although the requirement that records be available for SEC examination was included in a few individual exemptions granted during 1996 it is not included in individual exemptions granted prior to that time. Therefore, Sanwa Bank requests that Section II(q)(1)(A) of the Notice be modified to provide that the required records must be made available to authorized representatives of the Department and the Service.

The Department is not persuaded by this comment and has not made the requested change to the Notice. Because of the involvement of mutual funds in the transactions described herein, the Department believes that the records maintained in connection with the exemption should be subject to SEC examination.

7. Other Modifications to the Notice

In addition to the changes noted above, Sanwa Bank has requested (and the Department has agreed to make) several miscellaneous modifications to the Notice. In this regard, the Department has redesignated ''Section I(g)(2)(C)'' of the Notice as ''Section I(g)(2)(B).'' Further, in Section III(d) of the Notice, the Department has inserted quotation marks after the word ''Fund'' and before the word ''Funds.''

8. Paragraph (b) of Representation 1 of the Summary

Sanwa Bank represents that the second paragraph of Representation 1 of the Summary should be revised to reflect the fact that as of August 28, 1997, the SBC Savings Plan had 3,000 participants instead of 3,500 participants.

In response, the Department has noted this change and has made the requested modification.

9. Paragraph 3 of Representation 3 of the Summary

Sanwa Bank confirms that it has not received and will not receive any 12b–1 fees in connection with the transactions covered by the proposed exemption. However, Sanwa Bank wishes to point out that because the Funds issue more than one class of shares, one class of shares is subject to 12b–1 fees. Thus, although the class of Fund shares purchased by Plans is not subject to 12b–1 fees, Sanwa Bank emphasizes that it does receive 12b–1 fees with respect to the another class of shares purchased by non-Plan investors. Accordingly, Sanwa Bank notes that the last sentence of the third paragraph of Representation 3 of the Summary should be clarified to read as follows: ''In addition, no Fund has paid or will pay any 12b-1 fees to Sanwa Bank or its affiliates in connection with the transactions.''

In response, the Department has made the requested modification.

10. Representation 17 of the Summary

Sanwa Bank notes that the first two sentences of Representation 17 of the Summary, regarding certain Plan-level fees should be clarified by substituting in their place the following language:

Through October 31, 1997, Sanwa Bank charged each Client Plan a Plan-level fee for its services as trustee, investment manager or custodian based on Sanwa Bank's standard fee schedules and the terms of specific agreements negotiated between each Client Plan and Sanwa Bank. Such Plan-level fees included asset-based charges that were expressed as a percentage of Client Plan assets. Since October 31, 1997, however, Sanwa Bank no longer charges each Client Plan a Plan-level investment management, investment advisory, or similar fee with respect to assets of such Client Plan invested in shares of the Fund.

In response, the Department has made the requested modification.

11. Footnote 14 of the Summary

Sanwa Bank asserts that because Footnote 14 of the Summary might be construed to imply that Sanwa Bank has waived all investment advisory fees it

receives from the Funds through the end of the Funds' initial fiscal year, it wishes to clarify that it has agreed to waive temporarily a portion of such investment advisory fees.

The Department has noted this clarification.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10503) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments provided by the Association and Sanwa Bank, the Department has made the aforementioned changes to the Notice and Summary and has decided to grant the exemption subject to the modifications or clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bernard Chaus, Inc., Employee Savings Plan (the Plan), Located in New York, New York

[Prohibited Transaction Exemption 98–47; Exemption Application No. D–10606]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 24, 1997, to: (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Bernard Chaus, Inc. (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; (3) the past disposition or exercise of the Rights by the Plan; and (4) the proposed payment by the Employer to the Plan of an amount necessary to credit Plan accounts of participants affected by an administrative error relating to Rights which were not exercised or sold prior to the expiration of the Rights; provided the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The acquisition and holding of the Rights by the Plan resulted from an independent act of the Employer as a corporate entity and all holders of the common stock of the Employer, including the Plan, were treated in a substantially similar manner with respect to the Offering;

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering, except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold; and

(D) Within 30 days of the date of publication of this final exemption in the **Federal Register**, with respect to the Plan accounts of participants affected by an administrative error whereby 27 Rights (of the 17,041 Rights received by the Plan) were not exercised or sold prior to the expiration of the Rights, the Employer credits the affected accounts with an amount equal to the value such accounts would have received if the Rights had been sold on the last day of the Offering, including interest thereon through the date of such crediting at a rate equal to the average rate of earnings on all Plan assets during that period.

EFFECTIVE DATE: This exemption is effective as of December 24, 1997.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on August 6, 1998 at 63 FR 42077.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

ACRA Local 725 Health & Welfare Fund (the Welfare Plan) and ACRA Local 725 Pension Fund (the Pension Plan; together, the Plans), Located in Dade, Broward and Monroe Counties, Florida

[Prohibited Transaction Exemption 98–48; Exemption Application Nos. L–10536 and D–10537]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the payment of interest by the Pension Plan to the Welfare Plan on past mistaken contributions (the Mistaken Contributions) pursuant to an indemnification agreement by the Board of Trustees of the Pension Plan with respect to the Mistaken Contributions, provided the following conditions are satisfied: (a) The Mistaken Contributions occurred as a result of an inadvertent clerical error committed by the Plans' independent third party administrator; (b) the principal amount of the Mistaken Contributions was repaid as soon as the error was discovered; and (c) the amount of interest to be paid to the Welfare Plan by the Pension Plan has been determined by a third party bank to be the fair market rate of interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1998 at 63 FR 35289.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received no hearing requests with respect to the proposed exemption. The only comment received by the Department was submitted by the applicant to correct an error that appeared in the proposed exemption. The proposed exemption had indicated that the Plans were located in Macon, Georgia. While the Plans' current third party administrative manager, Core Management Resources, Inc., is located in Macon, the applicant commented that the Plans' trustees and participants are essentially located in Dade, Broward and Monroe Counties, Florida. The Department has amended the exemption accordingly and otherwise granted the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 30th day of September, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–26622 Filed 10–5–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following information collection without changes to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. This collection was published as proposed on July 20, 1998. No comments relating to the information collection were received within the 60 day comment period.

DATES: Comments will be accepted until November 5, 1998.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0011.

Form Number: NCUA 9600.

Type of Review: Extension of a currently approved collection.

Title: Application for Insurance of Accounts State-Chartered Credit Unions.

Description: Section 201 of the Federal Credit Union Act (12 U.S.C. 1781) requires state-chartered credit unions desiring federal insurance to submit an application. The requirement also applies to federal credit unions converting to state charters and desiring federal insurance.

Respondents: State-chartered credit unions and federal credit unions converting to state charter that desire federal insurance of member accounts.

Estimated No. of Respondents/Recordkeepers: 61.

Estimated Burden Hours Per Response: 4.5 hours.

Frequency of Response: Other. As required.

Estimated Total Annual Burden Hours: 268.

Estimated Total Annual Cost: N/A.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–26772 Filed 10–5–98; 8:45 am]

BILLING CODE 7535–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Co. Inc., et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Oportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5 issued to Southern Nuclear Operating Company, Inc., et al. (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendments would revise the Technical Specifications to accommodate an increase in maximum licensed thermal power level from 2558 megawatts thermal (MWt) to 2736 MWt.

The licensee submitted the proposed changes by letter dated August 8, 1997. In processing this request, the staff recognized on September 29, 1998, it inadvertently failed to publish a notice of proposed issuance of the amendments in the **Federal Register**. In the August 8, 1997, original application, the licensee requested that the proposed amendments be issued prior to startup from the fall 1998 refueling outage on Unit 2. Startup from the refueling outage is presently scheduled for October 18, 1998.

Upon being informed by the staff that a notice of proposed issuance of amendments inadvertently was not published, the licensee requested, by letter dated September 30, 1998, that the proposed amendments be processed on a exigent basis.

The need for exigency is based on the fact that the licensee would be required to postpone changes to procedures, instrumentation, and setpoints on Unit 2 until after startup and power ascension of the plant if the amendments were not issued prior to restart. The licensee would then be required to implement these changes while online which would increase the possibility of a plant scram and introduce a potential for unnecessary transients on the plant.

The licensee has evaluated the impact of the schedule change and the online implementation of the extended power uprate (EPU) and determined that receiving the amendments prior to startup will result in a net increase in plant safety and reliability. Reliability benefits include a reduced potential for an inadvertent reactor scram while adjusting instrumentation online and human performance issues associated with training and procedures. Implementation of the EPU requires adjustment of the direct scram from the turbine stop valve and the turbine control valve fast closure and the main steamline high flow isolation setpoints. These adjustments place the plant in a configuration that results in generation of a half scram signal and an increased potential for an unnecessary full scram of the plant. Implementation of the EPU also requires adjustment of the average power range monitor (APRM) setpoints, including the APRM simulated thermal power scram.

In addition, the licensee has identified approximately 20 instrumentation and controls and 30 operations procedures that would require revisions prior to and after the issuance of the uprate amendments if they are not issued prior to Unit 2 startup. This may result in human factor concerns associated with procedure revisions and operator training.

Therefore exigency is appropriate in order to allow implementation of these amendments and will result in a net benefit in plant safety and reliability.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated based upon the following discussion:

A. Evaluation of the Probability of Previously Evaluated Accidents

The proposed extended power uprate imposes only minor increases in plant operating conditions. No changes to rated core flow, rated reactor pressure, or turbine throttle pressure are required. The higher power level will result in moderate flow increases in systems associated with the turbine cycle (e.g., condensate, feedwater, and main steam). The small increase in operating temperatures for BOP [balance of plant] support systems has no significant effect on LOCA [loss-of-coolant accident] or other accident probabilities. The extended power uprate evaluations confirm the higher power level has no significant effect on flow induced erosion/corrosion. The limiting feedwater and main steam piping flow increases were evaluated and shown to be approximately proportional to the power increase. The affected systems are currently monitored by the Plant Hatch erosion/corrosion program. Continued system monitoring provides a high level of confidence in the integrity of potentially susceptible high energy piping systems.

When required, the occurrence frequency of accident precursors and transients is addressed by applying the guidance of NRC-reviewed setpoint methodology to ensure acceptable trip avoidance is provided during operational transients subsequent to implementation of extended power uprate. The setpoint evaluation confirmed Plant Hatch extended power uprate does not increase the number of challenges to the protective instrumentation.

Plant systems, components, and structures were verified as capable of performing their intended functions under increased power conditions with a few minor exceptions.

That is, some components will be modified prior to implementation of the extended power uprate program to accommodate the revised operating conditions * * *. The Plant Hatch extended power uprate does not significantly affect the reliability of plant equipment. In cases where plant availability could be impacted by BOP equipment performance, modifications and administrative controls will be implemented to adequately compensate. No new components or system interactions that could lead to an increase in accident probability are created due to operation at 2763 MWt [megawatts thermal].

The probability of design basis accidents (DBAS) occurring is not affected by the increased power level, since the applicable criteria established for plant equipment (e.g., ANSI Standard B3 1.1 and ASME [American Society of Mechanical Engineers] Code) will still be followed when the plant is operated at the new power level. The extended power uprate analysis basis assures the limits prescribed by the Code of Federal Regulations (CFR) (e.g., LOCA PCT [peak clad temperature], SLMPCR, 10 CFR 20) will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the CFR design rules were demonstrated to be maintained, as have other margin-assuring acceptance criteria used to judge the acceptability of the plant. Established reactor scram setpoints are such that there should be no increase in scram frequency due to the increased power level. No new challenges to safety-related equipment will result. Therefore, the proposed Operating License and Technical Specifications changes do not involve a significant increase in the probability of an accident previously evaluated.

B. Evaluation of the Consequences of Previously Evaluated Accidents

ECCS–LOCA Analysis

The Plant Hatch emergency core cooling system loss-of-coolant accident (ECCS–LOCA) performance analysis was performed for extended power uprate using methodology approved by the NRC for analysis required by 10 CFR 50.46. This revised analysis utilizes the same methodology (SAFER/GESTR) as the existing ECCS–LOCA analysis. ECCS requirements assumed for extended power uprate are very similar to the existing 1986 analysis. In accordance with regulatory guidance, the Plant Hatch ECCS–LOCA analysis was performed at 102% of the new RTP of 2763 MWt, or 2818 MWt. The licensing peak clad temperature remains well below the 10 CFR 50.46 required limit of 2200°F. Therefore, the analysis demonstrates Plant Hatch will continue to comply with 10 CFR 50.46 and 10 CFR 50, Appendix K at extended power uprate conditions. Thus, the consequences of accidents are not significantly increased at the higher power level.

Abnormal Operating Transient Analysis

An evaluation of the Plant Hatch Unit I and Unit 2 Final Safety Analysis Reports (FSARs) and reload transients was performed for extended power uprate to demonstrate the proposed maximum power level will have no adverse effect on plant safety. The evaluation was performed for a power level of 2763 MWt, with the exception of certain event evaluations that were performed at 102% of 2763 MWt. The transient analysis performed to demonstrate the acceptability of Plant Hatch extended power uprate employed the same NRC-approved methods used today.

The limiting transient events at extended power uprate conditions, including events that establish the core thermal operating limits and events that bound other transient protection criteria, were evaluated. The limiting transients were benchmarked against the existing RTP [rated thermal power] level by performance of the event analysis at both the proposed power level and the current RTP level. In addition, an expanded group of transient events was evaluated to confirm these events remained less limiting than the most limiting transients. The transient events included in the expanded group were chosen based upon events demonstrated to be sensitive to initial power level. This evaluation confirmed the existing set of limiting transient events remains valid for the Plant Hatch extended power uprate. The evaluation was performed for a

representative core and demonstrates the overall capability to meet all transient safety criteria. Cycle-specific analyses will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and establish cycle-specific operating limits.

The results of the limiting transients evaluation demonstrate extended power uprate can be accomplished without a significant increase in the consequences of the transients evaluated. The fuel thermal-mechanical limits at extended power uprate conditions are within the specific design criteria for the GE fuels currently loaded in the Plant Hatch cores. Also, the power-dependent and flow-dependent minimum critical power ratio (MCPR) and maximum average planar linear heat generation rate (MAPLHGR) limits utilized at Plant Hatch since the mid-1980s require only minor changes. The peak reactor pressure vessel (RPV) bottom head pressure remains within the ASME Code requirement for RPV overpressure protection. The effects of plant transients were evaluated by assessing disturbances caused by a malfunction or single failure of equipment, or operator error, consistent with the FSARs [Final Safety Analysis Reports]. Limiting transient events tend to be slightly more severe ([approximately equal to] 1%) when initiated from the new power level, assuming a 1.12 safety limit (SLMCPR) which was determined using the latest NRC-approved methods. However, for the most limiting transient, an evaluation of a representative core showed little or no change is required to the operating limit MCPR (OLMCPR) at extended power uprate and the integrity of SLMCPR is maintained. The margin of safety established by the SLMCPR is not affected and the event consequences are not significantly affected by the proposed extended power uprate to 2763 MWt. Cycle-specific analyses will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and establish cycle-specific operating limits.

The transient analysis results demonstrate the Plant Hatch core thermal power output can be safely increased to 2763 MWt without significantly affecting the consequences of previously evaluated postulated transient events. The results of the extended power uprate transient evaluation are summarized as follows:

1. Events Resulting in Nuclear System Pressure Increase

a. Main Generator Load Rejection with No Steam Bypass. At extended power uprate conditions, the fuel transient thermal and mechanical overpower results remain below the NRC-accepted design criteria.

b. Main Turbine Trip with No Steam Bypass. At extended power uprate conditions, the fuel transient thermal and mechanical overpower results remain below the NRC-accepted design criteria.

c. Main Steam Isolation Valve (MSIV) Closure. At extended power uprate conditions, this event (with a scram initiated by the valve closure) remains nonlimiting with respect to fuel thermal limits.

d. Pressure Regulator Failure—Closed and Slow Closure of a Single TCV [temperature control valve]. These transients remain nonlimiting as compared with other more severe pressurization events.

2. Event Resulting in a Reactor Vessel Water Temperature Decrease

a. Loss of Feedwater Heating. The consequences of this event at the extended power uprate conditions remain nonlimiting with regard to the cycle OLMCPR. The results at low core flow conditions are actually slightly higher than for the high core flow condition because of increased inlet coolant subcooling into the reactor core. The calculated thermal and mechanical overpower limits at extended power uprate conditions for this event also meet fuel design criteria.

b. Inadvertent High Pressure Coolant Injection (HPCI) Actuation. For the limiting condition analyzed, both the high water level setpoint and the high RPV steam dome pressure scram setpoints are not reached. Based upon the peak average fuel surface heat flux results, the HPCI actuation event will be bounded by the limiting pressurization event with respect to delta critical power ratio ([delta]CPR) considerations. In addition, the fuel transient thermal and mechanical overpower limits remain within the allowable NRC-accepted design values.

c. Shutdown Cooling Residual Heat Removal (RHR) Malfunction. This event is not affected by extended power uprate.

3. Event Resulting in a Positive Reactivity Insertion

Rod Withdrawal Error (RWE)

The current rod block monitor (RBM) system with power-dependent setpoints was analyzed for the RWE event at extended power uprate conditions using a statistical approach consistent with NRC approved methods. The analysis concluded the transient is slightly more severe with a greater [delta]CPR from the initial most limiting CPR. However, the fuel and mechanical overpower limits remain within the NRC accepted design criteria.

4. Event Resulting in a Reactor Vessel Coolant Inventory Decrease

a. Pressure Regulator Failure to Full Open. The results of this transient for extended power uprate remain nonlimiting as compared with other more severe pressurization events.

b. Loss of Feedwater Flow. This transient event does not pose any direct threat to the fuel in terms of a power increase from the initial conditions. Water level declines rapidly and a low water level causes a reactor scram. Actuation of HPCI and reactor core isolation cooling (RCIC) terminate the event. However, the loss of feedwater flow event is included in the extended power uprate evaluation to assure sufficient water makeup capability is available to keep the core well covered when all normal feedwater is lost. A plant-specific analysis performed in support of the extended power uprate program shows a large amount of water remains above the top of the active fuel. This sequence of events does not require any new operator actions or shorter operator response times. Therefore, operator actions for the event do not significantly change for extended power uprate.

c. Inadvertent Opening of a Safety/Relief Valve (S/RV), Loss of Auxiliary Power, and Loss of One DC System. These events remain less severe at extended power uprate conditions.

5. Event Resulting in Core Coolant Flow Decrease

a. Recirculation Pump Seizure. The recirculation pump seizure transient evaluation includes the assumption the pump motor shaft of one recirculation pump stops instantaneously. As a result, core flow decreases rapidly. The heat flux decline lags core power and flow, and could result in a degradation of core heat transfer. At extended power uprate conditions, the consequences of the pump seizure event remain nonlimiting. Note the Unit 2 FSAR classifies this event as an accident due to the low probability of occurrence.

b. RPT and Recirculation Flow Control Failure Decreasing Flow. These transients remain nonlimiting at extended power uprate conditions.

6. Event Resulting in Core Coolant Flow Increase

Recirculation Flow Controller Failure Increasing Flow

The results of this transient for extended power uprate remain nonlimiting as compared with other more severe pressurization events.

7. Event Resulting in Core Coolant Temperature Increase

Failure of RHR Shutdown Cooling

This event is not significantly affected by the increase in licensed thermal power.

8. Event Resulting in Excess of Coolant Inventory

Feedwater Controller Failure—Maximum Demand

The CPR calculated for this event at extended power uprate conditions is slightly higher than the corresponding value for the current rated power. However, the trend for the feedwater controller failure—maximum demand event is consistent—with the analysis for the current rated power level. The fuel thermal margin results are within the acceptable limits for the fuel types analyzed.

DBA Challenges to Containment

The primary containment's response to the limiting DBA was evaluated at 2763 MWt, plus a 2% adder. The effect of extended power uprate on the short-term containment response (peak values), as well as the long-term containment response for containment pressure and temperature confirms the suitability of the plant for operation at the new power level. Factors of safety provided in the ASME Code are maintained, and the safety margin is not altered by uprating power to 2763 MWt.

Short-term containment response analyses were performed for the limiting DBA LOCA, a double-ended guillotine break of a recirculation suction line, to demonstrate operation at a bounding reactor power will

not result in exceeding the containment design limits. This limiting DBA LOCA event results in the highest short-term containment pressures and dynamic loads. The analysis determined, at the proposed reactor power level, the maximum drywell pressure values increase only [approximately equal to] 1 psi and remain well bounded by the containment design pressure. Extended power uprate has no adverse effect on the containment structural design pressure.

Because increasing RTP increases residual heat, the containment long-term response will have slightly higher temperatures. Long-term suppression chamber temperatures remain within the design temperature of the structure; thus, ASME Code factors of safety are maintained and the safety margin is not affected. An analysis confirmed ECCS pump net positive suction head (NPSH) is not adversely affected with this temperature response, and the long-term response does not adversely affect the containment structure or the environmental qualification (EQ) of equipment located in the drywell and torus. The drywell long-term temperature response is not adversely affected for the higher reactor power; thus, the containment long-term response for extended power uprate is acceptable.

The impact of a reactor power increase on containment dynamic loads was evaluated and found to have no adverse effect for conditions that bound the proposed power level. Thus, containment dynamic loads are acceptable for operation at 2763 MWt.

The Plant Hatch extended power uprate evaluation of the primary containment response to DBAs confirmed the proposed power level does not result in a significant increase in the consequences of a postulated accident for a reactor power level [approximately equal to] 2% greater than the proposed increase to 2763 MWt.

Radiological Consequences of DBAs

For Plant Hatch extended power uprate, the radiological consequences of the limiting DBAs were reevaluated. The evaluations included the effect of the proposed power level on the radiological consequences of accidents presented in the FSARs. Reference 3 provides information on a revised radiological dose analysis for the DBA LOCA and shows doses remain within 10 CFR 100 limits at the new power level.

This DBA LOCA radiological evaluation was performed using input and evaluation techniques consistent with current regulatory guidance and appropriate plant design basis. The inputs and analysis methods are different from those utilized in the current licensing basis evaluation presented in the FSARs and the Atomic Energy Commission safety evaluation report supporting the initial plant licensing. However, the input used in the extended power uprate radiological evaluation provides a conservative assessment of the potential radiological consequences. The conclusions of these evaluations are consistent with the original licensing basis evaluations. The radiological consequences of the limiting DBA remain within 10 CFR 100 guidelines for the proposed RTP level. For the purpose of analysis, the new RTP level was increased by an additional 2% in accordance with regulatory guidance.

To demonstrate the change in consequences, the evaluation of radiological consequences using the different analysis inputs and methods was performed for the existing licensed RTP level and the proposed RTP level.

The impact of the proposed licensed power level on the fuel handling accident, control rod drop accident, and main steam line break outside primary containment was evaluated. The radiological consequences remain well below regulatory limits.

The evaluation of DBA radiological consequences confirmed extended power uprate does not result in a significant increase in consequences at a power level of 2763 MWt. The results remain below 10 CFR 100 guideline values. Therefore, the postulated radiological consequences do not represent a significant change in accident consequences and are clearly within the regulatory guidelines for the proposed power level increase.

Other Evaluations

1. Performance Improvements

The extended power uprate safety analysis was performed taking into account the implementation of the following previously approved special operational features.

a. Single-Loop Operation (SLO). The safety analysis for extended power conditions shows the single-loop operating mode remains valid. The current trip setpoints determined for two-loop operation (TLO) were confirmed to be acceptable for SLO, with a correction applied to account for the actual effective drive flow applied when operating with a single loop. The SLO settings were conservatively established to be consistent with the TLO settings, while ensuring the appropriate corrections are applied to the MAPLHGR and the OLCPR to account for SLO.

b. Maximum Extended Load Line Limit (MELLL). The safety analysis for new power conditions shows the operating domain as analyzed is valid for extended power uprate conditions, even with operation permitted on a slightly higher absolute rod line.

c. Increased Core Flow (ICF). The safety analysis for extended power uprate shows that operation at ICF conditions remains acceptable.

d. Final Feedwater Temperature Reduction (FFWTR). The safety analysis for extended power uprate shows operation at FFWTR conditions remains acceptable.

e. Average Power Range Monitor/Rod Block Monitor Technical Specification (ARTS) Improvements. The safety analysis for extended power uprate conditions shows the ARTS improvements remain valid for the extended power uprate conditions.

2. Effect of Extended Power Uprate on Support Systems

An evaluation was performed to address the effect of the extended power uprate on accident mitigation features, structures, systems, and components within the BOP. The evaluation results are as follows:

a. Auxiliary systems, such as building heating, ventilation, and air-conditioning (HVAC) systems, reactor building closed cooling water, plant service water, spent fuel pool cooling; process auxiliaries, such as instrument air and makeup water; and the post-accident sampling system were confirmed to operate acceptably under normal and accident conditions at the proposed power level.

b. Secondary containment and standby gas treatment system were confirmed to be adequate relative to containing, processing, and controlling the release of normal and post-accident levels of radioactivity.

c. Instrumentation was reviewed and confirmed capable of performing control and monitoring functions at the proposed power level. As required, analyses were performed to determine the need for setpoint changes for various functions (e.g., APRM simulated thermal power scram setpoints). In general, setpoints are to be changed only to maintain adequate difference between plant operating parameters and trip setpoints, while ensuring safety performance is demonstrated. The revised setpoints were established using NRC-reviewed methodology as guidance.

d. Electric power systems, including the main generator and switchgear components, were verified as being capable of providing the required electrical load as a result of the increased power level. An evaluation of the auxiliary power system confirmed the system has sufficient capacity to support all required loads for safe shutdown, maintain a safe shutdown condition, and operate the required engineered safeguards equipment following postulated accidents. No safety-related electrical loads were affected which would impact the emergency diesel generators.

e. Piping systems were evaluated for the effect of operation at higher power levels, including transient loading. The evaluation confirmed piping and supports are adequate to accommodate the increased loading resulting from operation at higher power conditions.

f. The effect of the higher power conditions on a high energy line break (HELB) was evaluated. The evaluation confirmed structures, systems, and components important to safety are capable of accommodating the effects of jet impingement, blowdown forces, and the environmental effects resulting from HELB events.

g. Control room habitability was evaluated. Post-accident control room and Technical Support Center doses at 2763 MWt were confirmed to be within the guidelines of General Design Criterion 19 of 10 CFR 50, Appendix A. (See Ref. 3.)

h. The EQ of equipment important to safety was evaluated for the effect of normal and accident operating conditions at the proposed power level. The equipment remains qualified for the new conditions. The preventive maintenance program will continue to provide equipment maintenance or replacement to ensure equipment EQ at extended power uprate conditions.

3. Effect on Special Events

The consequences of special events (i.e., anticipated transient without scram (ATWS); 10 CFR 50, Appendix R; and station blackout) remain within NRC-accepted

criteria at 2763 MWt. Vessel overpressure protection was analyzed assuming a closure of the MSIVs with a neutron flux scram, Although the peak reactor vessel bottom head pressure increases slightly at extended power uprate conditions, it is well within the ASME Code overpressure limit of 1375 psig. The standby liquid control (SLC) system capability analysis illustrates the plant can still achieve cold shutdown without dependence upon the control rods. Core thermal-hydraulic stability was evaluated. The new power level and modified power-to-flow map will not affect the ability to detect and suppress limit-cycle oscillations. Extended power uprate also does not adversely affect other special events, because the available equipment is not changed and the input assumptions for the evaluations are not significantly changed. Concurrent malfunctions assumed to occur during accidents were accounted for in the safety analyses for the proposed power level increase. The consequences of these equipment malfunctions do not change with the implementation of the extended power uprate program.

Conclusion

The evaluation of ECCS performance demonstrated the criteria of 10 CFR 50.46 are satisfied, thus, the margin of safety established by the criteria is maintained. The analysis demonstrated the ECCS will function with the most limiting single failure to mitigate the consequences of the accident and maintain fuel integrity. Challenges to the containment were evaluated and the integrity of the fission product barrier was confirmed. The radiological consequences of DBAs were evaluated and it was found the effect of the proposed extended power uprate on postulated radiological consequences does not result in a significant increase in accident consequences. The evaluations provide conservative results for the proposed power level of 2763 MWt and demonstrate the proposed extended power uprate does not result in a significant increase in accident consequences.

The abnormal transients were analyzed under extended power uprate conditions, and the analysis confirms the power increase to 2763 MWt has only a minor effect upon MCPR and the SLMCPR results. Thus, the margin of safety as assured by the SLMCPR is maintained. The effect of extended power uprate on the consequences of abnormal transients that result from potential component malfunctions is acceptable; thus, operation at the new power level does not result in a significant increase in transient event consequences.

The spectrum of analyzed postulated accidents and transients was investigated and determined to meet current regulatory criteria. In the area of core design, the fuel operating limits will still be met at the requested power level, and fuel reload analyses will show plant transients meet NRC-accepted criteria. The evaluation of accident consequences was performed consistent with the proposed changes to the plant Technical Specifications. Therefore, the proposed Operating License and Technical Specifications changes will not cause a significant increase in the consequences of an accident previously evaluated for Plant Hatch Unit 1 and Unit 2.

II. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated based upon the following discussion:

The BWR [boiling water reactor] configuration, operation, and event response is unchanged by the higher power level. Analyses of transient events confirm the same transients remain limiting and no transient events will result in a new sequence of events that could lead to a new accident scenario. The extended power uprate analyses confirm the accident progression is basically unchanged.

An increase in power level does not create a new fission product release path, or result in a new fission product barrier failure mode. The same fission product barriers, such as the fuel cladding, the reactor coolant pressure boundary (RCPB), and the reactor containment, remain in place. Fuel rod cladding integrity is ensured by operating within thermal, mechanical, and exposure design limits, and is demonstrated by the extended power uprate transient and accident analyses. Similarly, analysis of the RCPB and primary containment demonstrates the increased power level has no adverse effect upon these fission product barriers. The proposed Technical Specifications changes in support of extended power uprate implementation are consistent with the analyses, and assure transient and accident mitigation capability in compliance with regulatory requirements.

The effect of Plant Hatch extended power uprate on plant equipment was evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode resulting from the increased power was identified. The full spectrum of accident considerations defined in the FSARs was evaluated, and no new or different kind of accident resulting from the extended power uprate was identified. Extended power uprate analyses were performed using developed technology which was applied assuming the capability of existing plant equipment in accordance with existing regulatory criteria, including accepted codes, standards, and methods. GE has analyzed BWRs, with higher power densities and no new power-dependent accidents were identified. In addition, this uprate does not create any new sequence of events or failure modes that lead to a new type of accident.

All necessary actions will be taken prior to implementation of this program to ensure safety-related structures, systems, and components remain within their design allowable values and also ensure they can perform their intended functions under higher power conditions. The extended power uprate does not increase or create any new challenges to safety-related equipment or other equipment whose failure could cause a different kind of accident from that previously evaluated.

III. The proposed changes do not involve a significant reduction in a margin of safety based upon the following discussion:

The transient and accident analyses, as well as a majority of the plant-specific evaluations, to support the extended power uprate were performed at 2763 MWt and increased by an additional 2% in accordance with regulatory guidance, when applicable, for the evaluation of accidents and transients. The analyses demonstrate sufficient margins of safety exist. The evaluation of transient events and instrument setpoints demonstrate sufficient margin when compared to criteria establishing margins of safety for the proposed increase in power level.

The Plant Hatch extended power uprate analysis basis assures the power-dependent safety margin criteria prescribed by the CFR will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the ASME Code design rules are maintained, as are other margin-assuring acceptance criteria used to judge the acceptability of the plant.

A. Fuel Thermal Limits

No change in the basic fuel design is required to achieve the extended uprate power level or to maintain the margins as discussed above. No increase in the allowable peak rod power is requested. The abnormal transients were evaluated at the higher power level for a representative core configuration. The analysis confirms the extended power uprate has no significant effect upon the OLMCPR or the SLMCPR. The fuel operating limits, such as MAPLHGR and the OLMCPR, will still be met at the new power level. The analyses confirm the acceptability of these operating limits for extended power uprate without an adverse effect upon margins to safety. Cycle specific analyses for each fuel reload will continue to be performed to demonstrate compliance with the applicable transient criteria and establish cycle-specific operating limits.

B. DBA Challenges to Fuel

Evaluation of the ECCS performance demonstrates the criteria of 10 CFR 50.46 are satisfied; thus, the margin of safety established by the criteria is maintained. This evaluation was performed at 2763 MWt, and increased by an additional 2% in accordance with regulatory guidance. The analysis demonstrates Plant Hatch will continue to comply with the guidance of 10 CFR 50.46 and the margin of safety established by the regulation will be maintained following the increase in power level.

C. DBA Challenges to Containment

The primary containment response to the limiting DBA was evaluated for extended power uprate. The effect of the increased power on the short-term containment response (peak values), as well as the long-term containment response, for containment pressure and temperature confirms the suitability of the plant for operation at the proposed power level of 2763 MWt. Factors of safety provided in the ASME Code are maintained and safety margin is not affected.

Short-term containment response analyses were performed for the limiting DBA LOCA, consisting of a double-ended guillotine break of a recirculation suction line, to demonstrate operation at the new reactor power will not result in exceeding containment design limits. The analyses determined the

maximum drywell pressure increases only slightly and is bounded by the containment design pressure. Extended power uprate has no adverse effect on containment structural design pressure.

Long-term suppression chamber temperatures remain within the design temperature of the structure; thus, factors of safety provided in the ASME Code are maintained and the safety margin is not affected. Analyses confirm ECCS pump NPSH is not adversely affected with this temperature response, and the long-term response does not adversely affect the containment structure or the EQ of equipment located in the drywell and torus.

The impact of a reactor power increase on containment dynamic loads was evaluated and found to have no adverse effect for conditions that bound the proposed increase in power level. Thus, containment dynamic loads are acceptable for extended power uprate.

The Plant Hatch extended power uprate evaluation of the primary containment response to the DBA confirms the increased power level does not result in the reduction in a margin of safety.

D. DBA Radiological Consequences

The FSARs provide the radiological consequences for each DBA. The magnitude of the potential consequences is dependent upon the quantity of fission products released to the environment, the atmospheric dispersion factors, and the dose exposure pathways. For the case of extended power uprate, the atmospheric dispersion factors and the dose exposure pathways do not change. Therefore, the only factor that will influence the magnitude of the consequences is the quantity of activity released to the environment. This quantity is a product of the activity released from the core and the transport mechanisms between the core and the effluent release point.

The radiological consequences of DBAs were evaluated and it was found there is not a significant increase in consequences. The results remain below 10 CFR 100 guideline values. Therefore, the postulated radiological consequences are clearly within the regulatory guidelines, and all radiological safety margins are maintained for the proposed power level of 2763 MWt.

E. Transient Evaluations

The effect of plant transients was evaluated by assessing a number of disturbances of process variables, and malfunctions or failures of equipment consistent with the FSARS. The transient events tend to be slightly more severe ([approximately equal to] 1%) when initiated from the new power level, assuming a 1.12 SLMCPR, which was determined using the latest GE methods approved by the NRC. However, for the most limiting transient, an evaluation of a representative core shows no significant change to the OLMCPR is required for the new power level and the integrity of the SLMCPR is maintained.

Cycle-specific analyses for each fuel reload will continue to be performed to demonstrate compliance with the applicable transient criteria and establish cycle-specific operating limits.

The fuel thermal-mechanical limits at extended power uprate conditions are within the specific design criteria for the GE fuels currently loaded in the Plant Hatch cores. Also, the power-dependent and flow-dependent MCPR and MAPLHGR methods remain applicable. The peak RPV bottom head pressure remains within the ASME Code requirement for RPV overpressure protection.

The margin of safety established by the SLMCPR is not affected by the proposed power level increase to 2763 MWt.

F. Special Events

The event acceptance limits for special events remain unchanged for extended power uprate. For example, the peak RPV bottom head pressure remains below the 1375 psig ASME Code requirement for RPV overpressure protection. Acceptance limits for ATWS, Appendix R, and station blackout also remain unchanged.

G. Technical Specifications Changes

The Technical Specifications ensure the plant and system performance parameters are maintained at the values assumed in the safety analysis. The Technical Specifications (setpoints, trip settings, etc.) are selected such that adequate margin exists. For instruments that initiate protective functions (e.g., reactor protection system, ECCS, and containment isolation), proper account is taken of inaccuracies introduced by instrument drift, instrument accuracy, and calibration accuracy. The Technical Specifications address equipment availability and limit equipment out-of-service to assure the plant will have at least the complement of equipment available to deal with plant transients as that assumed in the safety analysis. The evaluations and analyses performed to demonstrate the acceptability of extended power uprate were performed using input consistent with the proposed changes to the plant Technical Specifications.

The events (i.e., transients and accidents) that form the Technical Specifications Bases were evaluated for extended power uprate conditions using input and initial conditions consistent with the proposed Technical Specifications changes. Although some changes to the Technical Specifications are required, no NRC acceptance limit is exceeded. Therefore, the margins of safety assured by safety limits and other Technical Specifications limits are maintained. The proposed changes to the Bases are consistent with the evaluations demonstrating acceptability of the new licensed power level of 2763 MWt.

Conclusion

The spectrum of postulated accidents and transients was investigated and was determined to meet the current regulatory criteria for Plant Hatch at extended power uprate conditions. In the area of core design, fuel operating limits will still be met at the new power level, and fuel reload analyses will show plant transients meet the NRC-accepted criteria as specified in the plant Technical Specifications. Challenges to fuel and ECCS performance were evaluated and shown to meet the criteria of 10 CFR 50.46 and 10 CFR 50, Appendix K. Challenges to the containment were evaluated and the integrity of the fission product barrier was confirmed. Radiological release events were evaluated and shown to meet the guidelines of 10 CFR 100. The proposed Operating License and Technical Specifications changes are consistent with the Plant Hatch extended power uprate evaluations. The evaluations demonstrate compliance with the margin-assuring acceptance criteria contained in applicable codes and regulations. Therefore, the proposed Operating License and Technical Specifications changes do not involve a significant reduction in the margin of safety.

References

1. NRC letter from D. M. Crutchfield to G. L. Sozzi (GE), ''Staff Position Concerning GE BWR Extended Power Uprate Program,'' TAC No. M91680, dated February 8, 1996.

2. NRC letter from K. N. Jabbour to J. T. Beckham, Jr., ''Issuance of Amendments—Edwin I. Hatch Nuclear Plant Units I and 2,'' (TAC Nos. M91077 and M91078), dated August 31, 1995.

3. SNC letter BL–5356 from H. L. Sumner, Jr., to the NRC, ''Revised Post-LOCA Doses,'' dated April 17, 1997.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 14-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the

publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 5, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 8, 1997, as supplemented by letters dated March 9, May 6, July 6, July 31, September 4, September 11, and September 30, 1998, and also advanced information related to the application dated April 17, 1998, which 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 Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 1st day of October 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26745 Filed 10–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 5, 12, 19 and 26, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 5

Wednesday, October 7

11:30 a.m.—Affirmation Session (public Meeting) (if needed).

Week of October 12—Tentative

Thursday, October 15

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of October 19—Tentative

There are no meetings scheduled for the week of October 19, 1998.

Please Note: Briefing on Improvements to the Plant Assessment Process has been rescheduled for 2:00 p.m., Monday, November 2, 1998.

Week of October 26—Tentative

Wednesday, October 28

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

*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 of 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: October 2, 1998.

Sandy Joosten,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–26912 Filed 10–2–98; 2:26 pm]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 11:00 a.m., October 7, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC98–1, Mailing Online (Market Test).

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6840.

Dated: October 2, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–26913 Filed 10–2–98; 2:26 pm]

BILLING CODE 7710–FN–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40481; File No. SR–CBOE–98–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Listing and Trading of Principal-Protected Notes

September 25, 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 September 14, 1998, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to list the trade four separate Principal-Protected Notes. The value of each Principal-Protected Note will be linked to an index comprised of a single specified domestic mutual fund portfolio (''Index'' or collectively ''Indexes'').

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Exchange Rule 31.5(F), the Exchange may approve for listing and trading securities which cannot be readily categorized under the Exchange's listing criteria for preferred stock, bonds and debentures, or warrants. The Exchange seeks to list four Principal-Protected Notes, each of which shall be separately linked to a specified domestic mutual fund portfolio Index.[3] The four mutual fund portfolios underlying the Indexes are registered under the Investment Company Act of 1940.

The Principal-Protected notes will be senior, unsecured debt securities that will conform to the listing guidelines under Exchange Rule 31.5(F) in all respects.[4] Although a specific maturity date will not be established until the

[3] The Exchange notes that the Commission recently approved a similarly structured product for listing and trading on the American Stock Exchange—Market Index Target Term Securities linked to the Merrill Lynch EuroFund Index. *See* Securities Exchange Act Release No. 40367 (Aug. 26, 1998), 63 FR 47052 (Sept. 3, 1998).

[4] Exchange Rule 31.5(F) states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security satisfied the following criteria:

(a) Assets/Equity—The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in paragraph (A) (*i.e.*, pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least $400,000), the Exchange generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(b) Distribution—Minimum public distribution of $1,000,000 trading units including a minimum of 400 holders or, if traded in thousand dollar denominations, no minimum number of holders.

(c) Principal Amount/Aggregate Market Value—Not less than $4 million.

time of the offering, the Principal-Protected Notes will provide for a maturity of between two and seven years from the date of issuance. Each Principal-Protected Note may provide for payments at maturity based in whole or in part on changes in the value of the corresponding Index. Each Index will measure the total return of the corresponding mutual fund portfolio. The total return value shall reflect the Changes in the Net Value (''NAV'') of the corresponding mutual fund portfolio, plus any cash dividends and/or distributions paid on those shares.[5]

The Exchange will calculate the value of each Index once each business day. Holders of the Principal-Protected Notes will not receive any interest payments. However, holders of the Principal-Protected Notes will received at maturity the full principal amount of their Notes, plus a ''Supplemental Redemption Amount,'' if any, based on a formula to be set forth in the Prospectus. The Exchange notes that the formula may produce a total return at maturity which is lower than what a holder of the corresponding mutual fund portfolio might receive during the same period. At maturity, holders of the Principal-Protected Notes will not receive less than 100% of the initial issue price.

a. *Description of Principal-Protected Notes and the Underlying Mutual Funds.* Similar to other Exchange traded index-linked notes, both the issues (Principal-Protected Notes) and the issuer meet the general criteria set forth in Exchange Rule 31.5(F). Furthermore, the Exchange has represented that the issuer has a minimum tangible net worth in excess of $100,000,000 and otherwise substantially exceeds the earnings requirements set forth in Exchange Rule 31.5(A).[6] Each mutual fund portfolio underlying an Index includes several hundred stocks from among a wide variety of industry groups. As of the latest reporting period, the underlying mutual fund portfolios ranged in value from $900 million to $2.1 billion in total net assets. The NAV of each mutual fund portfolio is reported each business day through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and also is reported in the Mutual Fund Tables of the Wall Street Journal and other newspapers. The Principal-Protected Notes will be subject to the suspension and delisting policies of the Exchange set forth in Exchange Rule 31.94.[7]

b. *Calculation and Dissemination of Net Asset Values and Index Values.* Each Index will measure the total return of its underlying mutual fund portfolio. Such amount shall be equal to the change in the mutual fund's NAV, plus any cash dividends and/or distributions paid on the mutual fund portfolio shares. The value for each Index will be disseminated once a day over the Consolidated Tape Association's Network B or through the Option Price Reporting Authority (''OPRA''). If any mutual fund portfolio does not comply with Rule 22c–1 of the Investment Company Act of 1940,[8] which requires daily computation of a fund's current NAV, the Exchange will use the last available NAV in its calculation of the Index.

c. *Settlement of Principal-Protected Notes.* The Principal-Protected Notes will be settled at maturity by either a cash payment or by delivering shares in the corresponding mutual fund portfolio, at the determination of the Issuer. The value of the Principal-Protected Notes at maturity will be equal to the principal amount of such Notes plus a Supplemental Redemption Amount. The Supplemental Redemption Amount, which may not be less than zero, will equal the principal amount of such Principal-Protected Note multiplied by the percentage difference between the Adjusted Ending Index Value and the Starting Index Value. The Adjusted Ending Index Value means the ending value of the Index[9] reduced by an adjustment factor, if any, to be set forth in the prospectus.

d. *Other Exchange Rules.* Trading in Principal-Protected Notes will be governed by Chapter XXX of the Exchange's Rules.[10] The Principal-Protected Notes will trade during the normal trading hours for Chapter XXX securities, 8:30 A.M. to 3:00 P.M. Central Standard Time. The Principal-Protected Notes also will be subject to the equity margin rules of the Exchange.[11] Consistent with the Exchange's practice with respect to the offering of structured products, the Exchange will distribute an informational circular to its membership prior to the commencement of trading in the Principal-Protected Notes to provide guidance regarding member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular shall require that before a member, member organization, or employee of such member organization, undertakes to recommend a transaction in a Principal-Protected Note, such member or member organization should make a determination that the Principal-Protected Note is suitable for such customer. As part of that determination, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and special characteristics of the recommended transaction, including those highlighted, and that the customer is financially able to bear the risks of the recommended transaction. Lastly, as with other similarly structured products, the Exchange will closely monitor trading activity in Principal-Protected Notes to identify and deter any potential improper trading activity in such securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest. The Exchange further believes the listing and trading of the Principal-Protected Notes will provide investors an opportunity to invest in a mutual fund portfolio without being subject to the risk of principal loss.

[5] As discussed *infra* in Section II(A)(1)(c), ''Settlement of Principal Protected Notes,'' the total return value may be reduced by an adjustment factor.

[6] Exchange Rule 31.5(A), ''Equity Securities,'' requires that an issuer have pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least $400,000.

[7] Under Exchange Rule 31.94(C)(b)(iii), the Exchange may consider delisting debt securities if the aggregate market value or the principal amount of debt securities publicly held is less than $400,000 or, the issuer is not able to meet its obligations on the listed debt securities.

[8] 17 CFR 270.22c–1.

[9] The ending value of the Index shall represent the average of the values of the Index during a period prior to the stated maturity as specified in the prospectus.

[10] *See* Exchange Rules, Chapter XXX, ''Trading in Stocks, Warrants and Other Securities.''

[11] *See* Exchange Rules, Chapter XII, ''Margins.''

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–38 and should be submitted by October 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

[14] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26661 Filed 10–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40499; File No. SR–MSRB–97–9]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the Municipal Securities Rulemaking Board Relating to Rule G–38 on Consultants

September 29, 1998.

On March 18, 1998,[1] the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change and Amendment No. 1 (SR–MSRB–97–9) hereafter referred to collectively as the ''proposed rule change.'' The proposed rule change would give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis. Notice of the proposed rule change appeared in the **Federal Register** on May 18, 1998.[4] The Commission received no comment letters concerning the proposed rule change. The Commission is approving the proposed rule change.

I. Description of Proposal

Rule G–38, on consultants, requires dealers: (1) to have written agreements with certain individuals who are used by a dealer, directly or indirectly, to obtain or retain municipal securities business (''consultants''), and (2) to disclose such consulting arrangements directly to issuers and to the public through disclosure to the Board. Section (c) of the rule currently requires that each dealer disclose, in writing, to each issuer with which the dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer. Dealers are required to make such disclosures prior to the issuer's selection of any dealer in connection with the particular municipal securities business sought. The Board amended this rule to give brokers, dealers and municipal securities dealers (collectively referred to as ''dealers'') the option of disclosing their consulting arrangements to issuers, pursuant to section (c) of the rule, on either an issue-specific or issuer-specific basis.

According to the Board, this issue-specific disclosure requirement has created compliance problems for dealers in cases where issuers of municipal securities frequently bring new issues to market as well as in the co-manager selection process. For example, an issuer may bring new issues to market several times a month, and if a dealer is using a consultant to obtain a syndicate slot in each such issue, the dealer is required to disclose the same information to the same issuer month after month and possibly week after week. Furthermore, dealers who use a consultant to help obtain co-manager business sometimes have difficulty complying with Rule G–38(c) because, unlike the lead manager, a co-manager may learn of its selection for that business after the selection of the lead manager, thereby making it impossible for the dealer to disclose its consulting arrangements prior to the issuer's selection of any dealer, as required by the rule.

While the timing of the issue-specific disclosure requirement in Rule G–38(c) is appropriate in the majority of cases, it can be a problem in the context of frequent issuers of municipal securities and in the co-manager selection process. Thus, Rule G–38(c) has been amended to give dealers the option of disclosing their consulting arrangements to issuers on either an issue-specific or issuer-specific basis. Pursuant to the amendment, if a dealer chooses to disclose information regarding a consulting arrangement on an issuer-specific basis,[5] the dealer must submit the information, in writing, to the issuer ''at or prior to the consultant's first direct or indirect communication with that issuer for any municipal securities business.''[6]

[1] The Board initially submitted this proposal on November 24, 1997. However, a substantive amendment was requested to modify and clarify ambiguous timing issues in the proposed rule language. The Board filed Amendment No. 1 on March 18, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 39983 (May 12, 1998), 63 FR 27337.

[5] In contrast, disclosures made by a dealer on an issue-specific basis continue to be required prior to the issuer's selection of any dealer for the particular municipal securities business being sought.

[6] The initial proposal would have required that such disclosures be made ''within three business days of the consultant's first direct or indirect

Continued

To ensure that information on consultant arrangements, once disclosed, remains current, the amendment also requires dealers to (1) promptly notify the issuer, in writing, of any change in the information disclosed; and (2) update issuers, in writing, within one year of the previous disclosure of each consultant's name, company, role and compensation arrangement, even where such information has not changed.[7] Amendment No. 1 clarifies that the annual updating requirement for dealers disclosing information on an issuer-specific basis is triggered by the previous full disclosure of the consultant's name, company, role and compensation arrangement (and not any interim disclosure of changes to such information). However, this annual updating requirement would cease to apply if the dealer is no longer using the consultant, directly or indirectly, to attempt to obtain or retain municipal securities business with a particular issuer.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[8] Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[9] of the Act. The Commission is satisfied that the amendments to Rule G–38(c) provide the necessary relief to dealers from the heretofore stringent application of the rule while still essentially maintaining the rule's original intent and purpose. Prior to this proposed rule change, some dealers had difficulty meeting the ''any dealer'' requirement of the rule, because they had no way of knowing when the lead manager was selected. In cases where it is difficult to determine when a dealer is chosen (*i.e.*, co-manager selection), the amended rule provides an option for the dealer to disclose its consulting relationship before the specific dealer is selected.

The Commission understands that the timing of disclosure requirements had to be changed to make the rule more workable. However, the Commission was concerned that the initial amendment weakened the original goal of the rule (*i.e.*, for dealers to provide complete, timely disclosure concerning their consulting arrangements to issuers so that issuers can evaluate all potential underwriters before making a final decision). Given the rule's goal, the Commission believed that the initial proposal, allowing the dealer to make its disclosures within three days after the consultant had contacted the issuer,[10] would have greatly lessened the effectiveness of the rule. Thus, the Commission requested Amendment No. 1 to close potential compliance loopholes in the dealers' disclosure requirements and align the proposal with the rule's intent. The Commission believes Amendment No. 1 preserves the original intent and purpose of the rule and stymies any potential collusive activity by dealers and their consultants to circumvent Rule G–37.

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–MSRB–97–9) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26722 Filed 10–5–98; 8:45 am]

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communication with the issuer.'' However, the Commission requested that the timing requirement be more stringent. Thus, the Board filed Amendment No. 1, eliminating the dealers' three day disclosure window and replacing it with the current language. *See* note 1, *supra*.

[7] Pursuant to Rule G–8(a)(xviii) on recordkeeping, dealers are required to maintain records of all disclosures made pursuant to Rule G–38(c). This would apply to disclosures made pursuant to the amendment.

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. As a result of this amendment, municipal securities dealers should experience a decline in the number of disclosures required to be made to issuers regarding their consulting arrangements. A decline in required disclosure should translate to a decline in costs associated with these filings, thus allowing dealers to allocate resources to other areas. The implementation of this amendment should also enhance dealers' efficiency as recordkeeping and compliance become less burdensome. 15 U.S.C. 78c(f).

[9] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[10] *See* note 6, *supra*.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40500; File No. SR–NASD–98–69]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mutual Fund Breakpoint Sales

September 29, 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 September 10, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation'') 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. 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

NASD Regulation is proposing to amend NASD Interpretive Memorandum 2830–1 regarding mutual fund breakpoint sales to clarify its application to modern portfolio investment strategies. Below is the text of the proposed rule change. Proposed new language is italicized.

IM–2830–1 ''Breakpoint'' Sales

The sale of investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint is contrary to just and equitable principles of trade.

Investment company underwriters and sponsors, as well as dealers, have a definite responsibility in such matters and failure to discourage and to discontinue such practices shall not be countenanced.

For purposes of determining whether a sale in dollar amounts just below a breakpoint was made in order to share in a higher sales charge, the Association will consider the facts and circumstances, including, for example, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

asset allocation program that the member offers to its customers:

- *Which is designed to meet their diversification needs and investment goals; and*
- *Under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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

In the context of mutual fund sales, a ''breakpoint'' is that point at which the sales charge for quantity purchases of fund shares is reduced. Although funds are not required under SEC or NASD rules to offer breakpoint discounts, many funds use reduced fee schedules as a marketing tool to attract large investors. NASD Rule IM–2830–1 prohibits sales of mutual fund shares in amounts below breakpoints, if such sales are made ''so as to share in higher sales charges.'' The application of this standard depends on the purpose, or intent, of the member recommending the transaction. Accordingly, determining whether a breakpoint sales violation has occurred depends on facts and circumstances that provide evidence of intent.

Recently, NASD Regulation considered the application of IM–2830–1 to modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives. Both the Independent Dealer/Insurance Affiliate Committee and the Investment Companies Committee of NASD Regulation requested that the staff consider amending IM–2830–1 to more precisely identify those facts and circumstances to be considered by the staff when examining whether trades made pursuant to bona fide asset allocation programs that miss breakpoints have violated NASD rules.

NASD Regulation believes that under most circumstances, sales under a breakpoint pursuant to a bona fide asset allocation program would not constitute a breakpoint violation. NASD Regulation also believes that many investors generally may benefit from asset-based investment strategies, and that such strategies should not be discouraged. Based on these factors, as well as a review of the NASD's past positions regarding breakpoint sales, NASD Regulation proposed to amend IM–2830–1 to provide that for purposes of determining whether a sale of investment company shares for a dollar amount below a breakpoint was done for the purpose of sharing in a higher commission, the NASD will consider, among other things, whether the member conducting such sale retained records that demonstrate (a) that the trade was executed in accordance with a bona fide asset allocation program and (b) that the customer was informed that it might not receive breakpoint reductions that otherwise would be available.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] 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, in that the proposed rule change provides explicit guidance to both members of the NASD and the NASD Regulation examination staff regarding the application of the Association's breakpoint selling rules to modern portfolio investment strategies, such as strategies involving bona fide asset allocation programs, that can benefit investors.

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

NASD Regulation has neither solicited nor received comments on the proposed rule change.

III. Date Of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason 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. 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. copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–98–69 and should be submitted by October 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26723 Filed 10–5–98; 8:45 am]

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[3] 15 U.S.C. 78*o*–3.

[4] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding the Tax Treatment for Foreign Sales Corporations (Docket No. WTO/D–27)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that a dispute settlement panel has been established under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine the Foreign Sales Corporation (FSC) provisions of the U.S. Internal Revenue Code.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 2, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: FSC Dispute, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Office of the General Counsel (202) 395–3582.

SUPPLEMENTARY INFORMATION: By letter dated July 1, 1998, the European Communities requested the establishment of a panel to examine the FSC provisions (sections 921–927) of the U.S. Internal Revenue Code. On September 22, the WTO Dispute Settlement Body established a panel.

Major Issues raised by the European Communities and Legal Basis of Complaint

In their request for the establishment of a panel, the European Communities allege that the FSC provisions are inconsistent with several provisions of the WTO agreements, including the following specific allegations:

—The exemptions from U.S. direct (income) taxes of a portion of FSC income related to exports and of dividends distributed to U.S. parent companies constitute prohibited export subsidies under Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement);

—The requirement that the tax exemption under the FSC provisions is limited to receipts from the export of products having at least 50% U.S. origin by market value renders the FSC provisions a prohibited import substitution subsidy under Article 3.1(b) of the SCM Agreement;

—Because the United States allegedly has not taken the FSC provisions into account for the purpose of compliance with U.S. commitments under the Agreement on Agriculture, there is a violation of Articles 3 and 8 of that agreement read in conjunction with Articles 9(1)(d), 10(1) and 10(3) of that agreement.

Public Comment: Requirements for Submissions

Those persons wishing to submit written comments should provide fifteen (15) typed copies (in English) to Sandy McKinzy, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: FSC Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

If the submission contains business confidential information, fifteen copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. The public file also will include written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 An appointment to review the public file (Docket WTO/D–27 (''U.S.-Tax Treatment for Foreign Sales Corporations'') may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Police Staff Committee.

[FR Doc. 98–26702 Filed 10–5–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 98–03–C–00–EUG To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Eugene Airport-Mahlon Sweet Field (EUG), Submitted by the City of Eugene, Eugene, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the PFC revenue at Eugene Airport-Mahlon Sweet Field (EUG) under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mike Boggs, Airport Manager, at the following address: City of Eugene, 28855 Lockheed Drive, Eugene, OR 97402.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Eugene Airport-Mahlon Sweet Field, under § 158.28 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–03–C–

00–EUG to impose and use PFC revenue at Eugene Airport-Mahlon Sweet Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 29, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Eugene, Eugene Airport-Mahlon Sweet Field, Eugene, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1998.

Proposed charge expiration date: December 1, 1999.

Total requested for use approval: $1,032,875.

Brief description of proposed project: ''A'' Gate, North and South Canopies; ''B'' Gate Ramp Reconstruction; ''B'' Gates Covered Walkways; South General Aviation Ramp Reconstruction; Taxiway Alpha and Taxiway Alpha 8 Reconstruction; Taxiway Alpha 3 Rehabilitation; Taxiway Alpha 7 Reconstruction; Taxiway Alpha Rehabilitation; Taxiway Delta Rehabilitation; Water Loop Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Operations by air taxi/commercial operators utilizing aircraft having a maximum seating capacity of less than twenty passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner. Also exempted are operations by air taxi/commercial operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at Eugene Airport and are conducted within a 25 mile radius of the same airport, fire fighting charters, ferry or training flights, air ambulance/medivac flights, and aerial photograph or survey flights.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eugene Airport-Mahlon Sweet Field.

Issued in Renton, Washington on September 29, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–26794 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–03–U–00–SYR) to Use the Revenue From a Passenger Facility Charge (PFC) at Syracuse Hancock International Airport, Syracuse, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Robert Levine, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles R. Everett, Jr., Commissioner of Aviation of the City of Syracuse Department of Aviation at the following address: Syracuse Hancock International Airport, Syracuse, New York 13212.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Syracuse Department of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Levine, Project Manager, 600 Old Country road, Suite 446, Garden City, New York 11530, (516) 227–3807. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 31, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the City of Syracuse was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 29, 1995.

The following is a brief overview of the application.

Application number: 98–03–U–00–SYR.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1998.

Proposed charge expiration date: February 1, 2001.

Total estimate PFC revenue: $3,322,500.

Brief description of proposed projects:

—Land Acquisition for Parallel Runway 10L/28R Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Syracuse Department of Aviation.

Issued in Jamaica, New York on September 28, 1998.

Thomas Felix,

Manager, Planning and Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–26793 Filed 10–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33653]

Port of Benton—Acquisition and Operation Exemption—U.S. Department of Energy Rail Line in Richland, WA

The Port of Benton, a noncarrier, of Richland, WA, has filed a notice of exemption under 49 CFR 1150.31 to acquire the rail line assets of the U.S. Department of Energy (DOE) to operate a rail line approximately 17 miles long known as the Hanford Site Rail System, Southern Connection, extending from milepost 46, at the junction with Union Pacific rail line in Kennewick, WA, to milepost 29, at the DOE Hanford Site, connecting with the Hanford Site Rail System, Northern Connection (north of the City of Richland).

The transaction is expected to be consummated on October 1, 1998.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33653, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas A. Cowan, Esq., COWAN WALKER, P.S., P.O. Box 927, Richland, WA 99352.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 19, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–26634 Filed 10–5–98; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33659]

Toledo, Peoria & Western Railway Corp.—Corporate Family Transaction Exemption—Marksman Corp.

Toledo, Peoria & Western Railway Corporation (TPW Railway), a Class III rail common carrier, has filed a notice of exemption to lease, by assignment, 17 miles of rail line from Marksman Corporation (Marksman), a Class III rail carrier, between milepost 183 near Monterey, IN, and milepost 199 near North Judson, IN (the Rail Line). The Rail Line is now leased from J.K. Line, Inc., by Marksman. Marksman owns 100% of the capital stock of TPW Railway.[1] TPW Railway plans to operate as well as lease the Rail Line.[2]

The earliest the transaction could be consummated was September 17, 1998, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the transaction is to simplify the arrangements for the operation of the Rail Line. Prior to filing the notice, TPW Railway already performed operations on the Rail Line on behalf of Marksman pursuant to an unwritten agreement with Marksman. Assignment of the lease to TPW Railway will allow it to assume common carrier responsibilities in conjunction with its other rail operations.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33659, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 W. Miner Street, PO Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 29, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–26619 Filed 10–5–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Marksman Corporation—Lease and Operation Exemption—J.K. Line, Inc.*, STB Finance Docket No. 33481 (STB served Oct. 16, 1997).

[2] *See R.J. Corman Railroad Company/Pennsylvania Lines Inc.—Lease Exemption—Clearfield & Mahoning Railway Company*, STB Finance Docket No. 32861 (STB served June 21, 1996), slip op. at 1 n.2.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notices 437, 437A, 438 and 466

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notices 437, 437A, 438 and 466, Notice of Intention to Disclose.

DATES: Written comments should be received on or before December 7, 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 notices should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Intention to Disclose.

OMB Number: 1545–0633.

Notice Number: Notices 437, 437A, 438, and 466.

Abstract: Section 6110(f) of the Internal Revenue Code requires that a notice of intention to disclose be sent to

all persons to which a written determination is issued. That section also requires that such persons receive a notice if related background file documents are requested. Notice 437 is issued to recipients of letter rulings; Notice 437A to recipients of Chief Counsel Advice; Notice 438 to recipients of technical advice memorandums; and Notice 466 to recipients if a request for the related background file document is received. The notices inform the recipients of their right to request further deletions to the public inspection version of written determinations or related background file documents.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 3,250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,625.

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: September 24, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–26703 Filed 10–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form MTQ/941

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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form MTQ/941, Montana Quarterly Tax Report/ Employer's Quarterly Federal Tax Return.

DATES: Written comments should be received on or before December 7, 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 Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Montana Quarterly Tax Report/ Employer's Quarterly Federal Tax Return.

OMB Number: 1545–1554.

Form Number: Form MTQ/941.

Abstract: Form MTQ/941 is used by employers to report payments made to employees subject to income and social security and Medicare taxes and the amounts of these taxes. The state of Montana and the Simplified Tax and Wage Reporting System (STAWRS) have formed a partnership to explore the potential of combining Montana's quarterly reports for state withholding, Old Fund Liability Tax, and Unemployment Insurance with the Employer's Quarterly Federal Tax Return (Form 941). One form will satisfy both state and Federal requirements and will make employer filing faster and easier.

Current Actions: Revision of a currently approved collection.

Type of Review: Form MTQ/941 has been revised because of a change to the deposit regulations (Reg. 31.6302–1T(f)(4)) increasing the threshold for the deposit of Federal employment taxes from $500 to $1,000.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 390.

Estimated Time Per Response: 9 hr., 46 min.

Estimated Total Annual Burden Hours: 3,805.

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: September 28, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–26704 Filed 10–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee; Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Wednesday and Thursday, October 28–29, 1998. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW, Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting on October 28–29, 1998

Wednesday, October 28, 1998

9:00—Meeting Opens
11:30—Break for Lunch
1:00—Meeting Resumes
4:30—Meeting Adjourns for the Day

Thursday, October 29, 1998

9:00—Meeting Reconvenes
12:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Use of Form W–9 By Related Entities
(2) Content of a Year-End Accounting Statement Enclosed in a Statement Mailing
(3) Reporting on Tuition Payments By Institutions of Higher Education
(4) Application of Alternative Documentary Evidence Test to Offshore Accounts
(5) Gross Proceeds Reporting on the Sale of Stock Acquired by Exercising Nonqualified Employee Stock Options.
(6) Withholding Requirements on Payments of Designated Distributions to Corporations, Partnerships, Estates, and Trusts
(7) IRA Earnings Calculation for Excess Contributions Returned Prior to the Tax Due Date
(8) Standardization of Name Format on Tax Forms
(9) Follow-up on Form W–2G Reporting for Slot Machine Payouts
(10) Follow-up on Combined Filing of Information Returns in Mergers and Acquisitions
(11) Follow-up on Backup Withholding and Due Diligence Issues Resulting from Mergers and Acquisitions
(12) Follow-up on Roth and Education IRA Reporting Issues
(13) Follow-up on Employer Authority to See and Copy the Social Security Card
(14) Follow-up on Information Reporting for Disregarded Entities
(15) IRS Presentation on the Simplified Tax and Wage Reporting System (STAWRS)
(16) IRS Presentation on the Electronic Federal Tax Payment System (EFTPS)
(17) IRS Presentation by the Martinsburg Computing Center
(18) IRS Presentation on the New Employment Tax Call-Site
(19) IRS Presentation on the Revised Forms W–8
(20) IRS Presentation on the Restructuring and Reform Act of 1998

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC is currently comprised of 17 representatives from various segments of the information reporting payer/practitioner community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, *notification of intent to attend this meeting must be made with Ms. Gloria Wilson no later than Friday, October 23, 1998. Ms. Wilson can be reached at 202–622–4393.* Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Wilson in a voice-mail message, please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Thomasine Matthews at 202–622–4214 on or after Monday, October 19, 1998, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not this upcoming meeting), please write to Kate LaBuda at the IRS, Office of Payer Compliance, OP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, call Ms. Gloria Wilson at 202–622–4393. To have a copy of the agenda faxed to you on or after October 19, 1998, call Ms. Thomasine Matthews at 202–622–4214. For general information about IRPAC call Ms. Kate LaBuda at 202–622–3404.

Dated: September 29, 1998.

Kate LaBuda,

(Acting) Director, Office of Payer Compliance, Office of Examination.

[FR Doc. 98–26705 Filed 10–5–98; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 63, No. 193

Tuesday, October 6, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

Correction

In notice document 98–25621 beginning on page 51059, in the issue of Thursday, September 24, 1998, make the following correction:

On page 51059, in the third column, under the heading **DATES**, in the second line, ''[]'' should read ''November 23, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–047]

Great Lakes Transmission Limited Partnership: Notice of Final Revenue Sharing Report—Past Period Changes

Correction

In notice document 98–26106, beginning on page 52247, in the issue of Wednesday, September 30, 1998, the docket line is added to read as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-7568; 34-40377; 35-26912; IA-1749; and IC-23416]

Commission Statement of Policy on Regulatory Moratorium to Facilitate the Year 2000 Conversion

Correction

In notice document 98–23760, beginning on page 47051, in the issue of Thursday, September 3, 1998, make the following correction:

On page 47052, in the first column, under the heading **IV. Conclusion**, after the sixth line, insert ''August 27, 1998''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40424; File No. SR-NASD-98-68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Submission of Trade Reports in PORTAL-Designated Securities to the Automated Confirmation and Transaction Service

Correction

In notice document 98–24816, beginning on page 49623, in the issue of Wednesday, September 16, 1998, make the following correction:

On page 49623, in the first column, after the 13th line, insert ''September 10, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-25]

Proposed Amendment to Class E Airspace; Muscatine, IA

Correction

In proposed rule document 98–23776, beginning on page 46936, in the issue of Thursday, September 3, 1998, make the following correction:

§ 71.1 [Corrected]

On page 46937, in the second column, in the ninth line from the bottom, ''feet or more above the surface of the surface'' should read ''feet above the surface''.

BILLING CODE 1505-01-D

federal register

Tuesday
October 6, 1998

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48, 75, and 77
Experienced Miner and Supervisor Training; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48, 75, and 77

RIN: 1219–AB13

Experienced Miner and Supervisor Training

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises MSHA's training regulations to update and upgrade certain provisions. Specifically, these revisions require essential health and safety training for certain supervisors; eliminate new miner training for experienced miners; and promote flexibility in experienced miner training to meet the specific needs of the miner and the operator. This final rule will enhance safety and health by providing effective training of miners and, thus, reducing accidents, injuries, and illnesses.

DATES: This final rule is effective February 3, 1999, except that §§ 48.2(b)(2), 48.22(b)(2), 48.8(c), and 48.28(c) are effective October 6, 1998 and §§ 75.161 and 77.107–1 are effective October 6, 1999.

Submit all comments on the information collection burden by December 7, 1998.

ADDRESSES: Submit written comments on the information collection requirements directly to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA, 725 17th Street NW, Room 10235, Washington, DC 20503; and to MSHA by mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, Office of Standards, Regulations, and Variances at 703–235–5551; or by E-mail to comments@msha.gov. MSHA encourages commenters sending written comments by mail or facsimile to also send a computer disk of the comments.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; MSHA, Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

Section 115 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 825, directs the Secretary of Labor to promulgate regulations concerning safety and health training programs for miners. Section 115 states that each mine operator must have a training program approved by the Secretary. The legislative history of the Mine Act indicates that Congress intended that miners be trained commensurate with their exposure to mine hazards so that they can effectively deal with those hazards.

On October 13, 1978, MSHA published regulations for the training of miners in 30 CFR part 48 (43 FR 47453) implementing § 115 of the Mine Act. Among other things, the regulations define ''miner'' and ''experienced miner,'' and they specifically require new miner and newly-employed experienced miner training, task training, and annual refresher training.

On September 24, 1991, MSHA published a proposed rule (56 FR 48376) to revise portions of the existing regulations. The comment period for the proposed rule closed January 24, 1992, and MSHA held two public hearings: July 21, 1992, in Arlington, Virginia; and July 23, 1992, in Denver, Colorado. The record remained open until September 25, 1992, to allow for post-hearing comments.

MSHA received comments from many segments of the mining community. These comments have been reviewed and considered in the development of the final rule. Some commenters, however, raised issues outside the scope of the proposal. The issues addressed in the final rule are limited to those specifically raised in the proposed rule.

II. General Discussion

Overview

The Congress recognized, and MSHA's experience confirms, that effective training of miners is important to preventing deaths, injuries, and illnesses in mining. All miners must be trained to recognize and avoid mine hazards and to work safely. Effective training must be complete, preparing miners for the hazards they will face so that they can assist in the prevention of accidents, injuries, and illnesses. Circumstances affecting individual miners differ, however. They have varying levels of mining experience and work in various mining environments. Effective training must take these differences into account.

Training that is suitable for miners without mining experience may not be appropriate for miners with experience. MSHA continues to allow compliance flexibility under the final rule so that mine operators may develop training materials that best meet their particular needs. For example, training should take into account miners whose extent and type of experience varies, including those transferred from one mine to another mine owned by the same operator, as well as those miners who have not worked in their occupation for a period of time. For this reason, the final rule primarily retains a performance-oriented approach to experienced miner training.

As required in § 101(a)(9) of the Mine Act, the final rule promotes effective training without reducing the protection afforded miners in the following ways. First, it provides that experienced miners, including supervisors, must take training tailored to meet their specific needs. Once a miner is experienced, that miner will not have to take training designed for inexperienced miners. Second, miners who are away from mining for 5 years or more must receive at least 8 hours of experienced miner training. Third, experienced miner training includes four new subjects: prevention of accidents, emergency medical procedures, health, and health and safety aspects of the tasks to be performed in their jobs. Finally, miners returning to work, following an absence of 12 months or less, must be made aware of any major changes in the mine that may adversely affect their safety or health.

Training Plan Modifications

To minimize the paperwork burden, assist mine operators with compliance, and focus on the importance of quality training, MSHA will provide assistance and guidance for complying with this regulation. The Agency will issue compliance guidelines to all mine operators further explaining the required modifications to their training plans. MSHA also will include a model training plan addendum with the compliance guidelines. The operator can attach this model addendum to an existing MSHA-approved training plan and, thus, eliminate the need to submit a plan modification to MSHA for approval.

Existing standards require mine operators to post a copy of revisions to the training plan on the mine bulletin board.

III. Section-By-Section Discussion

Sections 48.2 and 48.22 Definitions

Supervisors as Miners

Like the proposal, the final rule eliminates the training exemption for supervisors who are subject to State certification programs; all supervisors are ''miners'' for training purposes. The final rule removes the specific reference to supervisors from the definition of

''miner'' under existing §§ 48.2(a)(1)(ii) and 48.22(a)(1)(ii).

When the training regulations were promulgated in 1978, MSHA expected that State certification programs would be sufficient for safety training purposes, and that Federal requirements would duplicate the requirement of the states. MSHA experience has shown that State certification programs generally do not focus on the safety and health aspects of mining, particularly those tasks performed by miners, and that accidents involving supervisors usually occur while supervisors are performing mining related tasks. For these reasons, the final rule will supplement the State certification program by emphasizing health and safety issues specific to a particular mine or mining method.

Supervisors direct the work force and, in that role, are responsible for assuring that work is done in a safe and healthful manner. In many instances, supervisors, who may have to visit many work areas at a mine, may encounter more hazards than miners who may be assigned to one area or one piece of equipment. Also, supervisors often personally intervene and perform non-supervisory tasks when interruptions of normal work operations occur or when hazardous situations arise.

Fatalities among underground coal mine supervisors, including State certified supervisors, confirm their exposure to hazards. From 1990 to 1997, there were 35 underground coal supervisor fatalities. This figure represents about 15% of all underground coal fatalities during that period. Though the fatality rate for supervisors has improved in recent years, their accident experience continues to warrant attention. Underground coal supervisors are of particular concern because MSHA estimates that only about 34% of underground coal supervisors receive or are required to receive part 48 training. About 75% of surface coal supervisors and all metal and nonmetal (M/NM) supervisors receive or are required to receive part 48 training.

Supervisors are subjected to many, if not more, of the hazards that non-supervisory miners face and, therefore, need to receive at least the same training. The final rule addresses this issue by requiring that previously exempt State certified supervisors complete part 48 annual refresher training not more than 12 months after the publication date of this final rule in the **Federal Register**. This will provide supervisors the full complement of training that all miners receive, including courses in Electrical Hazards, Health, Explosives, and Prevention of Accidents. In this way, the final rule assures that supervisors will be effectively trained in all health and safety aspects of their work environment.

Several commenters suggested that the training regulations refer to both ''miners'' and ''supervisors'' throughout the provisions to ensure that supervisors are covered by the training requirements. The Agency contends that separate references to both miners and supervisors throughout the rule are not necessary. All miners, including supervisors, need to be effectively trained commensurate with their exposure to mine hazards. Accordingly, the final rule removes the supervisor exemption and, by doing so, the definition of ''miner'' will include supervisors.

Commenters pointed out that some supervisors are primarily office workers who work at the mine, but are not exposed to mine hazards. These commenters suggested that these supervisors not be considered ''miners'' and required to complete comprehensive training. One commenter suggested that MSHA add clarifying language to the regulation to exclude supervisors who do not perform miners' tasks and are not regularly exposed to mining hazards. MSHA agrees that these supervisors, like other miners who are not regularly exposed to mining hazards, do not need comprehensive training. Under the final rule, supervisors will be treated like other miners. MSHA does not accept that additional explanatory language is needed, however, because the definitions for ''miner'' [§§ 48.2(a) and 48.22(a)] distinguish between miners who are required to take comprehensive training from those, including some supervisors, who only need hazard training (§§ 48.11 or 48.31).

On the other hand, MSHA received comments from both industry and labor representatives suggesting that supervisors who are exposed to mine hazards should receive training under part 48 beyond that required for other miners. The comments detailed courses that should be incorporated into a comprehensive training program specifically for supervisors. While these comments extend beyond the scope of the proposal, they raise important issues for future consideration by the Agency.

One commenter pointed out that many operators use their supervisory personnel as trainers to fulfill the requirements of part 48. The commenter was concerned that supervisors who conduct training would be required to take the same training themselves. Supervisors and miners who are MSHA approved to conduct training have demonstrated knowledge of the subject matter through previous instruction or experience. MSHA, therefore, will credit persons who conduct a training course with having taken that particular course. For example, an MSHA approved instructor who teaches a course on health will be credited with having taken that course.

Requirements for Experienced Miner Status

In the existing standards, an ''experienced miner'' is a person who has received training acceptable to MSHA from an appropriate State agency within the preceding 12 months; or a person who has had at least 12 months experience working in a surface or underground mine during the preceding 36 months; or a person who has received new miner training within the preceding 12 months. If, for example, a miner is laid off for more than 2 years, that miner is no longer considered ''experienced'' and reverts to new miner status for training purposes. In order to be considered ''experienced,'' the miner must complete new miner training. Consequently, miners who may have significant mining experience must take training designed for persons new to mining. The proposal had addressed this lapse in ''experienced'' miner status for training purposes by allowing a miner to retain this status for life if the miner completed new miner training and 12 months of mining experience.

Like the proposal, the final rule defines ''experienced miner'' in §§ 48.2(b) and 48.22(b) to mean a miner who has completed new miner training and has 12 months of mining experience. Once the miner has attained that training and experience, the miner retains ''experienced miner'' status for life for training purposes. Upon changing employment, the miner is then required to receive training specifically intended for experienced miners.

The final rule allows laid-off miners to retain experienced miner status, thus making them more competitive. Even when miners have not been passed over, the lapse of experienced miner status has stirred some resentment among miners who, by virtue of their mining experience, do not want to be called or treated as ''new miners.'' The final rule eliminates the lapse of the experienced miner status, and strengthens experienced miner training requirements.

MSHA received several comments on the definition of ''experienced miner.'' Some commenters agreed that the combination of training and experience

should qualify a person as an experienced miner.

Other commenters stated that obtaining experienced miner status might be difficult for some independent contractors working on mine property. They pointed out that independent contractors are often hired for their task expertise and that new miner training is not necessary to assure that these contractors are knowledgeable in the health and safety aspects of their tasks.

MSHA's position is that, in addition to task expertise, these independent contractors must have a solid foundation in the health and safety aspects of their mine work environment. MSHA's experience indicates that task expertise alone does not substitute for a familiarity with surrounding safety and health hazards. For example, an electrician who is contracted to work on mine property will be familiar with hazards associated with working around electricity, such as water, grounding, and live wires. The electrician may not be familiar with mine hazards or health and safety procedures, such as the use of personal protective equipment, lockout and tagging procedures, and working in and around operating equipment.

Under the proposal, experienced miner training would have been ''given by an operator or state.'' Commenters said that this provision would be unduly restrictive as to the types of entities that could provide the training. It was never MSHA's intention to restrict who could conduct the training. MSHA considered training provided by the operator through a third party as training ''given by'' the operator. For clarification, the final rule requires only that the training be MSHA-approved. Thus, a variety of entities can conduct the MSHA-approved training, including private trainers, universities, trade associations, and labor organizations.

Commenters noted that contractors are mobile, performing work for short periods of time at many different job sites in mining and general industry. According to these commenters, such work patterns make it difficult to accumulate a year's mining experience within 12 months of receiving new miner training. They suggested that the definition of an ''experienced miner'' include only a training requirement. Work experience, however, is critical to the hands-on application of the safe work procedures and practices of each task. Actually doing a task in a safe manner effectively imprints those practices and procedures and reinforces learning.

One commenter suggested that experienced underground miners should be considered experienced surface miners, and vice versa. MSHA rejected this comment because underground and surface mining present different environments, hazards, and mining equipment. If ''experienced'' status is to be meaningful, an experienced underground miner must have underground experience and an experienced surface miner must have surface experience.

Similarly, another commenter suggested that either surface or underground training and experience should suffice for independent contractors to gain ''experienced'' miner status for both locations. Again, MSHA concludes that training specifically geared to those respective environments is both justified and necessary because independent contractors, like other miners, are exposed to hazards that are unique to either surface or underground mining environments.

MSHA acknowledges, however, that maintenance and service contractors often have significant trade experience in work environments similar to surface mines or the surface areas of underground mines. These contractors are not exposed to appreciably different hazards when they are working in similar work environments. Accordingly, MSHA will allow independent contractors to count their trade experience in work environments with hazards similar to mining toward satisfying the 12-month surface mining experience requirement. For example, a person who has repaired or changed tires for 7 months in an employment setting with exposure to hazards like those found at mine properties, may be credited for the 7 months experience.

One commenter stated that it also may be difficult for some new miners, especially at mines that work intermittently, to gain the 12 months of mining experience within 12 months of receiving new miner training. Another commenter suggested that the rule should allow persons 36 months to attain the 12 months of mining experience. Although the Agency acknowledges the importance of mining experience, it also agrees that gaining experience consecutively or within a restricted time frame may be difficult in some cases. In response to commenters, and to provide flexibility to both miners and operators, the final rule imposes no limit on the amount of time within which the miner has to accumulate the 12 months of experience.

The proposal would have recast the existing grandfather provision for miners employed on October 13, 1978, by adding a 1-year experience requirement. MSHA received no comment specifically on this part of the proposal. Commenters were concerned, however, that some other miners, who are considered to be experienced miners under the existing rule, would lose that status under this proposed provision because they do not yet have 12 months of mining experience.

MSHA wants a smooth transition under the final rule without a disruption to the mining industry. Accordingly, MSHA will consider all miners who are experienced miners under the existing rule on the effective date of this final rule to be experienced miners for life. This addresses the commenters' concern and incorporates the current grandfather provision without adding requirements.

Under the proposal, MSHA would also have considered supervisors to be experienced miners if they were certified under an MSHA-approved State certification program and were employed as supervisors on the date of publication of this final rule. MSHA received no comment on this issue and the final rule retains this provision. Because supervisors are drawn from the pool of experienced miners, this provision does not reduce protection afforded miners under the existing standards.

Sections 48.5 and 48.25 Training of New Miners

Under the proposal, an ''experienced miner'' was a miner who had completed new miner training and had 12 months of mining experience. The proposal did not address what training a miner would need if the miner went to work at another mine before gaining the required 12 months of experience. Upon reviewing the proposal, MSHA was concerned that miners working in different mines before accumulating the required 12 months of mining experience would have to take new miner training each time they began work at a new mine, resulting in unduly repetitive and costly training.

One commenter pointed out that a training and experience requirement that may result in miners, including independent contractors, repeatedly taking new miner training is undesirable and not conducive to effective training. Another commenter suggested that new miner training be good for 36 months.

The final rule addresses this issue in §§ 48.5(d) and 48.25(d). This provision allows miners who have received new miner training in the last 36 months, to take experienced miner training rather than requiring them to retake new miner training. These miners will then continue in the operator's regular

program of training for miners, including task and annual refresher training. This approach minimizes the likelihood of repeating new miner training unnecessarily. MSHA has determined that the final provision reduces the compliance burden on mine operators and provides more effective training to miners, while not reducing the protection under the existing standards.

For example, a person new to mining receives surface new miner training, works 6 months, and leaves the mining industry. Two years after receiving new miner training, the person is hired at a surface mine. Because the person had received new miner training within 36 months, the person will be required to receive experienced miner training rather than new miner training. After an additional 6 months of working as a miner, the miner will have accumulated 12 months of total surface mining experience and, for training purposes, will be considered an experienced surface miner for life.

Alternatively, as another example, if the miner were to receive surface new miner training, work 6 months, and leave the mining industry for 4 years, that miner, upon returning to surface mining, will be required to repeat new miner training. After the miner completes the new miner training and accumulates another 6 months of mining experience, that miner will be considered an experienced surface miner for life. If the miner had accumulated 12 months of mining experience within 36 months of receiving new miner training, as in the previous example, that miner would have been required to receive experienced miner training rather than new miner training.

Sections 48.6 and 48.26 Experienced Miner Training

Consistent with the proposal, the final rule changes the title of §§ 48.6 and 48.26 from ''Training of newly employed experienced miners; minimum courses of instruction'' to ''Experienced miner training.'' Similarly, all references to ''newly employed experienced miners'' are revised to read ''experienced miners.''

The final rule states that experienced miner training pertains to miners rehired or transferred from one mine owned by the same operator to another, as well as to experienced miners who are newly employed at the mine for the first time. The final rule also requires experienced miner training for experienced underground miners who are working on the surface and are transferred underground, or experienced surface miners who are working underground and are transferred to the surface.

Miners returning to the mine after an absence of more than 12 months are also required to receive experienced miner training. The duration, not the cause, of the absence necessitates the training. The final rule, therefore, removes the itemization of causes of absences contained in the proposal. This avoids the possibility of miners ''falling through the cracks'' when they have been absent from the mine for reasons other than those listed. Thus, the absence may be for any reason including, but not limited to, lay off, work stoppage, termination, illness, injury, family care, extended leave, or other work.

Flexible Training

Experienced miners who are new or returning to a mine need to be apprised of the particular conditions and practices that present new safety and health hazards at that mine. Effective training prepares these miners to work safely by familiarizing them with the mine's environment, providing them with information on the mine's plans and procedures, and assuring that they have skills that are adequate to perform their jobs safely. This is practical, mine-specific training.

To provide flexibility for a variety of training needs, the final rule recognizes the diversity of experience among miners. For example, training geared for a miner who is experienced, but new to the operation, may not be appropriate for a miner who is transferred, from surface to underground or from one mine owned by the operator to another, and may already be knowledgeable about the operator's plans and procedures. The final rule requires the operator to vary the time spent on each subject so as to address the particular needs of the individual miner. It is up to the operator to determine appropriate training. MSHA encourages operators to add additional safety and health subjects based on the specific circumstances and conditions at the mine.

Commenters suggested that MSHA clarify whether the final regulatory language refers to surface or underground miners throughout §§ 48.6 and 48.26. MSHA does not include this suggestion in the final rule. The term ''experienced miner'' appears in subparts A and B, which apply to underground and surface miners, respectively.

Commenters also suggested that MSHA clarify proposed §§ 48.6(a)(3) and 48.26(a)(3) concerning transferred miners from underground to surface or surface to underground, to specifically state which type of transferred experienced miner, surface or underground, each section covers. For the same reason, the Agency does not include this suggestion in the final rule. The term ''experienced miner'' appears in the context of subparts A and B, which clearly apply to underground miners and surface miners, respectively.

Commenters suggested that miners who are transferred from one mine to another owned by the same operator, should not be required to receive all of the experienced miner training. They suggested that only certain subjects be required.

The final rule includes a performance approach to experienced miners training. MSHA intends that this training requirement be flexible so as to meet the needs of different miners, with their varying knowledge and understanding of the mine environment. While a miner transferring from one mine to another owned by the same operator may need less training than another experienced miner newly employed by the operator, all experienced miners must receive at least some training in all of the required subject areas. This is because this type of training acquaints miners with specific conditions, plans, and procedures of a different mine or mine environment.

One commenter stated that experienced miners transferred from the surface area of an underground mine to underground, or vice versa, should not be required to complete all of the requirements of new miner training to be able to transfer. Further, the commenter recommended that these transferring miners should receive, in all cases, a predetermined reduction in the number of hours required in new miner training.

Experienced miner training must not be approached from the standpoint of ''one size fits all.'' MSHA experience indicates that a predetermined reduction of required training based on some miners having prior experience does not account for differences in the miners' experience. Under the final rule, as under existing policy, MSHA will allow miners to receive credit for applicable training previously taken under subpart A to fulfill requirements of subpart B or vice versa. For example, if an experienced underground miner transfers to a surface job, that miner's first aid training can be credited toward the first-aid training required for an inexperienced surface miner. MSHA expects mine operators to assess the training needs of the transferring miner

and to determine any applicable training to credit.

Several commenters objected to the phrase in the proposal that training be ''thorough and effective.'' They maintained that such a requirement was vague, subjective, and could cause enforcement problems. MSHA agrees. The final rule does not include this language. However, MSHA expects mine operators to provide necessary training to ensure that miners have the information they need to work in a safe and healthy environment.

Additional Experienced Miner Courses

The existing standards require training in some subjects to acquaint newly employed experienced miners with the environment, operations, and hazards at the mine. Miners with more than 1 year of total mining experience, and who have less than 1 year of mine experience at the mine where the accident occurred, accounted for about 22% of all miner fatalities from 1990 to 1997. During that period of time, these miners accounted for only 5% of the total mining population. This high percentage of accidents indicates that experienced miners new to a mine are not receiving the training they need to work safely.

The final rule strengthens training for experienced miners, requiring training in four additional subjects to increase their ability to work safely, avoid injuries and illness, and respond to emergencies. The added courses are: (1) prevention of accidents, with a review of accidents that have occurred at the mine; (2) the mine's emergency medical arrangements and the location of first-aid equipment and supplies; (3) health, including instruction on the purpose of taking dust and noise measurements, and explaining warning labels and any health control plan in effect at the mine; and (4) the health and safety aspects of the task to which the miner will be assigned.

Regarding the course on prevention of accidents, one commenter stated that a review of all accidents should not be required because training on specific accidents might not be feasible under certain circumstances due to employee confidentiality or pending litigation. The commenter was also concerned that, interpreted broadly, the provision would require mine operators to provide training on every accident that occurs at a mine, regardless of degree of the injury.

While some duplicate wording has been removed, the final rule retains the proposed requirement that a review of general causes of accidents applicable to the mining environment and causes of specific accidents at the mine be provided. MSHA intends that mine operators' instruct miners on accidents of particular concern at the mine. It is the mine operator's responsibility to determine which accidents should be reviewed as part of the training. This flexibility is important for providing mine operators the latitude to design their own training, tailored to address the specific needs of their unique mining conditions.

Commenters objected to the proposed first-aid instruction requirement and suggested that it be eliminated or changed. Some commenters recommended that first-aid methods be taught according to a national program. Alternatively, some commenters suggested that instruction should focus on making miners aware of the locations of first-aid supplies, rather than requiring training in first-aid methods. Some commenters noted that a review of first aid would be redundant, as it is done in annual refresher training, and that instruction on this subject would impose a burden on many operators to hire an approved first-aid instructor and obtain first-aid teaching equipment.

In response to commenters, the final rule requires that experienced miners be made aware of emergency medical arrangements and locations of first-aid equipment and supplies. Consistent with this change, the Agency has changed the title ''First aid'' to ''Emergency medical procedures.'' Miners who take this course also must take annual refresher training that includes instruction in first-aid methods. Additionally, some miners and designated supervisors will receive first-aid training under the requirements in 30 CFR parts 56, 57, 75, and 77.

One commenter questioned the need for taking any training related to health measurements, noting that an experienced miner already knows the purpose for taking health measurements. MSHA disagrees. It is important that miners know the health measurements in place at the mine. Miners who move from one mine to another may encounter new and different health issues. Health measurement training also serves to reinforce the importance of appropriate health protection.

Several commenters suggested that instruction on warning labels be included in hazard recognition training rather than training related to health. While understanding warning labels promotes safe handling of materials, frequently the associated hazards have harmful, long-term effects on miners' health. Under the final rule, therefore, miners must receive training on warning labels as a part of health training.

One commenter suggested that MSHA provide flexibility for the health course requirement. The commenter suggested that MSHA provide language in this section exempting training that does not apply to a particular operation. For example, training on the use of respirators should not be required if the miner would not be required to use respirators. MSHA agrees that training for miners must be relevant for the needs of each miner and, therefore, the final rule adds the language ''where applicable'' to this requirement.

One commenter noted that, for clarity, the health training requirement should match that of annual refresher training. MSHA agrees, and has reworded the language to be consistent with that in the surface annual refresher training requirements [30 CFR 48.28(b)(8)].

One commenter suggested that the proposed requirement for instruction in the mandatory health and safety aspects of miners' tasks in §§ 48.6(b)(11) and 48.26(b)(11) would duplicate the existing course, ''Mandatory health and safety standards'' in §§ 48.6(b)(2) and 48.26(b)(2). MSHA concurs to the extent that, in the proposal, both courses included instruction in mandatory health and safety standards. Under the final rule, there is no duplication. The final rule also clarifies that the training required in §§ 48.6(b)(11) and 48.26(b)(11) is not for miners who, because of no task experience within the prior 12 months, are required to take task training under §§ 48.7 and 48.27.

Proposed §§ 48.6(e) and 48.26(e) addressed task training. MSHA agrees with commenters that this provision duplicates existing part 48 regulations, and it is not included in the final rule. The final rule clarifies language in §§ 46.6(b)(11) and 48.26(b)(11), ''Health and safety aspects of the tasks to which the experienced miner is assigned,'' that if a miner receives task training under §§ 48.7 or 48.27, then training in the health and safety aspects of the task is not required under experienced miner training.

Like the proposal, the final rule modifies the language in § 48.26(b)(5), pertaining to instruction in escape and emergency evacuation plans, by adding the words, ''in effect at the mine.'' This change is made to keep the subject matter focused on the plans and procedures at the specific mine. MSHA received no comments on this change.

In response to comments, the final rule also modifies, the language in §§ 48.6(b)(7) and 48.26(b)(7), concerning instruction in hazard recognition, focusing on the recognition and

avoidance of hazards present at a specific mine. Like the proposal, the final rule is performance oriented and does not specify particular topics to cover in this course, so that the mine operator will have the flexibility to address hazardous conditions unique to the mine. MSHA expects mine operators to take a close look at hazards related to mine gases, electricity, explosives, and haulage, where applicable. In identifying these areas the Agency does not intend that they are all inclusive, but rather indicative of hazards at the mine that could potentially cause an accident.

Several commenters responded to proposed §§ 48.6(f) and 48.26(f), which provided that experienced miners returning to work after an absence of up to 12 months must receive training on changes in the mine environment. The final rule revises and redesignates the provisions as §§ 48.6(e) and 48.26(e). The Agency intends that this training be practical awareness training so that returning miners, experienced and inexperienced, may know the changes which could adversely affect their safety and health.

Commenters questioned what changes would trigger this training for miners returning to work. Commenters suggested that only significant or fundamental changes be covered. In response to comments, the final rule clarifies that the changes must be ''major.'' A major change is a change which the operator knows or should know is likely to endanger the safety or health of the miner. To facilitate the effectiveness of training, commenters also suggested that it be given by knowledgeable persons designated by the operator. The Agency has included this suggestion in the final rule. These knowledgeable persons do not have to be approved instructors.

In addition, commenters were concerned about recordkeeping, including documentation and tracking burdens. Consistent with the Paperwork Reduction Act, intended to minimize recordkeeping requirements, the final rule requires no recordkeeping under §§ 48.6(e) and 48.26(e). This will assist operators in providing the practical awareness training in a timely manner.

Commenters were also concerned that MSHA specify what is intended by an ''absence'' and suggested that a minimum absence time be included, such as 60 days, before this training requirement would be triggered. MSHA intends that this provision address miners who are away from the mine site for any length of time up to 12 months for whatever reason (illness, injury, lay-off, work stoppage, vacation, weekend, off-shift time, etc.). The Agency has not included a minimum length of absence because changes at the mine site which endanger miners' safety or health can occur quickly; these changes may have nothing to do with the length of the absence. Therefore, the final rule is not conditioned on any minimum time related to an absence.

Another commenter suggested that, instead of an absence of up to 12 months, 6 months should be the maximum absence allowed under this paragraph. The final rule contemplates that returning experienced miners will receive either this training under §§ 48.6(e) or 48.26(e) or receive the full complement of experienced miner training under this section. Because experienced miner training [§§ 48.6 or 48.26] is required for a miner who is absent for more than 12 months, the 12-month maximum is retained in §§ 48.6(e) and 48.26(e) in the final rule.

Specific Time Requirements

In the preamble to the proposed rule, MSHA invited comment on whether these regulations should specify time requirements, particularly a minimum number of hours for experienced miner training. Some commenters stated that a time requirement would inhibit the flexibility for training experienced miners. Because the experienced miner training covers varying backgrounds, and individual training needs differ, the final rule does not contain a ''one-size-fits-all'' time minimum for all experienced miners. As noted above, under the final rule, operators must design the instruction to meet the specific needs of the miners. For training to be meaningful, it must instill knowledge or proficiency in the subject matter. Under the final rule, operators must provide training in necessary subjects in sufficient depth so as to adequately meet the miners' needs.

Other commenters said that there should be a required minimum of 8 hours of training to assure that adequate time is devoted to training. The Agency agrees that a minimum time is warranted in the limited instance of miners returning to mining after an extended absence of many years. Over time, safety skills and knowledge erode, this is further exacerbated by long absences. Mining is becoming increasingly complex and subject to technological innovation. Miners re-entering the field after being away for many years, need to be properly trained. Training must be of sufficient duration to apprise these miners of new developments, as well as re-acquaint them with safe mining practices and procedures. In response to comments, and to assure that miners who have been away from mining for an extended period receive adequate training, the final rule requires that experienced miners returning after an absence from mining of 5 years or more must receive at least 8 hours of experienced miner training before starting work. MSHA is aware that many operators already provide 8 hours of training for all newly employed experienced miners and commends the industry for this commitment to better, more comprehensive training.

Sections 48.8(c) and 48.28(c) Annual Refresher Training of Supervisors

In the proposed rule, if training was required by §§ 75.161(a) or 77.107–1 within 30 days of the effective date of the revision, annual refresher training would not begin more than 31 days after the effective date. The Agency was concerned that, as worded, this provision was confusing and unnecessary. Accordingly, §§ 48.8(c) and 48.28(c) is modified in the final rule. Supervisors subject to MSHA approved State certification must receive annual refresher training not more than 12 months after this rule is published.

To accommodate flexibility, reduce burden, and respond to commenters' concerns, the Agency is providing an effective date of 12 months for mine operators to provide annual refresher training for supervisors. Consistent with existing MSHA training policy for miners, the final rule establishes the initial anniversary date for annual refresher training of supervisors, for the month the final rule is published. Therefore, October, 1998 is the initial anniversary month for those supervisors who were not required to receive annual refresher training. These supervisors have 12 months from this date to complete annual refresher training. By allowing 12 months for this training, the Agency allows time for outreach activities for operators and supervisors, and facilitates the inclusion of State certified supervisors into the operator's existing annual refresher training program cycle.

If the mine operator wants to provide annual refresher training to all miners only once a year, then the supervisor would have to receive the training with other miners before 12 months have elapsed. This will establish a new anniversary date for that supervisor.

According to one commenter, the scheduling of annual refresher training for supervisors, who have been trained under the requirements of 30 CFR 75 and 77, should not be limited to the coal sector of the mining industry. This

aspect of the final rule primarily affects coal supervisors, however, because some of these supervisors were previously exempt from part 48 training.

Sections 75.161 and 77.107–1 Plans for Training Programs

Like the proposed rule, the final rule revises certain training provisions in 30 CFR parts 75 and 77, for certified persons in underground and surface coal mines, respectively. It removes course requirements for methane measurement and oxygen deficiency testing, roof and rib control, ventilation, and use of self-contained self-rescue devices from § 75.161 and the course requirement for principles of mine rescue from § 77.107–1. These deletions do not reduce protection afforded miners under the existing rule, but only eliminate duplicate provisions and consolidate training requirements in part 48.

Specifically, the final rule removes the training requirement in § 75.161(a) for methane measurement and oxygen deficiency testing, which is covered in § 48.8(b)(10) (Mine gases); in § 75.161(a) for roof and rib control and ventilation plans, which is covered in § 48.8(b)(4) (Roof or ground control and ventilation plans); and in § 75.161(c) for self-contained self-rescue devices, which is covered in § 48.8(b)(8) (Self-rescue devices and respiratory devices). The final rule also revises § 77.107–1 by deleting the reference to principles of mine rescue, as this training is covered under existing § 48.28(b)(3) (Escape and emergency evacuation plans; fire warning and firefighting).

One commenter suggested that MSHA add language to clarify that training received under part 48 would not diminish State and Federal requirements for certified persons. The final rule removes only duplicate training requirements from 30 CFR 75 and 77. Additional training requirements for certified persons, under existing standards in parts 75 and 77, are not covered by part 48 and are unchanged; therefore, additional language to address this point is unnecessary.

One commenter believed that MSHA did not go far enough in removing overlapping topics. This commenter recommended also removing the first-aid training requirements from 30 CFR parts 75 and 77 and leaving the first-aid requirements in 30 CFR part 48 to satisfy all first-aid training needs. In 30 CFR part 48, however, supervisors may never receive a comprehensive first-aid course, because they can receive only a review of basic first-aid and satisfy requirements for part 48 annual refresher training. The first-aid training requirements in §§ 75.1713 and 77.1705 will assure that there are supervisors on mine property who will receive, at a minimum, 5 hours of refresher first-aid training annually.

As discussed previously, MSHA allows operators 12 months to provide annual refresher training to supervisors under §§ 48.8 and 48.28. This requirement, however, does not eliminate the requirement for annual training of certified and qualified persons under the existing §§ 75.161 and 77.107–1. In removing courses that duplicate those required under part 48 from the training required for certified and qualified persons by parts 75 and 77, the final rule creates the potential for a lapse in vital training. To eliminate this possible lapse in training, the effective date for removal of duplicate training courses from 30 CFR parts 75 and 77 is also 12 months from the date of publication of this final rule.

In effect, this will require an underground supervisor to receive annual refresher training under § 48.8, as well as annual training under existing § 75.161 during the 12 months after the final rule is published. MSHA will, however, allow for crediting during this transition period. As an example, if a supervisor receives annual refresher training under § 48.8 before 12 months has lapsed since the supervisor last received training under § 75.161, and the refresher training duplicates the existing requirements of § 75.161, that supervisor will not have to repeat those duplicate courses when next receiving training under § 75.161. After the effective date of final §§ 75.161 and 77.107–1, which is 12 months from date of publication in the **Federal Register**, (1) all supervisors will have received initial annual refresher training under part 48; (2) the duplicate courses will have been removed from the training required by §§ 75.161 and 77.107–1; and (3) these duplicate courses will be covered in the supervisor's subsequent annual refresher training under part 48.

MSHA also proposed removing § 77.1709, which requires new employees to be trained in safety rules and safe work procedures before they begin work at the mine. These requirements are covered under § 48.25 (Training of new miners), § 48.26 (Experienced miner training), and § 48.27 (New task training). MSHA received no comments on this proposal. The final rule removes existing § 77.1709.

IV. Paperwork Reduction Act

The final rule contains collection of information requirements in §§ 48.2/22 and 48.6/26. The information collection requirements associated with part 48 training are approved under OMB Control Number 1219–0070. This final rule will require modification of the information collection budget for part 48. These requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1995 (PRA 95). The respondents and requirements are discussed below with an estimate of the annual information collection burden.

Description of Respondents

The respondents are mine operators and individuals who are paid to perform tasks for the mine operator (e.g., instructors). Respondents are not required to respond to any collection of information unless it displays a currently valid OMB control number. MSHA estimates that this information collection requirement affects all (about 20,650) mines and independent contractors. MSHA data for 1997 indicate that there are about 2,560 coal mines, 10,960 metal/nonmetal mines, 3,890 independent contractors at coal mines, and 3,240 independent contractors at metal/nonmetal mines.

Description of Information Collection Burden

The estimated incremental information collection burden hours associated with this final rule can be divided into the following three categories: (1) revising the definition of ''miner;'' (2) improving experienced miner training; and (3) requiring experienced miners, before they return to work following an absence of 12 months or less, to have training on the significant changes in the mine environment that could affect the miners' safety or health.

State-Certified Supervisors as ''Miners''

The burden hours and associated costs for supervisors to take annual refresher training are included under the costs for changing the definition of ''miner'' to include all supervisors who previously had been exempt from part 48. The final rule increases the hours associated with this recordkeeping burden.

The current MSHA-approved training form (5000–23) is constructed for ease in keeping a record of the miners' and supervisors' various training courses. MSHA anticipates that the keeping of this record for supervisors requires only the supervisor's name, the date of the training, and checks in the appropriate boxes to indicate the types of training taken. The burden hours for this change

in the final rule are those associated with the actual time spent in filling out the training form. MSHA estimates that this recordkeeping will take about 3 minutes (0.05 hours) each for about 5,900 coal supervisors annually. This burden will be about 300 hours at an associated cost of about $12,700. This final rule will not impose additional burden hours for the instructor because the supervisor can attend training with other miners.

Requirements for ''Experienced Miner'' Status

This final rule changes the requirements for obtaining experienced miner status for training purposes. It removes the lapse in ''experienced miner'' status currently required when a miner has been away from mining for over 3 years. There is no additional paperwork associated with this change.

Training Plan Revisions

This final rule will require mine operators to modify their training plans. Training Plan revisions are approved under OMB Control Number 1219–0009. MSHA estimates that the burden hours for this recordkeeping will not change because the Agency intends to distribute a training plan addendum which operators can use to modify their training plans without having to submit the change to MSHA for approval.

Development of Training Course

The development of training courses is considered an information collection burden under PRA 95. The final rule adds four courses to experienced miner training. Three of these four courses are currently included in ''new miner'' training and need only slight modification to tailor them to the needs of experienced miners. Based on past experience, MSHA expects that these courses will be developed or modified by management or supervisory personnel. The total estimated one-time, initial information collection burden, for the development of a new course and modifying the existing courses, is about 24,000 hours with an associated cost of about $918,200. Further, the Agency estimates that any subsequent revisions to the courses would impose only a negligible burden.

Additional Instructor Time

MSHA estimates that the four additional required courses will increase the time spent on experienced miner training by an average of 2 additional hours. MSHA estimates that the additional burden hours for training conducted by 8,850 instructors will be about 17,700 hours at an associated cost of $688,100. MSHA estimates that the incremental expense for supplies and course materials are negligible.

Significant Changes in the Mine Affecting Safety and Health

The final rule requires operators to provide instruction about any significant changes in the mine environment that have occurred while the miner was away that could affect the miner's safety or health. For the purpose of this analysis, MSHA estimates that about 32,660 miners who return to work following an absence of 12 months or less, will need such instruction. MSHA estimates further that this instruction will take about 5–6 minutes (0.1 hour) and it will be provided orally by the miner's supervisor. MSHA estimates that this new provision will impose an additional burden on mine operators of about 6500 hours at an associated cost of about $251,800.

MSHA did not include burden estimates for supervisors instructing groups of miners returning after a change of shift, a holiday, or a weekend. MSHA considers that the supervisor's instruction of miners at the beginning of a new workshift is a normal business practice.

Summary of Information Collection Burden

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	No. respondents	Average hours per response	Average No. responses	Average No. responses per respondent	Total hours
Annually Recurring Burden					
§§ 48.2/22(a)	2,699	0.05	5,901	2.19	295
§§ 48.5/25(d), 48.6/26(b)	20,646	1.09	16,205	0.78	17,693
§§ 48.6/26(e)	20,646	0.10	65,329	3.16	6,533
Total	20,646	0.28	87,435	4.23	24,521
One-Time Initial Burden					
§§ 48.6/26(b)	20,646	1.16	20,646	1	23,981

*Discrepancies due to rounding.

Submit written comments on the information collection burden by December 7, 1998 to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503.

V. Executive Order 12866 and Regulatory Flexibility Act

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this rulemaking is not a significant regulatory action.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA, MSHA has analyzed the impact of the final rule both on mines with 500 or fewer employees and on those with fewer than 20 employees. MSHA has determined that this final rule will not impose a substantial cost increase on small mines, whether a small mine is defined as fewer than 20 miners or fewer than 500 miners.

MSHA has prepared a Regulatory Economic Analysis (REA) and Regulatory Flexibility Certification Statement to fulfill the requirements of E.O. 12866 and the Regulatory Flexibility Act. This REA is available

from the Agency upon request and is posted on MSHA's Homepage at www.msha.gov.

Regulatory Flexibility Certification Statement

Based on its analysis of costs and benefits, MSHA certifies that this final rule will not impose a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

MSHA used a quantitative approach in concluding that the final rule does not have a significant economic impact on a substantial number of small entities. This final rule will change the definition of a miner to include State-certified supervisors, change the definition of experienced miner to reflect a miner's past experience, and strengthen training requirements for experienced miners.

Compliance Costs

The incremental compliance costs of this rule include (1) the annually recurring costs for training previously exempted State-certified supervisors and the added training for experienced miners, and (2) the one-time cost for modifying existing courses and developing a new course for experienced miner training. MSHA estimates that the total initial cost will be $3.5 million. This includes an annually recurring cost of about $2.6 million and a one-time cost of about $0.9 million. MSHA has determined that this final rule will not have a significant economic impact on prices, production, or employment.

In its estimates, MSHA used a wage rate, including non-wage benefits, of $43 per hour for coal supervisors and $36 per hour for metal/nonmetal supervisors. MSHA used preliminary 1997 Agency data to determine the number of mines and miners. These estimates include contractors and contractor employees subject to the training requirements. MSHA developed the distribution of supervisors as a percentage of employment based on this Agency data.

Cost Impact on Small Entities

Using the Agency's traditional definition of a small mine, i.e., one employing fewer than 20 miners, MSHA estimates that the initial cost of this final rule will be about $1.88 million, which includes an annually recurring cost of $1.22 million and a one-time cost of $0.66 million. Using MSHA's traditional definition of a small entity, small operators have an estimated revenue of about $16.4 billion based on 1997 data. The cost impact on this industry segment is about 0.01% of revenue.

MSHA estimates that the initial cost of the final rule for small mines, using SBA's definition of 500 or fewer employees, will be about $3.44 million, which includes an annually recurring cost of $2.52 million and a one-time cost of $0.92 million. Using SBA's definition of a small entity, small operators have an estimated revenue of about $54.7 billion based on 1997 data. The cost impact on this industry segment is less than 0.01% of revenue.

The estimated contribution of the mining industry to the gross domestic product is about $58 billion of which the estimated cost of the final rule is less than 0.01%. When estimated compliance costs are so small in relation to estimated revenues, the Agency believes that it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. MSHA believes that this analysis provides a reasonable basis for the certification in this case.

The Agency will provide a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

Benefits

The RFA requires that, when developing regulations with major economic impacts, agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small entities. This final rule benefits both small and large mining operators and contractors by providing compliance flexibility, where appropriate, which allows the operator or contractor to be more responsive to the needs of miners. Thus, it enhances safety and health.

This final rule removes the exemption of State-certified supervisors from the definition of ''miner'' for purposes of part 48 training. This change affects supervisors in coal mines. From 1990 through 1997, 50 coal supervisors (12.9% of all coal fatalities) were killed. Of these, 35 occurred underground. Had the percentage of fatalities been the same for coal supervisors as for non-supervisory coal miners, MSHA projects that 43 coal supervisors (23 of which are underground coal supervisors), rather than 50, would have died during this time period. The average of these higher than expected fatalities is about 0.9 fatalities per year. The higher than expected number of fatalities is 1.5 per year for underground coal mine supervisors. Based on the greater impact on underground coal supervisors, MSHA estimates that the training required by this rule will help reduce excess supervisory fatalities by about 0.5 fatalities per year, which is slightly more than 50%.

Similarly, the percentage of fatalities between 1990 and 1997 for miners who had more than 1 year of total mining experience, but less than 1 year at the mine where the fatality occurred, is greater than the percentage of fatalities for all other miners. During that time period, these newly-employed experienced miners (NEEMs) incurred 174, or 22%, of the 793 fatalities, even though NEEMs constitute only about 5.3% of the miner population. Had the percentage of fatalities been the same for NEEMs as the percentage of fatalities for other miners, including new miners and supervisors, MSHA projects that 34 NEEMs, rather than 174, would have died during this time period. The average of the 140 higher than expected fatalities is about 17.5 per year.

In its *Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis: Proposed Rule on Part 48 Training* (PRIA), August 1991, MSHA had estimated that implementation of the proposed rule would have reduced NEEM fatalities by 20%. The PRIA states:

> In evaluating the potential effectiveness of these proposed additional training requirements * * *, MSHA relied upon its experience in observing the effectiveness of training programs and upon a qualitative review of the possible effects on injury rates of the experience and seniority factors. On that basis, therefore, MSHA estimates that about 20 percent of the excess fatalities occurring to newly-employed experienced miners, or about four fatalities per year, could be prevented by compliance with the proposed requirements * * *. (Pages III–20 and III–21)

A commenter stated that attributing a lack of part 48 training to the higher than expected fatality rate among underground coal supervisors or NEEMs is ''too simplistic.'' This commenter contends that most mines already provide supervisors with some or all of the required part 48 training. Commenters submitted alternative explanations as to why supervisors and NEEMs have a fatality rate higher than other categories of miners. One commenter stated that many supervisors often do not use the best judgment in every situation; neither do they use necessary safety equipment in all cases. Further this commenter stated that the higher fatality rate for NEEMs was due, in part, to the fact that some miners

were using techniques learned from previous mining experience which might not be appropriate to handle a different mining condition or situation.

In both the PRIA and this REA, MSHA estimates that about 20% of the supervisors at small underground coal mines, 40% of the supervisors at large underground coal mines, and 75% of the supervisors at surface coal mines receive or conduct part 48 annual refresher training. All supervisors at M/NM mines are required to receive part 48 training. Furthermore, in the PRIA, the Agency acknowledged that training, in and of itself, does not prevent accidents. The Agency contends, however, that training contributes to a reduction in accidents, injuries, illnesses, and fatalities by fostering safe work practices, increasing job skills, and enhancing hazard awareness and prevention. The PRIA stated that compliance with the revised part 48 rule would help prevent about 50% of the excess supervisory fatalities and 20% of the excess NEEM fatalities.

In the absence of any comments or data to refute this estimate, MSHA estimates that compliance with this final rule will help reduce the greater than expected number of supervisory and NEEM fatalities by four fatalities per year (0.5 supervisor and 3.5 NEEM fatalities). MSHA contends that effective training, tailored to the needs of individual miners and supervisors, together with reinforcement of management's policies, procedures, and work practices affecting miners' safety and health, can have a substantial impact on eliminating the unsafe behaviors and work practices described by commenters.

VI. Executive Order 12875 and the Unfunded Mandates Reform Act

Executive Order (E.O.) 12875, Enhancing the Intergovernmental Partnership, requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. E.O. 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

The final rule will impact about 212 sand and gravel or crushed stone operations that are run by State, local, or tribal governments for the construction and repair of highways and roads. MSHA offered these governments an opportunity to provide meaningful and timely input, at the proposed rule stage, through the promulgation of the proposal for notice and comment. MSHA also mailed a copy of the proposed rule to each mine owned or operated by a State, local, or tribal government. No state or local government commented or requested a waiver of regulatory requirements. MSHA will mail a copy of this final rule to these 212 entities.

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect these entities.

VII. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with E.O. 13045, MSHA has evaluated the environmental health and safety effects of the rule on children. The Agency has determined that the final rule will have no effect on children.

VIII. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments)

MSHA certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments.

Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

List of Subjects

30 CFR Part 48

Mine safety and health, Reporting and recordkeeping requirements, Training programs.

30 CFR Part 75

Coal mines, Mine safety and health, Training programs, Underground mining.

30 CFR Part 77

Coal mines, Mine safety and health, Surface mining, Training programs.

Dated: September 29, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, for the reasons set out in the preamble, 30 CFR, chapter 1, is amended as set forth below.

PART 48—[AMENDED]

1. The authority citation for part 48 is revised to read as follows:

Authority: 30 U.S.C. 811, 825.

2. Remove the words ''training of newly employed experienced miners'' and add, in their place, the words ''experienced miner training'' in the following places:

a. § 48.2(a)(1) introductory text

b. § 48.22(a)(1) introductory text

3. Remove the words ''training newly employed experienced miners'' and add, in their place, the words ''training experienced miners'' in the following places:

a. § 48.3(a) introductory text

b. § 48.23(a) introductory text

4. Section 48.2 is amended by removing paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii), and revising paragraphs (a)(2) and (b) to read as follows:

§ 48.2 Definitions.

For the purposes of this subpart A—

(a) * * *

(2) *Miner* means, for purposes of § 48.11 (Hazard training) of this subpart A, any person working in an underground mine, including any delivery, office, or scientific worker or occasional, short-term maintenance or service worker contracted by the operator, and any student engaged in academic projects involving his or her extended presence at the mine. This definition excludes persons covered under paragraph (a)(1) of this section and subpart C of this part.

(b) *Experienced miner* means:

(1) A miner who has completed MSHA-approved new miner training for underground miners or training acceptable to MSHA from a State agency and who has had at least 12 months of underground mining experience; or

(2) A supervisor who is certified under an MSHA-approved State certification program and who is

employed as an underground supervisor on October 6, 1998; or

(3) An experienced underground miner on February 3, 1999.

* * * * *

5. Section 48.5 is amended by revising paragraph (d) to read as follows.

§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(d) A newly employed miner who has less than 12 months of mining experience and has received the courses and hours of instruction in paragraphs (a) and (b) of this section, within 36 months preceding employment at a mine, does not have to repeat this training. Before the miner starts work, the operator must provide the miner with the experienced miner training in § 48.6(b) of this part and, if applicable, the new task training in § 48.7 of this part. The operator must also provide the miner with annual refresher training and additional new task training, as applicable.

6. Section 48.6 is amended by revising the heading, paragraph (a), the introductory text of paragraph (b), and paragraph (b)(7); by redesignating paragraph (b)(8) as paragraph (b)(12), and paragraph (b)(9) as paragraph (b)(13); and by adding new paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (c), (d), and (e) to read as follows:

§ 48.6 Experienced miner training.

(a) Except as provided in paragraph (e), this section applies to experienced miners who are—

(1) Newly employed by the operator;

(2) Transferred to the mine;

(3) Experienced underground miners transferred from surface to underground; or

(4) Returning to the mine after an absence of more than 12 months.

(b) Experienced miners must complete the training prescribed in this section before beginning work duties. Each experienced miner returning to mining following an absence of 5 years or more, must receive at least 8 hours of training. The training must include the following instruction:

* * * * *

(7) *Hazard recognition.* The course must include the recognition and avoidance of hazards present in the mine.

(8) *Prevention of accidents.* The course must include a review of the general causes of accidents applicable to the mine environment, causes of specific accidents at the mine, and instruction in accident prevention in the work environment.

(9) *Emergency medical procedures.* The course must include instruction on the mine's emergency medical arrangements and the location of the mine's first aid equipment and supplies.

(10) *Health.* The course must include instruction on the purpose of taking dust, noise, and other health measurements, where applicable; must review the health provisions of the Act; and must explain warning labels and any health control plan in effect at the mine.

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned and the safe work procedures of such tasks. Experienced miners who must complete new task training under § 48.7 of this part do not need to take training under this paragraph.

* * * * *

(c) The operator may include instruction on additional safety and health subjects based on circumstances and conditions at the mine.

(d) The training time spent on individual subjects must vary depending upon the training needs of the miners.

(e) Any miner returning to the same mine, following an absence of 12 months or less, must receive training on any major changes to the mine environment that have occurred during the miner's absence and that could adversely affect the miner's health or safety.

(1) A person designated by the operator who is knowledgeable of these changes must conduct the training in this paragraph. An MSHA approved instructor is not required to conduct the training outlined in this paragraph.

(2) No record of this training is required.

(3) The miner must also complete annual refresher training as required in § 48.8, if the miner missed taking that training during the absence.

7. Section 48.8 is amended by revising paragraph (c) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(c) All coal supervisors who are subject to § 75.161(a) of this chapter must receive annual refresher training required by this section within 12 months of October, 1998.

* * * * *

8. Section 48.22 is amended by removing paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii), and revising paragraphs (a)(2) and (b) to read as follows:

§ 48.22 Definitions.

For the purposes of this subpart B—

(a) * * *

(2) *Miner* means, for purposes of § 48.31 (Hazard training) of this subpart B, any person working in a surface mine, including any delivery, office, or scientific worker or occasional, short-term maintenance or service worker contracted by the operator, and any student engaged in academic projects involving his or her extended presence at the mine. This definition excludes persons covered under paragraph (a)(1) of this section and subpart C of this part.

(b) *Experienced miner* means:

(1) A miner who has completed MSHA-approved new miner training for surface miners or training acceptable to MSHA from a State agency and who has had at least 12 months of surface mining experience; or

(2) A supervisor who is certified under an MSHA-approved State certification program and who is employed as a surface supervisor on October 6, 1998; or

(3) An experienced surface miner on February 3, 1999.

* * * * *

9. Section 48.25 is amended by revising paragraph (d) to read as follows.

§ 48.25 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(d) A newly employed miner who has less than 12 months of mining experience and has received the courses and hours of instruction in paragraphs (a) and (b) of this section, within 36 months preceding employment at a mine, does not have to repeat this training. Before the miner starts work, the operator must provide the miner with the experienced miner training in § 48.26(b) of this part and, if applicable, the new task training in § 48.27 of this part. The operator must also provide the miner with annual refresher training and additional new task training, as applicable.

10. Section 48.26 is amended by revising the heading, paragraph (a), the introductory text of paragraph (b), paragraph (b)(5), and paragraph (b)(7); by redesignating paragraph (b)(8) as paragraph (b)(12); and by adding new paragraphs (b)(8), (b)(9), (b)(10), (b)(11), (c), (d), and (e) to read as follows:

§ 48.26 Experienced miner training.

(a) Except as provided in paragraph (e), this section applies to experienced miners who are—

(1) Newly employed by the operator;

(2) Transferred to the mine;

(3) Experienced surface miners transferred from underground to surface; or

(4) Returning to the mine after an absence of more than 12 months.

(b) Experienced miners must complete the training prescribed in this section before beginning work duties. Each experienced miner returning to mining following an absence of 5 years or more, must receive at least 8 hours of training. The training must include the following instruction:

* * * * *

(5) *Escape and emergency evacuation plans; firewarning and firefighting.* The course must include a review of the mine escape system and the escape and emergency evacuation plans in effect at the mine, and instruction in the firewarning signals and firefighting procedures in effect at the mine.

* * * * *

(7) *Hazard recognition.* The course must include the recognition and avoidance of hazards present in the mine.

(8) *Prevention of accidents.* The course must include a review of the general causes of accidents applicable to the mine environment, causes of specific accidents at the mine, and instruction in accident prevention in the work environment.

(9) *Emergency medical procedures.* The course must include instruction on the mine's emergency medical arrangements and the location of the mine's first aid equipment and supplies.

(10) *Health.* The course must include instruction on the purpose of taking dust, noise, and other health measurements, where applicable; must review the health provisions of the Act; and must explain warning labels and any health control plan in effect at the mine.

(11) *Health and safety aspects of the tasks to which the experienced miner is assigned.* The course must include instruction in the health and safety aspects of the tasks assigned and the safe work procedures of such tasks. Experienced miners who must complete new task training under § 48.27 of this part do not need to take training under this paragraph.

* * * * *

(c) The operator may include instruction in additional safety and health subjects based on circumstances and conditions at the mine.

(d) The training time spent on individual subjects must vary depending upon the training needs of the miners.

(e) Any miner returning to the same mine, following an absence of 12 months or less, must receive training on any major changes to the mine environment that have occurred during the miner's absence and that could adversely affect the miner's health or safety.

(1) A person designated by the operator who is knowledgeable of these changes must conduct the training in this paragraph. An MSHA approved instructor is not required to conduct the training outlined in this paragraph.

(2) No record of this training is required.

(3) The miner must complete annual refresher training as required in § 48.28, if the miner missed taking that training during the absence.

11. Section 48.28 is amended by revising paragraph (c) to read as follows:

§ 48.28 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(c) All coal supervisors who are subject to § 77.107–1 of this chapter must receive annual refresher training required by this section within 12 months of October, 1998.

* * * * *

PART 75—[AMENDED]

12. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

13. Section 75.161 is revised to read as follows:

§ 75.161 Plans for training programs.

Each operator must submit to the district manager, of the Coal Mine Safety and Health District in which the mine is located, a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be certified or qualified. The program must provide—

(a) For certified persons, annual training courses in first aid, principles of mine rescue, and the provisions of this part 75; and

(b) For qualified persons, annual courses in performance of the task which they perform as qualified persons.

PART 77—[AMENDED]

14. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811, 957, 961.

15. Section 77.107–1 is revised to read as follows:

§ 77.107–1 Plans for training programs.

Each operator must submit to the district manager, of the Coal Mine Safety and Health District in which the mine is located, a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be certified or qualified. The program must provide—

(a) For certified persons, annual training courses in the tasks and duties which they perform as certified persons, first aid, and the provisions of this part 77; and

(b) For qualified persons, annual courses in performance of the tasks which they perform as qualified persons.

§ 77.1709 [Removed]

16. Section 77.1709 is removed.

[FR Doc. 98–26598 Filed 10–5–98; 8:45 am]

BILLING CODE 4510–43–P

federal register

Tuesday
October 6, 1998

Part III

Environmental Protection Agency

Performance Partnership Grants for State and Tribal Environmental Program: Revised Interim Guidance; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6171–7]

Performance Partnership Grants for State and Tribal Environmental Program: Revised Interim Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The ''Performance Partnership Grants for State and Tribal Environmental Programs: Revised Interim Guidance'' is the revised version of the Performance Partnership Grant (PPG) guidance dated July 1996. This revision reflects the expanded authority provided in EPA's FY 1998 Appropriation Act to award PPGs to Interstate Agencies, Intertribal Consortia, and Air Pollution Control Agencies. The revision also incorporates some of the policy decisions made since July 1996 that impact PPGs. These decisions include items such as replacing references to four different application requirements with one set of requirements, adding new definitions and terms to reflect results-based management, adding the term ''workplan component'' along with requirements that the work plan be organized by workplan components, incorporating the use of multi-year grant budget periods, and adding Government Performance and Results Act (GPRA) reporting language. This revised guidance will serve as the operating guidance for States and Tribes interested in applying for PPGs. EPA will be proposing regulations governing the PPG program in FY1999.

PPGs are intended to provide States and Tribes with greater flexibility to address their highest environmental priorities, improve environmental performance, achieve administrative savings, and strengthen partnerships between EPA and the States or Tribes.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Ellen Haffa, Office of Water (4102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 260–3617, FAX: (202) 260–7926.

SUPPLEMENTARY INFORMATION: PPGs are a powerful funding tool that EPA is offering to eligible States and Tribes. A PPG is a multi-program grant awarded to a State or Interstate Agency, or Tribe or Intertribal Consortium from funds otherwise available for categorical grant programs. A State or Tribe can combine funds from 2 or more of 17 eligible grant programs into 1 or more PPGs. Recipients may then use PPGs to fund activities that are within the cumulative eligibilities of the 17 eligible grant programs.

EPA encourages States and Tribes to take advantage of PPGs. These grants enable State and Tribes to better direct their funding toward their most critical environmental problems while continuing to address core program requirements, better address multi-media high priority strategies such as community-based environmental protection, pollution prevention, and environmental justice, and reduce administrative burdens and costs by reducing the numbers of grants applications, budget, workplans, and reports. States and Tribes interested in pursuing PPGs should work in partnership with their Regional office to develop a PPG that funds solutions to the highest environmental priorities and ensures that EPA statutory and program requirements are met.

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 guidance 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 guidance is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Additional contacts for information on PPGs are:

Headquarters:

Scott McMoran, Chief, Grants Operations Branch, Grants Administration Division, U.S. EPA (3903R), 401 M. Street, SW, Washington, D.C. 20460, (202) 564–5376

Region 1:

Stanley Scott, Manager, Grants Management Unit, U.S. EPA—Region I, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–0001, (617) 565–3378

Robert Goetzl, Associate Director, State Grant and Indian Programs, U.S. EPA—Region 1, John F. Kennedy Federal Building, One Congress Street, Boston MA 02203–0001, (617) 565–3602

Region 2:

Donna Vizian, Chief, Grants and Contracts Management Branch, U.S. EPA—Region II, 290 Broadway, New York, N.Y. 10007–1866, (212) 637–3402

Dennis Santella, Leader, Strategic Planning Team, U.S. EPA—Region II, 290 Broadway, New York, N.Y. 10007–1866

Region 3:

Robert G. Reed, Jr. Chief, Grants and Audit Management Branch (3PM70), U.S. EPA—Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 215–5410

Mary Zielinski, Grants and Audit Management Branch, U.S. EPA—Region III, 1650 Arch Street, Philadelphia, PA 19103–2029

Region 4:

Linda Barrett, Grants and Procurement Branch, U.S. EPA—Region IV, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8399

Region 5:

Pat Thompson, Chief, Assistance Section, U.S. EPA—Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 886–6015

Region 6:

Brenda Durden, Chief, Program Planning and Grants Branch, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6510

Hattie Brown, Program Planning and Grants Branch, U.S. EPA—Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–7423

Region 7:

Carol Rompage, Grants Management Officer, U.S. EPA—Region VII 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7346

Region 8:

Grants, Audits, Procurement Branch, U.S. EPA—Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6104

Region 9:

Melinda Taplin, Chief, Grants Management Section, P–4–4, U.S. EPA—Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1693

Region 10:

Grants Administration Branch, U.S. EPA—Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2722

Dated: September 22, 1998.

Dana Minerva,

Deputy Assistant Administrator, Office of Water.

Dated: September 21, 1998.

Kerrigan Clough,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, Region VIII.

Performance Partnership Grants Guidance

Executive Summary

Performance Partnership Grants (PPGs): A PPG is a multi-program grant made to a State or Tribal agency by the U.S. Environmental Protection Agency (EPA) from funds allocated and otherwise available for categorical grant programs. PPGs provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs.

Purpose

- Flexibility. States and Tribes will have the flexibility to address their highest environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core program requirements.
- Improved Environmental Performance. States and Tribes can: (1) more effectively link program activities with environmental goals and program outcomes; and (2) develop innovative pollution prevention, ecosystem, and community-based strategies.
- Administrative Savings. Recipients and EPA can reduce administrative burdens and costs by greatly reducing the numbers of grant applications, budgets, work plans, and reports.
- Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and deploy their unique resources and abilities to jointly accomplish those goals.

Authority

- Authorization for PPGs is contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act (PL 104–134). EPA's 1998 Appropriation Act expanded the authority to award PPGs to Interstate Agencies, Intertribal Consortia, and Air Pollution Control Agencies.
- Authority applies to funds from seventeen program grants funded from EPA's State and Tribal Assistance Grants (STAG) appropriation.

Eligibility

- All States and federally recognized Indian Tribes (including environmental, health, agriculture, and other State/Tribal agencies) eligible to receive more than one categorical grant in Fiscal Year (FY) 1999 are eligible to receive PPGs.
- Local agencies are eligible if they: (1) are eligible under state authority to implement EPA funded programs; and (2) receive direct funding from EPA for two or more of the eligible grant programs.
- Certain Interstate Agencies and Intertribal Consortia are eligible, to the extent of their eligibility for the underlying categorical grant funds. Intertribal Consortia are eligible for the following categorical grants: General Assistance Program (GAP) grants (Indian Environmental General Assistance Program Act of 1992), Wetlands Program Development Grants (CWA 104(b)(3)), Water Quality Cooperative Agreements (CWA 104(b)(3)), and Water Pollution Control Grants (CWA 106). The proposed regulation established at 40 CFR Subpart B would make Intertribal consortia eligible for all of the remaining programs.
- PPGs do not affect State or Tribal agency ''pass-through'' grants to local or other agencies.
- State/Tribal agency eligibility is subject to the authority of the governor or State legislature, or Tribal authorities, as appropriate.

Application

- States and Tribes may apply for PPGs for any budget period, including multi-year awards, though EPA recommends not exceeding five years. The application must include a work plan corresponding to the proposed budget period. PPG work plan commitments are the programmatic basis for the PPG award and grant accountability. Commitments may consist of environmental indicators, performance measures (including measures of activity), and narrative descriptions of program activities or work plan components. PPG work plan commitments must include core performance measures or accountability measures, as defined by appropriate environmental statutes, regulations and EPA or State policy. PPG work plan commitments may be contained in categorical or PPG work plans, in a Performance Partnership Agreement (PPA) or Tribal Environmental Agreement (TEA).

Funding and State/Tribal Cost Share

- EPA's allocation of grant funds to States will be the same whether the funds are awarded as PPGs or categorically. PPGs do not adversely affect a Tribe's ability to compete for any grant.
- PPGs may fund any activities eligible to be funded under seventeen specified EPA grant authorities.
- EPA's policy is that States and Tribes should continue to spend the same amount of funds for environmental programs under PPGs as under categorical grants. Although, under PPGs, recipients will have the flexibility to realign those resources among environmental programs based on negotiated priorities including those in the PPG work plan, the total resources of the State or Tribe, both Federal and non-Federal, targeted to environmental programs should not be reduced, except in exceptional circumstances, for example, where a State or Tribe reduces funds across all State or Tribal agencies. Thus, the required cost share (based on the match or maintenance of effort requirements of the categorical grants included in the PPG) will be the same under PPGs as under categorical grants, unless EPA determines that there are exceptional circumstances justifying a reduction in cost share for a PPG for the year that the PPG is awarded.
- Applicants may have a single PPG budget for accounting and reporting purposes.

State/Tribal Options

- The content of each PPG depends on its purpose and the extent to which a recipient would like to deviate from traditional categorical work plans or enter the National Environmental Performance Partnership System (NEPPS) or complete a Tribal-EPA Agreement (TEA).
- PPGs may include all of an agency's federally-funded environmental programs, a single media (e.g. water), or a single function (e.g. compliance).
- The State or Tribe usually decides which grants to include in a PPG, with EPA concurrence.

EPA Regional Implementation

- EPA's Regional Administrators will be the designated approval and award officials for PPGs, with the ability to redelegate authority within their Regions.
- EPA Regions will designate a single grant Project Officer for each PPG.
- When State/Tribal PPG proposals present significant national policy issues or propose to deviate from National Program Guidance, EPA Regions will consult with EPA's national program managers.

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Section 8. Post-Award Requirements

Section 1. Overview of the U.S. Environmental Protection Agency's Performance Partnership Grant Program

Section 1.1 Scope of Guidance. A Performance Partnership Grant (PPG) is a single grant made to a State or Tribe (or Interstate Agency, Intertribal Consortium, or local agency) from grant funds allocated and otherwise available for existing categorical grant programs. PPGs are voluntary and provide States and Tribes with the option to combine funds from two or more categorical grants into one or more PPGs. Recipients may receive their financial assistance as one or more PPG(s), or continue receiving funds as categorical grants.

This Guidance applies to PPGs for FY 1999, and will remain in effect until superseded by statute, federal regulation, or amended guidance. It supersedes ''Performance Partnership Grants for State and Tribal Programs: Revised Interim Guidance,'' published in the **Federal Register** on August 19, 1996. This Guidance applies to: (1) State and Interstate Agencies, Tribes, Intertribal Consortia, and local Agencies that apply for or are awarded PPGs; (2) EPA Regions that approve, award, and administer PPGs; (3) EPA National Program Managers for any funds eligible for inclusion in PPGs; and (4) EPA Headquarters offices responsible for the administrative or policy management of PPGs.

EPA expects to issue proposed regulations for PPGs during FY 1999. The Agency has solicited extensive stakeholder involvement in the development of these regulations, which are currently in draft. Final regulations are anticipated in FY 1999.

Section 1.2 Organization. The guidance is divided into two parts. Sections 1–3 present an overview of the new program, explaining the purpose and expected benefits of PPGs, and identifying eligible grants, recipients, and activities. Sections 4–8 provide more specific guidance to Federal, State, and Tribal officials responsible for implementing the grant program. States and Tribes are presented a variety of options for how to apply for and manage PPGs. Section 4, in particular, helps applicants identify reasons for applying for a PPG and provides application criteria. Each section includes a checklist of steps and options.

Section 1.3 Purpose And Goals. President Clinton announced Performance Partnership Grants on March 16, 1995, as part of the Administration's program to ''Reinvent Environmental Regulation.'' PPGs are a part of EPA's continuing effort to reinvent government and build State and Tribal environmental protection capacity. This voluntary program is a response to recommendations from various internal and external stakeholders [1] to:

- Increase State and Tribal flexibility,
- Help States and Tribes improve environmental performance,
- Achieve administrative savings by streamlining the grants process, and
- Strengthen EPA partnerships with State and Tribal governments.

These previous recommendations have formed the basis for the purposes and goals of the PPG program, as described below:

Flexibility. PPGs will provide States and Tribes with flexibility to address their most pressing environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core work plan commitments. Potential recipients may apply for a PPG to replace up to seventeen eligible categorical grants, some of the seventeen (e.g., water media PPG), or portions of some of them (e.g., an enforcement PPG). They will allow recipients to more effectively administer core statutory, regulatory and non-regulatory programs. Recipients will also be able to develop innovative multimedia programs and activities that are difficult to fund with separate categorical grants. Moreover, recipients will have the option of developing multi-year planning.

Improved Environmental Performance. PPGs will encourage States and Tribes to improve environmental performance and more effectively link program goals with program outcomes. Recipients will be able to establish priorities across all environmental programs, and integrate strategic goals such as pollution prevention and community-based environmental protection into their program planning. States and Tribes will be able to achieve these objectives by:

- Coordinating and integrating activities which are now fragmented under many statutes, regulations, and programs,
- Conducting assessments to define environmental problems and set priorities with the public,
- Targeting the most significant environmental problems,
- Building environmental protection capacity through training, technical assistance and other appropriate means, and
- Using common sense and multimedia environmental protection strategies such as pollution prevention, ecosystem protection, community-based protection and environmental justice.

The emphasis on improved environmental performance will be achieved by increasing the use of environmental indicators and program performance measures, and decreasing the reporting of inputs and activities. Core Performance measures, to be developed jointly by EPA and each State or Tribe, will gauge progress toward agreed upon goals (see Section 1.6). Improved performance measures will provide the foundation for better reporting, monitoring, and assessment of State, Tribal and national environmental conditions. EPA expects that targeted strategic approaches and improved performance measures, when implemented together, will accelerate long-term systematic improvements in environmental conditions. (Core performance measures for Tribal programs are still evolving; until EPA has negotiated these measures with the Tribes, the Regions should use key work plan goals and objectives to reflect the new GPRA requirements.)

Administrative Savings. EPA, States, and Tribes expect PPGs to reduce administrative burdens and costs by reducing the overall number of grant applications, work plans, reports and certifications associated with traditional, single media federal grants. Multi-year planning may also contribute to reduced administrative costs.

Strengthened Partnerships. EPA will develop partnerships with States and Tribes where both parties share the same environmental and program goals and jointly deploy their unique resources and abilities to accomplish those goals.

Section 1.4 The National Environmental Performance Partnership System. On May 17, 1995, State and

[1] The National Performance Review (''Creating a Government That Works Better and Costs Less''), September 1992; EPA's State-EPA Capacity Steering Committee recommendations in ''Strengthening Environmental Management in the United States, Report of the Task Force to Enhance State Capacity,'' Environmental Protection Agency, Office of the Administrator, EPA–270–R–93–001, July 1993; and the National Academy of Public Administration Report (''Setting Priorities, Getting Results: A New Direction for EPA''), April 1995.

EPA leaders signed a ''Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System'' (NEPPS). The objective of signing this agreement was to accelerate the transition to a new working relationship between EPA and the States—one which reflects the advancement made in environmental protection over the preceding two decades by both the States and EPA.

Key goals that this new partnership agreement share with PPGs are: to allow States and EPA to achieve improved environmental results by directing scarce public resources toward the highest priority, highest value activities; to provide States with greater flexibility to achieve those results; to improve public understanding of environmental conditions and choices; and to enhance accountability to the public and taxpayers. Other key goals of the NEPPS agreement are increased reliance on self-management by State programs and a differential approach to oversight that serves as an incentive for State programs to perform well, rewarding strong programs and freeing up federal resources to address problems where State programs need assistance.

NEPPS and PPGs share many of the same objectives. Of course, States may apply for PPGs without entering NEPPS (and vice-versa) . But where States wish to apply for PPGs and enter NEPPS, the processes and documentation are integrated and, where appropriate, identical. The Performance Partnership Agreement (PPA) is a document that is common to both PPGs and NEPPS. For States doing both, the PPA will allow the processes and documentation to be integrated (see Section 4.3 for more details).

Section 1.5 Tribal Environmental Agreements. On July 14, 1994, Administrator Browner issued a nine-point Action Memorandum on Strengthening Tribal Operations which called for the development of Tribal-EPA Workplans (now called Tribal Environmental Agreements) to be jointly developed by EPA Regions and Tribes. In consultation with the Agency's Tribal Operations Committee, the American Indian Environmental Office and the National Indian Work Group developed guidance for the Tribal Environmental Agreements (TEAs). Currently, EPA Regions and Tribes are developing TEAs, many of which will be signed within the next year.

The TEAs (signed by the EPA Regional Administrator and the Tribal leadership) are a planning tool which clearly identifies the Tribe's environmental objectives, expected outcomes and resource needs, and implementation and management assistance needed from EPA. The Agreements establish the Tribe's environmental objectives over 3–4 years, but are flexible documents that can be changed to meet Tribal needs.

For Tribal PPGs, the TEAs are comparable to the State PPAs. In order for the TEAs to serves as commitment documents where Tribes are shifting funds, Tribes wanting to enter a PPG will have to include a specific section on the anticipated PPG funds and work plan commitments in addition to the other elements of the TEA or as an amendment to an already signed TEA. By using the TEA instead of the PPA, the Tribes will not have to conduct two planning processes. The addition of a commitment section to the TEA should ensure that PPG funding shifts, commitments, and expectations are clearly defined in one document signed by both the Tribe and EPA. TEAs will be required for Tribes wherever PPAs are required for States.

Section 1.6 PPG Accountability And Performance Measures. All PPGs will be required to contain a legally binding set of work plan commitments. These work plan commitments will be the primary basis for evaluating the success of a PPG. Some work plan commitments will be required in all PPGs because they are required by statute, regulation, standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or National Program Manager/Regional program guidance. Others will be optional.

For the purposes of this PPG guidance, work plan commitments are ''a description of the PPG program goals and objectives, results and benefits expected, a plan of action, and quantifiable projections of the program and environmental accomplishments to be achieved and the performance measures to be used. Where accomplishments cannot be quantified, activities can be listed to show the schedule of accomplishments. PPG work plan commitments are the legal basis for the expenditure of federal grant funds and the recipient's matching requirement'' (see Section 1.7). EPA will continue to work with States and Tribes to define the elements of work plan commitments, including national environmental goals and performance measures.

As EPA and States/Tribes negotiate work plan commitments under PPGs, they should use performance measures that measure program and environmental outcomes and outputs. Performance measures that are PPG work plan commitments should be quantifiable, measurable, and verifiable. Specifically, all States and Tribes should adopt outcome and output-oriented performance measures that track program performance and environmental conditions and trends.

Appropriate accountability provisions are essential in designing the new PPG program. A fundamental goal of EPA's efforts to design accountability provisions into PPGs is to begin moving Federal, State, and Tribal programs toward the use of results-oriented measures of environmental and program performance that are understandable and meaningful to the public. In recent years, EPA, States, and Tribes, with input from the stakeholders and the public, have embarked on new and innovative strategic directions and developed or tested innovative performance measures that are a natural fit to incorporate into PPGs. EPA believes that PPG performance measures should be consistent with ongoing EPA and State or Tribal initiatives, such as The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,[2] the National Environmental Goals Project, and EPA National Program core performance measures (developed under the NEPPS). EPA's National Program Guidances generally contain the national core performance measures. A more comprehensive list of optional environmental indicators may be found in Prospective Indicators for State Use in Performance Agreements prepared under a cooperative agreement with the Florida Center for Public Management, Florida State University. Although this report provides a preliminary list of national environmental indicators that may be helpful to States and EPA looking for good ideas about available environmental indicators,[3] Tribes may also find them applicable.

Specific performance measures are required only if they are required by statute, regulation or standing legal agreements between EPA and States/Tribes (e.g., Delegation Agreements), or if EPA National Program Managers or Regions have required them in guidance or policy.

Section 1.7 Definitions. Agency—United States Environmental Protection Agency (EPA).

Categorical Grant—Media-specific or multimedia grant for a particular program or narrowly defined activities.

National Environmental Performance Partnership System (NEPPS)—A new

[2] EPA 200nB–94–002.

[3] To obtain a copy of the document, contact EPA's Office of Policy, at (202) 260–4332, or Florida State University at (904) 921–0423.

approach to developing and implementing the State-EPA partnership agreed to by the States and EPA. It contains seven principal components: (1) increased use of environmental indicators; (2) a new approach to program assessments by States; (3) Performance Partnership Agreements; (4) differential oversight; (5) Performance Leadership Programs; (6) public outreach and involvement; and (7) joint system evaluation.

National Program Manager—Individual responsible for setting the direction and policy for the management of an EPA media or enforcement program on a National level.

Outcome—The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. See ''output''.

Output—An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See ''outcome''.

Performance Partnership Agreement (PPA)—A negotiated agreement signed by the EPA Regional Administrator and an appropriate official of a State or interstate agency and designated as such. These agreements typically set out jointly developed goals, objectives, and priorities and include work plan commitments that are the basis for grants; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. A Performance Partnership Agreement may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in Section 4.3.

Performance Partnership Grant (PPG)—A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities. Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Performance Partnership Grant Work Plan Commitments—The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Performance Partnership Grant Work Plan Component—A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

Program Flexibility—Reduction of effort or elimination of a work plan component in order to invest in another media-specific or multimedia work plan component.

Tribal Environmental Agreement (TEA)—A strategic planning document designated as a TEA and signed by the Regional Administrator and an appropriate Tribal official that sets out negotiated environmental goals, objectives, outcomes, outputs, priorities, actions to be taken, and measures of performance. A TEA may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in Section 4.3.

Section 2. Authority

Section 2.1—Statutory Authority. Authority for PPGs is contained in the 1996 Omnibus Consolidated Rescissions and Appropriations Act (P.L. 104–134). The authorizing language reads as follows:

> That beginning in fiscal year 1996 and each fiscal year thereafter, and notwithstanding any other provision of law, the Administrator is authorized to make grants annually from funds appropriated under this heading, subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian tribe for multimedia or single media pollution prevention, control and abatement and related environmental activities at the request of the Governor or other appropriate State official or the tribe.

Additional statutory authority for the awards of PPGs to interstate agencies and intertribal consortia is contained in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, P.L.105–65 (111 Stat. 1344, 1373 (1997)).

Section 2.2—Other Authorities. The requirements of 40 CFR Part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' will apply to a PPG as they do to a categorical grant. Some limited exceptions to 40 CFR Part 31 may be necessary to accommodate these grants. EPA will manage such exceptions through the grant deviation process. Additional requirements are included in substantive program regulations, OMB Circulars A–87 and A–102, the EPA Assistance Administration Manual, EPA-State/Tribal Memoranda of Agreement (MOA), NPM-Regional Guidance and MOA, the NEPPS agreement signed on May 17, 1995 (for States entering NEPPS), and E.O. 12372, ''Intergovernmental Review of Federal Programs.''

Section 3. Eligibility

Section 3.1—Eligible Applicants. All States, territories, interstate agencies, local agencies, Federally recognized Indian Tribes, and Intertribal Consortia eligible to receive more than one of the categorical grants referred to in Section 3.2 are eligible to receive a PPG(s). Any duly authorized State or Tribal entity that currently receives or is eligible to receive EPA categorical program grants may request a PPG for the funds it administers. This may include environmental, agricultural, and other agencies where authorized by State/Tribal law. Agencies that now receive pass-through funding from a State or Tribe may continue to receive such funding subject to applicable State, Tribal or Federal law. For any agency that now receives direct Federal funding, but is not eligible for a PPG (e.g., local air districts), EPA will continue to make Federal funding available pursuant to existing categorical grant authorities. Eligibility for PPGs is subject to the appropriate State, Tribal, or Territorial executive or legislative authorities. Interstate agencies and intertribal consortia may combine funds into a PPG if they are eligible under the authorizing statutory authorities to receive the grant funds.

In the case of proposals which combine funds currently awarded to separate, duly authorized State or Tribal agencies—such as combining funds from an environmental department with funds from program grants to an agriculture or health department—a joint proposal signed by the appropriate officials should indicate a method for sharing funds in addition to demonstrating the eligibility, planning, accountability and evaluation elements of PPGs described in this guidance.

If program eligibility, formerly referred to as Treatment as State (TAS), is required for a Tribal applicant to be eligible to receive categorical funding for a specific program, the Agency will require the same eligibility if the Tribal applicant intends to include funds for that categorical grant in the PPG or to use PPG funds for activities under that program.

EPA encourages applicants to combine funds from as many categorical

program grants as possible into a PPG to achieve maximum flexibility.

Section 3.2 Eligible Grant Programs. Funds available for the following seventeen grants identified in EPA's State and Tribal Assistance Grants (STAG) appropriation are eligible to be combined into a PPG:

(1) Air pollution control (section 105 of the Clean Air Act).
(2) Water pollution control (section 106 of the Clean Water Act).
(3) Public water system supervision (section 1443(a) of the Safe Drinking Water Act).
(4) Underground water source protection (section 1443(b) of the Safe Drinking Water Act).
(5) Hazardous waste management (section 3011(a) of the Solid Waste Disposal Act).
(6) Pesticide cooperative enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).
(7) Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act).
(8) Pesticide program implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).
(9) Nonpoint source management (sections 205(j)(5) and 319(h) of the Clean Water Act).
(10) Lead-based paint program (section 404(g) of the Toxic Substances Control Act).
(11) State indoor radon grants (section 306 of the Toxic Substances Control Act).
(12) Toxic substances compliance monitoring (section 28(a) and (b) of the Toxic Substances Control Act).
(13) State underground storage tanks (section 2007(f)(2) of the Solid Waste Disposal Act).
(14) Pollution prevention incentives for states (section 6605 of the Pollution Prevention Act of 1990).
(15) Water quality cooperative agreements (section 104(b)(3) of the Clean Water Act).
(16) Wetlands development grants program (section 104(b)(3) of the Clean Water Act).
(17) General Assistance Grants to Indian Tribes (Indian Environmental General Assistance Program Act of 1992). Only eligible Tribes can propose to include these funds in a PPG application.

Generally, grant funds that states combine into PPGs are those that provide for continuing, ongoing, environmental programs. Grants to capitalize Clean Water and Drinking Water State Revolving Funds, and other amounts specified for stated purposes in the STAG account, are not eligible for inclusion in PPGs.

Because all EPA grants to Tribes are awarded through a competitive or discretionary process, Tribes will be allowed to include these grants in a PPG without adversely affecting their ability to compete for any grant. For competitive grants on the above list (e.g., pollution prevention incentives for states, wetlands program development, water quality cooperative agreements, general assistance program grants to Tribes) to be combined in a PPG, the state or tribe must first be approved to receive the competitive grant, and must identify specific output or outcome measures as a condition for adding the funds to a PPG. A State or Tribe may include these grant output measures in its PPG work plan. EPA will add the funds to the PPG by a grant amendment.

Section 3.3 Eligible Activities. Recipients may use PPGs to fund activities that are within the cumulative eligibilities of the grants listed in Section 3.2. Within these eligibilities, a PPG may fund multimedia regulatory and non-regulatory activities that could be difficult to fund under any individual categorical grant. EPA, in consultation with the States and Tribes, has developed a list of activities indicative of those it hopes PPGs will encourage. The list does not indicate pre-approval of activities and is not intended to be exhaustive. It merely illustrates the kind of activities which States, Tribes, the Agency and other stakeholders have identified as difficult to conduct with categorical grants and for which PPGs would be appropriate.

PPGs may support multi-media activities, such as:

- Pollution prevention-oriented multi-media rules, permitting, compliance assistance, inspections, enforcement, training, and facility planning (e.g., one industry/one rule, one stop emission reporting, permitting and compliance assistance),
- Non-regulatory pollution prevention technical assistance, technology development and diffusion, and partnerships with accountants, financiers, insurers, risk managers, urban planners, chemists, product designers and marketers, and other professions,
- Ecosystem, community, sector, watershed, or airshed environmental protection strategies (e.g., watershed targeted NPDES permits, empowerment zones),
- Support of Agency initiatives including Common Sense Initiative & Regulatory Reinvention (e.g., XL strategy implementation, market based strategies, local community risk assessment, negotiated rulemaking, third-party auditing, self certification for compliance),
- Environmental justice,
- Children's health programs,
- Public outreach and involvement,
- Information clearinghouses,
- Environmental monitoring,
- Capacity building and environmental code development, and
- Integration of regulatory and non regulatory strategies.

Section 4. Preparing a PPG Application

Section 4.1—Components of a complete application. A complete application for a PPG must:

(a) Meet the requirements in 40 CFR Part 31, Subpart B if the applicant is a State, interstate, or local agency, a Tribe or an Intertribal Consortium;

(b) Specify the environmental programs and the amount of funds requested from each program to be combined in the Performance Partnership Grant;

(c) Include a consolidated budget;

(d) Include a work plan that addresses each program being combined in the grant and that meets the requirements of Section 4.3; and

(e) Provide a rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

The applicant and the Regional Administrator will negotiate regarding the information necessary to support the rationale for programmatic flexibility required in paragraph (f) of this section. The rationale may be supported by information from a variety of sources, including a Performance Partnership Agreement or comparable negotiated document, the evaluation report required in § 31.40, and other environmental and programmatic data sources. A State agency seeking programmatic flexibility is encouraged to include a description of efforts to involve the public in developing the State agency's priorities.

Section 4.2.—Time frame for submitting an application for EPA Action. An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

Section 4.3—Work plans. (a) *Bases for negotiating work plans.* The work plan

is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and State environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the applicant's planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance/accountability measures in the national program guidance, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national and regional program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.*

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) The work plan must correspond to the budget period of the PPG (e.g. a two-year PPG requires a two-year work plan.).

(3) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 31.40 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(4) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) *Performance Partnership Agreement (PPA) or Tribal-EPA Agreement (TEA) as work plan.* An applicant may use a PPA or TEA as all or part of the work plan for an environmental program grant if the portions of the PPA or TEA that is to serve as the grant work plan:

(1) Is clearly identified and distinguished from other portions of the PPA/TEA; and

(2) Meets the requirements in Section 4.3(b).

Section 4.5 Explanation of Certain Elements of a Performance Partnership Agreement. The following explains in more detail some of the elements of the PPA/TEA not previously addressed:

(a) *Negotiated Environmental Priorities and Goals.* This part of the PPA/TEA is the product of negotiation between senior Regional officials and State or Tribal officials in positions to negotiate across grant programs, where this is appropriate. This part identifies the applicant's most significant environmental problems and the goals the applicant expects to achieve with the PPG. This strategic planning process reflects the applicant's priorities (as contained in any State or Tribal strategic plans or self-assessments), comparative risk studies or other risk-based approaches, and national priorities (enumerated in EPA's five-year strategic plan,[4] the National Environmental Goals Project and National program priorities specified in EPA HQ/Regional Memorandums of Agreement). Major new strategic or program directions or investments/ disinvestments should be identified here.

(b) *EPA Roles and Responsibilities in Supporting State or Tribal Efforts.* To strengthen the federal partnership with States and Tribes, the PPA/TEA should describe how EPA will carry out its federal responsibilities and how it will support the State's or Tribe's environmental protection efforts. The negotiated agreement should include the work plan commitments (goals, performance measures, and/or program activities) the recipient expects to achieve under the PPG. The agreement should also set forth procedures (e.g., mid-year and end-of-year reviews, reporting requirements, joint activities) that EPA and the recipient will use for evaluating accomplishments, discussing progress, and making adjustments to meet milestones.

(c) *Core commitments.* All PPG work plans must include core work plan commitments (goals, core performance or accountability measures, program activities) derived from statutes, regulations, and standing legal agreements between EPA and States/ Tribes (e.g., Delegation Agreements). As appropriate and negotiated between EPA Regions and recipients, core work plan commitments and performance measures should reflect National Program Manager/Regional guidance, EPA Headquarters-Regional MOA, Regional-State/Tribal MOA, and other EPA or State/Tribal policies. EPA should work with States and Tribes to balance the need to maintain core program requirements with the need to incorporate program flexibility and move toward program performance measures and environmental indicators. A PPA/TEA may also include measures for which data sources are not yet available if there is a commitment to develop reliable data sources.

(d) *Public Participation.* States and Tribes should continue to use their current public participation processes in conjunction with PPGs. EPA believes that it is critical to involve all stakeholders in the process of determining environmental priorities and goals, and therefore strongly encourages States and Tribes to involve stakeholders in identifying priority environmental problems. Recognizing the role and contribution of general purpose and special purpose local governments in the Nation's overall protection of the environment, EPA strongly encourages States to engage local jurisdictions which would be affected by a PPG. EPA also encourages recipients to share with stakeholders the results of their goals and activities defined in the PPA/TEA. Effective public participation will establish the foundation for greater program flexibility and the achievement of better environmental results.

(e) *PPG Evaluation.* The recipient should prepare a PPG annual report (as described in 40 CFR 31.40(b)) as well as satisfy any other reporting requirements required in the PPG agreement. In addition to evaluating performance based on PPG work plan commitments, the recipient should identify any problems, delays or conditions which materially affected the recipient's ability to meet the PPG objectives or commitments, any benefits that enabled the recipient to perform better than expected, and EPA's performance in helping the recipient to achieve work plan commitments. EPA and the States/ Tribes are also interested in knowing whether the work undertaken under the grant: (1) addressed the stated strategic priorities and goals; (2) achieved administrative cost savings; (3) where appropriate, improved environmental results (to the extent environmental performance measures were part of the PPG work plan commitments); and (4) improved EPA/grantee working relationships. After reviewing the annual report, the EPA Project Officer will provide evaluation findings to the

[4] ''The New Generation of Environmental Protection: EPA's Five-Year Strategic Plan,'' (EPA 200–B–94–002)

recipient and will include such findings in the official PPG file. Where required in NPM guidance, the EPA project officer will also provide copies to appropriate NPM personnel.

• Evaluating the National PPG Program. EPA will request the assistance of PPG recipients to evaluate the overall PPG process. Lessons learned from FY 1996–1999 experiences will be used to modify the program in subsequent years. The overall PPG grant process will be evaluated by EPA and program participants in order to understand how well it is being implemented as a national program. In addition to the criteria used to evaluate individual PPGs, national criteria will address whether PPGs: (1) led to greater State and Tribal flexibility; (2) resulted in States and Tribes adopting innovative environmental protection strategies; (3) changed polluter behavior; and (4) improved public health and the environment.

Section 5. EPA And Recipient Roles And Responsibilities

Section 5.1 EPA Headquarters. National Program Manager (NPM). The NPMs set national strategic direction and core program requirements and priorities for all environmental programs. NPM and Regional Guidance for State grant programs should be issued in a timely fashion to accommodate EPA-applicant negotiations of grant work plans. In any circumstance where a State or Tribe proposes activities that will lead it to significantly deviate from NPM Guidance or EPA policy, the Regional Administrator will consult with the appropriate NPM. In many cases, NPMs also allocate categorical grant funds to EPA's Regions based on established allocation criteria. EPA NPMs should provide Regions with grant allocations in a timely fashion to accommodate the development of grant applications and the negotiation of grant work plans.

Grants Administration Division (GAD). The GAD's responsibilities include: (1) sponsoring the PPG Delegation of authority; (2) reviewing and acting on deviation requests from EPA's grant regulations to implement PPGs; (3) sponsoring the proposed PPG regulations; (4) answering questions regarding the administration of PPGs; (5) interpreting 40 CFR Part 31 and Part 35, Subpart A and the draft 40 CFR Part 35, Subparts A and B.

Office of the Chief Financial Officer (OCFO). The OCFO's responsibilities include: (1) distributing categorical grant funds to the Regions; (2) approving requests by the Regions to reprogram categorical grant funds into the PPG program element; (3) upon request of Appropriations Committees, provides periodic reports on the number of states participating in PPGs and the grant funds they are using; and (4) developing guidance for Regions to crosswalk State grant work plan budget and performance information to EPA's GPRA budget and reporting system.

Office of Congressional and Intergovernmental Relations (OCIR). OCIR responsibilities include: (1) providing guidance on EPA and State implementation of the National Environmental Performance Partnership System (NEPPS); (2) general interpretation and implementation of NEPPS policies; and (3) general national liaison with state and local governments and related organizations.

American Indian Environmental Office (AIEO). AIEO responsibilities include: (1) developing Guidance on EPA's partnerships with Tribes and Intertribal Consortia and the negotiation of Tribal-EPA Agreements (TEAs); (2) developing other crosscutting program guidance related to EPA's implementation of Tribal environmental programs; (3) general liaison with Tribal governments and related organizations; and (4) answering questions regarding PPG implementation in Indian Country.

Section 5.2 EPA Regions. Regional Administrator (RA). The RA is the designated approval and award official for PPGs with redelegation authority to the Deputy Regional Administrator or the Division Director or equivalent level. The RA, or a senior regional official(s) designated by the RA, should conduct the initial negotiations with applicants to establish environmental priorities and goals. The RA is also responsible for establishing many State grant allocations and a work plan negotiation process that will result in timely award of PPGs. The RAs should provide applicants with grant planning allocations in a timely fashion to accommodate the development of grant applications and the negotiation of grant work plans.

The RA should designate a single PPG Project Officer (PO) for each award. Because PPGs cross programs, the PO should coordinate negotiations with the recipient on behalf of all the relevant EPA programs. The RA may wish to designate a team of technical program staff to support the designated Project Officer, or set additional criteria for designating the PO. In any circumstance where an applicant proposes activities that will lead it to significantly deviate from NPM Guidance or EPA policy, the Regional Administrator will consult with the appropriate NPM.

Regional Program Managers. The managers of all programs included in the PPG will jointly be the program managers of the PPG, as will other appropriate Regional management officials. Regional Program Managers should (1) be consulted about or participate in negotiations with States and Tribes; (2) articulate Agency, NPM and Regional goals and priorities and work with recipients to assure they are incorporated into PPG work plans; (3) serve as the principal source for technical program assistance to recipients; and (4) participate in PPG program evaluation as defined by the PPG work plan.

Regional Project Officer. The PPG Project Officer (PO) will be the primary point of contact for grant recipients. The PO is responsible for coordinating programmatic and technical aspects of the PPA/TEA, PPG work plan, and the PPG agreement. All project officers must have successfully completed the EPA training course ''Managing Your Financial Assistance Agreement—Project Officer Responsibilities.'' The PO should work closely with the Regional Indian Coordinator/Regional Indian Office for Tribal PPGs.

Regional Grants Management Office (GMO). Regional GMOs are responsible for carrying out all administrative functions associated with the receipt of the PPG application, processing the PPG award, and post-award administrative management of PPGs. (These functions are the same as those for the award and management of categorical grants.)

Regional Comptroller Offices. Regional Comptroller Offices are responsible for submitting approval requests to Headquarters Budget Division for Regional reprogramming of funds from categorical grant program resource codes to PPG distribution accounts and, upon approval, completing the reprogramming of the funds. Both the PPG award and obligation must include the State identifier code on transactions in IFMS.

Section 5.3 Recipients. Recipients may wish to designate a single point of contact for each PPG to serve as the counterpart to the EPA Project Officer. This individual should be responsible for coordinating all programmatic and technical aspects of the PPG as well as for all intra-State or intra-Tribal agreements. Recipients should identify these points of contact in their PPG application.

Section 6. Funding

Section 6.1 Project Period and Availability of Funds. In consultation with the Regional Administrator, the applicant may choose to submit either

annual or multi-year PPG work plans. Project periods may remain open to reflect the continuing nature of PPGs. The Regional Administrator and applicant may negotiate the length of the budget period for PPGs, subject to limitations in appropriations acts. The approved work plan must cover the entire PPG budget period.

Section 6.2 Award Amounts and Distribution of Funds. A state's or tribe's choice of PPGs or categorical grants will not affect its allocation of grant funds.

Section 6.3 Reprogramming of Funds. EPA's Budget Division will allocate grant funds to the Regions by objective. Regional Budget Officers will request the reprogramming of funds from program resource codes into a PPG distribution account. For FY 1999, the reprogramming of funds to implement PPGs is exempt from the $500,000 Congressional reprogramming limitation. Reprogramming requests will be made only after the PPG project officer, EPA approval official and the Grants Management Office find the PPG application acceptable. Please refer to Office of the Comptroller Announcement No. 98—xx, ''Accounting for Resources under the Government Performance and Results Act'' for more details on budget execution and reporting for PPGs. The purpose statement/justification that should be included in the reprogramming request is:

Purpose: This action reprograms resources ($) from existing categorical grants, air ($.), water ($), etc. to support the implementation of the Performance Partnership Grant for the State/Tribe of _____. This transfer is authorized by the/this decision memorandum dated _____ and signed by _____.

Person to contact: _____

Phone: _____ (including area code)

Section 6.4 Carryover And Unexpended Prior Year Funds. Funds recovered from an applicant's FY 1996–98 categorical grants will be available to fund PPGs awarded in FY 1999 and beyond, provided there is consistency with the appropriation and/or the underlying categorical program statutes and Comptroller Policy No. 88–09 ''Disposition of Unobligated Balances of Assistance Awards.'' Carryover of unobligated balances will be allowed provided that the recipient uses the carryover award amount to support either ongoing programmatic goals, a multi-year PPG work plan, a special project falling within the PPG's eligibilities, or those activities contemplated for the next PPG award cycle's goals. As with all grant funds, the source of funds (e.g. CAA § 105, CWA § 106, PPG) determines the cost-share for unexpended prior-year funds. Therefore, unexpended prior-year PPG funds take on the final cost-share for the previous year's PPG, as described in Section 6.5.

If the PPG work plan commitments include activities that cannot be fully funded at the time of award (e.g. multi-year PPG work plans, competitive grants), additional funding can be added as it becomes available. The Regions may also forward-fund PPG awards.

Section 6.5 Cost-share Requirements. (a) An applicant for a Performance Partnership Grant must provide a non-federal cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs that are combined in the Performance Partnership Grant. Cost share requirements for the individual environmental programs are described in §§ 35.200 to 35.260, and other relevant documents.

(b) When an environmental program included in the Performance Partnership Grant has both a matching and maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that environmental program.

(c) Example. A State or Tribe that applies for a PPG combining its Water-106, Nonpoint Source, UIC, UST, RCRA and Air-105 categorical grants. The portion of the federal categorical grant funding from each program designated by the recipient to be reprogrammed to the PPG is listed in the third column below. (This amount does not necessarily reflect all the Federal dollars available to the recipient for that specific categorical program. The recipient may choose to continue to receive some of the program's funding categorically.) The fourth column illustrates the minimum recipient cost share for each piece (based on the cost share requirements of the program that is the source of the funds). The fifth column notes the basis for the requirement. The total amount of federal money awarded in the PPG is the sum of the contributed portions dollars in the third column. The minimum recipient PPG cost share is the sum of the minimum recipient cost shares for each of the contributed portions shown in the fourth column.

Funding source share	PPG total	Federal share	Recipient cost share	Basis of cost
Water-106	1,239,064	1,087,995	[5]151,069	MOE.
Nonpoint Source	924,333	554,600	[6]369,733	MOE or 40% match.
UIC	78,796	59,097	19,699	25% match.
UST	216,667	162,500	54,167	25% match.
RCRA	465,989	349,492	116,497	25% match.
Air-105	*2,290,230*	*1,374,198*	[6,7] *916,132*	*MOE or 40% match.*
PPG	5,215,079	3,587,882	1,627,297	PPG guidance

The minimum composite cost share for the PPG in this example is $1,627,297, which is 31.2% of the PPG total of $5,215,079. The percentage is based on the ratio between the total dollar value (Federal and non-Federal) of each program, activity, etc., included in the PPG(s) and the dollar value of its respective cost sharing requirement. EPA uses this percentage to determine the recipient's share of each dollar expended for the PPG(s).

If a recipient chooses to split federal categorical funding between a PPG and a categorical grant, the minimum required cost share for the PPG will be directly related to the portion of the categorical grant funds moving to the PPG. The following is an example of how this would apply to the UST funding cited above. If half of the funding was maintained in a categorical grant ($81,250 went to both the PPG and the categorical grant), the minimum cost share for the PPG would be half of $54,167 or $27,083.50.

If the cost share requirement for a categorical grant is a minimum percentage of the total grant program (combined federal and recipient contributions), the minimum allowable recipient contribution can be calculated using a two step process. Following is an example of how this would apply to the RCRA funding above:

(1) Divide the available federal funding by the maximum federal share ($349,492 divided by 75%) The result is the minimum total program amount (federal and State shares combined) for the grant ($465,989). (2) Subtract the federal contribution from the minimum total program amount to determine the minimum required recipient contribution. ($465,989 − $349,492 = $116,497. $116,497 represents 25% of the total.)

If a recipient decides to withdraw an environmental program with an MOE requirement from the PPG and seek funding for the environmental program under a categorical grant, the MOE requirement for the new categorical grant will be no less than the MOE requirement in the fiscal year immediately preceding the entry of the environmental program into the PPG. EPA may approve an adjustment to the MOE requirement for the new categorical grant if EPA determines that there are exceptional circumstances justifying such an adjustment. This requirement is a condition of receiving a PPG and, therefore, must be included in all PPG grant agreements.

Section 7. Administrative Information

Section 7.1 Delegation of Authority. The Regional Administrator is the designated approval and award official for PPGs with approval redelegation authority to the Deputy Regional Administrator or the Division Director level. References: Delegation #1–14 -Assistance Agreements; Delegation #1–101 -Performance Partnership Grants.

Section 7.2 Grant Budget Information. Applicants may merge funding for all PPG programs and activities into a single budget for accounting and reporting purposes. This budget must display a breakdown of costs by object class categories on Standard Form 424B. For applicants proposing multi-year PPG work plan commitments, the applicant need only reflect object class costs for the initial year. However, the budget information must accurately reflect the grant agreement and be able to be tracked to support the program outcomes and outputs cited in that grant agreement. The Regional Administrator may also require the applicant to submit a level of supplemental budget detail necessary to allow for adequate determination of the allowability, allocability, necessity, and reasonableness of each element of program costs.

Section 7.3 Certifications. States/Tribes may submit one set of grant certifications ((i.e. a bundled certification) for anti-lobbying, debarment/suspension, SF424B—assurances and procurement with the PPG application.

Section 7.4 Standard Terms And Conditions. EPA will add standard terms and conditions to the PPG agreement as required by the authorities set forth in sections 2.1 and 2.2. The PPG agreement must cite the PPG work plan commitments as terms and conditions of the agreement. The Region may add any additional State or Tribal specific terms and conditions deemed appropriate and necessary on a case by case basis.

Section 7.5 Grants Information And Control System (GICS) Data. The following are the GICS codes for PPGs.

—Program Code: BG
—Description: Performance Partnership Grants
—Statutory Authority Code: 141
—Text: Appropriations Act of 1996 (PL–104–134)
—Regulatory Code: A4
—CFDA number: 66.605

Section 8. Post-Award Requirements

Section 8.1 Pre-award Costs. Consistent with 40 CFR § 35.141 and subject to the availability of funds, EPA will reimburse applicants for allowable costs incurred from the beginning of the approved budget period.

Section 8.2 Financial Management And Reporting. Recipients. PPG recipients will continue to follow the regulations for Standards for Financial Management Systems contained in 40 CFR Part 31.20. Fiscal control and accounting procedures of the recipient applicant must be sufficient to permit preparation of Financial Status Reports for PPG awards.

PPG recipients must maintain accounting and financial records which adequately identify the source (i.e., Federal funds and match) and application of funds provided for PPG activities. These records should contain relevant information such as obligations, unobligated balances, outlays, expenditures and program income.

Recipients will track PPG funds to the total effort or costs incurred for the PPG work. EPA will reimburse the recipient for the federal share of the costs from the PPG budgetary account. PPG costs will not be tracked to each of the original individual categorical source(s) of grant funding.

Government Performance and Results Act: EPA will use budget information that States and tribes provide in PPG grant applications as a basis for linking the Agency's expenditures to with EPA's GPRA budget structure. EPA's Regional offices, with consultation with recipients, will be responsible for cross-walking PPG application budget data into the EPA's GPRA goals, objectives, and subobjective architecture. If a PPG work plan is subsequently amended, the Region will consult with the recipient to estimate the budget change associated with the amendment. Please refer to Office of the Comptroller Policy Announcement No. 98—xx, ''Accounting for Resources under the Government Performance and Results Act'' for guidance on approach to use for the cross-walk to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

Section 8.3 Payment. To reduce paperwork and facilitate payment, EPA will encourage PPG recipients to receive electronic payments via the Automated Clearinghouse (ACH) System. Inability to qualify for an ACH method of payment will not preclude an otherwise eligible recipient from receiving a PPG

[5] The Water 106 program has no match requirement for states. However, it has a MOE requirement based on recurrent expenditures in the FY year ending (1) June 30, 1971 or (2) October 1, 1977, if the State is expending funds awarded in any fiscal year for construction grants management under section 205(g). This requirement obligates a State to spend at least the base year amount of money each year without regard to the amount of the federal award. EPA will continue to use this MOE requirement amount to calculate recipient minimum cost share when the Water 106 program in part of a PPG. For Tribes, there is a 5% match, but no MOE.

[6] The Air 105 and the Nonpoint Source programs have both a match and a MOE requirement. The greater of the MOE or the match requirements of these two programs will be used to calculate the minimum cost share requirement for a PPG, when the programs are part of a PPG.

[7] Revenue generated by the collection of Clean air Act Title V fees can only be used for the Title V Operating Permit program and cannot be used to meet cost share requirements for any grants, including PPGs as well as section 105 grants.

award. Beginning January 1, 1999, all payments to grant recipients will be made electronically, although recipients who do not have a formal ACH established may still request payment using Standard Form 270.

Section 8.4 Allowable Costs. OMB Circular A–87 (cost principles) and EPA regulations in 40 CFR Part 31 will apply to PPGs to determine the reasonableness, allowability, necessity and allocability of costs.

Section 8.5 Additions/Deletions of Programs From Existing PPGs. States/Tribes may elect, with Regional concurrence, which categorical program or project grants will be included in its established PPG award(s). In general, once an annual PPG is awarded for a given fiscal year, EPA will authorize no programmatic deletions until the beginning of the next fiscal year. Once PPG program commitments are approved and funds have been reprogrammed by EPA, the funds lose their categorical identity and cannot be pulled out by an applicant.

Funds for grants approved in the middle of the fiscal year and appropriate competitive grants may be added to the PPG subject to PO approval. The PO and recipient will renegotiate the approved environmental performance agreement goals and revise the PPG program commitments and budgets. EPA will reprogram the funds to be added to a PPG. The recipient must submit a formal amendment to add funding to the PPG. EPA will process the amendments as expeditiously as possible, while maintaining fiduciary responsibility, to accommodate the recipient.

If a recipient chooses to add a categorical grant program to a two-year PPG, the match requirements of that program will then be calculated as part of the overall PPG composite match (see Section 6.5).

If the recipient drops a program at the end of a cycle, based on the recipient's decision to redirect its efforts and with the prior approval of the PPG PO, the PPG recipient shall be reimbursed for allowable costs incurred during the PPG project period.

If a recipient withdraws an environmental program with an MOE requirement from the PPG at the end of the award cycle and seeks funding for the program under a categorical grant, the MOE requirement for the new categorical grant will be no less than the MOE requirement in the fiscal year immediately preceding the entry of the environmental program into the PPG. EPA may approve an adjustment to the MOE requirement for the new categorical grant if EPA determines that there are exceptional circumstances justifying such an adjustment (see Section 6.5). This requirement is a condition of receiving a PPG and, therefore, must be included in all PPG grant agreements.

Section 8.5 Enforcement. If a recipient materially fails to comply with a term or condition in the PPG award, EPA may impose sanctions in accordance with 40 CFR § 31.43, including the conversion of a PPG back to individual categorical grants during the next award cycle.

Section 8.6 Disputes. The dispute process set forth in 40 CFR § 31.70 will apply to PPGs. Disagreements between the recipient and EPA regarding PPG applications, including PPG work plan commitments, priorities and/or related performance indicators, or PPGs themselves, including disallowances or enforcement actions, are to be resolved at the lowest level possible, i.e., the project officer.

The Regional Administrator designates the Dispute Decision Official. Because of the multi-media nature of the PPG program, it is suggested that the Regional Administrator select a multi-media Division Director in Regions where applicable, or the Region's Senior Resource Official/Assistant Regional Administrator as the Disputes Decision Official to resolve disputes arising under the PPG assistance agreements.

The Regional Administrator will continue to be the final level of appeal at the Regional level. The Deputy Administrator or his/her designee will serve as the Headquarters Disputes Review Official to resolve disputes arising under PPG assistance agreements appealed to Headquarters.

[FR Doc. 98–26459 Filed 10–5–98; 8:45 am]

BILLING CODE 6560–50–U

federal register

Tuesday
October 6, 1998

Part IV

The President

Proclamation 7131—Fire Prevention Week, 1998

Federal Register
Vol. 63, No. 193
Tuesday, October 6, 1998

Presidential Documents

Title 3—

The President

Proclamation 7131 of October 2, 1998

Fire Prevention Week, 1998

By the President of the United States of America

A Proclamation

Fire claims more than 4,000 American lives each year, a tragic loss of life that we can and must prevent. Nearly 80 percent of these deaths occur in the home, where smoke and poisonous gases often kill people long before flames can reach them.

Underestimating fire's deadly speed has cost many Americans their lives. Smoke alarms are one of the most effective safety tools available to ensure sufficient escape time, and research shows that by installing and maintaining working smoke alarms, we can reduce the risk of fire-related death by nearly 50 percent. Another important safety measure is a home fire escape plan, which enables everyone in the household to exit quickly during a fire emergency.

As sponsor of Fire Prevention Week for more than 70 years, the National Fire Protection Association (NFPA) has selected ''Fire Drills—The Great Escape!'' as the theme for this year's Fire Prevention Week. Together with the Federal Emergency Management Agency, the NFPA reminds us to take responsibility for our personal safety and practice our home escape plans. On Wednesday, October 7, 1998, fire departments across America will coordinate home fire drills in support of National Fire Prevention Week. Community fire departments will signal the start of the ''Great Escape Fire Drill'' by sounding their stations' fire alarms at 6:00 p.m.

As we focus on fire safety this week, let us also pay tribute to the courage and commitment of our Nation's fire and emergency services personnel. These dedicated men and women devote themselves, day in and day out, to protecting our lives and property from the ravages of fire. All America watched in awe this summer as thousands of firefighters from across the Nation battled the wildfires that raged through Florida for so many weeks. Leaving their own homes and families, these heroes put their lives on the line as street by street, house by house, they worked to save the homes of their fellow Americans. It is fitting that on Sunday, October 4, 1998, at the 17th annual National Fallen Firefighters Memorial Service in Emmitsburg, Maryland, our Nation will honor once again the valiant men and women across our country whose commitment to protecting our families and communities from fire cost them their lives.

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 October 4 through October 10, 1998, as Fire Prevention Week. I encourage people of the United States to take an active role in fire prevention not only this week, but also throughout the year. I also call upon every citizen to pay tribute to the members of our fire and emergency services who have lost their lives or been injured in service to their communities, and to those men and women who carry on their noble tradition.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, 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-third.

William J. Clinton

[FR Doc. 98–26972
Filed 10–5–98; 8:45 am]
Billing code 3195–01–P

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.J. Res. 128/P.L. 105–240

Making continuing appropriations for the fiscal year 1999, and for other purposes. (Sept. 25, 1998; 112 Stat. 1566)

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